GENERAL TERMS & CONDITIONS
Fixed-Price (FP OCTOBER 2018)

1. DEFINITIONS [OCT 2018]

The following terms shall have the meanings below:

(a) Government means the United States of America and includes the U. S. Department of Energy (DOE), the National Nuclear Security Administration (NNSA), or any duly authorized representative thereof.

(b) Company means Consolidated Nuclear Security, LLC acting under its Prime Contract No. DE-NA0001942 with DOE.

(c) Seller means Contractor, Subcontractor, Supplier, or Vendor, which can be either a person or organization that has entered into this Agreement with the 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 the Company.

(g) Subcontract Technical Representative means the duly authorized Company representative who provides technical direction to the 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) The term "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 [OCT 2017]

(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 – The Company, a Managing and Operating Contractor, acting under its Prime Contract with DOE, has entered into this Agreement with Seller for the benefit of DOE. 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 the 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 [OCT 2017]

(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. Company hereby objects to any terms and conditions contained in any acknowledgment of this Agreement that are different from or in addition to those mentioned in this Agreement.

(b) 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. All rights and obligations shall survive final performance of this Agreement.

5. COOPERATING WITH DOE OFFICE OF INSPECTOR GENERAL [OCT 2017]

(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. The 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.

6. REPORTING WASTE, FRAUD, AND ABUSE [OCT 2017]

(a) 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: Y12 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).

(b) 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.

(c) Flowdown - This Article shall flowdown to all lower-tier subcontracts.

7. PUBLIC RELEASE OF INFORMATION [OCT 2017]

(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 the Company in this Agreement may not be used in advertising or publicity without advance written approval of the Company.

(c) Flowdown - This Article shall flowdown to all appropriate lower-tier subcontracts.

8. CONFIDENTIALITY OF INFORMATION [OCT 2017]

(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, the 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 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 required 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 clause, 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 - This Article shall flowdown to all appropriate lower-tier subcontracts.

9. COMPLIANCE WITH LAWS [OCT 2017]

(a) In performing work under this Agreement, the 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 the Company, the Seller shall procure all necessary permits or licenses required for the performance of work under this Agreement.

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

10. DOE SECURITY BADGES AND CLEARANCE REQUIREMENTS (Y-12 Only) [OCT 2017]

(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 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 Complex.

(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 Y-12 Visitor Center 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 Complex.

(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. The employee must take the completed Checklist and badge to the Y-12 Visitor Center badging office. If the Y-12 Visitor Center 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 clause 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 Y-12 site 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) On the last Thursday of each month, Seller shall submit to the Company the Subcontract Badge/Clearance Status Report (UCN-21709). Seller shall ensure that all security badges issued to its employees and employees of its subcontractors at all tiers are recorded monthly.

11. WORKPLACE SUBSTANCE ABUSE PROGRAM (WSAP) [OCT 2017]

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

(c) Sub-tier contractors to Seller -- Seller shall include this requirement in its subcontracts with applicable lower tier subcontractors, and will require those subcontractors to include this requirement in their subcontracts, if the applicability standards listed in the "Applies to" section above are met. References to "Seller" include all lower tier subcontractors falling within the "Applies to" criteria listed in subparagraph (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 clause highlights certain provisions of 10 CFR Part 707, but Seller is directed to the entire provision to ensure compliance. The 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 clause 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 subparagraph (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 subcontractors employees not possessing a Facility Clearance) the WSAP shall so state. If Seller has employees in TDPs performing WSAP covered work, then prior to beginning work under this Agreement, Seller shall provide the Procurement Representative with a list of all TDP employees, and Seller's WSAP must comply with the provisions of 10 CFR Part 707 regarding TDPs. Thereafter, Seller shall notify the STR of any additions or deletions of employees in TDPs within 48 hours.

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

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

(i) Random drug testing at the rates specified in 10 CFR 707.7,

(ii) Drug testing as a result of an occurrence (see 10 CFR 707.9), and

(iii) Drug testing for reasonable suspicion of illegal drug use (see 10 CFR 707.10).

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

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

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

12. 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.

13. HOLD HARMLESS [OCT 2017]

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 THE 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 THE COMPANY. HOWEVER, SUCH LIABILITY AND INDEMNITY DOES NOT APPLY TO INJURY, DEATH, OR DAMAGE TO PROPERTY TO THE EXTENT IT ARISES FROM THE CONDUCT OF COMPANY.

