

FEDERAL CONTRACT TERMS AND CONDITIONS

VERSION 1.2, REVISED MAY 1, 2025

To the extent these clauses conflict with any term or condition in the *Standard Terms and Conditions*, the Parties shall (i) endeavor to interpret the clauses in harmony, otherwise (ii) these *Federal Contract Terms and Conditions* take precedence.

1. CLAUSES APPLICABLE TO THIS CONTRACT.

Subcontractor agrees to flow down all applicable clauses from the Contract Documents to Lower Tier Subcontractors and Lower Tier Suppliers, as necessary.

1.1 Equal Employment Opportunity

Subcontractor agrees to comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The Contractor is a federal government contractor and, as such, the provisions of 41 CFR § 60-1.4(a) are, if applicable, incorporated by reference. In addition, the Subcontractor shall abide by the requirements of 41 CFR § 60-300.5(a) and 41 CFR § 60 741.5(a). These regulations prohibit, respectively, discrimination against qualified protected veterans and qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.

1.2 Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c).

Subcontractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides in part that Subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which it is otherwise entitled.

1.3 Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)

Subcontractor shall comply with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, Subcontractor is required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, Subcontractor shall be required to pay wages not less than once a week.

1.4 Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)

Subcontractor shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, Subcontractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty (40) hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half (1-1/2) times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.

1.5 Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended

Subcontractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency ("EPA").

1.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

Subcontractor and its Lower Tier Subcontractors and Lower Tier Suppliers shall file the certification required by the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) and associated regulations. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to Contractor.

1.7 Debarment and Suspension (E.O.s 12549 and 12689)

Subcontractor represents and warrants that it is not listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Subcontractor shall provide to Contractor the required certification regarding its exclusion status and that of its principal employees.

2. CYBERSECURITY MATURITY MODEL CERTIFICATION REQUIREMENTS (JAN 2023)

If this applies to the Prime Contract, Subcontractor agrees to and understands the following:

(a) *Scope.* The Cybersecurity Maturity Model Certification ("CMMC") CMMC is a framework that measures a subcontractor's cybersecurity maturity to include the implementation of cybersecurity practices and institutionalization of processes (see <https://www.acq.osd.mil/cmmc/index.html>).

(b) *Requirements.* The Subcontractor shall have a current (i.e. not older than 3 years) CMMC certificate at the CMMC level required by this Agreement and maintain the CMMC certificate at the required level for the duration of the Agreement.

(c) *Subcontracts.* The Subcontractor shall—(1) Insert the substance of this clause, including this paragraph (c), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items, excluding commercially available off-the-shelf items; and (2) Prior to awarding to a subcontractor, ensure that the subcontractor has a current (i.e., not older than 3 years) CMMC certificate at the CMMC level that is appropriate for the information that is being flowed down to the subcontractor.

By signing the Subcontract Agreement, Subcontractor acknowledges and agrees that it has a current CMMC certificate at the level appropriate for the information it will receive under the terms of the Agreement.

3. PROMPT PAYMENT.

3.1 Contractor shall pay Subcontractor for satisfactory performance under its Subcontract not later than seven days from receipt of payment out of such amounts as are paid to Contractor under its contract with the Government. Additionally, Contractor shall pay Subcontractor an interest penalty for each payment not made in accordance with the foregoing: (i) for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and (ii) computed at the rate of interest established by the Secretary of the Treasury and published in the Federal Register for interest payments under Section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time Contractor accrues the obligation to pay an interest penalty.

3.2 Subcontractor shall include a payment clause and an interest penalty clause conforming to the standards set forth in the subparagraph above in each of its subcontracts and require each of its subcontractors to include such clauses in their subcontracts with each lower tier subcontractor or supplier.

3.3 The clauses required by the subparagraphs of this clause above shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in the Agreement, DOA or subcontract, provisions that permit Contractor or Subcontractor to withhold retainage without incurring an interest penalty and provisions that permit Contractor or Subcontractor to make a determination that part of a request for payment may be withheld in accordance with the Agreement, subcontract or other agreement without incurring an interest penalty. (FAR 52.232-27).

4. RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT.

4.1 Except as provided in 4.2 below, Centennial shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

4.2 The prohibition in 4.1 above does not preclude the Centennial from asserting rights that are otherwise authorized by law or regulation.

4.3 The Subcontractor agrees to incorporate the substance of this clause, including this subparagraph 4.3, in all subcontracts under this contract which exceed the simplified acquisition threshold. (FAR 52.203-6).

5. ANTI-KICKBACK PROCEDURES.

5.1 The Anti-Kickback Act of 1986 (41 U.S.C. 51-58)(the Act), prohibits any person from providing or attempting to provide or offering to provide any kickback; soliciting, accepting, or attempting to accept any kickback; or including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the

contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

- 5.2 When Contractor has reasonable grounds to believe that a violation described in subparagraph 5.1 above of this clause may have occurred, Contractor will promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
- 5.3 Contractor shall cooperate fully with any Federal agency investigating a possible violation described above.
- 5.4 The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that Contractor withhold, from sums owed a subcontractor under the prime contract, the amount of any kickback. The Contracting Officer may order the monies withheld be paid over to the Government unless the Government has already offset those monies against monies owed under the prime contract. In either case, Contractor must notify the Contracting Officer when the monies are withheld.
- 5.5 Subcontractor agrees to incorporate the substance of this clause, including this subparagraph, in all subcontracts which exceed \$100,000. (FAR 52.203-7).

6. CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (NOV 2021).

- 6.1 Definitions. As used in this clause—
- Agent means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.
- Full cooperation-
- (1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors' and investigators' request for documents and access to employees with information;
- (2) Does not foreclose any Subcontractor rights arising in law, the FAR, or the terms of the contract. It does not require-
- (i) A Subcontractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or
- (ii) Any officer, director, owner, or employee of the Subcontractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and
- (3) Does not restrict a Subcontractor from-
- (i) Conducting an internal investigation; or
- (ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.
- Principal means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).
- Subcontract means any contract entered into by a Subcontractor or Lower Tier Subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.
- Subcontractor means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.
- United States, means the 50 States, the District of Columbia, and outlying areas.
- 6.2 **Code of business ethics and conduct.** Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Subcontractor shall—
- (i) Have a written code of business ethics and conduct; and
- (ii) Make a copy of the code available to each employee engaged in performance of the Agreement.
- The Subcontractor shall-
- (i) Exercise due diligence to prevent and detect criminal conduct; and
- (ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.
- 6.3 (i) The Subcontractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer and Contractor, whenever, in connection with the award, performance, or closeout of this contract or

any subcontract thereunder, the Subcontractor has credible evidence that a principal, employee, agent, or subcontractor of the Subcontractor has committed-(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or (B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Subcontractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Subcontractor. The Government may transfer documents provided by the Subcontractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

(iii) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Subcontractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.

6.4 **Business ethics awareness and compliance program and internal control system.** This paragraph 6.3 does not apply if the Subcontractor has represented itself as a small business concern pursuant to the award of this Agreement or if this contract is for the acquisition of a commercial product or commercial service as defined at FAR 2.101. The Subcontractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:

(1) An ongoing business ethics awareness and compliance program.

(i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.

(ii) The training conducted under this program shall be provided to the Subcontractor's principals and employees, and as appropriate, the Subcontractor's agents and subcontractors.

(2) An internal control system.

