

GENERAL TERMS & CONDITIONS
Construction (CON OCTOBER 2021)

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1. DEFINITIONS [Apr 2021]

The following terms shall have the meanings below:

- (a) "Government" means the United States of America and includes the U. S. Department of Energy (DOE), the National Nuclear Security Administration (NNSA), or any duly authorized representative thereof.
- (b) "Company" means Consolidated Nuclear Security, LLC, acting under its Contract No. DE-NA0001942 with the DOE.
- (c) "Seller" means Contractor, Subcontractor, Supplier, or Vendor, which can be either a person or organization that has entered into this Agreement with Company.
- (d) "Agreement" means Purchase Order, Subcontract, Price Agreement, Basic Ordering Agreement, or Modification thereof.
- (e) "Article or Clause" is the numbered paragraph of General Terms & Conditions.
- (f) "Procurement Representative" means Subcontract Administrator, Buyer, Procurement Specialist, or Contract Specialist acting within the limits of a written authority to enter into, administer, and/or terminate Agreements and make related determinations and findings on behalf of Company.
- (g) "Subcontract Technical Representative" means the duly authorized Company representative who provides technical direction for performance of the work under this Agreement.
- (h) "On-site work" means work in furtherance of this Agreement at a DOE-owned or – leased area or Company-owned or – leased area.
- (i) "Educational Institution" means an entity of the type subject to 2 CFR 220.
- (j) "FAR" means the Federal Acquisition Regulations including all amendments and changes thereto in effect on the effective date of this Agreement.
- (k) "DEAR" means the DOE Acquisition Regulations, including all amendments and changes thereto in effect on the effective date of this Agreement.
- (l) "U.S.C." means the United States Code.
- (m) "Commercial Item/Service" and "Commercial Component" mean the same as the definitions for these terms set forth at FAR 2.101.
- (n) "Pantex" means the Pantex Plant in Amarillo, TX managed and operated by Company.
- (o) "Y-12" means The Y-12 National Security Complex in Oak Ridge, TN managed and operated by Company.
- (p) "Ref." means the Article is based with variations on the cited regulation.

2. ORDER OF PRECEDENCE [Oct 2017]

Any inconsistencies shall be resolved in accordance with the following descending order of precedence in Agreement documents:

- (a) The Schedule (excluding Sections C and G);
- (b) Schedule Section G:
 - (1) Negotiated Alterations or Special Provisions;
 - (2) General Terms and Conditions;
 - (3) Clauses Incorporated by Reference;
 - (4) Supplemental Conditions;
- (c) Specifications or Statement of Work, or other description of services or supplies (Section C); and
- (d) Drawings.

3. ACCEPTANCE OF TERMS AND CONDITIONS [Apr 2021]

(a) Seller, by signing this Agreement, delivering the supplies, or performing the requirements indicated herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Agreement incorporates by reference or attachment.

(b) This Agreement sets forth the entire agreement between Company and Seller concerning the subject matter of this Agreement. To avoid any doubt, this Agreement supersedes all prior and contemporaneous negotiations, understandings, and agreements, whether oral or written, pertaining to the subject matter hereof, and it supersedes and takes precedence over any conflicting or supplemental terms and conditions included in any Seller proposal, quote, acknowledgement, or invoice, all of which are hereby objected to and expressly rejected.

(c) Failure of Company to enforce any of the provisions of this Agreement shall not be construed as (1) evidence to interpret the requirements of this Agreement, (2) a waiver of any requirement, or (3) a waiver of the right of Company to enforce each and every provision. In accordance with Tennessee Code, Section 47-50-112(c), no waiver of any provision or part thereof of this Agreement shall be valid unless such waiver is in a writing signed by the Procurement Representative. Any waiver shall be strictly construed and shall apply on a one-time basis unless expressly stated to apply otherwise.

4. AGREEMENT FOR BENEFIT OF DOE [Apr 2021]

(a) Funding – Company shall make all payments under this Agreement from Government funds advanced and agreed to be advanced by DOE, and not from its own funds. In almost all circumstances, funds recovered by Company from Seller are Government funds.

(b) Administration – Administration of this Agreement may be transferred, in whole or in part, to DOE or its designee(s), and to the extent of such transfer and notice thereof to Seller, Company shall have no further responsibilities hereunder.

(c) Company Right to Recovery – If Company seeks recovery from Seller, Seller agrees it shall not plead, assert or raise in any manner a defense that Company has no right to recover (1) because Company itself, rather than DOE/NNSA, has suffered no damages on account of the cost-reimbursable nature of Company's Prime Contract with DOE, or (2) because DOE has accepted the project or task performed under this Agreement.

5. INDEPENDENT CONTRACTOR [Apr 2021]

Seller represents that it is licensed to perform the work under this Agreement. Seller shall act in performance of this Agreement as an independent contractor and not as an agent of Company or the Government, maintaining complete control over its employees and all lower-tier subcontractors. Nothing contained in this Agreement or any lower-tier subcontract shall create any contractual relationship between any such lower-tier subcontractor and the Government or Company. Seller is solely responsible for the actions of itself and its lower-tier subcontractors, agents, or employees.

6. DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS [Apr 2021]

This is a rated order certified for national defense, and Seller shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700). Unless otherwise stated in this Agreement indicated, the Defense Priority is Agreement is rated DO-E2.

7. COOPERATING WITH DOE OFFICE OF INSPECTOR GENERAL [Apr 2021]

(a) Seller shall cooperate fully and promptly with requests from the DOE Office of Inspector General (OIG) for information and data relating to DOE programs and operations. Seller must ensure that its employees (i) comply with requests by the OIG for interviews and briefings and provide affidavits or sworn statements, if so requested by an employee of the OIG so designated to take affidavits or sworn statements, and (ii) not impede or hinder another employee's cooperation with the OIG.

(b) Seller must ensure that reprisals are not taken against employees who cooperate with or disclose information to the OIG.

8. REPORTING WASTE, FRAUD, AND ABUSE [Apr 2021]

(a) Applies to — This Article applies to agreements that have a value in excess of \$5,500,000 and a performance period of more than 120 days.

(b) General Requirements — Seller shall ensure its employees having information about actual or suspected violations of laws, regulations, or policies including fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement relating to DOE programs, operations, facilities, contracts, or information technology systems notify an appropriate authority. Examples of violations to be reported include, but are not limited to, allegations of false statements; false claims; bribery; kickbacks; fraud; environmental, safety, and health violations; theft, computer crimes; subcontractor mischarging; conflicts of interest; and conspiracy to commit any of these acts. Seller must ensure that its employees are aware that its employees are required to report actual or suspected violations. Reporting can be as follows: Y-12 Ethics Hotline; phone 865-576-1900; fax 865-574-9656; Pantex 806-477-6777; Fax 806-477-3005; Office of Inspector General; 1-800-541-1625 (M-F 8:00AM – 4PM EST)

(c) Seller Specific Requirements — Seller shall inform its employees annually of their duty to report allegations of information described in General Requirements above; display the OIG hotline telephone number in buildings and common areas under its responsibility such as cafeterias, public telephone areas, official bulletin boards, reception rooms, and building lobbies; publish the OIG hotline telephone number in telephone books, newsletters, or other means of widespread communication to employees under its responsibility; Seller and its employees shall report to the OIG within a reasonable period of time, but not later than 24 hours after discovery of any alleged violations; shall not take any reprisal action against an employee for reporting actual or suspected violations to the OIG.

(d) Flowdown — Requirements of this Article, including paragraph (d), shall be flowed down to all lower-tier subcontracts.

9. EMPLOYEE CONCERNS [Apr 2021]

(a) Definitions. For the purposes of this Article, the following terms have the meaning set forth below:

(1) "Concerned Individual" means a current Seller Employee who expresses an Employee Concern through the ECP.

(2) "Discrimination" means adverse treatment of a Concerned Individual because he/she raised an Employee Concern.

(3) “Employee Concern” means a good-faith expression by a Concerned Individual that: (1) an activity, policy, or practice of DOE, or one of its contractors or subcontractors — including but not limited to, that which is related to the environment, safety, health, security, quality, and management of DOE facilities and/or operations — should be improved, modified, or terminated; or (2) he or she has been subjected to HIRD (as defined herein) by DOE, Company or one or more of Company’s subcontractors, for raising an Employee Concern.

(4) “Harassment” means a behavior or an action taken by one or more supervisors or co-workers against or toward a Concerned Individual to belittle, humiliate, or impede that Concerned Individual in his or her work environment or job performance because the Concerned Individual raised an Employee Concern. Harassment may include, but is not limited to, threatening, restraining, coercing, blacklisting, mocking, humiliating, and/or isolating a Concerned Individual.

(5) “Harassment, Intimidation, Retaliation/Reprisal, or Discrimination” (HIRD) means a type of Employee Concern that includes allegations of Harassment, Intimidation, Retaliation/Reprisal, or Discrimination for raising an Employee Concern.

(6) “Intimidation” means a behavior or an action taken by a supervisor or co-worker against or toward any employee to cause the employee to be fearful of filing an Employee Concern; cease from pursuing an Employee Concern; or otherwise be afraid for his/her safety or job security as a result of filing an Employee Concern.

(7) “Retaliation/Reprisal” means an adverse action taken against or toward a Concerned Individual with respect to employment (e.g., discharge, demotion, or other negative action with respect to the Concerned Individual’s compensation, terms, conditions or privileges of employment) because the employee raised an Employee Concern.

(8) “Seller Employee” means any person currently employed by Seller or by Seller’s subcontractors engaged in work for or supporting a Company project.

(b) Seller shall establish and maintain an Employee Concerns Program (ECP) suitable for the organization to accept, process, and resolve Employee Concerns in a timely manner.

(c) Seller shall provide means to inform its employees and its subcontractor employees regarding their rights and responsibilities to raise any Employee Concern related, but not limited to, the environment, safety, health, security, quality, and management of DOE facilities and operations, as well as Harassment, Intimidation, Retaliation/Reprisal, or Discrimination (HIRD), to Seller’s ECP, Company’s ECP, or the DOE ECP.

(1) While Seller Employees are encouraged first to seek resolution with first-line supervisors or organizational managers, or through Seller’s or Seller’s subcontractors’ own existing complaint or dispute-resolution systems, Seller Employees have the right to report Employee Concerns through the Company ECP through the following avenues:

Y-12:

- a. Call: (865) 241-5855, (865) 574-7755, (865) 574-3506;
- b. Helpline: (865) 576-1900;
- c. Online: <https://home1.y12.doe.gov/eec>;
- d. Form: UCN-21222, *Employee Concerns Submittal*; or
- e. Q&A: <https://home1.y12.doe.gov/answers/>.

Pantex:

- a. Call: (806) 573-5348, (806) 573-5337, or (806) 573-6321;
- b. Helpline: (806) 573-6777;
- c. Online: <https://home1.y12.doe.gov/eec>;
- d. Form: UCN-21222, *Employee Concerns Submittal*; or
- e. *No More Surprises*: <https://pantex.y12.doe.gov/nms/>.

Seller Employees may also call the NNSA Production Office at Y-12 at 1-865-241-6497 or at Pantex at 1-806-573-36623, or DOE Employee Concerns Hotline at 1-800-676-3267 or the DOE Inspector General Hotline at 1-800-541-1625.

(2) Although Employee Concerns may be reported anonymously, the investigation into the Employee Concern may be limited if insufficient information is provided when submitting the Employee Concern. Those who submit Employee Concerns anonymously will not receive a direct response.

(d) Seller shall cooperate with and assist Company in (i) assessments of Seller’s ECP Program, and (ii) the processing of Seller Employee Concerns that are submitted to Company and/or the DOE ECP. This includes, but is not limited to, responding to the allegations in the Employee Concern, and making pertinent information, including relevant documentation, available to Company as necessary to address the submitted concern.

(e) Seller’s resolution of Employee Concerns must be in a manner that protects the health and safety of both employees and the public and ensures effective and efficient operation of the DOE-related activities under Seller’s or Company’s jurisdiction. Assessments of Seller’s ECP program may be used to verify it acted to minimize, correct, or prevent recurrence of the situation that precipitated a concern.

(f) Seller shall implement corrective actions as directed by the Company Procurement Representative.

(g) Seller shall notify Company when it becomes aware that a Seller employee filed a formal complaint of Retaliation/Reprisal, including a complaint submitted pursuant to 10 CFR 708, DOE Contractor Employee Protection Program; 41 USC § 4712,

Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information; or a complaint filed with the U.S. Department of Labor under 29 CFR 24, Procedures for Handling Retaliation Complaints.

(h) At least every six (6) months, or more frequently if requested by the Company Procurement Representative, Seller shall provide to Company a summary of Employee Concerns activity data with respect to Seller's ECP.

(i) As a means of establishing an effective program, Seller's ECP should utilize ECP best practices, which may include, but are not limited to:

- (1) Ensuring that there is an ECP Manager who reports to a designated executive in Seller's management chain;
- (2) Establishing a case-file system of documentation and records for Employee Concerns;
- (3) Establishing a process that provides anonymity and confidentiality for Seller Employees who raise Employee Concerns unless Seller is legally compelled to disclose such information;
- (4) Providing avenues for informal resolution of concerns;
- (5) Allowing for the use of alternate dispute resolution;
- (6) Referring Employee Concerns to other appropriate organizations to investigate an Employee concern; and
- (7) Documenting acceptance of dismissal of a concern, including "closure" of a concern after an investigation into its merits.