14. LIABILITY FOR FINES AND PENALTIES [OCT 2017]

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

15. DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS [OCT 2017]

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 the Defense Priority is DO-E2.

16. EXPORT CONTROL [OCT 2018]

(a) The 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, the Seller must obtain required licenses or other approvals for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The 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) The 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) The Seller shall include this Article, including the paragraph (e) in subcontracts hereunder.

17. AUTHORIZATION AND CONSENT (Ref. FAR 52.227-1) [OCT 2017]

(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 the Company under this Agreement or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Seller or a subcontractor with (i) specifications or written provisions forming a part of this Agreement or (ii) specific written instructions given by the Company directing the manner of performance. The entire liability to the Government or the Company for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, 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) The Seller shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

18. PATENT INDEMNITY [OCT 2017]

(a) The Seller shall indemnify the 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 the Company or the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Seller shall have been informed as soon as practicable by the 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 the 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 the 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 the Seller, unless required by final decree of a court of competent jurisdiction.

19. PAYMENT [OCT 2018]

(a) The Company shall pay the Seller, upon the submission of proper invoices or vouchers (if required), the prices stipulated in this Agreement for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this Agreement. Unless otherwise specified in this Agreement, payment shall be made on partial deliveries accepted by the Company if the amount due on the deliveries warrants it.

(b) Unless otherwise provided, terms of payment shall be net 30 calendar days from the latter of (1) submission of Seller's proper invoice, if required (unless such invoice is not approved), or (2) delivery of supplies/completion of work if invoice is not required. Any offered discount shall be taken if payment is made within the discount period that Seller indicates. Payments may be made either by check or electronic funds transfer, at the option of Company. Payment shall be deemed to have been made as of the date of mailing or the date on which an electronic funds transfer was made.

(c) If an invoice is required under the terms of this subcontract, a final invoice shall be submitted for payment no more than 90 calendar days following the expiration or termination of the subcontract, unless a later or alternate date is agreed to in writing by the Procurement Representative. Said invoices shall be clearly marked "Final Invoice", thus indicating that all payment obligations of the Company under this subcontract have ceased and that no further payments are due or outstanding. If Seller fails to submit a final invoice within the time allowed, the Procurement Representative shall determine the final amount owed to the Seller, if any, or the final amount owed by the Seller to the Company. Such determination shall be final and conclusive between the parties without the right of judicial review unless the 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.

(d) 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.

20. TRAVEL REIMBURSEMENT [OCT 2017]

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

21. TAXES – FIXED-PRICE, FEDERAL, STATE AND LOCAL TAXES. [OCT 2017]

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

(1) The term "direct tax" means any tax or duty directly applicable to the completed supplies or services covered by this subcontract, or any other tax or duty from which the Seller or this transaction is exempt. It 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 subcontract. 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 "subcontract date" means the effective date of this subcontract if it is a negotiated subcontract, or the date set for the opening of bids if it is a subcontract entered into as a result of sealed bidding.

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

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

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

(e) Price Adjustment. If, after the subcontract 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 subcontract, or (2) refuses to accept the evidence of exemption, furnished under paragraph (d) hereof, with respect to any direct tax excluded from the

subcontract price, and if under either (1) or (2) the Seller is obliged to and does pay or bear the burden of any such tax (and does not secure a refund thereof), the subcontract price shall be correspondingly increased. If, after the subcontract date, the Seller is relieved in whole or in part from the payment or the burden of any direct tax included in the subcontract 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 subcontract, the Seller agrees promptly to notify the Company of such relief, and the subcontract price shall be correspondingly decreased or the amount of such relief paid over to the Company for the benefit of the Government. Invoices or vouchers covering any increase or decrease in the subcontract 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 subcontract price or the price as adjusted under paragraph (e) of this clause, and if the Seller is entitled to a refund or drawback by reason of the export or re-export of supplies covered by this subcontract, or of materials or components used in the manufacture or furnishing of the completed supplies or services covered by this subcontract, the Seller agrees that he will promptly notify the Company thereof and that the amount of any such refund or drawback obtained will be paid over to the Company for the benefit of the Government or credited against amounts due from the Company under this subcontract: Provided, however, That the Seller shall not be required to apply for such refund or drawback unless so requested by the Company.

