

**CH2M HILL BWXT West Valley, LLC
(CHBWV)**

**GENERAL CONDITIONS FOR PURCHASE ORDERS AND SUBCONTRACTS
TABLE OF CONTENTS**

TITLE	PAGE NO.
1.0 DEFINITIONS.....	2
2.0 PURCHASE ORDER ADMINISTRATION.....	2
3.0 PURCHASE ORDER.....	2
4.0 SAFETY & ENVIRONMENT.....	3
5.0 SUBSUPPLIERS.....	3
6.0 SCHEDULE.....	3
7.0 PROJECT INVESTIGATION.....	3
8.0 SELLER'S DRAWINGS, SPECIFICATIONS, AND CALCULATIONS.....	4
9.0 CHANGES.....	4
10.0 INVOICING, PAYMENT AND AUDIT.....	4
11.0 PAYMENTS WITHHELD.....	5
12.0 SHIPMENTS OF GOODS.....	5
13.0 SELLER INSURANCE.....	5
14.0 RISK OF LOSS; DEDUCTIBLES; TITLE.....	6
15.0 EXPEDITING.....	6
16.0 TERMINATION FOR CAUSE.....	6
17.0 TERMINATION FOR CONVENIENCE OF BUYER.....	6
18.0 SUSPENSION.....	7
19.0 STOP-WORK & SHUTDOWN AUTHORIZATION.....	7
20.0 EMERGENCY CLAUSE.....	8
21.0 RELATED SERVICES.....	8
22.0 GOODS WARRANTIES.....	9
23.0 LIENS.....	9
24.0 INTELLECTUAL PROPERTY PROTECTION.....	9
25.0 CONFIDENTIALITY.....	9
26.0 APPLICABLE LAW.....	9
27.0 PERMITS AND LICENSES.....	10
28.0 TAXES/DUTIES.....	10
29.0 GENERAL INDEMNITY.....	10
30.0 ASSIGNMENT.....	10
31.0 NO WAIVER OF BREACH.....	10
32.0 PUBLICITY.....	10
33.0 SEVERABILITY/SURVIVAL.....	10
34.0 SUCCESSORS AND ASSIGNS.....	11
35.0 HAZARDOUS MATERIALS AND MATERIAL SAFETY DATA.....	11
36.0 BUYER INFORMATION.....	11
37.0 BUYER FURNISHED MATERIALS.....	11
38.0 FORCE MAJEURE.....	11
39.0 DISPUTES.....	12
40.0 NO THIRD PARTY OR OTHER CLAIMS.....	12
41.0 DAMAGES.....	12
42.0 ARTICLE HEADINGS.....	12
43.0 INSPECTION/TESTING/ACCEPTANCE.....	13
44.0 BACKCHARGE; OFFSET.....	13
45.0 PRODUCT INFORMATION.....	13
46.0 INDEPENDENT CONTRACTOR.....	13
47.0 COMPLETE AGREEMENT.....	13
48.0 INDEMNIFICATION OF CHBWV.....	13
49.0 WORKER SAFETY AND HEALTH PROGRAM-(CIVIL PENALTIES UNDER 10 CFR 851).....	14
50.0 MODEL CLAUSE, IMPLEMENTING THE PRICE-ANDERSON AMENDMENTS ACT OF 2005 - NUCLEAR HAZARDS INDEMNITY AGREEMENT.....	14
51.0 FAR CLAUSES.....	16
52.0 DEAR CLAUSES.....	17
53.0 LAWS, REGULATIONS AND DOE ORDERS.....	18

1.0 DEFINITIONS

The following definitions apply to these General Conditions and in the other Purchase Order Documents, unless the context clearly requires otherwise:

- 1.1 "Applicable Laws" shall have the meaning set forth in Article 26.1.
- 1.2 "Buyer" means CH2M HILL BWXT West Valley, LLC (CHBWV), (or, if the Purchase Order Form is signed by one of its subsidiaries or affiliates, such subsidiary or affiliate), its successors and assigns.
- 1.3 "Contracting Officer" shall mean the Government official executing the contract between CHBWV and DOE and includes any appointed successor or authorized representative thereof.
- 1.4 "Damages" shall have the meaning set forth in Article 26.2.
- 1.5 "Day(s)" means calendar day(s) unless otherwise specified.
- 1.6 "DOE" shall mean the U. S. Department of Energy.
- 1.7 "Facility Site" means all those parcels of land on which the Project is to be located.
- 1.8 "Force Majeure Event" shall have the meaning set forth in Article 38.0.
- 1.9 "General Conditions" means the terms and conditions set forth in this document, consisting of Articles 1.0 through 51.0.
- 1.10 "Goods" means all material, equipment, supplies and other items to be furnished by Seller under the Purchase Order.
- 1.11 "Hazardous Material" means any hazardous material or Waste, toxic substance, pollution or contamination.
- 1.12 "Indemnified Parties" shall have the meaning set forth in Article 26.2.
- 1.13 "Owner" means the ultimate Owner of the project identified as such in the Purchase Order and any of its subsuppliers affiliates or vendors of any tier.
- 1.14 "Party" or "Parties" means Buyer and/or Seller.
- 1.15 "Project" means the project or facility for which the Goods and/or Services are being purchased.
- 1.16 "Purchase Order" means the document entitled "Purchase Order Form" and issued by Buyer to Seller in connection with the Project, all Purchase Order Documents set forth therein, and all written change orders, modifications and supplements thereto, if any.
- 1.17 "Purchase Order Documents" means the documents Identified as Purchase Order Documents in the Purchase Order.
- 1.18 "Purchase Order Form" shall mean the document entitled Purchase Order Form and executed by Buyer and Seller.
- 1.19 "Purchase Order Price" means the price to be paid by Buyer to Seller for the Goods and Services as provided for in the Purchase Order.
- 1.20 "Schedule" shall have the meaning set forth in Article 6.1.
- 1.21 "Seller" means the individual or entity identified as such in the "Purchase Order."
- 1.22 "Services" shall have the meaning set forth in Article 21.0.

- 1.23 "Special Conditions" means the terms and conditions identified as such in the "Purchase Order".
- 1.24 "Subsupplier" means vendor, supplier, materialman, consultant, contractor, subcontractor or other person or entity providing goods or services directly or indirectly to Seller in connection with the Purchase Order.

2.0 PURCHASE ORDER ADMINISTRATION

- 2.1 Buyer may establish and implement a program to monitor the performance and quality of the Goods and Services. Seller shall provide Buyer's inspectors and supervisory personnel access to all Goods and Services wherever in preparation or progress. Notwithstanding any monitoring program implemented by Buyer with respect to the Goods and Services, Buyer shall have no obligation to supervise or inspect Goods and Services, and any inspection by Buyer with respect to the Goods and Services shall not relieve Seller of its obligations under this Purchase Order.
 - 2.2 Buyer may expedite Seller and Subsuppliers in the performance of the Goods and Services and Seller shall provide Buyer with all information reasonably requested by Buyer to enable it to do so. Any expediting efforts by Buyer will not relieve or lessen Seller's responsibility for its failure to meet its obligations under the Purchase Order.
 - 2.3 Seller shall be solely responsible for the Goods and Services and neither Owner nor Buyer shall be responsible for Seller's safety precautions and programs incident thereto, failure to comply with Applicable Law, or failure to furnish or perform the Goods or Services as required under the Purchase Order.
 - 2.4 Neither Owner nor Buyer shall be responsible for the acts or omissions of Seller or any Subsupplier(s).
 - 2.5 Buyer may disapprove or reject Goods or Services which, in its opinion, do not conform to the requirements of the Purchase Order.
 - 2.6 Buyer may schedule and conduct job meetings to be attended by persons designated by Buyer, including Seller and its Subsupplier(s) for the Project, to discuss matters related to the Goods, Services or Project, including but not limited to procedures, progress, problems, scheduling, safety and coordination.
 - 2.7 Buyer and/or the Owner may implement from time to time safety, health and drug free programs (and amendments thereto) of general applicability to the Facility Site. Buyer's personnel, Seller's personnel, and all Subsupplier personnel shall all fully comply with any such programs. Buyer will keep copies of any such programs at the Facility Site and they will be available during normal business hours for Seller to inspect and/or copy.
 - 2.8 Buyer may establish procedures for processing shop drawings, samples and other submittals by Seller.
 - 2.9 Buyer shall review and process all requests for change orders by Seller as set forth in Article 9.0.
 - 2.10 Buyer shall determine when the Goods and Services are complete.
- ## 3.0 PURCHASE ORDER
- 3.1 The Purchase Order is intended to be read as a whole and any Goods or Services required by one part and not mentioned in another shall be executed to the same extent and purpose as though required by all. The misplacement, addition, or omission of a word or character shall not change the intent of any part from that

set forth by the Purchase Order as a whole. Should a question or doubt arise as to the intent and meaning of any part of the Purchase Order, Seller shall immediately notify Buyer in writing before the part of the Goods and Services affected is performed. Buyer's determination of intent and meaning of such part shall be final, subject to dispute resolution under Article 39.0.

- 3.2 In the various parts of the Purchase Order where reference is made to applicable codes and standards, the Goods and Services shall, except as otherwise specified, conform to the latest issue of the referenced code or standard available at the time the Goods or Services are delivered or performed. Upon any point of conflict between codes and standards applicable to the Goods or Services, Buyer shall be notified, but the code or standard imposing the more or most stringent requirement as the case may be shall govern, unless otherwise stipulated by Buyer in writing.
- 3.3 Where specific governing standards are not specified in connection with the Goods or Services, the highest applicable industry codes and standards shall govern.
- 3.4 Seller acknowledges and agrees that it shall provide all labor, services, equipment, materials, supplies, documentation and other such items necessary or appropriate to perform and complete the Goods and Services in conformity with and as reasonably inferred from the Purchase Order, notwithstanding the fact that each such necessary or appropriate item may not be expressly specified therein.
- 3.5 Any inconsistencies in this solicitation or Order shall be resolved by giving precedence in the following order: (i) changes to the Order; (ii) the face of the Order; (iii) Form WV-0184, General Conditions for Purchase Order and Subcontracts, (iv) technical requirements; (v) quality control requirements; and (vi) drawings. In any case, inconsistencies shall be promptly brought to the attention of the Buyer for resolution.

4.0 SAFETY & ENVIRONMENT

- 4.1 Seller acknowledges that safety is of prime importance to Buyer and Owner, and Seller shall cooperate with Buyer and Owner in efforts to prevent injuries to personnel and to comply with all applicable safety rules and regulations.
- 4.2 Consistent with ISO 14001:2015 the seller acknowledges and agrees to protect the environment through compliance with state and local laws, sustainable stewardship, energy and transportation management. Consideration shall be given to transportation, delivery, use, end-of-life treatment and final disposition of products and services. Wastes shall be minimized and items or byproducts reused, recycled or repurposed to the extent practical.