(j) Flowdown – Requirements of this Article, including paragraph (j), shall be flowed down to all lower-tier subcontracts.

10. PUBLIC RELEASE OF INFORMATION [Apr 2021]

(a) Seller shall not publicly disclose information concerning any aspect of the materials or services relating to this Agreement without the prior written approval of the Procurement Representative unless specifically required by law.

(b) The interest of Company or DOE in this Agreement may not be used in advertising or publicity without advance written approval of the Procurement Representative.

(c) Flowdown — Requirements of this Article, including paragraph (c), shall be flowed down to all lower-tier subcontracts.

11. CONFIDENTIALITY OF INFORMATION [Apr 2021]

(a) To the extent that work under this Agreement requires that Seller be given access to confidential or proprietary business, technical, or financial information belonging to the Government, Company, or other parties, Seller shall after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties during or after the term of this Agreement unless specifically authorized by Company in writing. The foregoing obligations, however, shall not apply to (1) information which, at the time of receipt by Seller is in public domain; (2) information which is published after receipt thereof by Seller or otherwise becomes part of the public domain through no fault of Seller; (3) information which Seller can demonstrate was in its possession at time of receipt thereof and was not acquired directly or indirectly from Government or Company; (4) information which Seller can demonstrate was received by it from a third party who did not require Seller to hold it in confidence.

(b) Seller shall obtain written agreement, in a form satisfactory to Company, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within Seller's organization directly concerned with performance of this Agreement.

(c) Seller agrees, if requested by Company or DOE, to sign an agreement identical, in all material respects, to the provisions of this Article, with each company supplying information to Seller under this Agreement, and to supply a copy of such agreement to Company.

(d) Seller agrees that upon request by Company or DOE, it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by Company or DOE, such an agreement shall also be signed by Seller's personnel.

(e) Flowdown — Requirements of this Article, including paragraph (e), shall be flowed down to all lower-tier subcontracts.

12. COMPLIANCE WITH LAWS [Apr 2021]

(a) In performing work under this Agreement, Seller shall comply with the requirements of applicable Federal, State, and local laws and regulations, unless relief has been granted in writing by the appropriate regulatory agency.

(b) Except as otherwise directed by Company, Seller shall procure all necessary permits or licenses required for the performance of work under this Agreement.

(c) By entering into this Agreement, Seller certifies that it and all associates and subcontractors under the Agreement are licensed, certified, and registered to perform the professional and technical services required to complete the work under this Agreement. Seller shall ensure that such licenses, certifications, and registrations are maintained throughout performance of this Agreement and failure to do so may be cause for default termination.

(d) Regardless of the performer of the work, Seller is responsible for compliance with the requirements of this Article. Seller is responsible for flowing down the requirements of this Article to subcontracts at any tier to the extent necessary to ensure Seller's compliance with the requirements.

13. EXPORT CONTROL [Apr 2021]

(a) Seller must comply with all U.S. export control laws and regulations, including, but not limited to, the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this Agreement (see also the illustrated list of additional export laws at DEAR 970.5225-1). In the absence of available license exemptions or exceptions, Seller must obtain required licenses or other approvals for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) Seller must obtain export licenses, if required, before using foreign persons in performance of this Agreement, if the foreign person will have access to export-controlled technical data or software.

(c) Seller is responsible for all regulatory record-keeping requirements associated with the use of licenses and license exemptions and exceptions.

(d) Guidance regarding national policy set forth in National Security Directive 189, concerning fundamental research and export control is at DEAR 970.5225-1.

(e) Flowdown – Requirements of this Article, including paragraph (e), shall be flowed down to all lower-tier subcontracts.

14. DOE SECURITY BADGES AND CLEARANCE REQUIREMENTS () [Aug 2021]

(a) Security badges issued by Company to Seller employees and Seller's lower-tier subcontractor employees are Government property. Seller must ensure that badges issued to its employees and employees of its subcontractors at all tiers are returned to Company. Employees must return badges upon expiration of this Agreement, termination of employment, or when access to the Y-12 National Security Complex or Pantex Plant is no longer needed. Employees holding an L or Q clearance must attend a security termination debriefing conducted by Company when returning badges. When possible, Seller must notify the STR three business days before an employee holding an L or Q clearance will be returning a badge so that debriefings may be scheduled. However, in all cases, the Personnel Security Clearance Office should be notified by Seller within one working day of a termination of employment or need for access to the Complex if the employee holds an L or Q clearance in order to provide notification to DOE/NNSA within two business days. DOE/NNSA directives require the termination of an employee security clearance within two business days of termination of employment or need for access to the Sites.

(b) Seller must immediately notify the Procurement Representative in writing when a badge of its employee or the employee of a lower-tier subcontractor is lost or stolen. These employees must report in person to the Badging Office (or contact PSS after hours/weekends) to complete an affidavit concerning the loss or theft and to obtain replacement badges.

(c) Seller must immediately notify the Procurement Representative in writing whenever any employee of Seller or a lower-tier subcontractor who has been badged or holds a security clearance under this Agreement terminates employment or no longer needs access to the Sites.

(d) Seller must ensure that its employees and its lower-tier subcontractors' employees complete the *Subcontractor Personnel Exit Checklist*, Form UCN- 4452S, before exiting the site for the final time. The employee must take the completed Checklist and badge to the Badging Office. If the Badging Office is closed (hours of operation are Monday-Thursday 6:00 a.m. to 4:30 p.m.) the employee may leave the Checklist and badge with the STR. (In such cases alternate debriefing arrangements will be made for employees holding an L or Q clearance.) The Checklist, signed by the STR or an authorized representative of Personnel Security, is acceptable proof to Company that a badge has been returned.

(e) Seller's payment may be withheld until all requirements of this Article have been met. Failure by employees of Seller and its lower-tier subcontractors to promptly return badges will result in a charge of \$1,000 per badge, to be withheld from payment or billed to Seller. In addition, failure to return a badge may result in the denial of future access to the Sites for the individual. This \$1,000 charge will not be assessed against badges that are lost or stolen during performance if replacement badges are issued to allow Seller or lower-tier subcontractor employees to return to work.

(f) For Y-12 only - On the last Thursday of each month, Seller shall submit to Company the Subcontract Badge/Clearance Status Report (UCN-21709). Seller must ensure that all security badges issued to its employees and employees of its subcontractors at all tiers are recorded monthly.

15. WORKPLACE SUBSTANCE ABUSE PROGRAM (WSAP) [Apr 2021]

(a) Applies to — This Article applies to subcontracts \$25,000 or greater and which involve: (1) access to or handling of classified information or special nuclear materials; (2) high risk of danger to life, the environment, public health and safety, or national security; (3) transportation of hazardous materials to or from a DOE site, (4) employees who are required to have L or Q clearances to perform work under this Agreement, or (5) on-site construction activities.

(b) WSAP Covered Work — For purposes of this Article, "WSAP covered work" means both on-site work, and work that is not on-site but that is performed by subcontractor employees with Q or L clearances at facilities that have Limited Areas (security areas designated by DOE for the protection of classified matter). Facilities that are not DOE-owned or – leased or Company-owned or — leased but that have Limited Areas within them are known as "possessing facilities."

(c) Sub-tier contractors to Seller — Seller shall include this requirement in its subcontracts with applicable lower tier subcontractors, and will require those subcontractors to include this requirement in their subcontracts, if the applicability standards listed in the “Applies to” section above are met. References to “Seller” include all lower tier subcontractors falling within the “Applies to” criteria listed in paragraph (a) above.

(d) Company approval of Seller Program.

(1) All work falling within the “Applies to” criteria above is subject to 10 CFR 707, “Workplace Substance Abuse Programs at DOE Sites.” This Article highlights certain provisions of 10 CFR Part 707, but Seller is directed to the entire provision to ensure compliance. Seller shall develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR Part 707. In accordance with 10 CFR 707.5(d), Seller’s WSAP requires Company approval. Seller’s proposed WSAP must be submitted to the Procurement Representative and approved before the start of work.

(2) Seller shall also submit applicable lower-tier subcontractor WSAPs for Company approval. Seller may either include employees of some or all subcontractors in its WSAP, or include this Article in subcontracts for WSAP covered work and require subcontractors to submit WSAPs for Company approval.

(e) General Workplace Substance Abuse Program Requirements.

(1) Seller’s WSAP shall be consistent with the baseline elements in 10 CFR Part 707 and the guidelines of the U.S. Department of Health and Human Services found at: <http://www.samhsa.gov/>.

(2) For all WSAP covered work, Seller’s WSAP must provide for pre-employment testing for illegal drugs before final selection of applicants for employment, regardless of whether such applicants will fill testing designated positions (TDPs) as described in paragraph (f) below. Pre-employment testing must comply with all applicable provisions of 10 CFR 707.

(3) Seller must notify the Procurement Representative in writing, as soon as possible, or at the latest by the next business day, after Seller receives notice —

- of an employee’s conviction under a criminal drug statute, or
- for employees in TDPs (defined below), of a drug related arrest or conviction or a receipt of a positive drug test result.

(4) Seller shall maintain files of chain-of-custody records required by 10 CFR 707.12(a) and 10 CFR 707.16(d) and submit copies to Company upon request. Seller and lower-tier subcontractors shall require that laboratory records relating to positive drug test results be maintained in the manner and for the periods required by 10 CFR 707.16(c).

(5) Seller shall use only drug-testing laboratories certified by the Department of Health and Human Services under Subpart C of the HHS “Mandatory Guidelines for Federal Workplace Drug Testing Programs.” [See 10 CFR 707.12(a)]. The HHS Mandatory Guidelines are available at <http://www.samhsa.gov/>. Sellers shall provide a copy of the certification to the Procurement Representative upon request. Seller shall retain pre-employment testing records in accordance with 10 CFR 707.16. When an applicant has been tested and determined to have used an illegal drug, Seller must terminate processing for employment and so notify the applicant.

(6) As required by 10 CFR 707.5(d), Company will monitor Seller’s implementation of its program for effectiveness and compliance with 10 CFR Part 707. Seller shall submit a written report, if appropriate, to the Procurement Representative of drug tests completed before mobilization or commencing authorized work. At Company’s request, Seller shall submit additional reports of tests completed during performance.

(7) Company will require Seller to remove from WSAP covered work any Seller employee who is determined to have used an illegal drug.

(f) Testing Designated Positions.

(1) In addition to the general WSAP provisions, Seller shall determine if it has employees in TDPs as defined below and performing WSAP covered work. If Seller has no TDPs (potentially the case for uncleared construction subcontractors employees not possessing a Facility Clearance) the WSAP shall so state. If Seller has employees in TDPs performing WSAP covered work, then prior to beginning work under this Agreement, Seller shall provide the Procurement Representative with a list of all TDP employees, and Seller’s WSAP must comply with the provisions of 10 CFR Part 707 regarding TDPs. Thereafter, Seller shall notify the STR of any additions or deletions of employees in TDPs within 48 hours.

(2) TDPs are defined as those positions involving certain high risk work listed in Part 707, access to classified information, construction, and crane operators, and any positions filled by employees holding an L- or Q-clearance.

(3) Seller’s employees in TDPs who perform on-site will be subjected to the following drug testing by Company:

- (i) Random drug testing at the rates specified in 10 CFR 707.7,
- (ii) Drug testing as a result of an occurrence (see 10 CFR 707.9), and
- (iii) Drug testing for reasonable suspicion of illegal drug use (see 10 CFR 707.10).

(4) Seller’s employees performing on-site work shall be placed in Company’s pool of employees for random drug testing, and these employees will be subject to testing by Company’s Occupational Health Services (OHS). Seller’s employee will be notified by Company’s representative when Seller’s employee is selected for random drug testing. Company’s representative will notify Company’s OHS when Seller’s employee has been notified of his/her duty to report to Company’s OHS. Upon notification by Company’s representative, Seller’s employee will have one and one-half hours to report to Company’s OHS.

(g) Seller’s failure to comply with the requirements of 10 CFR Part 707 or to perform in a manner consistent with its approved WSAP may render Seller subject to suspension of payments, termination for default, suspension and debarment, and any other remedies available to Company and/or to DOE.

(h) If Seller believes that an anticipated lower tier subcontract for on-site work may require a WSAP that complies with 10 CFR 707, then Seller must notify the Procurement Representative not later than ten calendar days before Seller awards that subcontract.

16. BUY AMERICAN ACT — CONSTRUCTION MATERIALS [Apr 2021]

This Agreement is subject to the Buy American Act – Construction Materials (FAR 52.225-9) and Buy American Act - Construction Materials under Trade Agreements (FAR 52.225-11) clauses as stated in Article 576 titled “Clauses Incorporated by Reference.” Seller is solely responsible for compliance with such clauses and agrees to indemnify and hold harmless Company from any and all direct, indirect or consequential expenses or other damages relating to or arising out of the failure of Seller or its suppliers to comply with said clauses.