(i) The Subcontractor's internal control system shall—

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) At a minimum, the Subcontractor's internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Subcontractor's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Subcontractor's code of business ethics and conduct and the special requirements of Government contracting, including-

(1) Monitoring and auditing to detect criminal conduct;

(2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer and Contractor, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Subcontractor or Lower Tier Subcontractor thereunder, the Subcontractor has credible evidence that a principal, employee, agent, or subcontractor of the Subcontractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729- 3733).

(1) If a violation relates to more than one Government contract, the Subcontractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

(2) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Subcontractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

6.5 Subcontracts.

(1) The Subcontractor shall include the substance of this clause, including this paragraph 6.5, in subcontracts that exceed the threshold specified in FAR 3.1004(a) on the date of subcontract award and a performance period of more than 120 days.

(2) 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.

7. INSURANCE.

Unless Certificates of Insurance and the underlying insurance policies procured by the Subcontractor must contain the following provision:

"Cancellation or any material change in the policies adversely affecting the interest of the Government in such insurance shall not be effective for such period as may be prescribed by the laws of the state in which this contract is to be performed and in no event less than thirty (30) days written notice to Centennial Contractors Enterprises, Inc."

When necessary to make the language of the FAR clauses applicable to the Subcontract, the term "contractor" means "Subcontractor", the term "contract" means the "Subcontract", and the terms "government", "contracting officer", and equivalent terms and phrases mean "Contractor".

The full text of the FAR clauses may be found at <https://www.acquisition.gov/browse/index/far>

Subcontractor agrees to flow down and incorporate all applicable FAR clauses to its Lower Tier Subcontractors and its Lower Tier Suppliers.

8. CLAUSES APPLICABLE TO WORK PROCURED BY THE FEDERAL GOVERNMENT USING APPROPRIATED FUNDS.

The following FAR provisions are incorporated into the Agreement to the extent included in the Contract Documents. Where the Contract Documents indicate a different version of the FAR clause, the Subcontractor is expected to adhere to the version cited in the Contract Documents.

For the following clauses, any use of the term "Contractor" shall be understood to mean "Subcontractor". These clauses apply to the Subcontractor to the same extent that they apply to the Contractor.

FAR 52.202-1	Definitions	(Dec. 2001)
FAR 52.203-6	Restrictions on Subcontractor Sales to the Government	(July 1995)
FAR 52.203-7	Anti-Kickback Procedures	(July 1995)
FAR 52.203-12	Limitation on Payments to Influence Certain Federal Transactions	(June 2003)
FAR 52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	(July 1995)
FAR 52.211-5	Material Requirements	(Aug. 2000)
FAR 52.211-15	Defense Priority and Allocation Requirements	(Sept. 1990)
FAR 52.214-27	Price Reduction for Defective Cost or Pricing Data—Modifications— Sealed Bidding	(Oct. 1997)
FAR 52.215-2	Audit and Records—Negotiation	(June 1999)
FAR 52.215-10	Price Reduction for Defective Cost or Pricing Data	(Oct. 1997)
FAR 52.215-11	Price Reduction for Defective Cost or Pricing Data—Modifications	(Oct. 1997)
FAR 52.219-8	Utilization of Small Business Concerns	(Oct. 2000)
FAR 52.222-4	Contract Work Hours and Safety Standards Act—Overtime Compensation	(Sept. 2000)
FAR 52.222-6	Davis-Bacon Act	(Feb. 1995)
FAR 52.222-7	Withholding of Funds	(Feb. 1988)
FAR 52.222-8	Payrolls and Basic Records	(Feb. 1988)
FAR 52.222-9	Apprentices and Trainees	(Feb. 1988)
FAR 52.222-10	Compliance with Copeland Act Requirements	(Feb. 1988)
FAR 52.222-11	Subcontracts (Labor Standards)	(Feb. 1988)
FAR 52.222-12	Contract Termination—Debarment	(Feb. 1988)
FAR 52.222-13	Compliance with Davis-Bacon and Related Act Regulations	(Feb. 1988)
FAR 52.222-14	Disputes Concerning Labor Standards	(Feb. 1988)
FAR 52.222-15	Certification of Eligibility	(Feb. 1988)
FAR 52.222-17	Labor Standards for Construction Work—Facilities Contracts	(Feb. 1988)
FAR 52.222-20	Walsh-Healey Public Contracts Act	(Dec. 1996)
FAR 52.222-27	Affirmative Action Compliance Requirements for Construction	(Feb. 1999)
FAR 52.222-36	Affirmative Action for Workers with Disabilities	(June 1998)
FAR 52.223-13	Certification of Toxic Chemical Release Reporting	(June 2003)
FAR 52.223-14	Toxic Chemical Release Reporting	(June 2003)
FAR 52.225-1	Buy American Act—Supplies	(June 2003)
FAR 52.225-3	Buy American Act—North American Free Trade Agreement—Israeli Trade Act	(June 2003)
FAR 52.225-5	Trade Agreements	(June 2003)
FAR 52.225-11	Buy American Act—Construction Materials Under Trade Agreements	(June 2003)
FAR 52.225-15	Sanctioned European Union Country End Products	(Feb. 2000)
FAR 52.227-1	Authorization and Consent	(July 1995)
FAR 52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement	(Aug. 1996)
FAR 52.227-14	Rights in Data—General	(June 1987)
FAR 52.203-11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions	(Apr. 1991)
FAR 52.208-8	Required Sources for Helium and Helium Usage Data	(Apr. 2002)
FAR 52.222-21	Prohibition of Segregated Facilities	(Feb. 1999)
FAR 52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	(Dec. 2001)
FAR 52.222-26	Equal Opportunity	(Apr. 2002)
FAR 52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	(Dec. 2001)
FAR 52.225-13	Restrictions on Certain Foreign Purchases	(June 2003)
FAR 52.228-3	Workers' Compensation Insurance (Defense Base Act)	(Apr. 1984)
FAR 52.228-5	Insurance—Work on a Government Installation	(Jan. 1997)
FAR 52.244-6	Subcontracts for Commercial Items	(Apr. 2003)
FAR 52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels	(Apr. 2003)
FAR 52.248-1	Value Engineering	(Feb. 2000)

9. CLAUSES APPLICABLE TO WORK PROCURED BY THE DEPARTMENT OF DEFENSE USING NONAPPROPRIATED FUNDS.

- 9.1 **Fund Furnished Information.** All documents and information furnished by the Owner shall remain the Owner's property. Any information and data gained by the Subcontractor, and reports, drawings, charts, and photographic work generated in

performing the requirements of this Agreement remain the sole property of the Owner. The Subcontractor shall not disclose or duplicate any information furnished by the Owner, except as authorized in writing by the Issuing Contracting Officer. Any information or data provided by the Owner shall be returned to the Owner upon request or when no longer needed for the performance of this Agreement. Except as may be necessary for the performance of this Agreement, Subcontractor shall not use or disclose information concerning the activities of the Owner without the written prior consent of the Issuing Contracting Officer and the Contractor.

9.2 Prohibition Against Public Disclosure of Work under this Agreement.

9.2.1 Public disclosure of information derived from or knowledge gained as a result of work under this Agreement whether by press release, word of mouth, written correspondence or any other means is prohibited without the advance written consent of the Issuing Contracting Officer and Contractor. Request for authority to release such information must be made in writing and submitted by the Subcontractor to the Contractor. Request must be documented with sufficient evidence to justify requested release as being in the best interest of the public welfare. Final determination with regard to the necessity of public disclosure of such information remains solely with the Owner.

9.2.2 As used in this clause, the prohibition against “**public disclosures**” is defined to include a prohibition against disclosures to any governmental agency or unit other than the Owner as well as any individual or group of individuals outside of the Owner’s agency.