5.0 SUBSUPPLIERS

- 5.1 Seller, if required by Buyer, shall notify Buyer in writing of the names of Subsuppliers proposed for any of the Goods or Services and shall not subcontract any part of the Goods or Services without the prior written authorization of Buyer. Seller shall not subcontract the Goods or Services as a whole. Seller shall bind all Subsuppliers to the provisions of the Purchase Order applicable to the subcontracted Goods and Services.
- 5.2 Neither the Purchase Order nor any purchase order with a Subsupplier shall create any contractual relationship between any Subsupplier and either Owner or Buyer, nor any payment or other obligation on the part of either Owner or Buyer to any Subsupplier.

- 5.3 Notwithstanding the existence of any purchase order with a Subsupplier, Seller shall be fully responsible to Buyer for the Goods and Services as if no such purchase order exists.

- 5.4 Seller's purchase orders and similar purchase forms with any Subsuppliers in connection with any subcontracted Goods or Services under any of the Purchase Order Documents shall comply with the applicable requirements of all Purchase Order Documents.

- 5.5 Seller shall ensure that all Subsuppliers establish and implement a quality control system in their work and manufacturing processes which assures that all subcontracted Goods and Services shall meet the standard of performance required under the Purchase Order Documents.

- 5.6 All purchase orders and similar purchase forms with Subsuppliers shall contain a provision making them assignable to Buyer, Owner, or their respective successors and assigns, upon Buyer's written request following termination of this Purchase Order or Owner's written request following termination of the Prime Contract, as applicable.

6.0 SCHEDULE

- 6.1 Within ten (10) days after Purchase Order award, Seller shall prepare and submit for Buyer's approval a detailed schedule for furnishing the Goods and Services as required by the Purchase Order (such approved schedule, the "Schedule"). The Schedule must conform to all schedule parameters provided in the Purchase Order, including without limitation the Buyer's schedule. Seller shall, subject to Buyer's approval, maintain and update the Schedule throughout the performance of the Purchase Order. Unless directed otherwise by Buyer, Seller shall furnish the Goods and Services strictly in accordance with the Schedule (as updated), and shall, without additional cost to Buyer, work such overtime or take such other or different measures as may be required in order to meet the Schedule.

- 6.2 Seller represents that it shall (i) prepare documents for its planning, scheduling and coordination of the performance of the Purchase Order that are feasible and realistic, and (ii) prepare schedules, updates, revisions and reports that accurately reflect Seller's reasonable expectations as to the sequence of activities, duration of activities, productivity or efficiency, projected and actual completion of any Goods or Services or activity, and delays or problems expected or encountered and specified float time.

- 6.3 Seller acknowledges that the dates required in the Schedule for the performance and completion of the Goods and Services are essential conditions of the Purchase Order and agrees that Seller's failure to perform and complete the Goods and Services consistent with such dates shall constitute a material violation of the Purchase Order for the purposes of Article 16.0 and for the purposes of any other remedy available to the Buyer under the Purchase Order, at law, and/or in equity.

7.0 PROJECT INVESTIGATION

- 7.1 Seller represents that it has, or has had full opportunity to, examine the Facility Site and the Purchase Order; that it has satisfied itself as to the requirements of the Purchase Order and all conditions which may affect its performance under the Purchase Order, including but not limited to, as applicable, labor conditions and availability, the condition of the Facility Site and access thereto to furnish the Goods and Services and local weather

conditions; that the Purchase Order Price and Schedule have been determined with due regard for all such requirements and conditions which do or may affect the Purchase Order; and that its entry into the Purchase Order has not been induced either wholly or in part by any promises, representations or statements by or on behalf of the Buyer, its agents or representatives, or the Owner, its agents or representatives, other than those set forth in the Purchase Order. Seller acknowledges and accepts the risk of mistake or error with respect to all matters within the scope of its Project investigation, and agrees that it shall not be entitled to, and shall make no claim for, any additional compensation or damages of any kind or character or extension of time should any requirements or conditions applicable to the Purchase Order be different from or in addition to those identified by Seller through such investigation.

8.0 SELLER'S DRAWINGS, SPECIFICATIONS, AND CALCULATIONS

8.1 Drawings, specifications, and calculations submitted by Seller to the Buyer with a request for review, may be reviewed and commented upon by the Buyer. Such review and comment shall relate only to general conformance with the specifications and for confirmation of physical interface of items shown with related systems. In no event will such review and comment relieve Seller of the responsibility of compliance with all requirements of the Purchase Order.

8.2 Seller shall furnish all submittals and other documentation when and as required by the Purchase Order. All materials specifically prepared or developed by Seller or any of its Subsuppliers to perform Seller's obligations under the Purchase Order shall become the property of Buyer upon payment for, or termination of, Seller's Goods and Services, whether delivered to Buyer or not, and shall be delivered to Buyer on written request.

9.0 CHANGES

9.1 Any modifications or changes to this order and any authorizations made pursuant to this Order must be made in writing by the CHBWW Procurement Department Representative to execute such changes, modifications, or authorizations.

9.2 Buyer has the right by written order to Seller to add to, deduct from or otherwise change the Purchase Order. If any such Buyer directed change affects the Purchase Order Price, Schedule or any other provision of the Purchase Order, or Seller becomes aware of any circumstance which Seller believes necessitates a change in the Purchase Order Price, Schedule or any other provision of the Purchase Order, Seller shall, within seven (7) days of receipt of such written order or becoming aware of such circumstance, submit a written request to Buyer for an adjustment to the Purchase Order Price, Schedule or other provision of the Purchase Order Seller believes is affected thereby. Seller's written request shall include documentation sufficient to enable Buyer to determine the factors necessitating the adjustment(s) being requested. If Seller fails to provide such written request to Buyer within such seven (7) day period (or fails within such period to provide Buyer with a detailed statement of the reasons it is unable to do so and, as soon as it is able to do so, provides such request), Seller shall be deemed to have waived any right for submitting a claim and/or any claim for an adjustment of the applicable Purchase Order Price, Schedule or other provision of the Purchase Order.

9.3 Following receipt of timely written documentation from Seller as prescribed in Article 9.1, Buyer shall, provided an

adjustment is warranted, issue a written change order to Seller either (i) adjusting the Purchase Order Price, Schedule or other provision of the Purchase Order as requested by Seller or (ii) in the event Buyer disagrees with Seller's statement as to the effect of a Buyer directed or other change to the Goods and Services, adjusting the Purchase Order Price, Schedule or other provision of the Purchase Order if and as it deems appropriate. Seller shall thereafter furnish the Goods and Services in accordance with a written change order, subject to dispute resolution under Article 39.0. Seller shall have no right to suspend or delay the furnishing of Goods or Services while Buyer is reviewing Seller's change request or if it disagrees with the written change order issued to it by Buyer

9.4 Notwithstanding anything to the contrary in this Article 9.0; no adjustment in the Purchase Order Price, Schedule or any other provision of the Purchase Order shall be made for or as a result of any correction of errors, omissions, deficiencies, or improper or defective Goods or Services on the part of Seller or its Subsuppliers.

9.5 Any changes shall be performed by Seller consistent with all of the requirements of the Purchase Order, unless otherwise directed in writing by Buyer.

10.0 INVOICING, PAYMENT AND AUDIT

10.1 Invoices will be paid as set forth in the Purchase Order Form if they meet the invoicing requirements set forth in the Purchase Order and this Section 10.0; show applicable discounts, and are accompanied by the bills of lading or transportation receipts. Applicable freight charges and sales and use taxes shall be shown separately on the invoices. Freight charges shall be supported by copy of the paid freight bill.

10.2 Time in conjunction with payment and any applicable payment discounts will be computed from the date the Buyer receives Seller's proper invoice, unless Seller's entitlement to payment is conditioned on delivery of Goods and Services, in which event time for payment and any applicable payment discounts will be computed from the later of (i) the date the Buyer receives Seller's proper invoice and (ii) the date Goods are received and accepted.

10.3 Any invoice deviating from the requirements of the Purchase Order will be returned to Seller for correction and/or submission of acceptable support documentation.

10.4 The terms of payment as shown in the Purchase Order shall take precedence over terms of payment shown on Seller's invoices or elsewhere.

10.5 No payment shall constitute a waiver of any claims Buyer may have against Seller.

10.6 All payments are provisional and any overpayment by Buyer to Seller shall be deemed to be a mistake of fact and promptly repaid to Buyer upon demand.

10.7 The date of receipt by Buyer of a proper, complete and fully substantiated invoice from Seller will establish the effective date of the invoice. If not otherwise specified in the Purchase Order, payment shall be net thirty (30) days after the effective date of the invoice. The acceptance of any payment shall constitute a waiver of all claims by Seller.

10.8 Applicable freight charges and sales and use taxes shall be shown separately on the invoices. Freight charges shall be supported by copy of the paid freight bill.

- 10.9 Notwithstanding anything to the contrary in this Purchase Order, Buyer shall pay Seller the undisputed portion of any invoice only after Buyer receives corresponding payment from Owner.
- 10.10 If required by Buyer, Seller shall furnish with each invoice a waiver and release in form and substance satisfactory to Buyer in which Seller waives and releases any and all claims of any nature, including but not limited to mechanic's and other liens or claim or right of lien or other encumbrance, which Seller or its Subsuppliers have or may have against Buyer, Owner of the Facility Site and/or Project as a result of labor, services, equipment, material, supplies, documentation or other items used or employed by Seller or its Subsuppliers to the date of the invoice in the performance of the Purchase Order.
- 10.11 Acceptance by the Seller of the final payment on the Purchase Order Price shall be and shall operate as a release by Seller of Buyer from all claims of the Seller arising out of or in connection with the Purchase Order. Seller further agrees that as a condition to Buyer's obligation to make final payment, Seller shall, if required by Buyer, procure and furnish to Buyer in a form acceptable to Buyer a full and complete waiver and release of any and all claims of any nature, including but not limited to mechanic's and other liens, or claim or right of lien or other encumbrance, from one or more Subsuppliers.
- 10.12 Seller shall maintain true and correct records of all reimbursable costs (in accordance with generally accepted accounting principles applied on a consistent basis) pertaining to Seller's performance under this Purchase Order and all transactions related thereto, and shall retain all such records for a period of four (4) years from the date of their preparation, or such longer period as may be required by law. Buyer may from time to time make an audit of all records of Seller in connection with its performance under the Purchase Order. Buyer shall be permitted to make such audits for a period of four (4) years from the date of the preparation of the applicable records, or such longer period as may be required by law. As to all work which Seller may perform on a reimbursable basis, Buyer will have the right at reasonable times and places, to inspect, and copy any of Seller's books, accounts, time cards, records of transactions, estimates, schedules, correspondence or any other records or documents which may have possible bearing on its performance under such Purchase Order. Seller shall assist Buyer in making the above audits. In the event an audit by Buyer results in disallowance of costs, any overpayment that has been made to Seller will be immediately reimbursed by Seller to Buyer.