17. AUTHORIZATION AND CONSENT (Ref. FAR 52.227-1, DEC 2007) [Apr 2021]

(a) The Government authorizes and consents to all use and manufacture, in performing this Agreement or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any Article the delivery of which is accepted by Company under this Agreement or (2) used in machinery, tools, or methods whose use necessarily results from compliance by Seller or a subcontractor with (i) specifications or written provisions forming a part of this Agreement or (ii) specific written instructions given by Company directing the manner of performance. The entire liability to the Government or Company for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity Article, if any, included in this Agreement or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) Seller shall include the substance of this Article, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold. However, omission of this Article from any subcontract, including those at or below the simplified acquisition threshold, does not affect this Article and consent.

18. PATENT INDEMNITY-CONSTRUCTION [Apr 2021]

Seller shall indemnify Company and the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any United States patent (except a patent issued upon application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order 35 U.S.C. 181) arising out of performing this Agreement or out of the use or disposal by or for the account of Company or the Government of supplies furnished or work performed under this Agreement.

19. PERFORMANCE AND PAYMENT BONDS [Apr 2021]

(a) As used in this clause, “original Agreement price” means the award price of this Agreement. Original Agreement price does not include the price of any options, except those exercised at the time of award.

(b) If the price of this Agreement is greater than \$150,000, Seller must furnish performance and payment bonds to Company as follows:

(1) Performance Bonds on Company form available at <http://www.y12.doe.gov>. The penal amount shall be 100 percent of the original Agreement price.

(2) Payment Bonds on Company form available at <http://www.y12.doe.gov>. The penal amount shall be 100 percent of the original Agreement price.

(3) (i) Company may require additional performance and payment bond protection if the price is increased. The increase in protection shall generally equal 100 percent of the increase in price.

(ii) Company may secure the additional protection by directing Seller to increase the penal amount of the existing bond or to obtain an additional bond.

(c) Seller shall furnish all executed bonds, including any necessary reinsurance Agreements, to Company within the time specified in the solicitation, but in any event before starting work.

(d) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is available at <https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm>.

20. ALTERNATIVE PAYMENT PROTECTIONS [Apr 2021]

(a) If the price of this Agreement is greater than \$30,000 but not greater than \$150,000, Seller shall submit one of the following payment protections:

(1) A payment bond on Company form available at <http://www.y12.doe.gov>; or

(2) An irrevocable letter of credit (see the “Irrevocable Letter of Credit” Article).

(b) The amount of the payment protection shall be 100 percent of the Agreement price.

(c) The payment protection must be submitted within ten calendar days of award of the Agreement.

(d) The payment protection shall provide protection for the Agreement’s period of performance plus one year.

(e) Except for payment bonds, which provide their own protection procedures, Company is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a nonpayment has occurred and to withhold such funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.

21. ADDITIONAL BOND SECURITY [Apr 2021]

Seller shall promptly furnish additional security required to protect Company, the Government, and persons supplying labor or materials under this Agreement if---

- (a) Any surety upon any bond, or is suing financial institution for other security, furnished with this Agreement becomes unacceptable to the Government;
- (b) Any surety fails to furnish reports on its financial condition as required by the Government;
- (c) The Agreement price is increased so that the penal sum of any bond becomes inadequate in the opinion of Company; or
- (d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If Seller does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 calendar days before an ILC's scheduled expiration, Company may immediately draw on the ILC.

22. PLEDGES OF ASSETS [Apr 2021]

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond---

- (1) Pledge of assets; and
- (2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of---

- (1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203-2 (except see 28.203-2(b)(2) with respect to Government securities held in book entry form) and/or;
- (2) A recorded lien on real estate. The offeror will be required to provide---
 - (i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d);
 - (ii) Evidence of the amount due under any encumbrance shown in the evidence of title;
 - (iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

23. PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS [Apr 2021]

Upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this Agreement for which a payment bond has been furnished, Seller shall promptly provide a copy of such payment bond to the requester.

24. IRREVOCABLE LETTER OF CREDIT [Apr 2021]

(a) "Irrevocable letter of credit" (ILC), as used in this Article, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by Company (the beneficiary) of a written demand therefore. Neither the financial institution nor the offeror/Seller can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, as an alternative payment protection, or to secure performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this Article shall be used.

(c) The ILC shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this Article, and---

- (1) If used as a bid guarantee, the ILC shall expire no earlier than 60 calendar days after the close of the bid acceptance period;
- (2) If used as an alternative payment protection or as security for a performance or payment bond, the offeror/Seller may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 calendar days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and Company provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

- (i) For Agreements exceeding \$150,000 the later of----
 - (a) One year following the expected date of final payment;
 - (b) For performance bonds only, until completion of any warranty period; or
 - (c) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.
- (ii) For Agreements of \$150,000 or less, 90 calendar days following final payment.

(d) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. The offeror/Seller shall provide Company a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

(e) The following format shall be used by the issuing financial institution to create an ILC:
 [Issuing Financial Institution's Letterhead or Name and Address]

Issue Date _____

Irrevocable Letter of Credit No. _____

Account party's name _____

Account party's address _____

For Solicitation No. _____ (for reference only)

To: CNS

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States \$_____. This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [issuing financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on _____, or any automatically extended expiration date.

2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 calendar days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of CNS (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution, if any, otherwise state of issuing financial institution].

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 calendar days after the resumption of our business.

Sincerely,

[Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

[Confirming Financial Institution's Letterhead or Name and Address]

(Date)_____

Our Letter of Credit Advice Number _____

Beneficiary: CNS

Issuing Financial Institution: _____

Issuing Financial Institution's LC No.: _____

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by _____ [name of issuing financial institution] for drawings of up to United States dollars _____/U.S. \$ _____ and expiring with our close of business on _____ [the expiration date], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at _____.

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 calendar days prior to any such expiration date, we shall notify Company, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 calendar days after the resumption of our business.

Sincerely,

[Confirming financial institution]

(g) The following format shall be used by Company for a sight draft to draw on the Letter of Credit:

Sight Draft

[City, State]

(Date)_____

[Name and address of financial institution]

Pay to the order of CNS the sum of United States \$ _____ . This draft is drawn under Irrevocable Letter of Credit No. _____ .

CNS

[By]

25. TAXES –FEDERAL, STATE AND LOCAL TAXES [Apr 2021]

(a) Definitions. As used throughout this clause, the following terms shall have the meaning set forth below:

(1) The term “direct tax” means any tax or duty directly applicable to the completed supplies or services covered by this agreement, or any other tax or duty from which Seller or this transaction is exempt. The term includes any tax or duty directly applicable to the importation, production, processing, manufacture, construction, sale, or use of such supplies or services; it also includes any tax levied on, with respect to, or measured by sales, receipt from sales, or use of the supplies or services covered by this agreement. The term does not include transportation taxes, unemployment compensation taxes, social security taxes, income taxes, excess-profits taxes, capital stock taxes, property taxes, and such other taxes as are not within the definition of the term “direct tax” as set forth herein.

(2) The term “agreement date” means the effective date of this agreement if it is a negotiated agreement, or the date set for the opening of bids if it is an agreement entered into as a result of sealed bidding.

(b) Federal Taxes. Except as may be otherwise provided in this agreement, the agreement price includes all applicable Federal taxes in effect on the agreement date.

(c) State or Local Taxes. Except as may be otherwise provided in this agreement, the agreement price does not include any State or local direct tax in effect on the agreement date. For subcontractors providing and installing tangible personal property, which becomes part of real property, the agreement price should include all state and local direct taxes on such installed tangible personal property.

(d) Evidence of Exemption. Company agrees, upon request of Seller, to furnish a tax exemption certificate or other similar evidence of exemption with respect to any direct tax not included in the agreement price pursuant to this clause; and the Seller agrees, in the event of the refusal of the applicable taxing authority to accept such evidence of exemption, (1) promptly to notify the Company of such refusal, (2) to cause the tax in question to be paid in such manner as to preserve all rights to refund thereof, and (3) if so directed by Company to take all necessary action, in cooperation with and for the benefit of Government, to secure a refund of such tax (in which event Company agrees to reimburse the Seller for any and all reasonable expenses incurred at its direction).

(e) Price Adjustment. If, after the agreement date, the Federal Government or any State or local Government either (1) imposes or increases (or removes an exemption with respect to) any direct tax, or any tax directly applicable to the materials or components used in the manufacture of furnishing of the completed supplies or services covered by this agreement, or (2) refuses to accept the evidence of exemption, furnished under paragraph (d) hereof, with respect to any direct tax excluded from the agreement price, and if under either (1) or (2) Seller is obliged to and does pay or bear the burden of any such tax (and does not secure a refund thereof), the agreement price shall be correspondingly increased. If, after the agreement date, Seller is relieved in whole or in part from the payment or the burden of any direct tax included in the agreement price, or any tax directly applicable to the materials or components used in the manufacture or furnishing of the completed supplies or services covered by this agreement, the Seller agrees promptly to notify Company of such relief, and the agreement price shall be correspondingly decreased or the amount of such relief paid over to Company for the benefit of the Government. Invoices or vouchers covering any increase or decrease in the agreement price pursuant to the provisions of this paragraph shall state the amount thereof, as a separate added or deducted item, and shall identify the particular tax imposed, increased, eliminated, or decreased.

(f) Refund or Drawback. If any tax or duty has been included in the agreement price or the price as adjusted under paragraph (e) of this Article, and if Seller is entitled to a refund or drawback by reason of the export or re-export of supplies covered by this agreement, or of materials or components used in the manufacture or furnishing of the completed supplies or services covered by this agreement, Seller agrees that he will promptly notify Company thereof and that the amount of any such refund or drawback obtained will be paid over to Company for the benefit of the Government or credited against amounts due from the Company under this agreement: Provided, however, that the Seller shall not be required to apply for such refund or drawback unless so requested by Company.

26. PAYMENT [Apr 2021]

(a) Company shall pay Seller the price as provided in this Agreement.

(b) (1) Company may make progress payments monthly as the work proceeds, or at more frequent intervals as determined by Company, on estimates of work accomplished which meets the standards of quality established under the Agreement, as approved by Company.

(2) Pay estimates shall be submitted monthly. In the preparation of estimates, Company may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to Seller at locations other than the site may also be taken into consideration if (i) consideration is specifically authorized by this Agreement and (ii) Seller furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this Agreement. (3) An updated progress report shall be submitted by Seller with each pay estimate. (4) Before a request for payment is approved, Seller shall submit to the Subcontract Technical Representative all required plans and reports for the work period in question.

(c) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as: (1) relieving Seller from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or (2) waiving the right of Company to require the fulfillment of all of the terms of the Agreement.

(d) In making these progress payments, Company shall, upon request, reimburse Seller for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance Agreements, when applicable) after Seller has furnished evidence of full payment to the surety.

(e) Company shall pay the final amount due Seller under this Agreement after: (1) completion and acceptance of all work; and (2) Seller has submitted: (i) "Certified-as-Built" shop drawings and manufacturer's data and a bound copy of certified test data and reports; (ii) a certified statement that all payrolls have been submitted under this Agreement; (iii) a properly executed voucher; and (iv) a release of all claims against Company and the Government arising under or related to this Agreement, other than claims, in stated amounts, that Seller has specifically excepted from the operation of the release. Release may also be required of the assignee if Seller claims amounts payable that have been assigned in accordance with the Article titled "Assignment".

(f) A final invoice shall be submitted for payment no more than 90 calendar days following the expiration or termination of the subcontract, unless a later or alternate date is agreed to in writing by the Procurement Representative. Said invoices shall be clearly marked "Final Invoice", thus indicating that all payment obligations of Company under this subcontract have ceased and that no further payments are due or outstanding. If Seller fails to submit a final invoice within the time allowed, the Procurement Representative shall determine the final amount owed to Seller, if any, or the final amount owed by Seller to Company. Such determination shall be final and conclusive between the parties without the right of judicial review unless Seller submits a Claim requesting a Director, Procurement Operations and Business Management Final Decision under the Resolution of Disputes clause within 60 calendar days after receipt of the Procurement Representative's determination.

27. INTEREST [Apr 2021]

All amounts due to Company by Seller shall bear simple interest from the date due until paid, unless paid within 30 calendar days of the date due. The interest rate shall be the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563) as of the date due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. The due date shall be the earliest of the date fixed under this Agreement and the date of the first written demand for payment, including a demand resulting from a default termination. This Article shall not apply to amounts due under a price reduction for defective cost or pricing data article or a cost accounting standards article.

28. RESOLUTION OF DISPUTES [Apr 2021]

(a) Seller and Company agree to make good-faith efforts to settle any dispute or Claim that arises under this Agreement through discussion and negotiation. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of Alternative Dispute Resolution (ADR). Whether mediation or binding arbitration is voluntarily agreed to or court ordered, the site of the proceedings shall be Oak Ridge, Tennessee (for Agreements related to Y-12) or Amarillo, TX (for Agreements related to Pantex); the parties shall share the cost of obtaining the mediator or arbiter, and each party shall bear its discretionary costs.

(b) "Claim," as used in this Article, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Agreement terms, or other relief arising from or relating to this Agreement, or its breach. However, a written demand or written assertion by Seller seeking the payment of money is not a Claim until certified, if certification is required by paragraph (d) below. A request for payment (e.g., a voucher, invoice, or other routine request for payment, a termination settlement proposal, or a request for an adjustment or equitable adjustment) that is not in dispute when submitted is not a Claim. An initially undisputed request for payment may be converted to a Claim by Seller by complying with the submission and applicable certification requirements in paragraphs (c) and (d) below.