9.2.3 Subcontractor agrees to insert this clause in any and all subcontracts hereunder relating to performance of work under this contract.

9.3 All Items to Become Property of the Owner. Title to all data and information developed and furnished by the Subcontractor, together with all deliverable data, reports, documentation and all other information pertaining to the Work and services to be performed pursuant to this Agreement including any copyright, shall become property of and remain with the Owner upon completion. The Owner shall have the full right to use each of these for its purposes without compensation or approval on the part of the Subcontractor. The Owner shall have unlimited access to and the right to make copies of the above-mentioned items.

9.4 Required Insurance. The Subcontractor shall maintain, during the term of the contract and any option period, the types of insurance and no less than the minimum amounts for coverages listed in the Subcontract Agreement. All liability insurance coverage will name the United States and the Contractor and Owner each as an additional insured for claims, demands, suits, judgments, costs, charges, and expenses arising out of or in connection with any loss, damage, or injury resulting from the negligence or other fault of the Subcontractor, Subcontractor's agents, representatives, or employees. The insurance coverage maintained is to have coverage amounts complying with the state or military Installation/Base requirements, whichever is greater, where the work is performed:

9.4.1 All General Liability and Professional Liability Insurance policies shall be written on a per "occurrence" basis. Policies written on a "claims made" basis are not acceptable.

9.4.2 Builder's Risk Insurance covering loss or damage from the hazard of fire and from the risks included within the Extended Coverage Endorsement. Subcontractor shall increase the amount of such insurance at periodic intervals so that one hundred percent (100%) coverage of the value of the materials delivered and labor performed shall be maintained; and each certificate of insurance furnished the Owner shall be amended periodically to show such adjustments for each Agreement.

9.4.3 The Subcontractor shall be fully responsible to the Contractor for its associates and its professional consultant's work.

9.4.4 Prior to the commencement of work hereunder and not less than ten (10) days after signing this Agreement, the Subcontractor shall furnish to the Contractor a certificate or written statement of the above required insurance at the minimum amounts established in the Subcontract Agreement. The policies evidencing required insurance shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interest of the Owner in such insurance shall not be effective for such period as maybe prescribed by the laws of the State in which this contract is to be performed and in no event less than thirty (30) days after written notice thereof to the Issuing Contracting Officer.

9.4.5 The Subcontractor agrees to insert the substance of this clause, including this paragraph, in all lower tier subcontracts hereunder

9.5 Rights in Shop Drawings.

9.5.1 The term “**shop drawings**” for construction means drawings, submitted by the construction Subcontractor, Lower Tier Subcontractor or Lower-Tier Supplier pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government or the Owner may obtain, duplicate, use, and disclose in any manner and for any purpose, shop drawings delivered under this contract.

9.5.2 This clause, including this paragraph, shall be included in all subcontracts hereunder at any tier.

9.6 Notice of Radioactive Materials.

9.6.1 The Subcontractor shall notify the Contractor, in writing, twenty-one (21) days prior to the delivery of, or prior to completion of any servicing required by this Agreement of, items containing either:

(1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or

(2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries.

(3) Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Subcontractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

9.6.2 If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Subcontractor may request that the Owner and Contractor or designee waive the notice requirement in paragraph 9.6.1 of this clause. Any such request shall –

(1) Be submitted in writing;

(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

9.6.3 All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the Contract Documents.

9.6.4 This provision, including this paragraph 9.6.4, shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph 9.6.1 of this provision.

9.7 Examination of Records (NOV 2005) (BI.011).

9.7.1 The Subcontractor agrees that the Contracting Officer, the Contracting Officer's duly authorized representative, the Contractor, or the Contractor's duly authorized representative shall have the right to examine and audit the books and records of the Subcontractor directly pertaining to the contract during the period of the contract and until the expiration of three (3) years after the final payment under the contract.

9.7.2 The Subcontractor agrees to include the clause in 9.7.1 above, in all subcontracts.

9.8 Contract Work Hours and Safety Standards Act Overtime Compensation (May 2014) (BI.024)

9.8.1 Overtime requirements. No Subcontractor or Lower Tier Subcontractor employing laborers or mechanics shall require or permit them to work over 40 hours in any work week unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

9.8.2 Violation; liability for unpaid wages; liquidated damages. The responsible Subcontractor and Lower Tier Subcontractor are liable for unpaid wages if they violate the terms in paragraph 9.8.1 of this clause. In addition, the Subcontractor and Lower Tier Subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or

permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37).

9.8.3 Withholding for unpaid wages and liquidated damages. The Contracting Officer will withhold from payments due under the Contract Documents sufficient funds required to satisfy any Contractor or Subcontractor liabilities for unpaid wages and liquidated damages. In turn, Contractor will withhold from payments due under this Agreement sufficient funds required to satisfy any Subcontractor or Lower Tier Subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the Agreement are insufficient to satisfy Subcontractor or Lower Tier Subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards statute.

9.8.4 Payrolls and basic records.

(1) The Subcontractor and its Lower Tier Subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the Agreement and shall make them available to the Contractor and Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.

(2) The Subcontractor and its Lower Tier Subcontractors shall allow authorized representatives of the Contracting Officer, the Contractor, or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph 9.8.4(2) of this clause. The Subcontractor or Lower Tier Subcontractor also shall allow authorized representatives of the Contracting Officer, Contractor, or Department of Labor to interview employees in the workplace during working hours.

9.8.5 Subcontracts. The Subcontractor shall insert the provisions set forth in paragraphs 9.8.1 through 9.8.4 of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require Lower Tier Subcontractors to include these provisions in any such lower-tier subcontracts. The Subcontractor shall be responsible for compliance by any Lower-Tier Subcontractors with the provisions set forth in paragraphs 9.8.1 through 9.8.4 of this clause.

9.9 Subcontracts (Labor Standards) (May 2014) (BI.030).

9.9.1 Definition. “**Construction, alteration or repair,**” as used in this clause, means all types of work done by laborers and mechanics employed by the construction Subcontractor or construction Lower Tier Subcontractor on a particular building or work at the site thereof, including without limitation-

- (1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;
- (2) Painting and decorating;
- (3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;
- (4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (9.9.1)(i) and (ii) of the “site of the work” as defined in the clause BI.025, Construction Wage Rate Requirements of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the “site of the work” definition; and
- (5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the “site of the work” definition in paragraph (a)(1)(ii) of the BI.025, Construction Wage Rate Requirements, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the clause at BI.025, in the “site of the work” definition).

9.9.2 The Subcontractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled-

- (1) Construction Wage Rate Requirements;
- (2) Contract Work Hours and Safety Standards-Overtime Compensation (if the clause is included in this contract);
- (3) Apprentices and Trainees;
- (4) Payrolls and Basic Records;
- (5) Compliance with Copeland Act Requirements;
- (6) Withholding of Funds;
- (7) Subcontracts (Labor Standards);

- (8) Contract Termination-Debarment;
- (9) Disputes Concerning Labor Standards;
- (10) Compliance with Construction Wage Rate Requirements and Related Regulations; and
- (11) Certification of Eligibility.

9.9.3 The Subcontractor shall be responsible for compliance by any Lower Tier Subcontractors performing construction within the United States with all the contract clauses cited in paragraph 9.9.2.

9.9.4 (1) Within 14 days after award of the contract, the Subcontractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the Subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (9.9.2) of this clause have been included in the Lower Tier Subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Subcontractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional Lower Tier Subcontract.