11.0 PAYMENTS WITHHELD

- 11.1 Buyer may withhold the whole or any part of any payment to Seller to such extent as may be necessary to protect Buyer from loss as a result of:
- (a) incomplete, defective or damaged Goods or Services not remedied;
 - (b) backcharges, per Article 44.0;
 - (c) claims filed or reasonable evidence indicating probable filing of claims, including lien claims, involving or arising out of Seller's performance under the Purchase Order;
 - (d) damage to Buyer's, Owner's or their respective other contractors work;

- (e) failure of the Seller to make payments when due to Subsuppliers;
- (f) reasonable insecurity regarding Seller's intention or ability to continue with the proper and timely performance under the Purchase Order;
- (g) failure of the Seller to perform or comply with any of its obligations under the Purchase Order; or
- (h) expenses arising from frivolous claims against Buyer.

- 11.2 Funds withheld in accordance with this Purchase Order are not for the benefit of the bonding company or any other third party.

12.0 SHIPMENTS OF GOODS

- 12.1 Seller shall deliver the Goods in good condition properly packaged for shipment and otherwise in accordance with the Purchase Order.
- 12.2 Seller must strictly comply with any requirement specified in the Purchase Order.
- 12.3 All charges for packing, boxing, crating, freight, trucking, or special services of any kind are included in the Purchase Order Price unless otherwise specifically authorized in the Purchase Order.
- 12.4 All shipping documents must reference Buyer's Purchase Order number.
- 12.5 No delivery of any Goods shall be considered made or complete until such Goods are completely and finally delivered to Buyer's physical possession in their entirety, including but not limited to replacement of any defective parts. No shipment is deemed completed until Seller has delivered the bill of lading or transportation receipt to the Buyer.

13.0 SELLER INSURANCE

- 13.1 Unless otherwise specified in the Purchase Order, Seller agrees that it shall obtain and maintain during the performance of any Services at the Facility Site and until the acceptance thereof, the insurance described in 13.2 and shall be carried with insurance companies with at least a Best's "A" rating. Seller will furnish to Buyer three (3) copies of the certificate(s) evidencing such insurance prior to commencing, performance or physically present on the Facility site under the Purchase Order.
- 13.2 The required insurance coverage is as follows:
- (a) Worker's Compensation Insurance and Employer's Liability Insurance (including occupational disease) to cover statutory benefits and limits of the Worker's Compensation laws of any applicable jurisdiction in which the Services are to be performed hereunder, and Employers' Liability Insurance with limits of five hundred thousand dollars (\$500,000) for trauma, each accident; five hundred thousand dollars (\$500,000) for disease, each person and five hundred thousand dollars (\$500,000) disease, policy limit.
 - (b) Commercial General Liability Insurance written on the latest ISO occurrence form and including coverage for Contractual Liability and Products and Completed Operations (to remain in force for two (2) years following acceptance of the Goods and Services). The insurance required by this clause (b) shall have the following limits of liability:

Third Party Bodily Injury and Property Damage Liability:

\$1,000,000 combined single limit per occurrence and \$2,000,000 combined single limit general aggregate, with such limits available to the Project.

- (c) Business Automobile Liability insurance covering all owned, leased and non-owned vehicles used in connection with the Goods and Services, with not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- (d) If professional services are involved, Professional Liability Insurance with not less than \$1,000,000 per occurrence with a 24 months discovery period after completion of the performance under the Purchase Order.

13.3 The following endorsements shall be included in the above insurance coverages:

- (a) Thirty (30) days advance written notice in the event of cancellation, non-renewal, or material change of any policy. Language referring to "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be stricken from the certificate of insurance.
- (b) Buyer and Owner named as additional insureds (except on Workers' Compensation and Professional Liability Insurance).
- (c) A waiver of subrogation in favor of Buyer and Owner.
- (d) Severability of Interest or Separation of Insureds.
- (e) Seller's insurance is primary and any insurance maintained by Buyer is considered excess and non-contributory.

14.0 RISK OF LOSS; DEDUCTIBLES; TITLE

14.1 Notwithstanding any other provision in the Purchase Order, at all times prior to Buyer's transfer to the Owner of risk of loss of the Project and to the extent not covered by Builder's Risk insurance applicable to the Project, Seller shall bear the risk of loss and full responsibility for the costs of replacement or repair resulting from any damage to, or loss or destruction of, the Project or any portion thereof arising from any nonconformity or defect in the Goods or Services.

14.2 In addition to its obligations under Article 14.1, Seller shall be responsible for deductibles for any damage or loss covered by insurance provided by Seller under Article 13.0, and for the payment of deductibles for any damage or loss covered by any Builder's Risk insurance and covering the Goods and/or Services, provided that with respect to such Builder's Risk insurance deductible, such damage or loss was caused by (i) the fault, negligence or willful misconduct of Seller or any of its Subsuppliers, (ii) the failure of Seller to meet its obligations under the Purchase Order, (iii) any nonconformity or defect in the Goods or Services.

14.3 Title to the Goods, or portions thereof, shall pass to Buyer upon the occurrence of the earliest of the following events, as applicable: (i) when such Goods or portion thereof are delivered to the Buyer or Facility Site pursuant to the Purchase Order; (ii) when Seller has been paid any sum to which it may become entitled in respect to such Goods or portion thereof; or (iii) when such Goods or portion thereof are identifiable to the

Purchase Order. All Goods or portions thereof and other items to which Buyer has title shall not be removed from the Facility Site without Buyer's prior written consent. Use of storage facilities furnished to Seller at the Facility Site shall not relieve Seller of such risk of loss unless otherwise agreed in writing.

15.0 EXPEDITING

15.1 Seller agrees 1) to expedite delivery of the Purchase Order and any suborders to the extent necessary and in sufficient time to safeguard the Schedule; 2) that all Goods and Services furnished hereunder by Seller or its Subsuppliers shall be subject to expediting by the Buyer and/or Owner at all reasonable times and places, both before, during and after manufacture; 3) that such expediting or failure to expedite by the Buyer and/or Owner shall not relieve Seller of any of its responsibilities under the Purchase Order; and 4) that all orders with Subsuppliers shall include a statement providing for the expediting rights of the Buyer and/or Owner.

16.0 TERMINATION FOR CAUSE

16.1 If the Seller should file a bankruptcy petition or be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for the Seller, or if it should fail to supply enough properly skilled workmen or proper plant or materials or fail to make sufficient progress so as to endanger the timely and proper performance of the Purchase Order, or if it should abandon the Purchase Order or unreasonably delay its progress or completion, or persistently disregard Applicable Law or the instructions of Buyer or materially breach any provision of the Purchase Order, then Buyer may, without prejudice to any other right or remedy, upon written notice to Seller, terminate the employment of the Seller with respect to all or part of the Goods or Services and take possession of such Goods or Services, and all materials for such Goods or Services and tools, plant, appliances and equipment and temporary construction used in connection therewith and finish such Goods or Services by whatever method Buyer may deem expedient, all at the expense of Seller. In such case Seller shall not be entitled to receive any further payment from Buyer.

16.2 If Buyer's expense of completing the Goods and Services, including any attorney's fees and other legal expenses plus 15% administration fee in connection therewith, exceed the amount, if any, which Buyer agrees would have been payable to Seller had it completed the Goods and Services as required under the Purchase Order, Seller shall pay the difference to Buyer within ten (10) days after receipt from Buyer of written notice of the amount thereof.

16.3 Upon the failure of Seller to pay Buyer as set forth in Article 16.2, Buyer shall have the right to sell the whole or any part of any of Seller's materials, tools, plant, appliances, equipment and temporary structures at public or private sale at any time or times thereafter without further notice to Seller and to transfer and deliver the same. Buyer shall have the right to become the purchaser at such sale or sales (free and discharged of any equity of redemption) and after deducting all legal and other costs, attorney fees and expense of sale and delivery, shall apply the balance, if any, of the proceeds of such sale or sales so made, to the amount due Buyer. Buyer shall pay the surplus, if any, to Seller and Seller shall pay any deficiency to Buyer on demand.

17.0 TERMINATION FOR CONVENIENCE OF BUYER

- 17.1 Buyer may upon written notice to Seller, without cause and without prejudice to any other right or remedy, elect to terminate all or any part of the Goods or Services. Such termination shall be effective in the manner specified in said notice. On receipt of such notice Seller shall, unless the notice directs otherwise, immediately discontinue performance under this Purchase Order and the placing of orders for equipment, materials, supplies and other items in connection with the terminated performance under this Purchase Order, and shall, if requested, make every reasonable effort to procure cancellation of existing orders and subcontracts upon terms satisfactory to Buyer, and shall thereafter do only such performance under this Purchase Order as may be necessary to preserve and protect performance under this Purchase Order already in progress and continue to complete the performance under this Purchase Order not terminated hereunder, and to protect all material, plant or equipment on the Facility Site or in transit thereto.
- 17.2 Should Buyer elect to terminate all or any part of this Purchase Order for convenience as provided herein, a complete and final settlement of any and all claims of Seller arising as a result of such termination shall be made as follows: Buyer shall pay to Seller, forty five (45) days after receipt of an invoice which meets the requirements of the Purchase Order, all amounts due and owing to Seller on or prior to the date of termination, including a payment for performance under this Purchase Order satisfactorily completed but not yet invoiced by Seller prior to the termination date, all retainage held by Buyer at the date of termination, and all reasonable, actual termination costs incurred by Seller in terminating performance under this Purchase (but excluding any and all costs and expenses incurred by Seller from and after the date of termination for those of its employees who are not directly performing required termination activities). In no event shall Seller be entitled to lost profit on Goods or Services not furnished.
- 17.3 As a condition precedent to receiving any termination payment under this Article 17.0, Seller shall execute and deliver all such papers and take such steps concerning obligations and commitments of and to Seller in connection with the Goods and Services as Buyer may require for the purpose of fully vesting in Buyer the rights and benefits of Seller under such obligations and commitments, including but not limited to valid and final waiver of any and all actual or potential liens and/or claims.