(c) A Claim by Seller shall be made in writing, cite this Article, and be submitted to Company's Director, Procurement Operations and Business Management with a request for a Final Decision.

(d) Seller and any lower-tier subcontractors whose portion of the Claim exceeds \$50,000 shall certify its portion of the Claim; provided however, if Seller cannot certify the lower-tier subcontractor's portion of Seller's Claim, Seller shall explain in writing why it cannot certify that portion.

- (i) Company shall not be liable for, and shall not pay, any Claim originated by Seller if that Claim exceeds \$50,000 unless Seller's Claim is accompanied by the below certification from Seller.
- (ii) Company shall not be liable for, and shall not pay, any Claim of a lower-tier subcontractor to Seller if that Claim, without mark-ups by a higher-tier subcontractor or Seller, exceeds \$50,000 unless that Claim is accompanied by the below certification from the lower-tier subcontractor that originated the Claim.

- (iii) The aggregate amount of both increased and decreased costs shall be used in determining when the dollar threshold requiring certification is met.
- (iv) If Seller certified its costs under the Adjustments Article, Seller is not required to certify under this Article as a Claim, unless Seller certified more than 180 calendar days before Seller submits its Claim or the Claim amount exceeds the prior certified amount by more than \$50,000.

CERTIFICATION

I acknowledge the expectation that any payment by Company for this requested contract adjustment will be reimbursed by funds of the Federal Government, and, under penalty of law, I certify that this Claim request is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, that the amount requested accurately reflects the contract adjustment for which Seller and I believe Company is liable, and that I am duly authorized to certify the request on behalf of [Seller or lower-tier subcontractor, as appropriate].

(e) (1) A Claim from Seller shall be deemed denied if the Director, Procurement Operations and Business Management does not issue a written Final Decision (i) by the date the Director, Procurement Operations and Business Management notified Seller that the decision would be issued, or (ii) within 60 calendar days after receipt of the Claim if the Director, Procurement Operations and Business Management did not notify Seller of a date by which the Final Decision would be issued. The Director, Procurement Operations and Business Management may, but is not required to issue a written Final Decision after a Claim is deemed denied.

(2) The Director, Procurement Operations and Business Management's written Final Decision on any Seller Claim shall be final and conclusive between the parties with no right of judicial review, provided however, that the Final Decision shall not be final and binding against either party, and shall be given no evidentiary weight by the trier of fact, if Seller files suit within 90 calendar days of the written Final Decision in the appropriate court as provided for in paragraph (f) below.

(3) Seller shall have no right to file suit prior to the date of the written Final Decision or 60 calendar days from the Director, Procurement Operations and Business Management's receipt of the Claim, whichever occurs earlier.

(f) (1) State Agency. Where Seller is a State agency, such as an Educational Institution, the applicable constitutional provisions or statutes that govern sovereign immunity shall dictate the appropriate forum and law governing substantive issues.

(2) Seller not a State Agency. (a) Any litigation for an Agreement related to the Y-12 site shall be brought and prosecuted exclusively in Federal District Court, with venue in the United States Court for the Eastern District of Tennessee, Northern Division; any litigation for an Agreement related to the Pantex site shall be brought and prosecuted exclusively in the United States District Court for the Northern District of Texas, Amarillo Division. (b) In the event the requirements for jurisdiction in Federal District Court are not present, such litigation (if for an Agreement related to Y12 site) shall be brought in either Anderson, Knox, or Roane County, Tennessee, in the Circuit or Chancery Court, as appropriate. In the event requirements for jurisdiction in Federal District Court are not present for an Agreement related to the Pantex site, such litigation shall be brought in Carson County, TX or, in the event that such court lacks jurisdiction, in the highest trial court in the state of Texas having jurisdiction.

(3) THE PARTIES AGREE TO TRIAL BY JUDGE ALONE AND HEREBY WAIVE ANY RIGHT TO DEMAND A TRIAL BY JURY.

(4) If a court awards interest of any kind, interest shall be simple interest at the applicable rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563). If a court awards prejudgment interest, interest shall accrue from no earlier than the date a Claim is received by the Director, Procurement Operations and Business Management.

(g) Subject to (f)(1), the resolution of all issues arising from or relating to this Agreement shall be governed to the maximum extent practicable by the common law of federal contracts; provided, however, that (i) the "Christian Doctrine" shall not apply, meaning that federal procurement clauses (e.g., the FAR, including agency supplements) or portions thereof not appearing in this Agreement shall not be read into this Agreement, and (ii) where the language of any article, provision or term herein differs from the language of a federal procurement clause, provision or term, the differing language of this Agreement shall control. Where the common law of federal contracts does not apply, then subject to (f) (1), resolution shall be governed by the laws of the State of Tennessee, without regard to its Conflicts of Laws rules.

(h) There shall be no interruption in the performance of the work, and Seller shall proceed diligently with the performance of this Agreement pending final resolution of any dispute arising under or related to this Agreement between the parties or between Seller and its sub-tier subcontractors.

(i) The contractual remedies in this Article shall not be deemed to waive, postpone the running of, extend, or otherwise affect any statute of limitation applicable to any request for payment or Claim.

29. HOLD HARMLESS [Apr 2021]

Seller shall be solely responsible for all liability and related expenses resulting from injury, death, damage to, or loss of property which is in any way connected with seller's negligent performance of work under this agreement. Seller shall also be responsible for all materials and work until acceptance by company. Seller's responsibility shall apply to activities of seller, its agents, lower-tier subcontractors, or employees and such responsibility includes the obligation to indemnify, defend, and hold harmless the

government and company. However, such liability and indemnity does not apply to injury, death, or damage to property to the extent of company fault or negligence.

30. LIABILITY FOR FINES AND PENALTIES [Apr 2021]

Seller shall be responsible, at no expense to Company, for the payment of fines, penalties, and other assessments imposed as a result of Seller's performance. If the fine, penalty, or other assessment results in part from actions or failures to act of Company or its employees, Company will be responsible for its *pro rata* share. If Company is required to pay a fine, penalty, or other assessment for which Seller is liable under this Article, Seller shall reimburse Company the amount of such fine, penalty, or other assessment.

31. DIFFERING SITE CONDITIONS [Apr 2021]

(a) Seller shall promptly, and before the conditions are disturbed, give a written notice to Company of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Agreement, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

(b) Company shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Seller's cost of, or the time required for, performing any part of the work under this Agreement, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this Article and the Agreement modified in writing accordingly.

(c) No request by Seller for an equitable adjustment under this Article shall be allowed unless (1) the written notice required in paragraph (a) above is timely given and (2) the request is made in writing before final payment under this Agreement.

32. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK [Apr 2021]

(a) Seller acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. Seller also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Company, as well as from the drawings and specifications made a part of this Agreement. Any failure of Seller to take the actions described and acknowledged in this paragraph will not relieve Seller from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to Company.

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

33. TITLE TO MATERIALS FOUND [Apr 2021]

The title to water, soil, rock, gravel, sand, minerals, timber, and any other materials developed or obtained in the excavation or other operations of Seller or any of its lower-tier subcontractors is hereby expressly reserved by DOE/NNSA. Seller may, at the sole discretion of Company, be permitted, without charge, to use in the Work any such materials which meet the requirements of this Agreement.

34. MATERIAL AND WORKMANSHIP [Apr 2021]

(a) All equipment, material, and articles incorporated into the work covered by this Agreement shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Agreement. References in the specifications or drawings to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Seller may, with Company's written approval, use any equipment, material, article, or process that is equal to that specified, unless the words "No Substitution" follow the listing of the item in the specifications or drawings.

(b) Seller shall obtain Company approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, Seller shall furnish to Company the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by Company, Seller shall also obtain Company's approval of material or articles that Seller contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When so directed, Seller shall submit samples for approval at Seller's expense. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this Agreement shall be performed in a skillful and workmanlike manner. Company may require, in writing, Seller to remove from the work any employee Company deems incompetent, careless, or otherwise objectionable.

35. PROTECTION OF EXISTING IMPROVEMENTS, EQUIPMENT, UTILITIES, AND ANTIQUITIES [Apr 2021]

(a) Seller shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site that are not to be removed and that do not unreasonably interfere with the required work. Seller shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance, or by the careless operation of equipment, or by workmen, Seller shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by Company.

(b) Seller shall protect from damage all existing improvements and utilities at or near the work site and on adjacent property of a third party, the locations of which are made known to or should be known by Seller. Seller shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Agreement or failure to exercise reasonable care in performing the work. If Seller fails or refuses to repair the damage promptly, Company may have the necessary work performed and charge the cost to Seller.

(c) Federal law provides for the protection of antiquities located on land owned or controlled by the Government, Antiquities include Indian graves or campsites, relics and artifacts. Seller shall control the activity at the jobsite to ensure that any existing antiquities discovered thereon will not be disturbed or destroyed. Seller shall report the discovery of any antiquities at the jobsite and, upon discovery of unusual materials (e.g. obsidian chips or flakes, bones, darkly stained soils, "arrowheads"), Seller shall stop work at/or around such materials and notify Company.

(d) Should Seller encounter any utilities, lines, or structures not shown on the drawings or not correctly located thereon, it shall immediately stop all work adjacent thereto. Seller shall immediately notify Company, which will issue instructions indicating the method of proceeding. If Seller damages any utility, line, or structure, whether or not shown on the drawings, Company shall be immediately notified.

36. SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION [Apr 2021]

(a) Seller shall be furnished the number of drawings and specifications specified in the Statement of Work at no cost.

(b) Seller shall keep on the work site a copy of the drawings and specifications and shall at all times give Company access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. Within the specifications, Division One (the "Special Conditions") shall govern. In case of discrepancy in the figures, in the drawings, or in the remainder of the specifications, the matter shall be promptly submitted to the Construction Engineer and the Procurement Representative, who shall promptly make a determination in writing. Any adjustment by Seller without such a determination shall be at its own risk and expense. Company shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(c)(1) The drawings and specifications incorporated into this Agreement are intended to include everything requisite and necessary to complete the entire work properly, notwithstanding the fact that every item necessarily involved may not be specifically mentioned. (2) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve Seller from performing such omitted or misdescribed details of the work, but they shall be performed as if fully and correctly set forth and described in the drawings and specifications. (3) The specifications and drawings may identify and list quantities of items to be furnished and installed by Seller. These identifications may be incomplete and the quantities are estimates only. Seller is responsible for furnishing the items and quantities manifestly necessary to carry out the intent of the drawings and specifications. (4) The drawings furnished by Company are, in general, to scale. Scales shown on a microfilmed reproduced drawing change in proportion to the reduction of the drawing from original size. Figured dimensions shall always be followed and the drawings not scaled. (5) Prior to fabricating any item (structural steel, piping, ductwork, etc.) Seller shall field-verify all dimensions critical to the installation. Any discrepancies between existing or new conditions and the drawings shall be reported to Company for resolution. (6) The specifications are divided into sections for convenience only, and such sections do not define or establish the limits of work of any subcontractor. It is Seller's responsibility to define lower-tier subcontractors' limits of work and to insure that all lower-tier subcontractors and suppliers at whatever level are familiar with all provisions of this Agreement that may affect their work. (7) The data sheet equipment numbers are not unique. Multiple pieces of equipment may utilize the same number. Seller shall determine the quantity of equipment and material needed to complete the work.

(d) Shop drawings means drawings submitted to Company by Seller or any lower tier subcontractor showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (*i.e.*, fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by Seller to explain in detail specific portions of the work. Company may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this Agreement.

(e) If this Agreement requires shop drawings, Seller shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with requirements of this Agreement and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to Company without evidence of Seller's approval may be returned for

resubmission. Company will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate its reasons therefore. Any work done before such approval shall be at Seller's risk. Approval by Company shall not relieve Seller from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Agreement, except with respect to variations described and approved in accordance with (f) of this Article.

(f) If shop drawings show variations from the requirements of this Agreement, Seller shall describe such variations in writing, separate from the drawings, at the time of submission. If Company approves any such variation, Company shall issue an appropriate modification to this Agreement, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) Seller shall submit to Company for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of the specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by Company and one set will be returned to Seller.

37. STANDARDS AND CODES [Apr 2021]

In case of any conflict between any referenced standards and codes and an Agreement provision, Seller shall immediately notify Company of such conflict together with a recommendation for resolution. Company shall confirm the Agreement requirement in writing or direct an alternative solution in accordance with the Changes Article of this Agreement.

38. SUBCONTRACTORS, OUTSIDE ASSOCIATES, AND CONSULTANTS [Apr 2021]

Any subcontractors and outside associates or consultants required by Seller in connection with the services covered by this Agreement will be limited to individuals or firms that were specifically identified in Seller's proposal, or during negotiations, and agreed to. Seller shall obtain the Procurement Representative's written consent before making any substitution for these subcontractors, associates, or consultants.

39. OTHER SUBCONTRACTS [Apr 2021]

Company may award other subcontracts for work at or near the site of the work under this Agreement. Seller shall cooperate fully with other subcontractors and with Company employees and shall carefully adapt scheduling and performance of work under this Agreement to accommodate the additional work, heeding any direction that may be provided by the STR. Seller shall not commit or permit any act that will interfere with performance by other subcontractors or by Company employees.