9.9.5 The Subcontractor shall insert the substance of this clause, including this paragraph (9.9.5) in all subcontracts for construction within the United States.

9.10 **Privacy Act (NOV 2004) (BL050)**

9.10.1 The Subcontractor agrees to-

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies-

- (i) The systems of records; and
- (ii) The design, development, or operation work that the Subcontractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

9.10.2 In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Subcontractor is considered to be an employee of the agency.

9.10.3 (1) **"Operation of a system of records,"** as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) **"Record,"** as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) **"System of records on individuals,"** as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

9.11 **Restriction on Certain Foreign Purchases (DEC 2010) (BL055).**

9.11.1 Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Subcontractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

9.11.2 Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports

from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn/>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.

9.11.3 The Subcontractor shall insert this clause, including this paragraph 9.11.3, in all *lower tier* subcontracts.

9.12 **Notice and Assistance Regarding Patent and Copyright Infringement (DEC 2010) (BL057)**

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

9.12.2 In the event of any claim or suit against the NAFI on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed under this contract, the Subcontractor shall furnish to the NAFI, when requested by the Contracting Officer, all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the NAFI except where the Subcontractor has agreed to indemnify the Contractor and NAFI.

9.12.3 The Subcontractor shall include the substance of this clause, including this paragraph 9.12.3, in all lower tier subcontracts that are expected to exceed the simplified acquisition threshold.

9.13 **Specifications and Drawings for Construction (NOV 2004) (BL095).**

9.13.1 The Subcontractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contractor and Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contractor, who shall promptly make a determination in writing. Any adjustment by the Subcontractor without such a determination shall be at its own risk and expense. The Contractor shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

9.13.2 Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by," or "acceptable to", or "satisfactory to" the Contractor, unless otherwise expressly stated.

9.13.3 Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed".

9.13.4 Shop drawings means drawings, submitted to the Contractor by the Subcontractor or Lower Tier Subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Subcontractor to explain in detail specific portions of the work required by the contract. The Contractor or Owner may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this Agreement.

9.13.5 If this Agreement requires shop drawings, the Subcontractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contractor without evidence of the Subcontractor's approval may be returned for resubmission. The Contractor will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Contractor's reasons therefore. Any work done before such approval shall be at the Subcontractor's risk. Approval by the Contractor shall not relieve the Subcontractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Agreement, except with respect to variations described and approved in accordance with 9.13.6 below.

9.13.6 If shop drawings show variations from the contract requirements, the Subcontractor shall describe such variations in

writing, separate from the drawings, at the time of submission. If the Contractor approves any such variation, the Contractor shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

9.13.7 The Subcontractor shall submit to the Contractor for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. The Contractor and Owner will retain five sets (unless otherwise indicated) of all shop drawings and return the other set to the Subcontractor.

9.13.8 This clause shall be included in all subcontracts at any tier.

9.14 **Subcontracts for Commercial Items and Commercial Components (NOV 2005) (BI.107).**

9.14.1 *Definitions.* As used in this clause- “**Commercial item**,” has the meaning contained in the clause Definitions. “**Subcontract**,” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Subcontractor or Lower Tier Subcontractor.

9.14.2 To the maximum extent practicable, the Subcontractor shall incorporate, and require its Lower Tier Subcontractors at all tiers to incorporate, commercial items as components of items to be supplied under this Agreement.

9.14.3 Notwithstanding any other clause of this Agreement, the Subcontractor is not required to include any provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices, in a subcontract at any tier for commercial items or commercial components:

Equal Opportunity (E.O.11246);

Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a)); and

Affirmative Action for Workers with Disabilities (29 U.S.C. 793).

9.14.4 The Subcontractor shall include the terms of this clause, including this paragraph (9.14.4), in subcontracts awarded under this Agreement.

9.15 **Establishing a Minimum Wage for Contractors (NOV 2014) (BI.141)**

9.15.1 *Executive Order 13658.* This Agreement is subject to Executive Order 13658, the regulations issued by the Secretary of Labor in 29 CFR part 10 pursuant to the Executive Order, and the following provisions.

9.15.2 *Minimum Wages.* (1) Each worker (as defined in 29 CFR 10.2) engaged in the performance of this Agreement by the Subcontractor or any Lower Tier Subcontractor, regardless of any contractual relationship which may be alleged to exist between the Subcontractor and worker, shall be paid not less than the applicable minimum wage under Executive Order 13658.

(2) The minimum wage required to be paid to each worker performing work on or in connection with this Agreement between January 1, 2015 and December 31, 2015 shall be \$10.10 per hour. The minimum wage shall be adjusted each time the Secretary of Labor’s annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 13658 will be effective for all workers subject to the Executive Order beginning January 1 of the following year. The Secretary of Labor will publish annual determinations in the Federal Register no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on www.wdol.gov (or any successor Web site). The applicable published minimum wage is incorporated by reference into this contract.

(3) The Subcontractor shall pay unconditionally to each worker all wages due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 10.23), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Executive Order may not be of any duration longer than semimonthly.

(4) The Subcontractor and any Lower Tier Subcontractor shall be responsible for the compliance by any Subcontractor or Lower Tier Subcontractor with the Executive Order minimum wage requirements. In the event of any violation of the minimum wage obligation of this clause, the Subcontractor and any Lower Tier Subcontractor responsible therefore shall be liable for the unpaid wages.

(5) If the commensurate wage rate paid to a worker on a covered contract whose wages are calculated pursuant to a special certificate issued under 29 U.S.C. 214(c), whether hourly or piece rate, is less than the Executive Order minimum wage, the Subcontractor and any Lower Tier Subcontractor must pay the Executive Order minimum wage rate to achieve compliance

with the Order. If the commensurate wage due under the certificate is greater than the Executive Order minimum wage, the Subcontractor and any Lower Tier Subcontractor must pay the 14(c) worker the greater commensurate wage.

9.15.3 Withholding. The agency head shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime CONTRACTOR under this or any other Federal contract with the same prime CONTRACTOR, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by Executive Order 13658.

9.15.4 Contract Suspension/Contract Termination/Contractor Debarment. In the event of a failure to pay any worker all or part of the wages due under Executive Order 13658 or 29 CFR part 10, or a failure to comply with any other term or condition of Executive Order 13658 or 29 CFR part 10, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the Subcontractor and any Lower Tier Subcontractor, take action to cause suspension of any further payment, advance or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Contractor may enter into other contracts or arrangements for completion of the work, charging the Subcontractor and any Lower Tier Subcontractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a Subcontractor and any Lower Tier Subcontractor as provided in 29 CFR 10.52.

9.15.5 The Subcontractor and any Lower Tier Subcontractor may not discharge any part of its minimum wage obligation under Executive Order 13658 by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

9.15.6 Nothing herein shall relieve the Subcontractor and any Lower Tier Subcontractor of any other obligation under Federal, State or local law, or under contract, for the payment of a higher wage to any worker, nor shall a lower prevailing wage under any such Federal, State, or local law, or under contract, entitle a Subcontractor and any Lower Tier Subcontractor to pay less than \$10.10 (or the minimum wage as established each January thereafter) to any worker.

9.15.7 Payroll Records. (1) The Subcontractor and any Lower Tier Subcontractor shall make and maintain for three years records containing the information specified in paragraphs (9.15.7)(1) (i) through (vi) of this section for each worker and shall make the records available for inspection and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

- (i) Name, address, and social security number.
- (ii) The worker's occupation(s) or classification(s)
- (iii) The rate or rates of wages paid.
- (iv) The number of daily and weekly hours worked by each worker.
- (v) Any deductions made; and
- (vi) Total wages paid.