18.0 SUSPENSION

- 18.1 Buyer may upon written notice to Seller at any time suspend the performance of all or any portion of this Purchase Order. Upon receipt of such notice, Seller shall, unless the notice requires otherwise:
- (a) immediately discontinue the performance under the suspended Purchase Order on the date and to the extent specified in the notice;
 - (b) place no further suborders or contracts for equipment, material, supplies, services or facilities with respect to the performance under the suspended Purchase Order, except to the extent required in the notice;
 - (c) promptly make every reasonable effort to obtain suspension upon terms satisfactory to Buyer of all suborders and other agreements to the extent they relate to suspended performance under this Purchase Order;

- (d) continue protection and maintenance of Goods, including those portions of Goods which have been suspended; and
- (e) take any other reasonable steps to minimize Seller's costs associated with such suspension.

- 18.2 As full compensation for Buyer's suspension of performance under this Purchase Order, Buyer will pay to Seller forty five (45) days after receipt of an invoice which meets the requirements of the Purchase Order, the actual, reasonable costs associated with mobilization and demobilization of Seller's plant, forces and equipment, the cost of maintaining and protecting the Goods and Services furnished prior to the date of the invoice, and those amounts Buyer and Seller agree Seller should be paid for equipment, materials, supplies, documentation or other items which Seller procured for the Project but for which Seller has not been paid as of the date of the suspension. Seller shall during the period of the suspension continue to invoice Buyer in accordance with Article 10.0 for the costs of maintaining and protecting the Goods and Services furnished prior to suspension.
- 18.3 Upon receipt of notice to resume suspended performance under this Purchase Order, Seller shall immediately resume performance thereof to the extent required in the notice.
- 18.4 No adjustment shall be made for any suspension to the extent that performance under this Purchase Order would have been concurrently suspended, delayed, or interrupted by Seller's non-compliance with the requirements of this Purchase Order.

19.0 STOP-WORK & SHUTDOWN AUTHORIZATION

- 19.1 All personnel have the right to stop any activity, regardless of who is performing the activity, if continuation of that activity would be considered an imminent health and safety hazard.
- 19.2 "Imminent Health and Safety Hazard" is a given condition or situation which, if not immediately corrected, could result in a serious injury or death, including exposure to radiation and toxic/hazardous chemicals.
- 19.3 Stop-Work: In the event of an imminent health and safety hazard, identified by overseeing facility operations, or other individuals; the individual or group identifying the imminent hazard situation shall immediately take actions to eliminate or mitigate the hazard (i.e., by directing the operator/implementer of the activity or process causing the imminent hazard to stop work, or by initiating emergency response actions or other actions) to protect DOE facilities and the environment. In the event an imminent health and safety hazard is identified, the individual or group identifying the hazard should coordinate with an appropriate Buyer official who will direct the stop work or other actions, as required. Such mitigating action should subsequently be coordinated with the Buyer's management. The suspension or stop-work order should be promptly confirmed in writing from the Buyer Representative.
- 19.4 All personnel have the right to recommend a facility shutdown, regardless of who is performing the activity, if continuation of that activity would be considered an imminent danger in relation to the Facility Safety Envelope.
- 19.5 "Imminent Danger in relation to the Facility Safety Envelope" is a condition, situation, or proposed activity which, if not terminated, could cause, prevent mitigation of, or seriously increase the risk of (1) Radiation

Exposure, (2) Fire/Explosion, and/or (3) Hazardous Chemical Exposure.

- 19.6 Shutdown: In the event of an imminent danger in relation to the Facility Safety Envelope or a non-imminent health and safety hazard identified by facility line management or operators, facility health and safety personnel overseeing facility operations, or other individuals; the individual or group identifying the potential health and safety hazard may recommend facility shutdown in addition to any immediate actions needed to mitigate the situation. However, the recommendation must be coordinated with Buyer management, and DOE management. Any written direction to suspend operations shall be issued by the Buyer's Representative.
- 19.7 Facility Representative: DOE personnel designated as Facility Representatives provide technical oversight of operations. The Facility Representative has the authority to "stop work," which may apply to the suspension of operations of the entire plant, activity, or job. This stop-work authority will be used for an operation of a facility which performing work the Facility Representative believes (1) poses an imminent danger to health and safety of workers or the public if allowed to continue; (2) could adversely affect the safe operation of, or could cause serious damage to the facility if allowed to continue; or (3) could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits.
- 19.8 The Buyer's Representative may at any time during the performance of this Purchase Order issue an order stopping work in whole or in part due to environmental, safety, and health reasons.

20.0 EMERGENCY CLAUSE

- 20.1 The U.S. Department of Energy (DOE) WVDP Director or designee shall have the sole discretion to determine when an emergency situation exists at the West Valley site. In the event that either the DOE WVDP Director or designee determines such an emergency exists, the DOE WVDP Director or designee will have the authority to direct any and all activities of the Buyer and the Seller necessary to resolve the emergency situation. The DOE WVDP Director or designee may direct the activities of the Buyer and the Seller throughout the duration of the emergency.

21.0 RELATED SERVICES

- 21.1 Whenever Seller furnishes personnel for installation, start-up, testing, inspection, related services, or maintenance (the "Services"), the following provisions shall apply, in addition to other applicable provisions of the Purchase Order:
- (a) Seller represents that Seller, its agents, and employees are qualified and competent to perform the Services and that all tools and equipment furnished by Seller in its performance of the Services are, and shall be kept, in good working order;
 - (b) Seller warrants that the Services shall be performed in a good and workmanlike manner and in accordance with accepted standards and shall conform to the requirements of the Purchase Order. Any Services not so performed or not in conformity herewith shall be promptly re-performed and resulting damage, if any, corrected all as required hereunder by Seller, at no cost to Buyer. In the event Seller fails to re-perform any Services and/or correct any resulting damage as required, Buyer may do so and

Seller shall reimburse Buyer for all costs and expenses incurred;

- (c) Seller's personnel will, upon arrival at the Facility Site, report to Buyer's site manager who will provide an appropriate orientation to such personnel including proper lines of communication with discipline superintendents. All formal communications shall pass between the Buyer and Seller's personnel. This does not preclude routine communications among such personnel and discipline superintendents and other appropriate personnel;
- (d) Seller's personnel shall comply with all Facility Site and Project rules and regulations, including but not limited to those pertaining to safety, plant protection, security, identification, drug testing, and the operation and parking of vehicles;
- (e) When Seller deems the Services completed, Seller shall give the Buyer notice thereof in writing, if required, in the Purchase Order. Within fifteen (15) days after receipt of such notice, Buyer will determine if the Services have been performed and completed as required. If the Services have been properly completed, Buyer will advise Seller in writing that same have been accepted. If the Services have not been completed as required, Buyer will so notify Seller and Seller will take remedial action as described in Article 21.1(b) and will repeat the procedure stated herein until the Services have been accepted;
- (f) At any time prior to final completion and acceptance of all the Services, Buyer may accept as finally complete any finished part of the Services that Buyer and Seller reasonably agree constitutes a separately functioning and usable part of the Services that can be used by the Buyer without significant interference with Seller's performance of the remainder of the Services. The Buyer may at any time request in writing that Seller permit Buyer to accept any such part of the Services and Seller shall make that part of the Services available for Buyer's inspection within five (5) days following the request. If Buyer and Seller agree following the inspection that the part of the Services in question can be accepted by Buyer as finally complete, Buyer shall issue a written notice to Seller accepting such part of the Services;
- (g) Seller shall at all times during the performance of Services at the Facility Site abide by and be a signatory to any project labor agreement(s) applicable to the Project and Seller shall provide evidence that it is a signatory to such agreement(s) prior to performing any Services at the Facility Site; and
- (h) Seller shall not interfere with the work of any other entity(ies) on the Facility Site, without prior specific written authorization from Buyer, but Seller shall immediately notify Buyer if Seller foresees risk of such interference. Any labor provided by Seller at the Facility Site shall be compatible with all other labor at the Facility Site. Seller will use all reasonable means to ensure labor harmony and continued progress of work at the Facility Site.
- (i) Seller agrees that the Owner or Buyer shall have the right to perform or have performed in or about the Facility Site during the time when Seller is furnishing the Goods or Services such other work as Owner or

Buyer may desire and that Seller shall make every reasonable effort to enable both its performance under the Purchase Order and such other work to be completed without hindrance or interference.

- (j) In the event Seller's performance is delayed or interfered with by the work of Buyer, Owner or their respective other contractors, Seller's sole and exclusive remedy shall be an extension of time for its performance. Any claim by Seller for an extension of time arising out of any alleged delay or interference shall be made to Buyer in accordance with Article 9.0.

22.0 GOODS WARRANTIES

- 22.1 Seller warrants that all Goods furnished hereunder and any component part thereof shall be new and unused and free from defects in design, material and workmanship, shall strictly conform to the specifications and/or drawings, shall be of the highest quality of their respective kinds, and shall be of sufficient size and capacity and materials to fulfill in all respects the operating conditions specified until one year after first placed into service by Buyer, or three years after acceptance, whichever first occurs.
- 22.2 Upon receipt of written notice from Buyer that the Goods do not conform with Buyers Warranty under Article 22.1, Seller shall at no cost to Buyer promptly repair or replace such Goods so that they conform with the requirements of the Purchase Order, including but not limited to accessing such Goods. If the Goods cannot be repaired or replaced so as to conform with the requirements of the Purchase Order, the nonconforming Goods shall be removed at no cost to Buyer and Seller shall promptly refund all or that portion of the Purchase Order Price that has been paid by Buyer, along with any carriage, insurance, freight and related costs incurred by Buyer in connection with the transportation, handling, delivery, removal, and replacement of the Goods and in connection with any damages or other expenses incurred in removing and/or replacing such Goods.
- 22.3 If Seller does not commence action to correct a nonconformity in the Goods within a reasonable time (in no event later than two (2) working days) following receipt of written notice of the nonconformity, Buyer may affect repairs, and Seller shall reimburse Buyer for all expenses incurred. Such actions on the part of Buyer shall not relieve Seller of any responsibility or liability hereunder with respect to such Goods.
- 22.4 Seller warrants that it has the ability to deliver good title to all Goods, that it has the right to sell the Goods, and that the Goods are free from any security interest, lien, restriction or other encumbrance.

23.0 LIENS

- 23.1 Seller shall promptly pay for all labor, services, equipment, materials, supplies, documentation or other items used or employed by it or on its behalf in the performance of the Purchase Order and shall keep and maintain all equipment, materials, supplies, and other items and the Facility Site and Project free from all mechanic's and other liens or claim or right of lien or other encumbrance. If any mechanic's or other lien or claim or right of lien or other encumbrance is filed upon or asserted against the Facility Site and/or Project by a Subsupplier, Seller shall promptly furnish to Buyer (or appropriate governmental authority) a bond or other collateral necessary to discharge such lien or claim or right of lien or other encumbrance, and shall indemnify,

defend and hold harmless the Indemnified Parties against and from any and all Damages arising from or in connection with any such lien or claim or right of lien or other encumbrance, as applicable, subject to Applicable Law.