40. ASSIGNMENT [Apr 2021]

(a) Except as provided in (b), Seller shall not assign rights or obligations to third parties without the prior written consent of the Procurement Representative. Seller shall submit the documentation prescribed at FAR 42.1200 when requesting Company acceptance of Seller's successor in interest or to recognize Seller's change of name.

(b) Seller may assign rights to be paid amounts due or to become due to a bank, trust company, or other financing institution, including a Federal lending agency, if the Procurement Representative is promptly furnished written notice and a signed copy of such assignment, provided that any assignment of monies shall be subject to (1) proper setoffs in favor of Company and (2) any deductions provided for in this Agreement.

41. SUSPENSION OF WORK [Apr 2021]

(a) The Procurement Representative may order Seller, in writing, to suspend, delay, or interrupt all or any part of the work of this Agreement for the period of time that the Procurement Representative determines appropriate.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of Company in the administration of this Agreement, or (2) by Company's failure to act within the time specified in this Agreement (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this Agreement (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Agreement modified in writing accordingly. However, no adjustment shall be made under this Article for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of Seller, or for which an equitable adjustment is provided or excluded under any other term or condition of this Agreement.

(c) A request for adjustment under this Article shall not be allowed—

(1) For any costs incurred more than 14 calendar days before Seller shall have notified the Procurement Representative in writing of the act or failure to act involved (but this requirement shall not apply as to a request for adjustment resulting from a suspension order); and,

(2) Unless the request for adjustment, in an amount stated, is submitted in writing as soon as practicable, but no later than the earlier of final payment under this Agreement or 180 calendar days after the termination of the suspension, delay, or interruption. Requests for adjustment not submitted before final payment and within the 180-day period are waived.

42. STOP WORK AUTHORITY [Apr 2021]

(a) Unless the provisions for stop work under the *Supplemental Conditions Y-12 Construction or Pantex Construction Management Master Specifications* apply, the Procurement Representative, may under this Article, at any time, by written order, require Seller to stop all or any portion of the work called for by this Agreement for 90 calendar days, and for any other further period to which the parties may agree. Seller shall immediately comply with the order and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the work stoppage.

(b) Before expiration of the stop-work order, Company may --

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order for default or convenience.

(c) If the order is canceled or expires, Seller shall resume work. Company shall make an equitable adjustment in the delivery schedule or price, or both, and the Agreement shall be modified, in writing, accordingly, if the stop-work order results in an increase in the time required for, or cost properly allocable to, performance of this Agreement. As a condition precedent to an equitable adjustment, Seller shall submit its request for equitable adjustment in writing to the Procurement Representative within 30 calendar days after the work stoppage ends.

(d) If the work covered by the order is terminated for convenience, Company shall allow reasonable costs resulting from the order in arriving at the termination settlement.

(e) If the work covered by the order is terminated for default, Company shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the order.

43. DELAYS [Apr 2021]

(a) Conditions Precedent—As conditions precedent for entitlement to any price adjustment or schedule extension:

(1) Written Notice—For each separate delay, Seller shall give prompt written notice of the delay-causing event to the Procurement Representative. Such written notice must be given even if Company has independent knowledge of the delay-causing event. Seller proposed revisions to the Schedule (e.g., Fragmentary Networks or “Fragnets”), “Daily Logs,” “Daily Reports,” meeting minutes and the like do NOT constitute the required notice. On the basis of the most accurate information available to the Seller, the notice shall state:

(i) “This notice is submitted pursuant to the Article titled, “Delays,” or equivalent specific reference to this Article;

(ii) date, cause, and circumstances regarding the delay;

(iii) name and function of Seller and Company individuals knowledgeable about the delay;

(iv) identification of documents and substance of oral communications involving the delay; and

(v) the particular elements of performance impacted by the delay, including

(a) adjustment in labor and/or materials,

(b) estimated resulting price and schedule adjustments, and

(c) time by which Company must respond to minimize cost, delay, or disruption to performance of the work. In no event shall Seller recover any delay costs incurred **prior to 14 calendar days** before Seller gives such written notice.

(2) CPM—Seller shall include with any delay claim a Critical Path Method (CPM) schedule that shows the delay is on the critical path affecting the subcontract’s overall completion date.

(b) Notwithstanding any other provision in this Agreement, Seller shall not be entitled to recover:

(i) profit for delay costs of any kind, including, but not limited to acceleration, extended costs, and loss of efficiency or productivity, regardless of the theory of recovery; or

(ii) home office overhead, whether unabsorbed, under-absorbed, extended, or other basis.

(c) Excusable Delays—

(1) Company shall not be liable to Seller if Company’s nonperformance is caused by an occurrence beyond its reasonable control and without its fault or negligence, such as Acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Seller’s sole remedy shall be a schedule extension to this Agreement if the facts support the extension requested by Seller.

(2) This provision is in addition to, and does not derogate from, the Article titled, “Termination for Default.”

44. LOSS OF PRODUCTIVITY [Apr 2021]

This article does not create a right to recover loss of productivity. However, where Seller can establish entitlement to loss of productivity under another article, Seller’s recovery is subject to the additional requirements contained herein.

(a) Time Limits. (1) Seller shall initiate any request for adjustment (excluding profit) for loss of productivity within 14 days from the beginning of the loss of productivity. A request for adjustment shall be initiated by written notice to the Procurement Representative and shall explicitly state that the request is due to loss of productivity. Seller shall not recover for loss of productivity occurring more than 14 days prior to Seller’s initiating its request.

(2) After initiating its request for adjustment, Seller shall attend the weekly productivity meeting addressed in paragraph

(b). The purpose of the weekly meetings is to enable Company to verify the loss of productivity claimed by Seller, and to allow both parties to work together to mitigate future loss of productivity.

(b) Weekly Productivity Meeting

(1) After Seller has initiated its request for adjustment for loss of productivity, Company shall establish a weekly meeting to address loss of productivity. Seller, and a representative from each subcontractor to Seller that incurred a loss of productivity in the prior week, shall attend the weekly productivity meeting.

(2) At the weekly productivity meeting, Seller and each subcontractor to Seller shall address:

- (i) any loss of productivity incurred during the prior week;
- (ii) specifics regarding that loss of productivity; and
- (iii) how to mitigate or avoid that loss in the current week and future weeks.

(3) Seller and each subcontractor to Seller attending the weekly meeting shall:

- (i) identify the specific impacted tasks (by type and area) on which it suffered a loss of productivity in the prior week;
- (ii) by each impacted task and area, estimate the percentage loss of productivity suffered the prior week and explain the basis of this estimate;
- (iii) by each impacted task and area, identify the total labor hours expended the prior week, and of that total, identify the number of labor hours the subcontractor attributes to loss of productivity;
- (iv) by each impacted task and area, identify the change(s) in working conditions that caused the loss of productivity for the prior week – if more than one cause is identified, estimate the loss of productivity attributable to each cause. If a cause is due to changed work, identify the specific changes;
- (v) list by name and position any employee for whom loss of productivity is claimed due to excessive overtime; and
- (vi) suggest ways to mitigate or avoid the loss of productivity going forward.

(4) Attendance and presentation at the weekly meeting of all the information required in subparagraph (3) shall be a condition precedent to recovery of any amount for loss of productivity for the prior week.

(5) When Seller no longer experiences a loss of productivity for which it seeks an upward adjustment to the Subcontract price, Seller may submit a written request to the Procurement Representative to cancel the weekly productivity meetings and the Procurement Representative shall cancel the meetings.

(c) No profit. Seller and subcontractors to Seller shall not receive profit on requests for adjustment due to loss of productivity.

45. ADJUSTMENTS [Apr 2021]

(a) Articles in this Agreement that provide for an adjustment or for an equitable adjustment are supplemented by paragraphs (b) through (j).

(b) Requests for adjustments or equitable adjustments, whether submitted in response to a request by Company for a proposal or submitted on Seller's initiative, must include an itemized breakdown of cost for Seller and each lower-tier subcontractor in at least the following detail: direct material quantities and costs; direct labor hours and rates for each trade; employment taxes; Workers' Compensation Insurance; equipment hours and rates; and bond premiums paid for Seller's bonds (Seller shall not be entitled to any adjustment for bond premiums paid by its lower-tier subcontractors).

(c) (1) This paragraph (c) does not apply when the change to the Agreement price has been agreed upon prior to commencement of the changed work.

(2) When submitting a request for adjustment or an equitable adjustment exceeding \$50,000, the originator of the request (whether Seller or a lower-tier subcontractor), shall, as a condition precedent to any recovery, submit sufficient data supporting the request and certify as follows:

CERTIFICATION

I acknowledge the expectation that any payment by Company for this requested contract adjustment will be reimbursed by funds of the Federal Government, and, under penalty of law, I certify that this claim request is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, that the amount requested accurately reflects the contract adjustment for which Seller and I believe Company is liable, and that I am duly authorized to certify the request on behalf of [Seller or lower-tier subcontractor, as appropriate].

The aggregate amount of both increased and decreased costs shall be used in determining when the dollar threshold requiring certification is met.

(d) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, as supplemented by DEAR Part 931, in effect on the date of this Agreement, shall govern allowability of all costs claimed, agreed to, or determined under this Article.

(e) Only those reasonable proposal preparation costs incurred in response to the Procurement Representative's written change order or written request for a proposal are recoverable, but only to the extent the costs are fully documented and exclude overhead or profit; provided however, that in no event shall Company pay for (and Seller shall not include in its proposal) any proposal preparation costs relating to delay, schedule analysis, cumulative impacts, loss of productivity, or any time-related costs.

(f) Seller shall not be entitled to any adjustment for bond premiums paid by its lower-tier subcontractor(s).

(g) (1) The table below does not apply to a request for an adjustment or equitable adjustment below or equal to \$50,000; however, the table does apply to related requests below \$50,000 that when aggregated exceed \$50,000 and to requests below or equal to \$50,000 when first submitted but when amended exceed \$50,000.

(2) The overhead, profit and commission percentages in the table below apply to Seller and lower-tier subcontractors.

	Overhead	Profit	Commission
Category ONE A To Seller and subcontractors on work performed with their own forces negotiated <i>before</i> commencement of work	As negotiated	As negotiated (Subject to Note 2)	Not Applicable (See Note 7)
Category ONE B To Seller and subcontractors on work performed with their own forces negotiated <i>after</i> commencement of work	10 % maximum (see Note 3)	10 % maximum (Subject to Note 2)	Not Applicable (See Note 7)
Category TWO X To Seller and subcontractors on work performed by other than their own forces (<i>with</i> certification; see Note 5)	Not Allowed	Not Allowed	1st \$50,000.01 to \$100,000 -- 10 % Next \$150,000 -- 8% Amount above \$250,000 - - 6% (see Note 3)
Category TWO Y To Seller and subcontractors on work performed by other than their own forces (<i>without</i> certification; see Note 6)	Not Allowed	Not Allowed	3% (see Note 3)

NOTES:

1. The percentages for overhead and profit for Category ONE(A and B) are subject to negotiation according to the nature, extent, and complexity of the work involved. In no event shall overhead (subject to Note 3) and profit for Category ONE B exceed the stated maximum percentage.
2. No profit is allowed under Category ONE(A and B) where recovery is sought under an Article (i) providing for an adjustment as opposed to an equitable adjustment, or (ii) stating profit is not allowed.
3. Federally approved overhead rates shall be (i) the maximum overhead for Category ONEB, and (ii) the Commission in-lieu-of the Commission stated in the table for Categories TWO (X and Y).
4. The percentage for overhead includes all indirect costs including, but not limited to, field and office supervisors and assistants, incidental job burdens, small tools, and general overhead allocations.
5. Category TWO X applies where Seller or higher-tier subcontractor certifies (per paragraph (c)) the originating lower-tier subcontractor's request.
6. Category TWO Y applies where Seller or higher-tier subcontractor does not certify the originating lower-tier subcontractor's request.
7. EXAMPLE: Seller performs 60% of changed work and subcontracts 40% to 1st-tier which performs 30% of changed work and subcontracts 10% to 2nd-tier. 2nd-tier gets CAT ONE. 1st-tier gets CAT TWO on 2nd-tier work and CAT ONE on its own work. Seller gets CAT TWO on 2nd-tier's work (not 1st-tier's commission on 2nd-tier's work), CAT TWO on 1st-tier's work, and CAT ONE on work Seller performs.

(h) Equitable adjustments for deleted work shall include credits, limited to the same restrictions for overhead, profit, and commission in paragraph (g) of this Article.

(i) On proposals covering both increases and decreases in price, the overhead, profit, and commission shall be applied to the net change in direct costs for the Seller or the subcontractor performing the work.

(j) The Procurement Representative may make adjustments by unilateral modification to the subcontract (for example, for a no-cost change or where the parties fail to agree on an increase or decrease in price or time). The unilateral modification shall be final and conclusive between the parties without the right of judicial review unless Seller submits a Claim requesting a Director, Procurement Operations and Business Management Final Decision under the Resolution of Disputes clause within 60 calendar days after receipt of the unilateral modification.