(2) The Subcontractor and any Lower Tier Subcontractor shall also make available a copy of the contract, as applicable, for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of 29 CFR part 10 and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of an authorized representative of the Department of Labor, or under its own action, shall take such action as may be necessary to cause suspension of any further payment or advance of funds until such time as the violations are discontinued.

(4) The Subcontractor and any Lower Tier Subcontractor shall permit authorized representatives of the Wage and Hour Division to conduct investigations, including interviewing workers at the worksite during normal working hours.

(5) Nothing in this clause limits or otherwise modifies the Subcontractor and any Lower Tier Subcontractor's payroll and recordkeeping obligations, if any, under the Davis-Bacon Act, as amended, and its implementing regulations; the Service Contract Act, as amended, and its implementing regulations; the Fair Labor standards Act, as amended, and its implementing regulations; or any other applicable law.

9.15.8 The Subcontractor (as defined in 29 CFR 10.2) shall insert this clause in all of its covered subcontracts and shall require its Lower Tier Subcontractors to include this clause in any covered lower-tier subcontracts. The Subcontractor shall be responsible for the compliance by any Lower Tier Subcontractor with this contract clause.

9.15.9 Certification of Eligibility. (1) By entering into this Agreement, the Subcontractor and any Lower Tier Subcontractor (and officials thereof) certify that neither it (nor he or she) nor any person or firm who has an interest in the Subcontractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

9.15.10 Tipped employees. In paying wages to a tipped employee as defined in section 3(t) of the Fair Labor Standards Act, 29 U.S.C. 203(t), the Subcontractor and any Lower Tier Subcontractor may take a partial credit against the wage payment obligation (tip credit) to the extent permitted under section 3(a) of Executive Order 13658. In order to take such a tip credit, the employee must receive an amount of tips at least equal to the amount of the credit taken; where the tipped employee does not receive sufficient tips to equal the amount of the tip credit the Subcontractor and any Lower Tier Subcontractor must increase the cash wage paid for the workweek so that the amount of cash wage paid and the tips received by the employee equal the applicable minimum wage under Executive Order 13658. To utilize this proviso:

(1) The employer must inform the tipped employee in advance of the use of the tip credit;

(2) The employer must inform the tipped employee of the amount of cash wage that will be paid and the additional amount by which the employee's wages will be considered increased on account of the tip credit;

(3) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received); and

(4) The employer must be able to show by records that the tipped employee receives at least the applicable Executive Order minimum wage through the combination of direct wages and tip credit.

9.15.11 Anti-retaliation. It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or 29 CFR part 10, or has testified or is about to testify in any such proceeding.

9.15.12 Disputes concerning labor standards. Disputes related to the application of Executive Order 13658 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 10. Disputes within the meaning of this contract clause include disputes between the Subcontractor and any Lower Tier Subcontractor and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.

9.15.13 Notice. The Subcontractor and any Lower Tier Subcontractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the Subcontractor and any Lower Tier Subcontractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the Subcontractor and any Lower Tier Subcontractor must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers. Subcontractor and any Lower Tier Subcontractor that customarily post notices to workers electronically may post the notice electronically provided such electronic posting is displayed prominently on any Web site that is maintained by the Subcontractor and any Lower Tier Subcontractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

9.16 **Establishing Paid Sick Leave for Federal Contractors (DEC 2016) (BI.145)**

9.16.1 Executive Order 13706. This contract is subject to Executive Order 13706, the regulations issued by the Secretary of Labor in 29 CFR part 13 pursuant to the Executive Order, and the following provisions.

9.16.2 Paid Sick Leave.

(1) The Subcontractor and any Lower Tier Subcontractor shall permit each employee (as defined in 29 CFR 13.2) engaged in the performance of this contract by the Subcontractor and any Lower Tier Subcontractor, regardless of any contractual relationship that may be alleged to exist between the Subcontractor or any Lower Tier Subcontractor and employee, to earn not less than 1 hour of paid sick leave for every 30 hours worked. The Subcontractor and any Lower Tier Subcontractor shall additionally allow accrual and use of paid sick leave as required by Executive Order 13706 and 29 CFR part 13. The

Subcontractor and any Lower Tier Subcontractor shall in particular comply with the accrual, use, and other requirements set forth in 29 CFR 13.5 and 13.6, which are incorporated by reference in this contract.

(2) The Subcontractor and any Lower Tier Subcontractor shall provide paid sick leave to all employees when due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 13.24), rebate, or kickback on any account. The Subcontractor and any Lower Tier Subcontractor shall provide pay and benefits for paid sick leave used no later than one pay period following the end of the regular pay period in which the paid sick leave was taken.

(3) The Subcontractor shall be responsible for the compliance by any Lower Tier Subcontractor with the requirements of Executive Order 13706, 29 CFR part 13, and this clause.

9.16.3 Withholding. The contracting officer shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Subcontractor and any Lower Tier Subcontractor under this or any other Federal contract with the same Subcontractor and any Lower Tier Subcontractor, so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of the requirements of Executive Order 13706, 29 CFR part 13, or this clause, including any pay and/or benefits denied or lost by reason of the violation; other actual monetary losses sustained as a direct result of the violation, and liquidated damages.

9.16.4 Contract Suspension/Contract Termination/Contractor Debarment. In the event of a failure to comply with Executive Order 13706, 29 CFR part 13, or this clause, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the Subcontractor and any Lower Tier Subcontractor, take action to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Subcontractor and any Lower Tier Subcontractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a Subcontractor as provided in 29 CFR 13.52.

9.16.5 The paid sick leave required by Executive Order 13706, 29 CFR part 13, and this clause is in addition to a Subcontractor's and any Lower Tier Subcontractor's obligations under the Service Contract Labor Standards and the Wage Rate Requirements (Construction) statutes, and a Subcontractor and any Lower Tier Subcontractor may not receive credit toward its prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of Executive Order 13706 and 29 CFR part 13.

9.16.6 Nothing in Executive Order 13706 or 29 CFR part 13 shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under Executive Order 13706 and 29 CFR part 13.

9.16.7 Recordkeeping.

(1) Any Subcontractor and any Lower Tier Subcontractor performing work subject to Executive Order 13706 and 29 CFR part 13 must make and maintain, for no less than three (3) years from the completion of the work on the contract, records containing the information specified in paragraphs (i) through (ii) of this section for each employee and shall make them available for inspection, copying, and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor: (i) Name, address, and Social Security number of each employee; (ii) The employee's occupation(s) or classification(s); (iii) The rate or rates of wages paid (including all pay and benefits provided); (iv) The number of daily and weekly hours worked; (v) Any deductions made; (vi) The total wages paid (including all pay and benefits provided) each pay period; (vii) A copy of notifications to employees of the amount of paid sick leave the employee has accrued, as required under 29 CFR 13.5(a)(2); (viii) A copy of employees' requests to use paid sick leave, if in writing, or, if not in writing, any other records reflecting such employee requests; (ix) Dates and amounts of paid sick leave taken by employees (unless a Subcontractor and any Lower Tier Subcontractor's paid time off policy satisfies the requirements of Executive Order 13706 and 29 CFR part 13 as described in § 13.5(f)(5), leave must be designated in records as paid sick leave pursuant to Executive Order 13706); (x) A copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests, as required under 29 CFR 13.5(d)(3); (xi) Any records reflecting the certification and documentation a Subcontractor or any Lower Tier Subcontractor may require an employee to provide under 29 CFR 13.5(e), including copies of any certification or documentation provided by an employee; (xii) Any other records showing any tracking of or calculations related to an employee's accrual or use of paid sick leave; (xiii) The relevant covered contract;

(xiv) The regular pay and benefits provided to an employee for each use of paid sick leave; and (xv) Any financial payment made for unused paid sick leave upon a separation from employment intended, pursuant to 29 CFR 13.5(b)(5), to relieve a Subcontractor and any Lower Tier Subcontractor from the obligation to reinstate such paid sick leave as otherwise required by 29 CFR 13.5(b)(4).