24.0 INTELLECTUAL PROPERTY PROTECTION

- 24.1 Seller shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all Damages which the Indemnified Parties may suffer or pay by reason of any claims or suits arising out of claims of infringement of any patent rights, copyrights or other intellectual property, proprietary or confidentiality rights relating to the Goods or Services performed by Seller or any Subsupplier under or in connection with the Purchase Order, subject to Applicable Law. Any such suit or claim shall be defended at Seller's expense by counsel satisfactory to Buyer. If, in any such suit or claim, a temporary restraining order or preliminary injunction is granted, Seller shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraining order. If, in any such suit or claim, the Goods or Services, or any part, combination or process thereof, is held to constitute an infringement and its use is permanently enjoined, Seller shall promptly make every reasonable effort to secure for Owner or Buyer, at no cost to Owner or Buyer, a license authorizing continued use of the infringing item. If Seller is unable to secure such suspension or such license within a reasonable time, Seller shall, at its own expense and without impairing Owner's or Buyer's use of the Goods or Services, either replace the affected Goods or Services, or part, combination or process thereof, with non-infringing components or parts or modify the same so that same becomes non-infringing.

25.0 CONFIDENTIALITY

- 25.1 All drawings, specifications, technical data, and other information furnished to Seller by Buyer, or Owner, or their respective other contractors are, and shall remain, the property of Owner, Buyer or such other contractors, as the case may be, and may not be copied or otherwise reproduced or used in any way except in connection with the Goods or Services, or disclosed to third parties or used in any manner detrimental to the interests of Owner, Buyer or such other contractors.
- 25.2 The following information shall not be subject to the confidentiality requirements of Article 25.1:
 - (a) information in the public domain through no action of Seller in breach of this Purchase Order; or
 - (b) information independently developed by Seller; or
 - (c) information acquired by Seller from a third party not delivered to Seller in breach of confidentiality agreements which said third party may have with Buyer, Owner, Owner's other contractors, or any other third party.
- 25.3 If and when requested in writing, Seller shall, and shall cause its Subsuppliers to, execute any such confidentiality agreements as are deemed necessary for the protection of Buyer, Owner and/or any of their respective other contractors.

26.0 APPLICABLE LAW

- 26.1 Seller, all Subsuppliers, all Goods and Services provided hereunder shall comply with all laws, treaties, ordinances, judgments, decrees, injunctions, writs and orders of any

court or governmental agency or authority, and rules, regulations, codes, orders, interpretations of any federal, state, county, municipal, regional, environmental or other governmental body, instrumentality, agency, authority, court or other body having jurisdiction over the Project or any activity conducted at or in connection with the Project ("Applicable Law").

- 26.2 Seller shall indemnify, defend, and hold harmless Owner, Buyer, and their respective directors, officers, employees, parents and subsidiaries of any tier, representatives, agents, successors and assigns, and any and all representatives, agents, directors, officers, employees of any of the foregoing, (the "Indemnified Parties"), against and from any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, interest and causes of action, including without limitation administrative and legal costs, reasonable attorney's fees (collectively, "Damages"), arising from or based on any actual or asserted violation of Applicable Law by Seller or any of its Subsuppliers, subject to Applicable Law.
- 26.3 Seller shall not under any circumstance apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety or health, or air, water or noise pollution, laws or regulations relating to the Purchase Order or the performance thereof, without Buyer's prior written approval.
- 26.4 Seller agrees to comply 18 U. S. C. 431 "Relating to Officials not to Benefit;" and 29 CFR Part 470 "Obligations of Federal Contractors and Subcontractors: Notice of Employee Rights Concerning Payment of Union Dues or Fees."

27.0 PERMITS AND LICENSES

- 27.1 Unless obtained by Owner or Buyer, Seller shall obtain and pay for any permits, licenses, or royalties which may be required for the shipping, transportation, delivery, furnishing and unrestricted, perpetual, royalty-free use of the Goods, and shall furnish evidence thereof to Buyer. Furthermore, whenever reports to municipal authorities are required from Owner or Buyer under penalty to report, or to report within a specific time, Seller shall be held liable for any costs or penalties to which Owner or Buyer may be subjected as a result of Seller's failure to give proper evidence of a license or permit within any time limit specified.

28.0 TAXES/DUTIES

- 28.1 Seller agrees to pay, and that the Purchase Order Price is inclusive of, all taxes, fees and contributions on or measured by the income, gross receipts or assets of Seller or any of its Subsuppliers and all taxes, fees and contributions on or measured by employees or other labor costs of Seller or any of its Subsuppliers, including without limitation all payroll or employment compensation tax, social security tax or similar taxes for Seller's or any of its Subsupplier's employees and agrees that Seller shall pay all such amounts. Seller further agrees to pay and that the Purchase Order Price is inclusive of all sales and use taxes, and all import, export and other customs duties, charges, levies and fees imposed or incurred in connection with the shipping and delivery of any equipment, materials, supplies or other items required for the Purchase Order to the Facility Site. In the event that Buyer should pay or be required to pay any of the foregoing items or any portion thereof, Seller shall reimburse Buyer therefore in full within five (5) days of receipt of written demand from Buyer for any such reimbursement.

29.0 GENERAL INDEMNITY

- 29.1 Seller shall indemnify, defend and hold harmless the Indemnified Parties against and from any and all Damages (including without limitation any damage to or destruction of property of, or death of or bodily injury to, persons (regardless of whether they are employees of an Indemnified Party, Seller or any Subsupplier, or unaffiliated with the Project, or otherwise)) caused or contributed to by (i) any fault or act or omission of Seller or any of its Subsuppliers, or of any of their respective employees, agents, or representatives, under, in connection with or otherwise relating to this Purchase Order or the Project or (ii) by any failure of Seller to comply with the terms of this Purchase Order; subject to Applicable Law.
- 29.2 In any and all claims against one or more of the Indemnified Parties by any employee of Seller or of any of its Subsuppliers, the indemnification, defense and hold harmless obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Seller or of any of its Subsuppliers, under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

30.0 ASSIGNMENT

- 30.1 Buyer may assign this Order to the DOE or to such party as DOE may designate to perform Buyer's obligations hereunder. Upon receipt by Seller of written notice that the DOE or a party so designated by the DOE has accepted an assignment of this Order, Buyer shall be relieved of all responsibility hereunder and Seller shall thereafter look solely to such assignee for performance of Buyer's obligations.
- 30.2 Seller agrees that it shall have no right, power or authority to assign or delegate any of its rights or obligations under the Purchase Order, either voluntarily or involuntarily, or by operation of law, without prior written consent of Buyer and that any such unauthorized assignment or delegation shall be null and void and of no effect.

31.0 NO WAIVER OF BREACH

- 31.1 Any failure by Buyer at any time, or from time to time, to enforce or require the strict compliance with and performance by Seller of any of the terms or conditions of the Purchase Order shall not constitute a waiver by Buyer or a breach of any such terms or conditions or any other breaches, or the right of the Buyer to avail itself of the remedies it may have for any such breach.

32.0 PUBLICITY

- 32.1 Seller shall not disclose the nature of its work on the Project, or engage in any other publicity or public media disclosures with respect to the Project without the prior written consent of the Buyer.

33.0 SEVERABILITY/SURVIVAL

- 33.1 The provisions of the Purchase Order are severable, and, if any provision shall be determined to be illegal or unenforceable, such determination shall in no manner affect any other provision of the Purchase Order, and the remainder of the Purchase Order shall remain in full force and effect. In the event that any provision of the Purchase Order is held to be unenforceable or invalid by any court of competent jurisdiction, Buyer and Seller shall in good faith negotiate an equitable adjustment in the provisions of the Purchase Order to preserve its purpose and maintain the allocation of risk, liabilities and

obligations originally agreed upon, to the maximum extent then possible under Applicable Law.

- 33.2 Notwithstanding anything to the contrary in the Purchase Order, the provisions of the Purchase Order setting forth (i) Seller's obligations with respect to confidentiality, indemnification, and warranty; (ii) limitations on Buyer's liability; and (iii) any obligation which expressly or by implication survives termination of the Purchase Order, shall survive completion of the Goods and Services or the earlier termination under Article 16.0 or Article 17.0.

34.0 SUCCESSORS AND ASSIGNS

- 34.1 The Purchase Order shall be binding upon and inure to the benefit of the Parties' respective heirs, successors, executors, administrators and authorized assigns.

35.0 HAZARDOUS MATERIALS AND MATERIAL SAFETY DATA

- 35.1 Seller shall notify Buyer immediately upon the discovery of the presence of any Hazardous Material on, or the release of Hazardous Material on or from, the Facility Site, and shall proceed in accordance with Article 35.2 hereof in connection therewith.
- 35.2 In the event a Hazardous Material is discovered to exist at the Facility Site and is one for which Seller is responsible pursuant to Article 35.3 hereof, Seller shall notify Buyer of the presence thereof and be responsible for responding to and handling such Hazardous Material (including but not limited to the condition resulting from the presence thereof) in compliance with the requirements of all Applicable Laws and as directed by Buyer. In the event a Hazardous Material is discovered to exist at the Facility Site and is not one for which Seller is responsible pursuant to Article 35.3 hereof, Seller shall immediately notify Buyer of the presence thereof and thereafter proceed with the performance of the Purchase Order as directed by Buyer or otherwise
- 35.3 Seller is responsible for any Hazardous Material that Seller or any of its Subsuppliers creates, brings to or disturbs or releases upon or near the Facility Site.
- 35.4 Seller shall indemnify, defend and hold harmless the Indemnified Parties against and from all Damages caused or contributed to by any Hazardous Material for which Seller is responsible pursuant to Article 35.3 hereof, subject to Applicable Law.
- 35.5 Seller agrees to comply with Federal OSHA Hazard Communication Standards 29 CFR 1926.59 and 29 CFR 1910.1200 which requires that manufacturers, importers, and distributors properly label all containers of hazardous materials or components and furnish a Safety Data Sheet (SDS) for each hazardous material supplied.
- 35.6 Revised SDSs must be submitted to consignee when there is a change in composition or when significant new information concerning Hazardous Materials or ways to protect against hazards becomes known.

36.0 BUYER INFORMATION

- 36.1 No information, including but not limited to, estimated quantities, bills of materials, lists, weights or quantities of materials or structures which have been or may be furnished to Seller under the Purchase Order are warranted or guaranteed as to accuracy, completeness or otherwise. They may or may not be accurate in any or all particulars, and they shall not be considered as finally correct, sufficiently complete or accurately covering any portion or all of the Goods or Services to be furnished under the Purchase Order.