(k) For any Seller request for adjustment or equitable adjustment (or "Claim" under the Resolution of Disputes Article) exceeding \$100,000, Company, or its authorized representative, shall have the right during customary business hours to examine, audit, and copy all Seller (and applicable lower-tier subcontractor) books, records, accounts, correspondence, and other evidence relating to the amount of, or entitlement to, the request. Company may choose as its authorized representative the Defense Contract Audit Agency (DCAA) or an independent public accounting firm. Seller shall provide adequate workspace in order to conduct the examination and audit. Seller expressly agrees this provision authorizes the DCAA or the selected independent

accounting firm to provide a complete audit report to (and discuss with) Company without additional prior approval from Seller, the audited lower-tier subcontractor, or the NNSA.

(l) Flowdown -Requirements of this Article, including this paragraph (l), shall be flowed down to all lower-tier subcontracts.

46. AUTHORIZED REPRESENTATIVES AND NOTICE [Oct 2017]

Unless otherwise specified, all notices and communications in accordance with or related to this Agreement shall be between authorized representatives designated in writing by the parties. Notices shall be in writing and may be served either personally on the authorized representative of the receiving party, by facsimile, by courier or express delivery, or by certified mail to the facsimile number or address shown on the face of this Agreement or such address as directed by notice.

47. CHANGES [Apr 2021]

(a) The Procurement Representative may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Agreement in any one or more of the following:

- (1) Drawings, designs, or specifications.
- (2) In the method or manner of performance of the work.
- (3) In the Government-furnished property or services.
- (4) Directing acceleration in the performance of the work.
- (5) Place of delivery of supplies.
- (6) Description of services to be performed.
- (7) Time of performance of the services (*i.e.*, hours of the day, days of the week, etc.).

(b) If any such change causes a difference in the cost, or the time required for performance, Company shall, subject to the submission requirement in paragraph (d), make an equitable adjustment in the price, delivery/performance schedule, or both, and modify the Agreement in writing. If Seller's proposal includes the cost of property made obsolete or excess by the change, Company has the right to prescribe the manner of disposition of the property.

(c) Only the Procurement Representative is authorized on behalf of Company to issue a change, which must be in writing and clearly designated as a change order. If Seller considers that any oral direction or instruction by any Company personnel (including the Procurement Representative) constitutes a change, or if Seller considers that any written direction or instruction by any Company personnel (other than a designated change order issued by the Procurement Representative) constitutes a change, Seller shall not rely upon such direction or instruction and shall not be eligible for an equitable adjustment arising therefrom, without prior written confirmation from the Procurement Representative directing Seller to perform as stated in the direction or instruction. If such written confirmation from the Procurement Representative to perform also confirms the direction or instruction to be a change, the confirmation shall be deemed a change order for purposes of paragraph (d). If, however, such written confirmation from the Procurement Representative to perform does not confirm the direction or instruction to be a change, any request by Seller for an equitable adjustment arising from such direction or instruction shall comply with paragraph (e).

(d) If the Procurement Representative issues a change order, any request for equitable adjustment by Seller must be submitted in writing to the Procurement Representative within 30 calendar days of receiving Company's change order. If the request is not submitted within such time, the request shall be late and may be denied by the Procurement Representative whether or not Company is prejudiced by the late request. If Company, in its sole discretion, decides to act upon a particular late request submitted prior to final payment, such action shall not constitute or be deemed to be a waiver of this submission requirement with regards to any other late request, nor shall such action be considered in any way in interpreting this provision as a course of dealing or in any other manner.

(e) (1) If the Procurement Representative has not issued a written change order but Seller considers a change to this Agreement has occurred because, for example: (i) Company did not satisfy one of its expressed or implied duties under the Agreement, or (ii) the Procurement Representative did not provide written confirmation that a change occurred in response to Seller's request for confirmation as provided for in paragraph (c), then as a condition precedent for entitlement to an equitable adjustment, Seller shall notify the Procurement Representative, in writing, that a change has occurred for which Seller intends to seek an equitable adjustment and identify: (i) date, nature and circumstances regarding the change, (ii) name of each person knowledgeable about the change, (iii) documents and substance of oral communications involving the change, and (iv) the particular elements of performance impacted by the change, including (a) adjustment in labor and/or materials, (b) delay or disruption caused, (c) estimated resulting price and schedule adjustments and (d) time by which Company must respond to minimize cost, delay, or disruption to performance of the work.

(2) In no event shall Seller recover any costs caused by the change incurred prior to 14 calendar days before Seller gives such written notice.

(3) Any request for equitable adjustment by Seller must be submitted in writing to the Procurement Representative no later than 30 calendar days after Seller gives the written notice specified in subparagraph (e)(1). If the request is not submitted within such time, the request shall be late and may be denied by the Procurement Representative whether or not Company is prejudiced by the late request. If Company, in its sole discretion, decides to act upon a particular late request submitted prior to final payment, such action shall not constitute or be deemed to be a waiver of this submission requirement with regards to any other late request, nor shall such action be considered in any way in interpreting this provision as a course of dealing or in any other manner.

(f) Nothing in this Article, including any disagreement with Company about an equitable adjustment, shall excuse Seller from proceeding with the Agreement as changed.

48. CHANGE ORDER ACCOUNTING [Apr 2021]

Change order accounting is required whenever the estimated cost of a change or series of related changes exceeds \$50,000. For each change or series of related changes, Seller shall establish and maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. Seller shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the Procurement Representative or the matter is conclusively disposed of in accordance with the Resolution of Disputes Article. This Article applies whenever Seller believes the subcontract has been changed, either because of an ordered change or any other reason.

49. WARRANTY [Apr 2021]

(a) In addition to any other warranties in this Agreement, Seller warrants that work performed under this Agreement conforms to the Agreement requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by Seller or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of one year from the date of final acceptance of the work. If Company takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one year from the date Company takes possession.

(c) Seller shall remedy at Seller's expense any failure to conform, or any defect. In addition, Seller shall remedy at Seller's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of Seller's failure to conform to applicable requirements, or any defect of equipment, material, workmanship, or design furnished.

(d) Seller shall restore any work damaged in fulfilling the terms and conditions of this Article. Seller's warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.

(e) Company shall notify Seller, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If Seller fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Company shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at Seller's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Agreement, Seller shall: (1) obtain all warranties that would be given in normal commercial practice; (2) require all warranties to be executed, in writing, for Company's benefit, as directed; and (3) enforce all warranties for Company's benefit, as directed.

(h) If Seller's warranty under paragraph (b) of this Article has expired, Seller agrees to subrogate any of its rights and to aid Company in enforcing lower-tier subcontractor's, manufacturer's, or supplier's warranties.

(i) Unless a defect is caused by the negligence of Seller or subcontractor or supplier at any tier, Seller shall not be liable for the repair of any defects of material or design furnished by Company nor for the repair of any damage those results from any defect in Government-furnished material or design.

(j) This warranty shall not limit Company's rights under the Inspection of Construction Article of this Agreement (incorporated by reference) with respect to latent defects, gross mistakes, or fraud.

50. SUSPECT/COUNTERFEIT ITEMS [Apr 2021]

(a) Definitions.

(1) "Suspect material" as used in this Article, means any material or item that is not known to conform to established U.S. Company or industry-accepted specifications and national consensus standards.

(2) "Counterfeit material" as used in this Article, means any suspect material or item that is a copy or substitute without legal right or authority to do so, or one whose material, performance, or characteristics are knowingly misrepresented by the vendor, supplier, distributor, or manufacturer.

(b) Seller shall not use or provide suspect or counterfeit materials or parts as part of the end item for delivery, including any fasteners (Grade 5, Grade 8, Grade 8.2, ASTM A 325, bolts, studs, capscrews, washers, nuts, etc.), electrical components (circuit breakers, relays, fuses, transformers, etc.), piping components or mechanical piping components (pipe valves, fittings, nipples, flanges, couplings, plugs, spacers, and nozzles, etc.) valves, metal framing (plate fittings, post base, beam clamp channel, spring clips, square washers), wire rope, lifting materials (shackles, hooks, slings, cables, forklifts, hoists, etc.), welding material (rods, wire, flux, etc.) on any equipment, assemblies, components, or facilities under this contract. Any suspect or counterfeit material provided by Seller to Company is subject to seizure and will not be returned to the Seller. Seller shall replace any and all suspect or counterfeit material at no additional charge to Company.

(c) Fasteners.

(1) SAE Grades 5, 8 and 8.2 and ASTM Grade A325 fasteners, identified at <http://energy.gov/ehss/downloads/headmark-list-suspect-counterfeit-fasteners-1992> entitled Suspect Fastener Headmark List, cannot be introduced into DOE facilities. Therefore, such fasteners shall not be provided as deliverable end items or incorporated into deliverable end items under this contract.

(2) Any fasteners delivered under this Agreement shall be subject to the requirements of the Fastener Quality Act (“the Act”), Public Law 101-592, Title 15, United States Code (U.S.C.), Chapter 80, and those requirements as stated in this Agreement. No fastener, as defined in the Act and regulations issued thereunder by the Secretary of Commerce, shall be supplied to Company, regardless of lot size.

(3) Nothing in this Article shall prohibit Company from requiring in this Agreement, the inspection and testing of a greater number of fasteners from a lot than is specified in the applicable standards or specifications to which the manufacturer represents the fasteners to have been manufactured or in the applicable sampling procedures specified by the Secretary of Commerce.

(d) Electrical Equipment, Items, and Components

(1) All electrical equipment, items and components shall exhibit manufacturers’ labels and identification. Specifically, the labeling of voltage and current values for equipment and the marking of purged and pressurized enclosures with an asphyxiation hazard warning where the protective gas is other than air.

(2) Electrical equipment, items or components must be approved by a nationally recognized testing laboratory (NRTL) (e.g., UL, CSA, FMRS, or MET). Equipment approved by an NRTL shall bear written evidence by listing or labeling that it has received certification from the NRTL. If no certification is available, the manufacturer shall provide any test data, design documentation, etc., which certifies the equipment to be free of electrical hazards as recognized by the National Electric Code and OSHA. This documentation may include, where applicable, references to UL Standard 508 and ANSIC Series Standards.

(3) Molded case circuit breakers, that upon inspection gives the appearance of or display evidence of, being used, refurbished, or reconditioned, may be rejected by Company on the basis of appearance without testing.

(4) Electro-mechanical equipment, where electrical and mechanical components are combined into one system, shall follow requirements in this section.

(5) All electrical equipment used in Class I and Class II hazardous (classified) locations shall follow protection techniques outlined in NFPA 496.

(e) Mechanical Equipment, Items and Components.

(1) All mechanical equipment, systems and components shall exhibit manufacturers’ labels and identification.

(2) All mechanical equipment, that has electrical components, is to meet the requirements of (d) above.

(f) Packaging and Labeling.

(1) Reference to fasteners shall conform to the following format: Size; Style; Grade; and Specifications (i.e., 1/2 x 20 x 6", hex head, cap screws, grade 8, per specification SAE-J429).

(2) All bolts shall be marked with the grade and manufacturers head markings (suspect or counterfeit fasteners are those identified in <http://energy.gov/ehss/downloads/headmark-list-suspect-counterfeit-fasteners-1992> entitled Suspect Fastener Headmark List, Suspect Fastener Headmark List).

(3) All fasteners shall be separately boxed by lot number, with no mixing of lots.

(4) The manufacturer’s lot numbers shall be listed on the packing list as part of the descriptive information.

(5) Each individual box shall be marked with the lot number.

(6) All shipments of graded fasteners indicated in this contract, and other items as specified, shall include an authenticated “Certified Material Test Report” traceable to the manufacturer by lot number, such that the manufacturer’s test data (such as physical and chemical test reports for fasteners) can be certified by Company, if required.

(7) All remanufactured, refurbished or rebuilt replacement equipment and components, if specifications permit, shall be clearly marked as such and shipped in the manufacturer’s original packing, and have any designated serial numbers listed on the packing list.

(8) Seller shall affix a “certificate of conformance” stamp on each packing list, authenticated by a designated company official responsible for this function, if required by this Agreement.

(g) Confirmation of Source and Performance Characteristics.

(1) Company may obtain an opinion concerning legitimacy of the equipment from the original manufacturer. Such opinion shall be a sufficient basis for rejection of any item provided by the Seller. In addition to other rights provided by law or this contract, Company may reject the item or equipment provided by the Seller that does not meet the OEM’s published performance requirements.

(h) Reporting of Suspect/Counterfeit Materials and Investigation.

(1) Company investigates incidents of suspect or counterfeit materials. Seller shall cooperate with such investigations by providing evidence, documentation, or information as may be requested by Company in conducting the investigation.

(2) Company will report to the Office of Inspector General (OIG) any suspect/counterfeit material that is discovered during receipt, maintenance, testing, inspection or use and when there is reason to believe that a fraudulent act occurred during the manufacture, shipping, testing, or certification of the suspect/counterfeit material.

(3) Evidence of deliberate misrepresentation of any item(s) and/or component(s) or provision of any item specifically

prohibited under this contract, may result in an investigation by the OIG.

(i) Unauthorized Substitution.

All equipment and material furnished shall be the exact items as described in this contract. Company will not accept any substitutions unless specifically approved in writing by the Procurement Representative. Equipment or material for which unauthorized substitution is made shall be considered suspect/counterfeit.

51. DEFECT IDENTIFICATION AND REPORTING [Apr 2021]

(a) Seller and its suppliers shall identify and report in writing to Company any actual or potentially defective item or service provided in accordance with the requirements of this Article. The written report shall contain sufficient information to permit Company to evaluate the impact of such deficiencies.

