

GENERAL TERMS & CONDITIONS
Fixed-Price Architect-Engineer Services
(FPAE 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 (Y-12) 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, AVID 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 contracts and make related determinations and findings on behalf of Company.
- (g) Subcontract Technical Representative means the duly authorized Company representative who provides technical direction to Seller in 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” or “Commercial Component” means 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 in 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. 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.

4. 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.

5. INDEPENDENT CONTRACTOR [Oct 2017]

(a) Seller shall act in performance of this Agreement as an independent contractor and not as an agent for Company or the Government in performing this Agreement, 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, the Defense Priority is 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:

- 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) Flow down – 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 contracts 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/>. Seller 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 subcontractor’s 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. AUTHORIZATION AND CONSENT (Ref. 52.227-1) [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 authorization and consent.

17. PATENT INDEMNITY (Ref. FAR 52.227-3, DEC 2007) [Apr 2021]

(a) Seller shall indemnify Company and the Government and their officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this Agreement, or out of the use or disposal by or for the account of Company or the Government of such supplies or construction work.

(b) This indemnity shall not apply unless Seller shall have been informed as soon as practicable by Company or Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to—

(1) An infringement resulting from compliance with specific written instructions of Company directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the Agreement not normally used by Seller;

(2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or

(3) A claimed infringement that is unreasonably settled without the consent of Seller, unless required by final decree of a court of competent jurisdiction.

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

(a) Definitions - As used throughout this Article, 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 above in this paragraph.

(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 sellers 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 Article; and Seller agrees, in the event of the refusal of the applicable taxing authority to accept such evidence of exemption, (1) promptly to notify 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 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, 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 Company under this agreement: Provided, however, that Seller shall not be required to apply for such refund or drawback unless so requested by Company.

20. PAYMENT [Apr 2021]

(a) Estimates shall be made monthly of the amount and value of the work performed by Seller that meets the standards of quality established under this Agreement. The estimates shall be prepared by Seller and accompanied by any supporting data required by the Procurement Representative.

(b) Upon approval of the estimate by Company, payment upon properly executed vouchers shall be made to Seller, as soon as practicable, of 90 percent of the approved amount, less all previous payments; *provided*, that payment may be made in full during any months in which the Procurement Representative determines that performance has been satisfactory. Also, whenever the Procurement Representative determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of Company, the Procurement Representative may release the excess amount to Seller.

(c) Before final payment under the Agreement, or before settlement upon termination of the Agreement, and as a condition precedent thereto, Seller shall execute and deliver to the Procurement Representative a release of all claims

against Company arising under or by virtue of the Agreement, other than any claims that are specifically excepted by Seller from the operation of the release in amounts stated in the release.

(d) A final invoice shall be submitted for payment no more than 90 calendar days following the expiration or termination of the Agreement, 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 Agreement 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.

(e) For items subject to inspection or testing as a condition of acceptance, Company may in its sole discretion pay invoices prior to acceptance subject to repayment if the items are not accepted. The payment for items, either wholly or in part, shall not be deemed or construed as acceptance.

21. TRAVEL REIMBURSEMENT [Apr 2021]

If travel is a line item of the subcontract, Seller will be reimbursed for travel expenses in accordance with Company "Travel Reimbursement Policy" Article, which is incorporated by reference, up to the amount allowed by the Article or any ceiling amount specified in the line item of the Agreement, whichever is less.

22. INTEREST [Apr 2021]

[This Article does not apply if Seller is a nonprofit organization or a state or local government or instrumentality.] All amounts that become payable to Company by Seller under this Agreement 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. 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.

23. 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 Procurement Manger 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.

24. 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.

25. 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.

26. COMMENCEMENT, PROGRESS AND COMPLETION OF WORK [Oct 2017]

Seller shall furnish sufficient personnel, equipment, and facilities and shall work such hours to assure prosecution of the work to completion in accordance with specified Agreement milestones. Seller shall, from time to time, be required to provide to Company for approval an original and subsequently updated schedule showing all activities and sequence of operations needed for the orderly performance and completion of the work in accordance with specified Agreement milestones. Seller shall adhere to the approved Agreement schedule, submitting periodic progress reports and/or proposed schedule changes in the form and manner directed by Company.

27. DESIGN WITHIN FUNDING LIMITATIONS [Apr 2021]

(a) Seller shall accomplish the design services required under this Agreement so as to permit the award of a subcontract for construction of the facilities designed at a price that does not exceed the estimated construction subcontract price set forth in this Agreement. When bids or proposals for the construction subcontract are received that exceed the estimated price, Seller shall perform such redesign and other services as are necessary to permit subcontract award within the funding limitation. These additional services shall be performed at no increase in the price of this Agreement. However, Seller shall not be required to perform such additional services at no cost to Company if the unfavorable bids or proposals are the result of conditions beyond its reasonable control.