22. INTEREST [OCT 2017]

(This clause 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 clause shall not apply to amounts due under a price reduction for defective cost or pricing data clause or a cost accounting standards clause.

23. ASSIGNMENT [OCT 2017]

(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.

24. ASSIGNMENT OF CLAIMS [OCT 2017]

(a) The 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 clause 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) The 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.

25. RESOLUTION OF DISPUTES [OCT 2018]

(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 meditation 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 the 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 clause, and be submitted to the 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 clause, 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 the 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 the Seller and I believe the Company is liable, and that I am duly authorized to certify the request on behalf of [the 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 and 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 clause, 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 subtier 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.

26. STOP-WORK ORDER [OCT 2017]

(a) Unless the provisions for stop work under the "Environmental, Safety and Health" clause apply, the Procurement Representative, may under this clause, 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, the Seller shall resume work. The Company shall make an equitable adjustment in the delivery schedule or price, or both, and the Agreement shall be modified, in writing, accordingly, if the stop-work order results in an increase in the time required for, or cost properly allocable to, performance of this Agreement. As a condition precedent to an equitable adjustment, Seller shall submit its request for equitable adjustment in writing to the Procurement Representative within 30 calendar days after the work stoppage ends.

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

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

27. SUSPENSION OF WORK [OCT 2018]

(a) The Procurement Representative may order the 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 the Company in the administration of this Agreement, or (2) by the 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 clause 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 the 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 clause shall not be allowed—

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

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

28. CHANGES [OCT 2017]

(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 the 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, the 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, the Company has the right to prescribe the manner of disposition of the property.

(c) Only the Procurement Representative is authorized on behalf of the 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 the 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 the Company is prejudiced by the late request. If the 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 the Seller considers a change to this Agreement has occurred because, for example: (i) the 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 the Company is prejudiced by the late request. If the 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 clause, including any disagreement with Company about an equitable adjustment, shall excuse Seller from proceeding with the Agreement as changed.

29. CHANGE ORDER ACCOUNTING [OCT 2017]

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, the 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 clause. This clause applies whenever Seller believes the subcontract has been changed, either because of an ordered change or any other reason.

30. DELAYS [OCT 2018]

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

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

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

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

(iii) name and function of Seller and Company individuals knowledgeable about the delay;
(iv) identification of documents and substance of oral communications involving the delay; and
(v) the particular elements of performance impacted by the delay, including
(a) adjustment in labor and/or materials,
(b) estimated resulting price and schedule adjustments, and
(c) time by which Company must respond to minimize cost, delay, or disruption to performance of the work. In no event shall Seller recover any delay costs incurred **prior to 14 calendar days** before Seller gives such written notice.

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

(b) Notwithstanding any other provision in this Agreement, Seller shall not be entitled to recover:
(i) profit for delay costs of any kind, including, but not limited to acceleration extended costs and loss of efficiency or productivity, regardless of the theory of recovery; or
(ii) home office overhead, whether unabsorbed, under-absorbed, extended, or other basis.

(c) Excusable Delays—

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

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

31. LOSS OF PRODUCTIVITY [OCT 2017]

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

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

(2) After initiating its request for adjustment, Seller shall attend the weekly productivity meeting addressed in paragraph (b). The purpose of the weekly meetings is to enable BUYER to verify the loss of productivity claimed by SELLER, and to allow both parties to work together to mitigate future loss of productivity.

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

(2) At the weekly productivity meeting, Seller and each subcontractor to Seller shall address:
(i) any loss of productivity incurred during the prior week;
(ii) specifics regarding that loss of productivity; and
(iii) how to mitigate or avoid that loss in the current week and future weeks.

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

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

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

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

32. ADJUSTMENTS [OCT 2018]

(a) Clauses 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 of $50,000 or greater, 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 the 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 the Seller and I believe the Company is liable, and that I am duly authorized to certify the request on behalf of [the 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 clause.