(2) (i) If a Subcontractor and any Lower Tier Subcontractor wishes to distinguish between an employee's covered and non-covered work, the Subcontractor and any Lower Tier Subcontractor must keep records or other proof reflecting such distinctions. Only if the Subcontractor and any Lower Tier Subcontractor adequately segregates the employee's time will time spent on non-covered work be excluded from hours worked counted toward the accrual of paid sick leave. Similarly, only if that Subcontractor and any Lower Tier Subcontractor adequately segregates the employee's time may a Subcontractor and any Lower Tier Subcontractor properly refuse an employee's request to use paid sick leave on the ground that the employee was scheduled to perform non-covered work during the time she asked to use paid sick leave

(ii) If a Subcontractor and any Lower Tier Subcontractor estimates covered hours worked by an employee who performs work in connection with covered contracts pursuant to 29 CFR 13.5(a)(i) or (iii), the Subcontractor and any Lower Tier Subcontractor must keep records or other proof of the verifiable information on which such estimates are reasonably based. Only if the Subcontractor and any Lower Tier Subcontractor relies on an estimate that is reasonable and based on verifiable information will an employee's time spent in connection with non-covered work be excluded from hours worked counted toward the accrual of paid sick leave. If a Subcontractor and any Lower Tier Subcontractor estimates the amount of time an employee spends performing in connection with covered contracts, the Subcontractor and any Lower Tier Subcontractor must permit the employee to use her paid sick leave during any work time for the Subcontractor and any Lower Tier Subcontractor.

(3) In the event a Subcontractor and any Lower Tier Subcontractor is not obligated by the Service Contract Labor Standards, the Wage Rate Requirements (Construction) statute, or the Fair Labor Standards Act to keep records of an employee's hours worked, such as because the employee is exempt from the FLSA's minimum wage and overtime requirements, and the Subcontractor or any Lower Tier Subcontractor chooses to use the assumption permitted by 29 CFR 13.5(a)(1)(iii), the Subcontractor and any Lower Tier Subcontractor is excused from the requirement in paragraph (1)(d) of this section to keep records of the employee's number of daily and weekly hours worked.

(4) (i) Records relating to medical histories or domestic violence, sexual assault, or stalking, created for purposes of Executive Order 13706, whether of an employee or an employee's child, parent, spouse, domestic partner, or other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship, shall be maintained as confidential records in separate files/records from the usual personnel files. (ii) If the confidentiality requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA), section 503 of the Rehabilitation Act of 1973, and/or the Americans with Disabilities Act (ADA) apply to records or documents created to comply with the recordkeeping requirements in this contract clause, the records and documents must also be maintained in compliance with the confidentiality requirements of the GINA, section 503 of the Rehabilitation Act of 1973, and/or ADA as described in 29 CFR 1635.9, 41 CFR 60-741.23(d), and 29 CFR 1630.14(c)(1), respectively. (iii) The CONTRACTOR shall not disclose any documentation used to verify the need to use 3 or more consecutive days of paid sick leave for the purposes listed in 29 CFR 13.5(c)(1)(iv) (as described in 29 CFR 13.5(e)(1)(ii)) and shall maintain confidentiality about any domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

(5) The Subcontractor and any Lower Tier Subcontractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(6) Nothing in this contract clause limits or otherwise modifies the Subcontractor and any Lower Tier Subcontractor's recordkeeping obligations, if any, under the Wage Rate Requirements (Construction) statute, the Service Contract Labor Standards statute, the Fair Labor Standards Act, the Family and Medical Leave Act, Executive Order 13658, their respective implementing regulations, or any other applicable law.

9.16.8 The Subcontractor and any Lower Tier Subcontractor (as defined in 29 CFR 13.2) shall insert this clause in all of its covered subcontracts and shall require its Lower Tier Subcontractors to include this clause in any covered lower-tier subcontracts.

9.16.9 Certification of Eligibility. (1) By entering into this Agreement, the Subcontractor and any Lower Tier Subcontractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the Subcontractor's and any Lower Tier Subcontractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Labor Standards, section 3(a) of the Wage Rate Requirements (Construction) statute, or 29 CFR 5.12(a)(1). (2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts currently maintained on the System for Award Management website, <http://www.SAM.gov>. (3) The penalty for making false

statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

9.16.10 Interference/Discrimination.

(1) A Subcontractor and any Lower Tier Subcontractor may not in any manner interfere with an employee's accrual or use of paid sick leave as required by Executive Order 13706 or 29 CFR part 13. Interference includes, but is not limited to, miscalculating the amount of paid sick leave an employee has accrued, denying or unreasonably delaying a response to a proper request to use paid sick leave, discouraging an employee from using paid sick leave, reducing an employee's accrued paid sick leave by more than the amount of such leave used, transferring an employee to work on non-covered contracts to prevent the accrual or use of paid sick leave, disclosing confidential information contained in certification or other documentation provided to verify the need to use paid sick leave, or making the use of paid sick leave contingent on the employee's finding a replacement worker or the fulfillment of the Subcontractor's and any Lower Tier Subcontractor's operational needs.

(2) A Subcontractor and any Lower Tier Subcontractor may not discharge or in any other manner discriminate against any employee for: (i) Using, or attempting to use, paid sick leave as provided for under Executive Order 13706 and 29 CFR part 13; (ii) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under Executive Order 13706 and 29 CFR part 13; (iii) Cooperating in any investigation or testifying in any proceeding under Executive Order 13706 and 29 CFR part 13; or (iv) Informing any other person about his or her rights under Executive Order 13706 and 29 CFR part 13.

9.16.11 Waiver. Employees cannot waive, nor may Subcontractor and any Lower Tier Subcontractor induce employees to waive, their rights under Executive Order 13706, 29 CFR part 13, or this clause.

9.16.12 Notice. The Subcontractor and any Lower Tier Subcontractor must notify all employees performing work on or in connection with a covered contract of the paid sick leave requirements of Executive Order 13706, 29 CFR part 13, and this clause by posting a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by employees. Subcontractor and any Lower Tier Subcontractor that customarily post notices to employees electronically may post the notice electronically, provided such electronic posting is displayed prominently on any website that is maintained by the Subcontractor and any Lower Tier Subcontractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment.

9.17 Basic Safeguarding of Covered Contractor Information Systems (JUL 2019) (BI.150).

9.17.1 Definitions. As used in this clause--

"Covered contractor information system" means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

"Federal contract information" means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public Web sites) or simple transactional information, such as necessary to process payments.

"Information" means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

"Information system" means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

"Safeguarding" means measures or controls that are prescribed to protect information systems.