(b) Seller will promptly advise the Procurement Representative if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, Company will review Seller's revised estimate of construction cost. Company may, if it determines that the estimated construction subcontract price set forth in this Agreement is so low that award of a construction subcontract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction subcontract price set forth in this Agreement, or Company may adjust such estimated construction subcontract price. When bids or proposals are not solicited or are unreasonably delayed, Company shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids or proposals to determine compliance with the funding limitation.

28. RESPONSIBILITY OF THE ARCHITECT-ENGINEER [Apr 2021]

(a) Seller shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by Seller under this Agreement. Seller shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

(b) Neither Company's review, approval or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Seller shall be and remain liable to Company in accordance with applicable law for all damages to Company caused by Seller's negligent performance of any of the services furnished under this Agreement.

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

(d) If Seller is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

29. SELLER-FURNISHED DESIGN AND TECHNICAL DOCUMENTS [Oct 2017]

(a) Seller shall prepare its design, drawings, specifications, and other technical requirements using the Scope of Work, technical documents, and drawings as a basis. Company will, at the times and places specified by Company, convene meetings to review Seller's progress. Seller shall provide qualified technical personnel to participate in such reviews.

(b) Company shall transmit comments and instructions to Seller as a result of such meetings or other document reviews. Seller shall promptly respond to these comments and instructions and, at Company's direction, resubmit any documents and/or reconvene for additional progress review. On resubmittal of additional review, Seller shall direct specific attention to revisions other than those covered by Company in its comments and instructions.

30. WORK OVERSIGHT [Apr 2021]

The extent and character of the work to be done by Seller shall be subject to the general oversight, supervision, direction, control, and approval of Company.

31. REQUIREMENTS FOR REGISTRATION OF Designers [Oct 2017]

Architects or engineers registered to practice in the particular professional field involved in a State, the District of Columbia, or an outlying area of the United States shall prepare or review and approve the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work.

32. STANDARDS AND CODES [Apr 2021]

In case of any conflict between any referenced standards and codes and any Agreement provisions, 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.

33. 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.

34. 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

35. ASSIGNMENT OF CLAIMS [Apr 2021]

(a) Seller may assign its rights to be paid amounts due or to become due as a result of the performance of this Agreement to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence. Unless otherwise stated in this Agreement, payments to an assignee of any amounts due or to become due under this Agreement shall not be subject to reduction or setoff.

(b) Any assignment or reassignment authorized under this Article shall cover all unpaid amounts payable under this Agreement, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Agreement.

(c) Seller shall not furnish or disclose to any assignee under this Agreement any classified document (including this Agreement) or information related to work under this Agreement until the Procurement Representative authorizes such action in writing.

36. 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 claim 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.

37. STOP-WORK ORDER [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, the estimated cost, the fee, or a combination thereof, and in any other terms of the Agreement that may be affected, 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.

38. 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 revision 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 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 or recovery; or

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

39. EXCUSABLE DELAYS [Oct 2017]

(a) Neither Company nor Seller shall be liable to the other party for default to the extent its nonperformance is caused by an occurrence beyond its reasonable control and without its fault or negligence (an “Excusable Delay”), such as Acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, (subject to (b)), unusually severe weather, delays of common carriers, and in the case of Seller’s nonperformance, acts of the Government in either its sovereign or contractual capacity.

(b) Seller agrees that any strike, work stoppage, or labor dispute specifically related to work under this Agreement among Seller’s employees or its subcontractors’ employees are not Excusable Delays.

(c) If Company’s or Seller’s nonperformance is caused by the default of its subcontractor at any tier, and if the cause of the default is beyond the reasonable control of both the nonperforming party and its subcontractor, and without the fault or negligence of either, the nonperforming party shall be entitled to an Excusable Delay under this Article, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the nonperforming party to meet the required delivery schedule.

The party whose performance is affected by an Excusable Delay shall be granted schedule relief only to the extent it justifies and accounts for the claimed period of delay.

40. 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	Not Allowed	Not Allowed	1 st \$50,000.01 to \$100,000 -- 10 %

To Seller and subcontractors on work performed by other than their own forces (with certification; see Note 5)			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 (without 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 percentages.
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 ONE B, 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 Seller or the subcontractor performing the work.

(j) The Procurement Representative may make adjustments by unilateral modification to the Agreement (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 (1), shall be flowed down to all lower-tier subcontracts.

41. 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.

42. 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 when the supplies to be furnished are to be specially manufactured for Company in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery of supplies.

(4) Description of services to be performed.

(5) Time of performance of the services (*i.e.*, hours of the day, days of the week, etc.).

(6) Place of performance of the services.

(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 there from, 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.

43. 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 Agreement has been changed, either because of an ordered change or any other reason.

44. 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 A325, bolts, studs, cap screws, 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 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 Agreement.