(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 $50,000; however, the table does apply to related requests below $50,000 that when aggregated equal or exceed $50,000 and to requests below $50,000 when first submitted but amended to equal or 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	As negotiated	As negotiated (Subject to Note 2 below)	Not Applicable
Category One B To Seller and subcontractors on work performed with their own forces negotiated after commencement of work	10 % (see Note 3 below)	10 % (Subject to Note 2 below)	Not Applicable
Category Two To Seller and subcontractors on work performed by other than their own forces	Not Allowed	Not Allowed	1st $50,000 to $100,000 -- 10 % Next $150,000 -- 8% Amount above $250,000 -- 6% **(with certification)** **(see Note 3 below)**
Category Three To Seller and subcontractors on work performed by other than their own forces	Not Allowed	Not Allowed	3% **(without certification)** **(see Note 3 below)**

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 percentage.
2. No profit is allowed under Category One (A and B) where recovery is sought under a clause (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 stated Commission in the table for Categories Two and Three.

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 applies where Seller or higher–tier subcontractor certifies the originating lower-tier subcontractor's request.
6. Category Three applies where Seller or higher-tier subcontractor does not certify the originating lower-tier subcontractor's request.

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

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

(k) For any Seller request for adjustment or equitable adjustment (or "Claim" under the Resolution of Disputes Article) exceeding $100,000, the 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) the Company without additional prior approval from Seller, the audited lower-tier subcontractor, or the NNSA.

(l) Flowdown - Seller shall include this Article, including this paragraph (l), in all lower-tier subcontracts.

33. GOVERNMENT PROPERTY [OCT 2017]

(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 the 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 the Agreement, the 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 clause 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 the Company or acquired by the 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, the 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 the 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 the 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 clause) shall be construed as "United States Government" and "United States Government Property" respectively.

34. WARRANTY OF SUPPLIES [OCT 2017]

(a) Definitions. As used in this clause—

"Acceptance" means the act of an authorized representative of the Company acknowledging that supplies conform with requirements of the Agreement.

"Supplies" means the end items furnished by the Seller and related services required under this Agreement.

(b) General. Notwithstanding acceptance by the Company or any provision concerning the conclusiveness thereof, the Seller warrants that for one year after delivery all supplies furnished under this Agreement will be free from defects in material or workmanship and will conform with all requirements of this Agreement.

(c) Remedies. (1) The Company shall give written notice to the Seller of any breach of warranties in paragraph (b) within 45 calendar days after discovery of the defect.

(2) Within a reasonable time after the notice, the Company may either—

(A) Require the prompt correction or replacement of supplies that do not conform with the requirements of this Agreement; or

(B) Retain such supplies and reduce the price by an amount equitable under the circumstances.

(3) When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Seller.

(4) Corrected or replaced supplies are subject to this clause to the same extent as supplies initially delivered. The warranty shall be equal in duration to that in paragraph (b) and shall run from the date of delivery of the corrected or replaced supplies.

(d) Sampling. (1) If the Agreement provides for inspection by sampling, conformance of supplies subject to warranty shall be determined by the sampling procedures in the Agreement. The Company—

(A) May, for sampling purposes, group any supplies delivered under this Agreement;

(B) Shall use a sample of the size required by the sampling procedures for the quantity of supplies on which warranty action is proposed;

(C) May project warranty sampling results over supplies in the same shipment or in other shipments; and

(D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.

(2) Within a reasonable time after notice of any breach of the warranties the Company may exercise one or more of the following options:

(A) Require an equitable adjustment in the price for any group of supplies.

(B) Screen the supplies grouped for warranty action under this clause at the Seller's expense and return nonconforming supplies to the Seller for correction or replacement.

(C) Return the supplies grouped for warranty action under this clause to the Seller (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement.

(e)(1) The Company may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Seller the cost occasioned to the Company thereby if the Seller—

(A) Fails to deliver corrected or replaced supplies within the time established for their return; or

(B) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 calendar days (or such longer period as the Company may authorize in writing) after receipt of notice from the Company specifying such failure.

(2) Instead of correction or replacement by the Company, the Company may require an equitable adjustment of the price. In addition, if the Seller fails to furnish timely disposition instructions, the Company may dispose of the nonconforming supplies for the Seller's account in a reasonable manner. The Company is entitled to reimbursement from the Seller, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(f) The rights of the Company in this clause are in addition to its rights under any other clause of this Agreement.