9.17.2 Safeguarding requirements and procedures.

(1) The Subcontractor and any Lower Tier Subcontractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls: (i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems). (ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute. (iii) Verify and control/limit connections to and use of external information systems. (iv) Control information posted or processed on publicly accessible information systems. (v) Identify information system users, processes acting on behalf of users, or devices. (vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems. (vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse. (viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals. (ix)

Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices. (x) Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems. (xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks. (xii) Identify, report, and correct information and information system flaws in a timely manner. (xiii) Provide protection from malicious code at appropriate locations within organizational information systems. (xiv) Update malicious code protection mechanisms when new releases are available. (xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) Other requirements. This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

9.17.3 Subcontracts. The Subcontractor and any Lower Tier Subcontractor shall include the substance of this clause, including this paragraph (9.17.3), in subcontracts under this contract (including subcontracts for the acquisition of commercial items, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

9.18 **Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2019) (BL151)**

9.18.1 Definitions. *As used in this clause--*

“Covered foreign country” means The People’s Republic of China.

“Covered telecommunications equipment or services” means– (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

“Critical technology” means– (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations; (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled– (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or (ii) For reasons relating to regional stability or surreptitious listening; (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities); (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material); (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

“Substantial or essential component” means any component necessary for the proper function or performance of a piece of equipment, system, or service.

9.18.2 Prohibition. Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Subcontractor and any Lower Tier Subcontractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph 9.18.3 of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in Federal Acquisition Regulation 4.2104.

9.18.3 Exceptions. This clause does not prohibit contractors from providing— (1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

9.18.4 Reporting requirement.

(1) In the event the Subcontractor and any Lower Tier Subcontractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Subcontractor and any Lower Tier Subcontractor is notified of such by a Lower Tier Subcontractor or by any other source, the Subcontractor and any Lower Tier Subcontractor shall report the information in paragraph 9.18.2(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Subcontractor and any Lower Tier Subcontractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Subcontractor and any Lower Tier Subcontractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Subcontractor and any Lower Tier Subcontractor shall report the following information pursuant to paragraph 9.18.4(1) of this clause (i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Subcontractor and any Lower Tier Subcontractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

9.18.5 Subcontracts. The Subcontractor and any Lower Tier Subcontractor shall insert the substance of this clause, including this paragraph 9.18.5, in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

10. CLAUSES APPLICABLE TO WORK PROCURED BY AMTRAK.

10.1 Environmental Compliance.

10.1.1 Contractor shall furnish all labor and equipment and perform all work required for the prevention of environmental hazards and/or pollution during and as a result of the Work. Under the Contract Documents “**environmental pollution**” is defined as the presence of chemical, physical, or biological elements or agents which adversely affect human health or welfare; unfavorably alter ecological balances of importance to human life; affect other species of importance; or degrade the utility for the environment of aesthetic and recreational purposes. The control of environmental pollution requires consideration of air, water, land, noise, solid waste management and management of radiant energy and radioactive materials, as well as other pollutants.

10.1.2 Subcontractor and its Lower Tier Subcontractors shall comply with all applicable federal, state, and local laws, regulations, ordinances, and orders concerning the environment and/or waste disposal, as well as all applicable provisions of the U.S. Army Corps of Engineers' Manual, EM385-1, entitled "General Safety Requirements", in effect on the date hereof, and any other requirements set forth elsewhere in the Contract Documents.

10.1.3 Subcontractor and its Lower Tier Subcontractors shall dispose of any wastes, including hazardous wastes, generated in connection with its performance of the Agreement in accordance with applicable federal, state, and local laws, regulations, ordinances, and orders, at its sole expense, using its own EPA generator number. In no event shall Owner or Contractor be identified as the generator of any such wastes. The Owner and Contractor reserve the right to require Subcontractor and Lower Tier Subcontractor to provide to the Owner and Contractor a copy of the results of any tests conducted by or for Subcontractor and Lower Tier Subcontractor on any such wastes and, at the Owner's expense, to perform additional tests or examinations of any such wastes prior to disposal.

10.1.4 The Owner or Contractor will notify the Subcontractor in writing of any observed noncompliance with the foregoing provisions and the action to be taken. Subcontractor shall, after receipt of such notice, immediately take corrective action. If Subcontractor fails or refuses to comply promptly, the Owner or Contractor may issue an order stopping all or part of the

Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of a claim for extension of the Subcontract Time or increase in Subcontract Price for excess costs or damage by Subcontractor unless it is later determined that Subcontractor was in compliance.

10.1.5 Subcontractor and its Lower Tier Subcontractors agree to defend, indemnify and hold harmless the Owner, the Contractor, their officers, directors, employees, agents, servants, successors, assigns and subsidiaries, irrespective of any fault or negligence on their part, from and against all losses and liabilities, fines, penalties, forfeitures, demands, claims, causes of action, suits, costs and expenses incidental thereto (including costs of defense and attorneys' fees), which may arise from the existence, discharge, release, and/or disposal of any materials, including any wastes, generated in connection with Subcontractor's performance of the Work pursuant to the Agreement.

10.1.6 Subcontractor and its Lower Tier Subcontractors shall include, and enforce, this Section in all subcontracts of any tier. Compliance with the provisions of this Section by subcontractors shall be the responsibility of Subcontractor.

10.2 **Assignment to Owner.** In the event of termination of the Contract between the Owner and Contractor, the subcontract shall, at Owner's option, be assigned to Owner.

10.3 **Rates for Contract Changes.**

10.3.1 The following maximum rates within the expressed dollar limitations shall apply in computing indirect costs and profit for Subcontract changes, under all provisions of this Agreement which provide for such adjustments. The actual percentages for overhead and profit shall be subject to negotiation and may vary according to the nature, extent and complexity of the work involved, but shall not exceed the rates set out below. When the Subcontract Time is increased, as a result of a change, any resulting change in Subcontract Price will, if appropriate, include the indirect costs and profit associated with extended performance computed in accordance with the terms of this Section. No further consideration of such costs arising from the specific modification will be given.

10.3.2 Overhead shall consist of: (a) Where the changed work is performed directly by Subcontractor's forces, 10.0% of direct labor and material costs for Subcontract changes. (b) For the purpose of this Section, the term "direct labor" shall include all foremen, equipment operators and skilled, semiskilled and common laborers directly assigned to the specific operation. The term "direct labor cost" shall consist of the actual payroll rate of wage per hour and fringe benefits paid for each and every hour such employees are actually engaged in the performance of the Work. (c) For the purpose of this Section, the term "direct material costs" shall consist of the actual costs of the materials including applicable tax and transportation charges. (d) For purposes of calculating appropriate percentages under this Section, Overhead shall be considered to include Builder's Risk and Public Liability Insurance, field supervisors, office supervisors and assistants, watchmen, expendable tools and minor equipment, field offices, sheds and other field expenses, incidental job burdens, surety premium adjustments on Contract changes, and general home office expenses. Assistants to office supervisors include all clerical, stenographic and general office help. Incidental job burdens include, but are not necessarily limited to, review and coordination, estimating and expediting relative to Subcontract changes. e) Subcontractor's markup (including profit) on Lower Tier Subcontractor's Work will be 5% of subcontractor's costs regardless of the total direct cost value of the Change. Lower Tier Subcontractor overhead markup will be computed in the same manner as for Contractor as set forth in Section 10.3. Subcontractor profit markup will be computed in the same manner as for Contractor as set forth in Section 10.3. Subcontractor agrees to incorporate this Section in each of its subcontracts. When more than one tier of subcontractors exists, for the purpose of markups, they shall be treated as one subcontractor.