(b) Notification of Defects. Seller shall notify Company in writing within two (2) calendar days upon knowledge of an actual or potentially defective item or service which has been provided to Company or to Seller. If the first notification, due to anticipated severity and/or significance of impact, is by means other than in writing, a written report shall be submitted within five (5) calendar days from the date of notification. The notification shall contain the following:

- (1) Name and address of the person making the notification.
- (2) Nature of the defect and any substantial safety hazard that could result, if known.
- (3) Description of the defective item or service, including the following specific information:
 - Manufacturer's name.
 - Item model number(s).
 - Name and addresses of the original and any intermediate supplier.
 - Potential failure modes.
 - Identification of the facilities where the defective item(s) and/or service(s) have been supplied, to the extent known.
 - Actions that have been taken or are being planned to correct the defective item(s) or service(s), including designation of the organization responsible for implementing the corrective actions and schedule for completion.
 - Additional pertinent information.

(c) Follow-up Reporting. In the event the report submitted is only preliminary, a written follow-up report shall be made each forty-eight (48) hours thereafter until a final written report can be made. The final written report shall be submitted to Company as soon as possible, in light of the defect's magnitude, but in no event shall it be provided later than thirty (30) days following discovery of the defect. The final written report should be comprehensive in terms of addressing the defect(s) and any remedial actions required to overcome the fact that the defective item(s) and/or service(s) were provided.

(d) Company Point of Contact for reporting is the Procurement Representative.

Note: Mark document "URGENT - DELIVER IMMEDIATELY".

(e) The responsibility for identifying and reporting a defective item or service shall extend to all levels and individuals of Seller.

(f) Requirements of this Article, including this paragraph (f), shall be flowed down to all lower-tier subcontracts.

52. BACKCHARGE WORK [Apr 2021]

(a) Backcharge work is a cost sustained by Company or the Government and chargeable to Seller for the performance of work which is Seller's responsibility under this Agreement.

(b) Upon identification of an actual or anticipated backcharge, Company will provide Seller a written notice which shall describe the work to be performed, the schedule for performance, and the cost to be charged Seller. The cost may include: (i) actual labor cost, (ii) actual material cost including transportation, and (iii) taxes, levies, duties and assessments.

(c) Seller is required to accept the backcharge or reperform work at Seller's cost. If Seller refuses to accept the backcharge or agree to reperform within 24 hours after receipt of Company's notice, Company may proceed with the backcharge work and set off the cost against Seller's payment.

53. COMPANY'S RIGHT TO SETOFF [Apr 2021]

Company may collect any amount determined by the Procurement Representative to be owed to Company by setting off such amount or portion thereof against any payment due Seller under this or any other Agreement it has with Company.

54. GOVERNMENT PROPERTY [Apr 2021]

(a) If Seller purchases property for which it is entitled to reimbursement as a direct item of cost, title for said property shall pass directly to the Government upon delivery to Seller. Title to all other property, the cost of which is reimbursable to Seller, shall pass to the Government upon the earliest of issuance of property for use in performance, or processing property for use in performance, or reimbursement of cost of property.

(b) As may be required by this Agreement, Company shall deliver to Seller at the time and locations stated in this Agreement the Government property described in this Agreement. If the property is not suitable for its intended use or is not delivered to Seller as specified in this Agreement, Company shall equitably adjust affected provisions in accordance with the Changes Article when the facts warrant an equitable adjustment and Seller submits a timely written request for such adjustment. Said equitable adjustment shall be Seller's exclusive remedy.

(c) Title to all Government property, whether provided by Company or acquired by Seller, shall remain in the Government. Title shall not be affected by the incorporation or attachment to any property not owned by the Government, nor shall any Government property become a fixture or lose its identity because it is affixed to any realty.

(d) For all Government property in Seller's possession or for which Seller is responsible for, Seller assumes the risk and responsibility for its loss or damage, except—

- (1) For reasonable wear and tear;
- (2) To the extent property is consumed in performing this Agreement; or
- (3) As otherwise provided for by this Agreement.

(e) Seller shall establish and maintain a property control program for use, maintenance, repair, protection and preservation of Government property consistent with good business practices and as may be prescribed by Company. Except as may be authorized in writing by Company, Government property shall be used only for the performance of this Agreement.

(f) Upon completion of this Agreement, Seller shall follow the instructions of the Procurement Representative regarding the disposition of all Government property not consumed in the performance of this Agreement (including any scrap) or previously delivered to Company. Seller shall dismantle, prepare for shipment, and at the Procurement Representative's direction, store or deliver said property (at Company expense), or dispose of the property as directed by the Procurement Representative. The net proceeds of any such disposal shall be credited to the Agreement price or shall be paid as the Procurement Representative may direct.

55. TERMINATION FOR CONVENIENCE [Apr 2021]

(a) Company may terminate performance of work under this Agreement in whole or from time to time in part by delivering to Seller a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, Seller shall immediately:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts, except as necessary to complete the continued portion of the Agreement.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to Company, as directed by Company, all interest of Seller under the subcontracts terminated, in which case the Company may settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval of Company, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts.

(6) As directed by Company, transfer title and deliver to Company—

- (i) Work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
- (ii) Completed or partially completed plans, drawings, information, and other property that, if the Agreement had been completed, would be required to be furnished to the Company.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that Company may direct, for the protection and preservation of property in Seller's possession and in which Company has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by Company, any property of the types referred to in paragraph (b)(6); *provided*, however, that Seller (i) is not required to extend credit to any purchaser and (ii) may acquire the property under conditions prescribed by, and at prices approved by, Company. The proceeds of any sale will be applied to reduce any payments to be made by Company under this Agreement.

(c) Seller shall submit complete termination inventory schedules within 120 calendar days from the effective date of termination.

(d) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, Seller may submit to Company a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by Company. Seller may request Company to remove those items or enter into an Agreement for their storage. Within 15 calendar days, Company will remove them or enter into a storage Agreement. Company may verify the list upon removal of the items, or if stored, within 45 calendar days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) Seller shall submit a final termination settlement proposal in the form and with the certification prescribed by Company within six months from the effective date of termination. If Seller fails to submit the proposal within the time allowed, Company may determine the amount, if any, due Seller and pay that amount.

(f) Seller and Company may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. However, the agreed amount, whether under this paragraph (f) or paragraph (g), exclusive of costs shown in paragraph (g)(2), may not exceed the total Agreement price as reduced by (1) the amount of payments previously made and (2) the Agreement price of work not terminated. The Agreement shall be modified, and Seller paid the agreed amount.

(g) If Seller and Company fail to agree on the whole amount to be paid, Company shall pay Seller the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f):

- (1) For Agreement work performed before the effective date of termination, the total (without duplication of any items) of—
 - (i) The cost of this work;
 - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Agreement; and
 - (iii) A sum, as profit on subdivision (g)(1)(i) of this Article, determined by Company under 49.202 of the Federal Acquisition Regulation in effect on the date of this Agreement, to be fair and reasonable; however, if it appears that Seller would have sustained a loss on the entire Agreement had it been completed, Company shall allow no profit and shall reduce the settlement to reflect the indicated rate of loss.
- (2) The reasonable costs of settlement of the work terminated, including—
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that Company expressly assumed the risk of loss, Company shall exclude from the amounts payable to Seller under paragraph (g) the fair value, as determined by Company, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Company or to a Procurement Representative.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this Agreement, shall govern all costs claimed, agreed to, or determined under this Article.

(j) Seller shall separately track all proposal preparation costs relating to delay, schedule analysis, cumulative impacts, loss of productivity, or any time-related costs and shall exclude such named proposal preparation costs from its termination settlement proposal. In no event shall Company pay for any such named proposal preparation costs.

(k) In arriving at the amount due the Seller under this clause, there shall be deducted—

- (1) All unliquidated advance or other payments to Seller under the terminated portion of this Agreement;
- (2) Any claim which Company has against Seller under this Agreement; and,
- (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Seller or sold under this Article and not recovered by or credited to Company.

(l) If the termination is partial, Seller may request an equitable adjustment of the price(s) of the continued portion of the Agreement. Any such request shall be made within 90 calendar days from the effective date of termination. If Seller fails to submit such proposal within the time allowed, Company may determine the amount, if any, due Seller and pay that amount.

(m) (1) Company may make partial payments and payments against costs incurred by Seller for the terminated portion of the Agreement, if Company believes the total of these payments will not exceed the amount to which Seller will be entitled.

(2) If the total payments exceed the amount finally determined to be due, Seller shall repay the excess to Company upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by Seller to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in Seller's termination settlement proposal because of retention or other disposition of termination inventory until 10 calendar days after the date of the retention or disposition, or a later date determined by Company because of the circumstances.

(n) Unless otherwise provided in this Agreement or required by statute, Seller shall maintain all records and documents relating to the terminated portion of this Agreement for three years after final settlement. This includes all books and other evidence bearing on Seller's costs and expenses under this Agreement. Seller shall make these records and documents available to Company at Seller's office, at all reasonable times, without any direct charge. Photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(o)(1) If Seller failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e), or (l), respectively, the Procurement Representative's determination under either said paragraph shall be final and conclusive without the right of judicial review.

<https://www.y12.doe.gov/suppliers/procurement/subcontracting/subcontract-provisions> (2) If Seller submits the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e), or (l), the Procurement Representative's determination under paragraph (e), (g), or (l) shall be final and conclusive without the right of judicial review

unless Seller submits a Claim requesting a final determination from the Company under the Resolution of Disputes clause within 60 calendar days after receipt of a determination under paragraph (e), (g), or (l).

56. TERMINATION FOR DEFAULT [Apr 2021]

(a) Company may by written notice to Seller terminate the right to proceed with the work (or a separable part of the work) if Seller: (1) refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this Agreement, (2) fails to complete the work within this time, (3) persistently disregards laws, safety or environmental regulations, ordinances or the instructions of Company, or (4) fails to comply with any substantive requirement of this Agreement.

(b) In this event, Company may take over the work and complete it by contract or otherwise, and may take possession and use any materials, appliances, and plant on the work site necessary for completing the work. Seller and its sureties shall be liable for any damage to Company resulting from the termination, including any increased cost incurred by Company in completing the work.

(c) Seller’s right to proceed shall not be terminated nor Seller charged with damages under this Article if—

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of Seller (Examples of such causes include acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a subcontract with Company, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both Seller and the subcontractors or suppliers); and

(2) Seller, within 10 calendar days from the beginning of any delay (unless extended by Company), notifies Company in writing of the causes of delay. Company shall ascertain the facts and the extent of delay. If the facts warrant, the Procurement Representative shall extend the time for completing the work.

(d) If, after termination of Seller’s right to proceed, it is determined that Seller was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

(e) The rights and remedies of Company in this Article are in addition to any other rights and remedies provided by law or under this Agreement.

57. SURVIVAL [Nov 2019]

All terms, conditions and provisions of this Agreement, which by their terms or by their nature are independent of the period of performance, shall survive the cancellation, termination, expiration, default or abandonment of this Agreement.

58. CLAUSES INCORPORATED BY REFERENCE [Apr 2021]

(a) The clauses listed in the table below are incorporated herein by reference. The texts of FAR and DEAR clauses are available at a variety of Internet Sites including URL: www.acquisition.gov and the texts of Company clauses are available on the “Procurement” link at: <https://www.y12.doe.gov/suppliers/procurement/subcontracting/subcontract-provisions>. Except as provided in (b) below, in the listed clauses “Contractor” means Seller, “Government” means Company, “Contract” means this subcontract, and “Contracting Officer” means Company’s Procurement Representative.

(b) “Government” retains its meaning in:

- (1) The phrases “Government property” and “Government-furnished property;”
- (2) Paragraph (a) of FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions;
- (3) DEAR 970.5227-5, Notice and Assistance Regarding Patent and Copyright Infringement; and
- (4) DEAR 970.5208-1, Printing.