- 36.2 Although the Goods or Services furnished under unit price items, if any, may differ from estimated quantities, the basis of payment for such Goods or Services shall be the actual amount of Goods or Services completed in each case, unless otherwise agreed in writing. Seller agrees that it will make no claim for loss of anticipated profits or for any other damages because no work is ordered under certain items or because of the quantities of Goods or Services actually completed are less than any estimates of quantity that have been or may be furnished to Seller.

37.0 BUYER FURNISHED MATERIALS

- 37.1 The following terms apply to any tools, patterns, equipment, material, or other property which is owned by the Government and supplied to Seller by Buyer (hereinafter "Buyer Furnished Property"):

Seller shall not use Buyer Furnished Property on any other Work without the prior written consent of Buyer.

Title to Buyer Furnished Property shall remain with the Government. Seller shall segregate and clearly mark Buyer Furnished Property to show the Government's ownership and shall preserve the Government's title thereto free and clear of all encumbrances. Seller, shall, if requested by Buyer, submit to Buyer an itemized inventory, showing the description and location of each item of Buyer Furnished Property. Buyer shall have the right to enter Seller's premises to inspect Buyer Furnished Property. Should Seller fail to perform the duties imposed upon it by this section or should Buyer at any time have reason to believe that its title to, or right to the possession of, any Buyer Furnished Property is threatened, Buyer shall have the right to enter upon Seller's premises and remove such property. Upon completion or termination of this Order Seller shall segregate all Buyer Furnished Property and shall dispose of the same as Buyer may direct. Buyer reserves the right to abandon Buyer Furnished Property at no additional cost to Buyer upon issuance of written notification to Seller of such intent.

Seller shall, at its expense, perform all maintenance, repairs, and replacements necessary with respect to Buyer Furnished Property so that the same may remain suitable for the use contemplated hereby and may be returned to Buyer in as good condition as when received, except for reasonable wear and tear or consumption of materials necessarily resulting from their use.

Seller shall give Buyer prompt written notice of any Buyer Furnished Property which upon delivery is found to be defective. The correction or replacement of such defective property shall be accomplished at Buyer's written direction.

Upon delivery to Seller, the risk of loss or damage to Buyer Furnished Property shall be upon Seller. Risk of loss or damage transfers to Buyer when such property is returned to Buyer.

Seller waives any and all claims relating to loss, damage, injury, or delay arising out of or related to Buyer Furnished Property and Seller shall indemnify buyer against any and all liability for damage to property or injury to or death of persons arising from or incidental to the presence or use of Buyer Furnished Property, whether such damage, injury, or death be caused by defects in such property, negligence in the use thereof, strict liability, or otherwise.

38.0 FORCE MAJEURE

- 38.1 Any delay in or failure of performance by the Seller hereunder shall be excused if and to the extent caused by a "Force Majeure Event." Force Majeure Events are defined as fire, explosion, act of God, act of the public enemy, and change in law, provided that such event is beyond the control of and without fault on the part of the Seller and the effects of which could not be prevented or avoided by the exercise of due care or foresight.
- 38.2 In the event Seller, by reason of a Force Majeure Event, is rendered unable to perform any of its obligations or comply with any conditions under the Purchase Order, Seller shall give written notice to Buyer no later than three (3) days after the occurrence of such Force Majeure Event, with a description of the particulars of the Force Majeure Event, including the estimated duration of said Force Majeure Event or the effect thereof and the probable impact on Seller's performance under the Purchase Order. The effects of said Force Majeure Event shall, so far as possible, be remedied by Seller with all reasonable dispatch, and Seller shall use its best efforts to eliminate and mitigate the consequences thereof. The time for Seller's performance may be extended for a period equal to the time such performance is delayed by said Force Majeure Event, but such relief shall be conditioned upon Seller's initial and continued satisfaction of the notice, reporting, remedy and mitigation, and other requirements of this Article 38.2 in relation to said Force Majeure Event. Under no circumstances shall Seller be entitled to any additional compensation or damages of any kind or character by virtue of a Force Majeure Event. Any claim by Seller for an extension of time arising out of any alleged Force Majeure Event shall be made to Buyer in accordance with Article 9.0.

39.0 DISPUTES

- 39.1 (1) The Seller and Buyer agree to make good-faith efforts to settle any dispute or claim that arise under this Order through discussion and negotiation. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of Alternative Disputes Resolution (ADR). In the event non-binding mediation or arbitration is agreed upon, the site of the proceedings shall be in Buffalo, New York. The mediator or arbitrator shall allocate cost, except that there shall be no pre-decisional interest costs, and each party shall bear its discretionary costs. In the event that ADR fails or is not used, the parties agree that the appropriate forum for resolution shall be litigation in Federal District Court, with Venue in the United States Court for the Western District of New York in Buffalo. Provided, however, that in the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in State Court in Buffalo, New York.
- (2) The parties agree that substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with the laws of the State of New York.
- (3) There shall be no interruption in the prosecution of the work, and the Seller shall proceed diligently with the performance of this Order pending final resolution of any dispute arising under this Order between the parties hereto or between the Seller and its sub-tier subcontracts.
- 39.2 Notwithstanding any other provision of this Article 39.0, in the event: a) Owner and Buyer become involved in any arbitration, mediation, litigation or other proceedings in connection with the Prime Contract, and b) Buyer

determines that it would be appropriate that disputes under this Purchase Order be resolved in the dispute proceeding due to the existence of common issues of fact or law, Seller shall consent to joinder to, and a consolidated resolution of issues in, that proceeding. Seller hereby consents to such joinder and irrevocably waives any objection which it may now or hereafter have to the bringing of any such action or proceeding in such jurisdiction, including any objection to the laying of venue based on the grounds of forum non conveniens and any objection based on the grounds of lack of in personam jurisdiction.

- 39.3 In the event Seller submits or pursues a poorly substantiated or frivolous change order or claim against Buyer or Owner or their respective other contractors, Buyer shall be entitled to backcharge Seller for all cost and expense (including but not limited to attorney's fees) incurred by Buyer and/or Owner because of such change order or claim. In the event Seller should submit and/or pursue any such change order or claim against Buyer, Seller shall pay to Buyer any and all costs and expenses (including but not limited to attorney's fees) incurred in investigating and/or defending against and/or resolving such claim or change order, within ten (10) days after Buyer's submission of its invoice (which may be interim or total) to Seller therefore.

40.0 NO THIRD PARTY OR OTHER CLAIMS

- 40.1 Seller agrees that nothing in any agreement between Owner and Buyer creates any rights in favor of Seller and Seller covenants not to sue Owner or Buyer as a third-party beneficiary of any such agreement.
- 40.2 Seller agrees that any claims it may have for additional compensation or economic loss of any kind or character arising out of its performance of the Purchase Order or otherwise in connection with the Purchase Order shall be made solely as provided for in Article 9.0. Seller covenants not to assert any such claim against Owner and Buyer or Owner's or Buyer's respective other contractors and Seller covenants not to sue Owner or Owner's or Buyer's respective other contractors on any such claim, whether based upon delay, contract, tort, negligence, warranty, indemnity, strict liability, error or omission or otherwise, and agrees that it shall assign any such claim it may have in that regard to Buyer if and when requested by Buyer in connection with any adjustment pursuant to Article 9.0 hereof.

41.0 DAMAGES

- 41.1 In no event shall Owner, Buyer, or any of their respective parents, affiliates, subsidiaries, representatives or any directors, officers, or employees of any of the foregoing be liable to Seller or any of its Subsuppliers, whether based on delay, contract, tort, negligence, warranty, indemnity, strict liability, error or omission or otherwise, for any consequential, special, incidental, indirect, exemplary, multiple or punitive damages or damages arising from or in connection with loss of use or loss of revenue or profit, actual or anticipated, or otherwise. Seller hereby releases Owner, Buyer and each of their respective parents, affiliates, subsidiaries, representatives or any directors, officers and employees from any such liability.

42.0 ARTICLE HEADINGS

- 42.1 The Article headings herein have been inserted for convenience of reference only and shall not in any manner affect the construction, meaning, or effect of

anything herein contained nor govern the rights and liabilities of the Parties.

43.0 INSPECTION/TESTING/ACCEPTANCE

- 43.1 All Goods shall be subject to inspection and testing by the Buyer and/or Owner on Seller's or its Subsupplier's premises before, during, and after manufacture, at reasonable times. Notwithstanding any inspection at Seller's or its Subsupplier's premises, acceptance of the Goods shall be at the Facility Site unless expressly indicated otherwise in the Purchase Order.
- 43.2 If any inspection or test, whether preliminary or final, is to be made on Seller's or its Subsupplier's premises, Seller shall ensure that the Buyer is furnished, without additional charge, all reasonable facilities and assistance required for such inspection or test to be conducted safely and conveniently. Any inspection or test by the Buyer or failure to inspect or test by the Buyer shall not relieve Seller of any responsibility or liability with respect to the Goods, nor shall any such inspection or test or failure to inspect or test be interpreted or in any way imply acceptance of the Goods.
- 43.3 If the results of the tests conducted indicate that any Goods or Services so not comply with the requirements set forth in the Purchase Order, the Seller shall, at his expense, make all necessary adjustments, repairs, replacements or changes in order to attain the required compliance. Until the required compliance is achieved, all subsequent tests by Buyer or the Owner shall be made at Seller's expense.

44.0 BACKCHARGE; OFFSET

- 44.1 Buyer may accomplish any required redesign, repair, rework or replacement of any nonconforming Goods or Services by the most expeditious means available, and backcharge Seller for the costs and expenses incurred.
- 44.2 If Seller requests Buyer to provide the services of its personnel or equipment, or provide permanent, temporary or consumable materials for Seller's use, Buyer will charge Seller for such items in accordance with Articles 44.4 and 44.6 below.
- 44.3 In the event of emergency, Buyer may proceed to furnish Goods or Services and backcharge Seller for Buyer's costs and expenses.
- 44.4 The cost of such backcharge shall include but not be limited to:
- (a) fully burdened labor costs;
 - (b) material costs including shipping and handling;
 - (c) subcontractor or subsupplier costs directly related to performing the backcharge work;
 - (d) equipment and tool rentals at Buyer customary rates; and
 - (e) a factor of fifty percent (50%) shall be applied to the total of the foregoing Articles 44.4(a), (b) (c) and (d) for indirect, overhead and administrative costs for the circumstances set forth in Article 44.1, 44.2 and Article 44.3 above.
- 44.5 Prior to completion of the Purchase Order, backcharge costs will be treated as a Purchase Order Price adjustment. Seller shall pay the invoice within ten (10) days from receipt. Buyer's right to backcharge is in addition to any and all other rights and remedies provided in the Purchase Order or by law. The performance of such backcharge by Buyer shall not relieve Seller of any of its responsibilities under the Purchase Order.