10.3.3 Profit will never be allowed to increase unless a Change Order issued by the Owner actually increases or decreases the scope of the Work under the Contract Documents. Where profit is allowed under the terms of applicable Contract Document or Agreement provisions, the following percentage shall be added to Contractor's total cost for the Contract change allowed: 5.0% of allowed costs on Contract changes.

10.3.4 The above percentages for overhead, markup and profit shall be applicable using Amtrak form 27CP (for Contractors) or Amtrak form 27SP (for Subcontractors) for deleted work as well as additional work. When a change consists of both added and deleted work, the applicable percentages shall be applied to the net cost or credit.

Subcontractor Owned Equipment and Plant: (a) The hourly rates for Subcontractor owned equipment and plant will be developed by the COTR from the "Rental Rate-Blue Book for Construction Equipment," published by Primedia Information, Inc. (referred to hereafter as the "Blue Book"). The Blue Book shall be used in the following manner: (b) The hourly rate will be determined by dividing the "monthly" rate set out in the Blue Book by 176 and then subtracting 22%. The "weekly", "hourly" and "daily" rates listed in the Blue Book will not be used. (c) The number of hours to be paid for shall be the number of hours that the equipment or plant is actually used on a specific change order activity. (d) The current revisions to the

Blue Book will be used in establishing rates. The current revisions applicable to specific work covered under the modification will be the "current revision" as of the first day of work performed on the change order and will apply throughout the period the modified work is being performed. (e) Regional adjustments will be made in accordance with the pertinent Rate Book regional adjustment map. (f) Overtime (multiple shifts) shall be charged at 150% of the base rate for double shifts and 200% of the base rate for triple shifts. For example:

Single Shift (8 hours) = \$100 per day (base rate)

Double Shift (16 hours) = \$150 per day

Third Shift (24 hours) = \$200 per day

(g) The "estimated operating costs per hour" shall be used for each hour that the equipment or plant is in operation on the modified work. No such costs shall apply to idle time regardless of the cause of the idleness. (h) Idle time for equipment will not be paid for, except where the equipment has been held on the Project site on a standby basis at the request of the COTR and but for this request would have left the Project site. Such payment will be made at one half the rate established in Section 10.3.5(a) above. (i) The rates as established above shall be deemed to include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs, overhaul and maintenance of any kind, depreciation, storage, insurance, all costs, including labor and equipment costs, of moving equipment or plant on to and away from the site, and all incidentals. Overhead and profit shall be factored in after all direct costs for the modified work have been considered by the COTR. (j) The number of hours for Operator costs shall be paid only as provided in Subsection 10.3.5(a) above.

10.3.5 All equipment shall be in good operating condition. Equipment used by Subcontractor shall be specifically described and be of suitable size and suitable capacity required for the Work to be performed. In the event Subcontractor elects to use equipment of a higher rental value than that suitable for the Work, payment will be made at the rate applicable to the suitable equipment. The equipment actually used and the suitable equipment paid for will be recorded as a part of the record for modified work. The Contractor or Owner shall determine the suitability of the equipment. If there is a differential in the rate of pay of the operator of oversize or higher rate equipment, the rate paid for the operator will likewise be that for the suitable equipment.

10.3.6 In the event that a rate is not established in the Blue Book for a particular piece of equipment or plant, the Contractor or Owner shall establish a rate for that piece of equipment or plant that is consistent with its cost and use in the industry.

10.3.7 The provisions of Section 10.3 shall apply to the equipment or plant owned directly by Subcontractor or by entities which are divisions, affiliates, subsidiaries or in any other way related to Subcontractor or its parent company.

10.3.8 Rented Equipment and Plant: In the event that Subcontractor does not own a specific type of equipment and must obtain it by rental, it shall inform the Contractor of its need to rent the equipment and of the rental rate for that equipment prior to using it on the Work. It shall be paid the actual rental for the equipment for the time that the equipment is actually used to accomplish the Work, provided that rate is reasonable and does not exceed the above-referenced discount rental rate in the Blue Book, plus the cost of moving the equipment onto and away from the job. Subcontractor shall provide a copy of the paid receipt or cancelled check for the rental expense incurred. Subcontractor shall be allowed a markup of six percent (6%) on those rental costs accepted by the Owner to cover all overhead and profit on that equipment.

10.3.9 Subcontractor agrees to submit all equipment and plant costs associated with modified work on the form prescribed by the Owner or Contractor and in the format prescribed herein.

10.4 Audit and Inspection.

10.4.1 Subcontractor and Lower Tier Subcontractor acknowledges and agrees that Amtrak, Amtrak's Office of Inspector General (OIG), Contractor and representatives of the Contractor may inspect, copy and/or audit Subcontractor's and any Lower Tier Subcontractor's data and records (in hard copy and/or electronic format) related in any way to the Agreement, including without limitation, all data and records relating to: (a) support for any proposal, change order, or request for equitable adjustment submitted to Contractor by Subcontractor; (b) Subcontract compliance and performance, including any work or deliverables in progress; (c) compliance with applicable provisions of Amtrak's federal grant, regulations and statutes; and (d) support for all direct and indirect costs or prices charged to Contractor. Subcontractor and any Lower Tier Subcontractors agree to maintain all such data and records throughout the term of the Contract and until three (3) years after final payment under the Contract Documents, and agree to cooperate with all audit activities.

10.4.2 In connection with audit and inspection activities, Amtrak, Amtrak OIG, Contractor, and representatives of Contractor shall be afforded, upon request, (a) access to Subcontractor's facilities and to Subcontract work or deliverables in progress, (b) the opportunity to interview Subcontractor's employees concerning any matter relating to the Agreement, and (c)

adequate and appropriate workspace.

10.4.3 Subcontractor agrees to reimburse Contractor, within thirty (30) calendar days after receipt of a written request, the full amount of any undisputed audit findings or questioned costs, unless otherwise agreed by Contractor and Owner in the course of post-audit negotiations with Subcontractor.

10.4.4 Subcontractor shall include the provisions of this clause in every subcontract or purchase order exceeding \$100,000, as well as a provision requiring all subcontractors to include these provisions in any lower tier subcontracts or purchase orders exceeding \$100,000. Subcontractor shall be responsible for Lower Tier Subcontractor's compliance with this clause.

10.4.5 Nothing in this Agreement shall be construed to limit the rights, obligations, authority, or responsibilities of Amtrak's Office of the Inspector General pursuant to the Inspector General Act of 1978, as amended, including the right to seek information by subpoena.

10.5 Fair Employment Practices/Equal Opportunity.

10.5.1 Subcontractor and Lower Tier Subcontractors agree to abide by the Owner's policy and practice to ensure that all business organizations receive fair and equal consideration and treatment without regard to race, color, religion, sex, disability, veteran status or national origin of the owners or principals of the business organization. In addition, Subcontractor and Lower Tier Subcontractors agree that it will not discriminate against any employee or applicant for employment because of race, sex, color, religion, disability, veteran status or national origin and that it will comply in all respects with the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*

10.5.2 Subcontractor and Lower Tier Subcontractors will take affirmative action to ensure that applicants and employees are treated fairly without regard to their race, color, religion, sex, disability, veteran status or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Subcontractor and Lower Tier Subcontractors agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination Section.

10.5.3 Subcontractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of Subcontractor's commitments under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

10.5.4 The Agreement may be canceled, terminated, or suspended in whole or in part based on Subcontractor's or any of its Lower Tier Subcontractors' failure to comply with this Section.

10.5.5 Subcontractor will include the provisions of this Section 10.5 in subcontracts involving Work to be performed under the Agreement, unless exempted by rules, regulations, or orders of the U.S. Secretary of Labor.