35. WARRANTY OF SERVICES [OCT 2017]

(a) Definition. "Acceptance," as used in this clause, means the act of an authorized representative of the Company approving specific services as partial or complete performance of the Agreement.

(b) Notwithstanding inspection and acceptance by the Company or any provision concerning the conclusiveness thereof, the Seller warrants that all services performed under this Agreement will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Agreement. The Company shall give written notice of any defect or nonconformance to the Seller within six months from the date of acceptance. This notice shall state either—

(1) That the Seller shall correct or reperform any defective or nonconforming services; or

(2) That the Company does not require correction or reperformance.

(c) If the Seller is required to correct or reperform, it shall be at no cost to the Company, and any services corrected or reperformed by the Seller shall be subject to this clause to the same extent as work initially performed. If the Seller fails or refuses to correct or reperform, the Company may, by contract or otherwise, correct or replace with similar services and charge to the Seller the cost occasioned to the Company thereby, or make an equitable adjustment in the price.

(d) If the Company does not require correction or reperformance, the Company shall make an equitable adjustment in the price.

36. SPECIFICATIONS, DRAWINGS AND OTHER TECHNICAL DATA [OCT 2017]

(a) Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Procurement Representative, who shall promptly make a determination in writing. Any adjustment by the Seller without such a determination shall be at its own risk and expense.

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

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

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

37. 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.

38. STANDARDS AND CODES [OCT 2017]

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

39. SUBCONTRACTORS, OUTSIDE ASSOCIATES, AND CONSULTANTS [OCT 2017]

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

40. SUSPECT/COUNTERFEIT ITEMS [OCT 2017]

(a) Definitions.

(1) "Suspect material" as used in this clause, 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 clause, 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) The 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 ripe, 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 the Seller to Company is subject to seizure and will not be returned to the Seller. The Seller shall replace any and all suspect or counterfeit material at no additional charge to Company.

(c) Fasteners.

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

(2) Any fasteners delivered under this contract 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 contract. 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 clause shall prohibit Company from requiring in this contract, 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, Suspect Fastener Headmark List.

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

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

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

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

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

(8) The 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 contract.

(g) Confirmation of Source and Performance Characteristics.

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

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

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

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

(3) Evidence of deliberate misrepresentation of any item(s) and/or component(s) or provision of any item specifically prohibited under this contract, may result in an investigation by the OIG.

(i) Unauthorized Substitution

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

41. DEFECT IDENTIFICATION AND REPORTING [OCT 2017]

(a) The 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 clause. The written report shall contain sufficient information to permit Company to evaluate the impact of such deficiencies.

(b) Notification of Defects. The 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 the Seller. The Seller shall include this Article in all subcontracts and purchase orders entered into under this Agreement.

42. TERMINATION FOR DEFAULT [OCT 2017]

(a)(1) The Company may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Seller, terminate this Agreement in whole or in part if the Seller fails to—

(i) Deliver the supplies or to perform the services within the time specified in this Agreement or any extension;
(ii) Make progress, so as to endanger performance of this Agreement (but see paragraph (a) (2) of this clause); or
(iii) Perform any of the other provisions of this Agreement (but see paragraph (a) (2) of this clause).

(2) The Company's right to terminate this Agreement under subdivisions (a) (1) (ii) and (1) (iii) of this clause, may be exercised if the Seller does not cure such failure within 10 calendar days (or more if authorized in writing by the Company) after receipt of the notice from the Company specifying the failure.

(b) If the Company terminates this Agreement in whole or in part, it may acquire, under the terms and in the manner the Company considers appropriate, supplies or services similar to those terminated, and the Seller will be liable to the Company for any excess costs for those supplies or services. However, the Seller shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Seller shall not be liable for any excess costs if the failure to perform the Agreement arises from causes beyond the control and without the fault or negligence of the Seller. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Seller.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Seller and subcontractor, and without the fault or negligence of either, the Seller shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Seller to meet the required delivery schedule.

(e) If this Agreement is terminated for default, the Company may require the Seller to transfer title and deliver to the Company, as directed by the Company, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs,

fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Seller has specifically produced or acquired for the terminated portion of this Agreement. Upon direction of the Company, the Seller shall also protect and preserve property in its possession in which the Company has an interest.

(f) The Company shall pay the Agreement price for completed supplies delivered and accepted. The Seller and the Company shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. The Company may withhold from these amounts any sum the Company determines to be necessary to protect the Company against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for convenience.