THE FOLLOWING CLAUSES ARE INCORPORATED INTO THIS AGREEMENT:		
Clause Number	Title and Date	Instructions
FAR 52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	Applies unless this Agreement is a personal services contract with individuals.
FAR 52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and other Covered Entities (JUL 2018)	None.
FAR 52.204-24	Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2019)	<i>Representation and Certifications</i> , UCN-22338, requires offerors to provide the representation in

		subpart (c) and complete the disclosures in subpart (d).
FAR 52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2019)	None.
FAR 52.211-5	Material Requirements (AUG 2000)	None.
FAR 52.215-15	Pension Adjustments and Asset Reversion (OCT 2010)	Applicable when cost and pricing data required.
FAR 52.222-1	Notice to the Government of Labor Disputes (FEB 1997)	None.
FAR 52.222-50	Combating Trafficking in Persons (FEB 2009)	The FEB 2009 clause requires the substance of this clause to be included in all subcontracts.
FAR 52.223-2	Affirmative Procurement of Bio-Based Products Under Service and Construction Contracts (SEP 2013)	None.
FAR 52.223-15	Energy Efficiency and Energy Consuming Products (DEC 2007)	None.
FAR 52.223-16	IEEE 1680 Standard for Environmental Assessment of Personal Computer Products Alt I (DEC 2007)	None.
FAR 52.223-17	Affirmative Procurement of EPA Designated Items in Service and Construction Contracts (MAY 2008)	None.
FAR 52.224-2	Privacy Act (APR 1984)	Applies to scope of work for system of records on individuals.
FAR 52.225-8	Duty-Free Entry	The Contractor shall include the substance of this clause in any subcontract if-- (1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or 2) Other foreign supplies in excess of \$15,000 may be imported into the customs territory of the United States.
FAR 52.225-9	Buy American Act - Construction Materials (MAY 2014)	For Agreements valued at less than \$6,932,000.
FAR 52.225-13	Restrictions on Certain Foreign Purchases (JUN 2008)	None.
FAR 52.236-7	Permits and Responsibilities (NOV 1991)	None.
FAR 52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities and Improvements (APR 1984)	None.
FAR 52.236-10	Operations and Storage Areas (APR 1984)	None.
FAR 52.236-11	Use and Possession Prior to Completion (APR 1984)	None.
FAR 52.236-12	Cleaning Up (APR 1984)	None.
FAR 52.244-6	Subcontracts for Commercial Items (DEC 2013)	None.
FAR 52.246-12	Inspection of Construction (AUG 1996)	None.
FAR 52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)	None.
DEAR 952.204-77	Computer Security (AUG 2006)	Applies if Seller may have access to computers owned, leased or operated on behalf of the Department of Energy.
DEAR 970.5204-3	Access to and ownership of records	Applicability instruction modeled after subsection (g).
UCN-22414	Identification and Protection of UCNI/OUO Information (APR 2018) (Company)	None.
UCN-22427	Travel Reimbursement Policy (NOV 2016) (Company)	Applies to all cost-reimbursement, time-and materials, and labor-hour agreements. It also applies to fixed-price agreements that have travel as a

		separate pay line item, but its applicability in such cases is only to that line item.
UCN-22433	Nuclear Hazards Indemnity and Price-Anderson Amendments Act (JUL2017) (Company)	The provisions of paragraphs (a) through (k) of 48 CFR 952.250-70 (AUG 2016), Nuclear Hazards Indemnity Agreement are incorporated by reference into this Agreement to the extent the Agreement involves a risk of public liability as that term is defined by the Atomic Energy Act of 1954, as amended.
UCN-22480	Hazardous Material Identification and Material Safety (JUL2014) (Company)	None.

THE FOLLOWING CLAUSES ARE INCORPORATED WHEN THE WORK INVOLVES ACCESS TO CLASSIFIED INFORMATION, SPECIAL NUCLEAR MATERIAL, AUTHORIZED UNRESTRICTED ACCESS TO AREAS CONTAINING CLASSIFIED INFORMATION OR SPECIAL NUCLEAR MATERIAL OR THE WORK REASONABLY MIGHT RESULT IN A PATENT APPLICATION THAT CONTAINS CLASSIFIED SUBJECT MATTER:

Clause Number	Title and Date	Instructions
DEAR 952.204-2	Security (AUG2016)	None.
DEAR 952.204-70	Classification/Declassification (SEP 1997)	None.
UCN-22381	Civil Penalties for Classified Information Security Violations (Company – JUL 2014)	None.
UCN-22427	Travel Reimbursement Policy (NOV 2016) (Company)	Applies to all cost-reimbursement, time-and materials, and labor-hour agreements. It also applies to those fixed-price agreements that have travel as a separate pay line item, but its applicability in such cases is only to that line item.
UCN-22508	Exhibit 7 Classified Inventions (MAY2017) (Company)	“Government” retains its meaning.

THE FOLLOWING CLAUSES ARE INCORPORATED IF THIS AGREEMENT EXCEEDS \$2,000:

Clause Number	Title and Date	Instructions
FAR 52.222-6	Construction Wage Rate Requirements (MAY 2014)	The required poster is available at: https://www.dol.gov/whd/regs/compliance/posters/davis.htm
FAR 52.222-7	Withholding of Funds (MAY 2014)	None.
FAR 52.222-8	Payrolls and Basic Records (MAY 2014)	None.
FAR 52.222-9	Apprentices and Trainees (JUL 2005)	None.
FAR 52.222-10	Compliance with Copeland Act Requirements (FEB 1988)	None.
FAR 52.222-11	Subcontracts (Labor Standards) (MAY 2014)	None.
FAR 52.222-12	Contract Termination - Debarment (MAY 2014)	None.
FAR 52.222-13	Compliance with Construction Wage Rate Requirements and Related Regulations (MAY 2014)	None.
FAR 52.222-14	Disputes Concerning Labor Standards (FEB 1988)	None.
FAR 52.222-15	Certification of Eligibility (FEB 1988)	None.
FAR 52.222-16	Approval of Wage Rates (FEB 1988)	None.
FAR 52.222-55	Minimum Wages Under Executive Order 13658 (DEC 2015)	Applies if this Agreement exceeds \$2,000 or a portion of the work identified is covered by the Davis-Bacon Act.
FAR-52.232-39	Unenforceability of Unauthorized Obligations (JUN 2013)	None.

THE FOLLOWING CLAUSE IS INCORPORATED IF THIS AGREEMENT EXCEEDS \$3,500:

Clause Number	Title and Date	Instructions
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FAR 52.222-54	Employment Eligibility Verification (OCT 2015)	Not applicable to COTS (as COTS is defined by the FAR).
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THE FOLLOWING CLAUSES ARE INCORPORATED IF THIS AGREEMENT EXCEEDS \$10,000:

Clause Number	Title and Date	Instructions
FAR 52.222-3	Convict Labor (JUN 2003)	None.
FAR 52.222-21	Prohibition of Segregated Facilities (FEB 1999)	Applies if FAR 52.222-26 Equal Opportunity applies.
FAR 52.222-23	Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction (FEB 1999)	Applies if FAR 52.222-26 Equal Opportunity applies and the amount of the Agreement is expected to be in excess of \$10,000.
FAR 52.222-26	Equal Opportunity (MAR 2007)	Applies if twelve (12) month aggregate value of Seller's federal contracts and subcontracts exceeds \$10,000, unless exempted per FAR Subpart 22.807. The required poster is available at: http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm
FAR 52.222-27	Affirmative Action Compliance Requirements for Construction (FEB 1999)	Applies if FAR 52.222-26 Equal Opportunity applies and the amount of the Agreement is expected to be in excess of \$10,000.
FAR 52.222-29	Notification of Visa Denial (JUN 2003)	Applies if FAR 52.222-26 Equal Opportunity applies and Seller is required to perform in or on behalf of a foreign country.
FAR 52.222-40	Notification of Employee Rights Under the National Labor Relations Act (DEC 2010)	Applies if Agreement will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009.
FAR 52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011)	None.

THE FOLLOWING CLAUSES ARE INCORPORATED IF THIS AGREEMENT EXCEEDS \$15,000:

Clause Number	Title and Date	Instructions
FAR 52.222-20	Walsh-Healey Public Contracts Act (OCT 2010)	None.
FAR 52.222-36	Equal Opportunity for Workers With Disabilities (JUL 2014)	Applies if Agreement exceeds or is expected to exceed \$15,000.

THE FOLLOWING CLAUSE IS INCORPORATED IF THIS AGREEMENT EXCEEDS \$30,000:

Clause Number	Title and Date	Instructions
FAR 52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards (OCT 2016)	None.

THE FOLLOWING CLAUSE IS INCORPORATED IF THIS AGREEMENT EXCEEDS \$35,000:

Clause Number	Title and Date	Instructions
FAR 52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (OCT 2015)	None.

THE FOLLOWING CLAUSE IS INCORPORATED IF THIS AGREEMENT EXCEEDS \$100,000:

Clause Number	Title and Date	Instructions
DEAR 970.5227-5	Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)	"Government" shall mean the "United States Government" and "Contracting Officer" shall mean the "DOE/NNSA Contracting Officer for Prime Contract DE-NA0001942" with Company. With respect to each notice or claim of, or suit against Company on account of, any alleged patent or copyright infringement based on the performance

		of the Agreement, Company shall be entitled to the same notices, cooperation, and assistance as is afforded the Government under this clause.
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THE FOLLOWING CLAUSES ARE INCORPORATED IF THIS AGREEMENT EXCEEDS \$150,000:		
Clause Number	Title and Date	Instructions
FAR 52.203-7	Anti-Kickback Procedures (OCT 2010), except paragraph (c)(1)	Paragraph (c)(1) does not apply.
FAR 52.203-12	Limitation on Payments to Influence Certain Federal Transactions (OCT 2010)	“Government” retains its meaning.
FAR 52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation (JUL 2005)	None.
FAR 52.222-35	Equal Opportunity for Veterans (OCT 2015)	Applies if Agreement <i>equals</i> or exceeds \$150,000.
FAR 52.222-37	Employment Reports on Veterans (FEB 2016)	Applies if FAR 52.222-35 applies.

THE FOLLOWING CLAUSES ARE INCORPORATED IF THIS AGREEMENT EXCEEDS \$250,000:		
Clause Number	Title and Date	Instructions
FAR 52.203-6	Restrictions on Subcontractor Sales to the Government (SEP 2006)	None.
FAR 52.203-17	Contractor Employee Whistleblower Rights and Requirements to Inform Employees of Whistleblower Rights (APR 2014)	None.
FAR 52.215-2	Audit and Records - Negotiation (OCT 2010)	None.
FAR 52.219-8	Utilization of Small Business Concerns (JUL 2013)	Applies if Agreement amount is expected to exceed \$250,000 unless performed entirely outside of the United States and its outlying areas.
FAR 52.242-13	Bankruptcy (JUL 1995)	None.
FAR 52.247-63	Preference for U.S. Flag Air Carriers (JUN 2003)	Applies if the Agreement involves international air transportation.
UCN-22646	Sustainable Acquisition Program— Construction (DEC 2018) (Company)	Applies to first-tier subcontracts that exceed \$250,000 and offer significant opportunities for designating energy efficient or environmentally sustainable products or services in the materials selection process.

THE FOLLOWING CLAUSES ARE INCORPORATED IF THIS AGREEMENT EXCEEDS \$500,000:		
Clause Number	Title and Date	Instructions
FAR 52.204-14	Service Contract Reporting Requirements (OCT 2016)	Applies if this Agreement has an estimated total value of \$500,000 or greater, except for indefinite-delivery Agreements.
FAR 52.204-15	Service Contract Reporting Requirements for Indefinite-Delivery Contracts (OCT 2016)	Applies to indefinite-delivery Agreements with an estimated total value of \$500,000 or greater.
DEAR 952.226-74	Displaced Employee Hiring Preference (JUN 1997)	None.
DEAR 970.5226-2	Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for FY 1993 (DEC 2000)	None.

THE FOLLOWING CLAUSE IS INCORPORATED IF THIS AGREEMENT EXCEEDS \$1,000,000:		
Clause Number	Title and Date	Instructions
UCN-22526	Bid Escrow Documents (JUL 2018) (Company)	Applies to all fixed priced agreements (except COTS) exceeding \$1,000,000, including any task release that exceeds \$1,000,000 under a Basic Ordering Agreement. The total value of the base award plus all option periods shall be used to determine whether the \$1,000,000 threshold is met.

THE FOLLOWING CLAUSE IS INCORPORATED IF THIS AGREEMENT EXCEEDS \$1,500,000:		
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Clause Number	Title and Date	Instructions
FAR 52.219-9	Small Business Subcontracting Plan (JAN 2017) (Alternate II) (NOV 2016)	Applicability in subcontracts other than small business concerns that offer subcontracting possibilities .

THE FOLLOWING CLAUSES ARE INCORPORATED IF THIS AGREEMENT EXCEEDS \$2,000,000:

Clause Number	Title and Date	Instructions
FAR 52.215-10	Price Reduction for Defective Cost or Pricing Data (AUG 2011)	None.
FAR 52.215-12	Subcontractor Certified Cost or Pricing Data (OCT 2010)	None.
FAR 52.215-13	Subcontractor Certified Cost or Pricing Data - Modifications (OCT 2010)	None.
UCN-22380	Cost Accounting Standards – Clauses (Company) (FEB 2019)	Ref. FAR 52.230-2.

THE FOLLOWING CLAUSES ARE INCORPORATED IF THIS AGREEMENT EXCEEDS \$5,500,000:

Clause Number	Title and Date	Instructions
FAR 52.203-13	Contractor Code of Business Ethics and Conduct (OCT 2015)	Applies if the period of performance is 120 days or more.
FAR 52.203-14	Display of Hotline Poster(s) (b)(3)(OCT 2015)	Required poster is: 'DOE Hotline Poster http://energy.gov/ig/downloads/office-inspector-general-hotline-poster '

THE FOLLOWING CLAUSE IS INCORPORATED IF THIS AGREEMENT EQUALS OR EXCEEDS \$6,932,000:

Clause Number	Title and Date	Instructions
FAR 52.225-11	Buy American Act - Construction Materials under Trade Agreements (OCT 2016)	Include ALTI (MAY 2014) in Agreements valued at less than \$10,441,216.

THE FOLLOWING CLAUSE IS INCORPORATED IF THIS AGREEMENT REQUIRES PRINTING (AS DEFINED IN TITLE I, DEFINITIONS OF THE U.S. GOVERNMENT PRINTING AND BINDING REGULATIONS):

Clause Number	Title and Date	Instructions
DEAR 970.5208-1	Printing (DEC 2000)	“Government” retains its meaning.