- 44.6 Independently of its backcharge rights, Buyer shall at any time and from time to time be entitled, but not required, to offset, against any obligation of Buyer to Seller, any obligation of Seller to Buyer, by giving Seller written notice thereof.

45.0 PRODUCT INFORMATION

- 45.1 If any design change at any time ever occurs (or is seriously contemplated) to any component of the Goods or Services to be supplied under the Purchase Order, Seller shall immediately advise Buyer of such design change, and concurrently provide Buyer with a full written description of such design change, the reasons for it, and all known or suspected impacts, implications, consequences, and details thereof, particularly including but not limited to any matters relating to performance, configuration, size, weight and durability. If after giving the matter reasonable consideration Buyer is not willing to accept such design change, any component, material, or other item of any kind incorporating or affected by such design change shall be deemed defective and therefore rejected under the Purchase Order and Seller shall immediately cause such component, material or other item to be replaced at its sole cost and risk with component, material or item which does not incorporate and is not affected by such design change.
- 45.2 Prior to furnishing any Goods or Services under the Purchase Order, Seller shall furnish to Buyer in detail all pertinent information concerning the operating history of any product to be furnished hereunder, particularly including but not limited to any deficiencies, problems or customer complaints relating thereto. Seller shall thereafter promptly keep Buyer current with regard to any new developments regarding such operating history, particularly including but not limited to any deficiencies, problems or customer complaints.

46.0 INDEPENDENT CONTRACTOR

- 46.1 Seller is an independent contractor, and neither an employee, agent, nor representative of the Buyer or the Owner, and shall maintain complete control of, and responsibility for, its Subsuppliers, employees, agents, means, methods, and operations.

47.0 COMPLETE AGREEMENT

- 47.1 The Purchase Order constitutes the complete agreement between the Parties with respect to the subject matter hereof, and supercedes all prior written or oral contracts, agreements, representations and/or understandings of any kind or nature that the Parties may have entered into or had prior to the date hereof with respect to the subject matter hereof.
- 47.2 Seller shall have accepted these Conditions provided Seller has received these Conditions, and either a) received payment; or b) started performance under the Purchase Order.

48.0 INDEMNIFICATION OF CHBWW

- (a) The Department of Energy has promulgated Procedural Rules (10 CFR 820), Quality Assurance Rules (10 CFR 830), and Radiation Protection Rules (10 CFR 835) in implementation of the Price-Anderson Amendments Act (PAAA) of 1988, Public Law 100-408, August 20, 1988. These rules govern the conduct of persons involved in DOE nuclear activities, and, in particular, are designed to achieve compliance with DOE nuclear safety requirements. Violation of the applicable rules will provide a basis

for the assessment of civil and criminal penalties under the PAAA.

- (b) This Order is subject to the requirements of the above rules if the performance of Work is covered by the Nuclear Hazards Indemnity clauses of this Order.
- (c) Indemnification of CHBWV. To the extent permitted by law, the Seller assumes full responsibility and shall indemnify, save harmless and defend CHBWV and its principal subcontractors, their agents, officers, employees, and directors from any civil or criminal liability under Sections 234A or 223 (c) of the Act or the implementing regulations at 10 CFR Sections 820 et seq. arising out of the activities of the Seller its lower-tier subcontractors, suppliers, agents, employees, officers, or directors. The Seller's obligation to indemnify and hold harmless shall expressly include attorneys' fees and other reasonable costs of defending any action or proceeding instituted under Sections 234A or 223 (c) of the Act or the implementing regulations at 10 CFR Sections 920, et seq. A copy of the implementing regulations at 10 CFR Sections 820, et seq., will be made available to the Seller upon request.

49.0 WORKER SAFETY AND HEALTH PROGRAM- (CIVIL PENALTIES UNDER 10 CFR 851)

- (a) Section 3173 of Public Law 107-314, Bob Stump National Defense Authorization Act for Fiscal Year 2003 amends the Atomic Energy Act (AEA) by adding Section 234C, Worker Health, and Safety Rules for Department of Energy Nuclear Facilities. The Department of Energy has promulgated Procedural Rules (10 CFR 851), Worker Safety and Health Program, to comply with Section 234C. These rules govern the conduct of contractor activities at DOE sites. Violation of the applicable rules will provide a basis for the assessment of civil penalties under the CFR ruling on contractors (and their subcontractors and suppliers) that are indemnified by the Price Anderson Amendments Act, 42 U.S.C. 2210(d). Title 10 CFR 851 sets forth the procedures DOE will use in exercising its enforcement authority, including the issuance of "Notices of Violation" and the resolution of an administrative appeal in the event CHBWV or the subcontractor elects to petition the Office of Hearings and Appeals for review.
- (b) This Order is subject to the requirements of 10 CFR 851 if under its terms, the supplier is required to perform work on the Facility Site. Reference DEAR 970.5223-1 titled "Integration of Environment, Safety and Health Into Work Planning and Execution," invoked elsewhere in these General Provisions.
- (c) Severity of Violations. DOE may assess civil penalties of up to \$95,000 per violation per day. If any violation is a continuing violation, each day of the violation shall constitute a separate violation for the purpose of computing the civil penalty.
 - (1) A Severity Level I violation is a serious violation. A serious violation shall be deemed to exist in a place of employment if there is a potential that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of

employment. A Severity Level I violation would be subject to a base civil penalty of up to 100% of the maximum base civil penalty of \$95,000.

- (2) A Severity Level II violation is an other-than-serious violation. An other-than-serious violation occurs where the most serious injury or illness that would potentially result from a hazardous condition cannot reasonably be predicted to cause death or serious physical harm to employees but does have a direct relationship to their safety and health. A Severity Level II violation would be subject to a base civil penalty up to 50% of the maximum base civil penalty (\$47,500).

- (d) Indemnification of CHBWV

To the extent permitted by law, the Supplier assumes full responsibility and shall indemnify, save harmless, and defend CHBWV and its principal subcontractors, their agents, officers, employees, and directors from any civil liability under Section 234C of the Act or the implementing regulations at 10 CFR Sections 851, arising out of the activities of the Supplier, its lower-tier subcontractors, suppliers, agents, employees, officers, or directors. The Supplier's obligation to indemnify and hold harmless shall expressly include attorney's fees and other reasonable costs of defending any action or proceeding instituted under Sections 234C of the Act or the implementing regulations at 10 CFR Section 851. A copy of the implementing regulations at 10 CFR Section 851, will be made available to the Supplier upon request.

50.0 MODEL CLAUSE, IMPLEMENTING THE PRICE-ANDERSON AMENDMENTS ACT OF 2005 – NUCLEAR HAZARDS INDEMNITY AGREEMENT

- (a) Authority. This clause is incorporated into this subcontract pursuant to the authority contained in subsection 170d of the Atomic Energy Act of 1954, as amended (hereinafter called the Act).
- (b) Definitions. The definitions set out in the Act shall apply to this clause.
- (c) Financial protection. Except as hereafter permitted or required in writing by DOE, the seller will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the seller provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the seller by DOE.
- (d) (1) Indemnification. To the extent that the seller and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the seller and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the seller and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170d of the Act, as that amount may be increased in accordance with

section 170t, in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this subcontract.

- (2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this subcontract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.
- (e) (1) Waiver of Defenses. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the seller, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
- (2) In the event of an extraordinary nuclear occurrence which—
 - (i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
 - (ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
 - (iii) Arises out of or results from the possession, operation, or use by the seller or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or
 - (iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the seller, on behalf of itself and other persons indemnified, agrees to waive:
 - (A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to—
 1. Negligence;
 2. Contributory negligence;
 3. Assumption of risk; or
 4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
 - (B) Any issue or defense as to charitable or governmental immunity; and
 - (C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first

knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

- (v) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.
- (vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the subcontract location" which phrase means any DOE facility, installation, or site at which contractual activity under this subcontract is being carried on, and any seller-owned or controlled facility, installation, or site at which the seller is engaged in the performance of contractual activity under this subcontract.
- (3) The waivers set forth above—
 - (i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
 - (ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
 - (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
 - (iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
 - (v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
 - (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
 - (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, subcontracts or other proof of financial protection; and
 - (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or

portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

- (f) Notification and litigation of claims. The seller shall give immediate written notice to DOE of any known action or claim filed or made against the seller or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the seller shall furnish promptly to DOE, copies of all pertinent papers received by the seller or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the seller and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the seller or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the seller or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
- (g) Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the seller to fulfill its obligation under this subcontract and shall be unaffected by the death, disability, or termination of existence of the seller, or by the completion, termination or expiration of this subcontract.
- (h) Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this subcontract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this subcontract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) Civil penalties. The seller and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders. If the seller is a not-for-profit organization, as defined by section 234 Ad(2), the total amount of civil penalties paid shall not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under this subcontract.
- (j) Criminal penalties. Any individual director, officer, or are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.

- (k) Inclusion in subcontracts. The seller shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

51.0 FAR CLAUSES

The following alterations apply to the FAR clauses in this Section 51.0 and to the DEAR clauses in Section 52.0. Whenever necessary to make the context of the unmodified FAR and DEAR clauses applicable to this Purchase Order, the terms shown below shall have the meaning as stated:

The term "Contractor" shall mean "Seller."

The term "Contract" shall mean this Purchase Order; and

The term "DOE," "Government," "Contracting officer," and equivalent phrases shall mean Buyer and/or Buyer's representative, except the terms "Government" and "Contracting officer" do not change:

- i) In the phrases "Government Property," "Government-Furnished Property," and "Government-Owned Property;"
- ii) In any patent clauses incorporated herein;
- iii) When a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or his duly authorized representative;
- iv) When title to property is to be transferred directly to the Government;
- v) When access to proprietary financial information or other proprietary data is required except for authorized audit rights; and
- vi) Where specifically modified herein.

For authorized audit rights, the term "Contracting Officer" or an "authorized representative of the Contracting Officer" shall also include "Buyer, or an authorized representative of Buyer."