(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 ANSI C 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.

(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 Agreement, 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 Seller. In addition to other rights provided by law or this Agreement, Company may reject the item or equipment provided by 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 Agreement, may result in an investigation by the OIG.

(i) Unauthorized Substitution

All equipment and material furnished shall be the exact item as described in this Agreement. 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.

45. 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 paragraph (f), shall be flowed down to all low-tier subcontracts.

46. 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.

(g) If this Agreement is to be performed outside the United States and its outlying areas, the words "Government" and "Government Property (wherever they appear in this Article)" shall be construed as "United States Government" and "United States Government Property" respectively.

47. TERMINATION [Apr 2021]

(a) Company may terminate this Agreement in whole or, from time to time, in part, for Company's convenience or because of the failure of Seller to fulfill the Agreement obligations. Company shall terminate by delivering to Seller a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, Seller shall—

(1) Immediately discontinue all services affected (unless the notice directs otherwise); and

(2) Deliver to the Procurement Representative all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process.

(b) If the termination is for the convenience of Company, the Procurement Representative shall make an equitable adjustment in the Agreement price but shall allow no anticipated profit on unperformed services. (c) If the termination is for failure of Seller to fulfill the Agreement obligations, Company may complete the work by contract or otherwise and Seller shall be liable for any additional cost incurred by Company.

(c) If, after termination for failure to fulfill Agreement obligations, it is determined that Seller had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Company.

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

48. SURVIVAL [Apr 2021]

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.

49. 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 Agreement, and "Contracting Officer" means Company's Procurement Representative.

(b) "Government" retains its meaning in:

(1) The phrases "Government property" and "Government-furnished property;"

(2) Exhibit 7 – Classified Inventions;

(3) Paragraph (a) of FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions;

(4) DEAR 970.5227-5, Notice and Assistance Regarding Patent and Copyright Infringement; and

(5) 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 52.222-50	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 52.225-13	Restrictions on Certain Foreign Purchases (JUN 2008)	None.
FAR-52.232-39	Unenforceability of Unauthorized Obligations (JUN 2013)	None.
FAR 52.244-6	Subcontracts for Commercial Items (DEC 2013)	None.
FAR 52.247-64	Preference for Privately Owned U.S.- Flag Commercial Vessels (FEB 2006)	None.
DEAR 952.204-71	Sensitive Foreign Nations Controls (MAR 2011)	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-22502	Exhibit 21 - Rights in Data – Facilities (UCN-22502) (OCT 2016) (Company)	None.
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 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-22433	Nuclear Hazards Indemnity and Price-Anderson Amendments Act (UCN-22433) (JUL 2017) (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 Data (Company – JUL 2014)	None.

THE FOLLOWING CLAUSES ARE INCORPORATED IF THE WORK INVOLVES ACCESS TO 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 (AUG 2016)	None.
DEAR 952.204-70	Classification/D016classification (SEP 1997)	None.
UCN-22381	Civil Penalties for Classified-Information Security Violations (JUL 2014) (Company)	None.
UCN-22508	Exhibit 7 Classified Inventions (MAY 2017) (Company)	“Government” retains its meaning.

THE FOLLOWING CLAUSES ARE INCORPORATED IF THIS AGREEMENT EXCEEDS \$2,500:

Clause Number	Title and Date	Instructions
FAR 52.222-41	Service Contract Labor Standards (MAY 2014)	None.
FAR 52.222-42	Statement of Equivalent Rates for Federal Hires (MAY 2014)	None.
FAR 52.222-43	Fair Labor Standards Act & Service Contract Labor Standards-Price Adjustment (Multi-Year & Option Contracts) (MAY 2014)	None.
FAR 52.222-44	Fair Labor Standards Act and Service Contract Labor Standards – Price Adjustment (MAY 2014)	None.

FAR 52.222-55	Minimum Wages Under Executive Order 13658 (DEC 2015)	Applies if this Agreement exceeds \$2,500 or a portion of the work identified is covered by the Service Contract Act.
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THE FOLLOWING CLAUSE IS INCORPORATED IF THIS AGREEMENT EXCEEDS \$3,500:		
Clause Number	Title and Date	Instructions
FAR 52.222-54	Employment Eligibility Verification (OCT 2015)	Not applicable to COTS (as COTS is defined by the FAR).

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 52.222-26	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 52.222-29	Notification of Visa Denial (JUN 2003)	None.
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-22645	Sustainable Acquisition Program (DEC 2018) (Company)	Applies to first tier subcontracts that exceed \$250,000 and offer significant opportunities for energy efficient or environmentally sustainable products or services.

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 FY1993 (DEC 2000)	None.

THE FOLLOWING CLAUSE IS INCORPORATED IF THIS AGREEMENT EXCEEDS \$750,000:		
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 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 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-Modification (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)	With a performance period of more than 120 days.
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 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.