- A. The Seller shall comply with the following FAR clauses, where applicable, which are incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of supplies or services. All references herein to the Federal Acquisition Regulation (FAR) are those in effect on the date of this Order, unless a date (month and year) is included in the reference.
 - (1) 52.203-6, Restrictions on Subcontractor Sales to the Government
 - (2) 52.203-7, Anti-Kickback Procedures
 - (3) 52.203-12, Limitations on Payments to Influence Certain Federal Transactions
 - (4) 52.203-13, Contractor Code of Business Ethics and Conduct
 - (5) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act

- (6) 52.204-9, Personal Identity Verification of Contractor Personnel
 - (7) 52.209-6, Protection of the Government' Interest when Subcontracting with Subcontractors Debarred, Suspended, or Proposed for Debarment
 - (8) 52.215-2, Audit and Records – Negotiation
 - (9) 52.215-13, Subcontractor Cost or Pricing Data – Modification
 - (10) 52.215-15, Pension Adjustments and Asset Reversions
 - (11) 52.215-18, Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions
 - (12) 52.215-19, Notification of Ownership Changes
 - (13) 52.219-8, Utilization of Small Business Concerns
 - (14) 52-219-9, Small Business Subcontracting Plan, Alternate II
 - (15) 52.222-4, Contract Work Hours and Safety Standards ACT - Overtime Compensation
 - (16) 52.222-21, Prohibition of Segregated Facilities
 - (17) 52.222-26, Equal Opportunity
 - (18) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and other Eligible Veterans
 - (19) 52.222-36, Affirmative Action for Workers with Disabilities
 - (20) 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era, and other Eligible Veterans
 - (21) 52.222-50, Combating Trafficking in Persons
 - (22) 52.222-54, Employment Eligibility Verification
 - (23) 52.223-14, Toxic Chemical Release Reporting
 - (24) 52.223-15, Energy Efficiency in Energy-Consuming Products
 - (25) 52.224-2, Privacy Act
 - (26) 52.225-13, Restrictions on Certain Foreign Purchases
 - (27) 52.227-1, Authorization and Consent
 - (28) 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement
 - (29) 52.230-2, Cost Accounting Standards
 - (30) 52.230-6, Administration of Cost Accounting Standards
 - (31) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors
 - (32) 52.244-6, Subcontracts for Commercial Items
 - (33) 52.245-1, Government Property
 - (34) 52.247-64, Preference for Privately Owned U.S. Flag Commercial Vessels
 - (35) 52.248-1, Value Engineering
- B. In addition to the referenced clauses in Section A above, the following FAR clauses are applicable if the contract is subject to the requirements of the Davis-Bacon Act:
 - (1) 52.222-6, Davis Bacon Act
 - (2) 52.222-7, Withholding of Funds
 - (3) 52.222-8, Payrolls and Basic Records
 - (4) 52.222-9, Apprentices and Trainees
 - (5) 52.222-10, Compliance with Copeland Act Requirements
 - (6) 52.222-11, Subcontracts (Labor Standards)
 - (7) 52.222-12, Contract Termination - Debarment
 - (8) 52.222-13, Compliance with Davis Bacon and Related Act Regulations
 - (9) 52.222-14, Disputes Concerning Labor Standards
 - (10) 52.222-15, Certification of Eligibility
 - (11) 52.222-27, Affirmative Action Compliance Requirements for Construction
 - C. In addition to the referenced clause in section A above, the following FAR clause is applicable if the contract is subject to the requirements of the Service Contract Act:
 - (1) 52.222-41, Service Contract Act of 1965, As Amended

52.0 DEAR CLAUSES

The Seller shall comply with the following DEAR clauses, where applicable which are incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of supplies or services. All references herein to the Department of Energy Acquisition Regulation (DEAR) are those in effect on the date of this Order, unless a date (month and year) is included in the reference.

- (1) 952.203-70, Whistleblower Protection for Contractor Employees
- (2) 952.204-2, Security
- (3) 952.204-70, Classification/Declassification
- (4) 952.204-77, Computer Security
- (5) 952.208-70, Printing
- (6) 952.209-72, Organizational Conflicts of Interest
- (7) 952.223-78, Sustainable Acquisition Program
- (8) 952.226-74, Displaced Employee Hiring Preference
- (9) 952.227-11, Patent Rights – Retention by the Contractor
- (10) 952.227-13, Patent Rights – Acquisition by the Government
- (11) 970.5204-2, Laws, regulations and DOE Directives
- (12) 970.5204-3, Access to and Ownership of Records

- (13) 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution
- (14) 970.5223-2, Affirmative Procurement Program as Modified by DOE Acquisition Letter 2008-05
- (15) 970.5223-4, Workplace Substance Abuse Programs at DOE Sites
- (16) 970.5227-1, Rights in Data - Facilities
- (17) 970.5227-4, Authorization and Consent

53.0 LAWS, REGULATIONS AND DOE ORDERS

Pursuant to DEAR 970.5204-2 Laws, Regulations and DOE Directives, the following list of laws and regulations are applicable to the work performed under the Purchase Order. The Seller shall comply with all applicable Federal and State Laws, Statutes, Codes, Rules, Regulations, and Orders; Executive Orders; Consensus Standards; and agreement documents applicable to work performed under the Purchase Order.

- (1) 10 CFR 20, Standards for Protection Against Radiation
- (2) 10 CFR 707, Workplace Substance Abuse Programs at DOE Sites
- (3) 10 CFR 719, Contractor Legal management Requirements Acquisition Regulations
- (4) 10 CFR 820, Procedural Rules for DOE Nuclear Facilities
- (5) 10 CFR 824, Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations
- (6) 10 CFR 830, Nuclear Safety Management
- (7) 10 CFR 835, Occupational Radiation Protection
- (8) 10 CFR 850, Chronic Beryllium Disease Prevention Program
- (9) 10 CFR 851, Worker Safety and Health Program
- (10) 29 CFR 1910, Occupational Safety and Health Standards - General Industry
- (11) 29 CFR 1926, Occupational Safety and Health Standards – Construction
- (12) 48 CFR Part 970.5203-2, Performance Improvement and Collaboration
- (13) 48 CFR Part 970.5204-2, Laws, Regulations, and DOE Directives
- (14) 48 CFR Part 970.5215-3, Conditional Payment of Fee, Profit, or Incentives (or alternatively, 48 CFR Part 952.223-76 or 952.223-77, Conditional Payment of Fee or Profit)
- (15) 49 CFR Part 173.427, Transport Requirements for Low Specific Activity (LSA) Class 7 (Radioactive) Materials and Surface Contaminated Objects (SCO)
- (16) 49 CFR Part 213, Track Safety Standards
- (17) 49 CFR Part 237, Bridge Safety Standards
- (18) 42 U.S.C. 2297h-8(a), Employee Protections
- (19) DOE Manual M 142.2-1, Manual for Implementation of the Voluntary Offer Safeguards Agreement and

- Additional Protocol with the International Atomic Energy Agency
- (20) DOE Order O 142.2A Adm. Chg. 1, Voluntary Offer Safeguards Agreement and Additional Protocol with the International Atomic Energy Agency
- (21) DOE Order O 142.3A, Unclassified Foreign Visits and Assignments Program
- (22) DOE Order O 144.1, Chg. 1, Department of Energy American Indian Tribal Government Interactions and Policy
- (23) DOE Order O 150.1A, Continuity Programs
- (24) DOE Order O 151.1D, Comprehensive Emergency Management System
- (25) DOE Order O 153.1, Departmental Radiological Emergency Response Assets
- (26) DOE Order O 200.1A, Information Technology Management
- (27) DOE Order O 205.1B Adm. Chg. 3, Department of Energy Cyber Security Program
- (28) DOE Order O 206.1, Department of Energy Privacy Program
- (29) DOE Order O 206.2, Identity, Credential, and Access Management (ICAM)
- (30) DOE Notice N 206.4, Personal Identity Verification
- (31) DOE Order O 210.2A, DOE Corporate Operating Experience Program
- (32) DOE Order O 221.1A, Reporting Fraud, Waste, and Abuse to the Office of Inspector General
- (33) DOE Order O 221.2A, Cooperation With the Office of Inspector General
- (34) DOE Order O 225.1B, Accident Investigations
- (35) DOE Order O 226.1B, Implementation of Department of Energy Oversight Policy
- (36) DOE Order O 227.1A, Independent Oversight Program
- (37) DOE Order O 231.1B Adm. Chg. 1, Environment, Safety, and Health Reporting
- (38) DOE Order O 232.2 Admin Chg. 1, Occurrence Reporting and Processing of Operations Information
- (39) DOE Order O 241.1B Chg. 1, Scientific and Technical Information Management
- (40) DOE Order O 243.1B Chg. 1, Records Management Program
- (41) DOE Order O 413.1B, Internal Control Program
- (42) DOE Order O 413.3B Chg. 2, Program and Project Management for the Acquisition of Capital Assets
- (43) DOE Order O 414.1D Adm. Chg. 1, Quality Assurance
- (44) DOE Order O 420.1C Chg. 1, Facility Safety
- (45) DOE Order O 422.1 Adm. Chg. 2, Conduct of Operations
- (46) DOE Order O 425.1D Chg. 1, Verification of Readiness to Startup or Restart Nuclear Facilities

- (47) DOE Order O 426.2 Adm. Chg. 1, Personnel Selection, Qualification, and Training Requirements for DOE Nuclear Facilities
- (48) DOE Order O 430.1C, Real Property Asset Management
- (49) DOE Order O 433.1B Adm. Chg. 1, Maintenance Management Program for DOE Nuclear Facilities
- (50) DOE Order O 435.1 Chg. 1, Radioactive Waste Management
- (51) DOE Order O 436.1, Departmental Sustainability
- (52) DOE Order O 440.2 C, Adm. Chg. 1, Aviation Management and Safety
- (53) DOE Order O 442.2, Differing Professional Opinions for Technical Issues Involving Environment, Safety and Health
- (54) DOE Order O 458.1 Adm. Chg. 3, Radiation Protection of the Public and the Environment
- (55) DOE Order O 460.1C, Packaging and Transportation Safety
- (56) DOE Order O 460.2A, Departmental Materials Transportation and Packaging Management
- (57) DOE Manual M 460.2-1A, Radioactive Material Transportation Practices Manual
- (58) DOE Order O 470.4B Adm. Chg. 1, Safeguards and Security Program
- (59) DOE Order O 470.5, Insider Threat Program
- (60) DOE Order O 471.1B, Identification and Protection of Unclassified Controlled Nuclear Information
- (61) DOE Order O 471.3, Chg. 1, Identifying and Protecting Official Use Only Information
- (62) DOE Manual M 471.3-1, Chg. 1, Manual for Identifying and Protecting Official Use Only Information
- (63) DOE Order O 471.6 Adm Chg. 2, Information Security
- (64) DOE Order O 472.2 Adm. Chg. 2, Personnel Security
- (65) DOE Order O 473.3A, Protection Program Operations
- (66) DOE Order O 484.1, Adm. Chg. 2, Reimbursable Work for the Department of Homeland Security
- (67) DOE Order O 522.1, Pricing of Departmental Materials and Services
- (68) DOE Order O 534.1B, Accounting
- (69) DOE Order O.551.1D Chg. 1, Official Foreign Travel
- (70) DOE Order O 580.1A Adm. Chg. 1, Department of Energy Personal Property Management Program