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

43. TERMINATION FOR CONVENIENCE [JULY 2018]

(a) The Company may terminate performance of work under this Agreement in whole or, from time to time, in part if the Company determines that a termination is in the Company's interest. The Company shall terminate by delivering to the Seller a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Company, the Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the Agreement.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Company, as directed by the Company, all right, title, and interest of the Seller under the subcontracts terminated, in which case the Company shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Company, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

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

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and

(ii) The completed or partially completed plans, drawings, information, and other property that, if the Agreement had been completed, would be required to be furnished to the Company.

(7) Complete performance of the work not terminated.

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

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

(c) The Seller shall submit complete termination inventory schedules no later than 120 calendar days from the effective date of termination, unless extended in writing by the Company upon written request of the Seller within this 120-day period.

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

(e) After termination, the Seller shall submit a final termination settlement proposal to the Company in the form and with the certification prescribed by the Company. The Seller shall submit the proposal promptly, but no later than six months from the effective date of termination, unless extended in writing by the Procurement Representative upon written request of the Seller within this six-month period. However, if the Company determines that the facts justify it, a termination settlement proposal may be received and acted on after one year or any extension. If the Seller fails to submit the proposal within the time allowed, the Company may determine, on the basis of information available, the amount, if any, due the Seller because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Seller and the Company may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in

paragraph (g)(3) of this clause, may not exceed the total Agreement price as reduced by (1) the amount of payments previously made and (2) the Agreement price of work not terminated. The Agreement shall be modified, and the Seller paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

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

(1) The Agreement price for completed supplies or services accepted by the Company (or sold or acquired under paragraph (b) (9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of—

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under paragraph (g)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Agreement if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Company under 49.202 of the Federal Acquisition Regulation, in effect on the date of this Agreement, to be fair and reasonable; however, if it appears that the Seller would have sustained a loss on the entire Agreement had it been completed, the Company shall allow no profit under this subdivision (g)(2)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

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

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

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

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

(1) All unliquidated advance or other payments to the Seller under the terminated portion of this Agreement;

(2) Any claim which the Company has against the Seller under this Agreement; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Seller or sold under the provisions of this clause and not recovered by or credited to the Company.

(l) If the termination is partial, the Seller may file a proposal with the Company for an equitable adjustment of the price(s) of the continued portion of the Agreement. The Company shall make any equitable adjustment agreed upon. Any such proposal by the Seller shall be requested within 90 calendar days from the effective date of termination unless extended in writing by the Company. If the Seller fails to submit such proposal within the time allowed, Company may determine the amount, if any, due Seller and pay that amount.

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

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

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

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

(2) If the Seller submits the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e), or (l), the Procurement Representative's determination under paragraph (e), (g), or (l) shall be final and conclusive without the right of judicial review unless the Seller submits a Claim requesting a final determination from the Company under the Resolution of Disputes clause within 60 calendar days after receipt of a determination under paragraph (e), (g), or (l).

44. SURVIVAL [OCT 2018]

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

45. CLAUSES INCORPORATED BY REFERENCE [OCT 2018]

(a) The clauses listed in paragraph (c) below are incorporated herein by reference. The texts of FAR and DEAR clauses are available at a variety of Internet Sites including URL: http://farsite.hill.af.mil/ and the texts of Company clauses are available at http://www.y12.doe.gov . Except as provided in (b) below, in the listed clauses "Contractor" means the Seller, "Government" means the Company, "Contract" means this Agreement, and "Contracting Officer" means the Company's Procurement Representative.

(b) "Government" retains its meaning in:

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

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

(3) DEAR 970.5208-1, Printing.

(c)(1) The following clauses are incorporated into this Agreement:

- FAR 52.211-5 Material Requirements (AUG 2000)
- 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)
- FAR 52.223-2 Affirmative Procurement of Bio-Based Products Under Service and Construction Contracts (SEPT 2013)
- FAR 52.223-7 Notice of Radioactive Materials (JAN 1997)
- FAR 52.223-15 Energy Efficiency and Energy Consuming Products (DEC 2007)
- FAR 52.223-16 IEEE 1680 Standard for Environmental Assessment of Personal Computer Products Alt I (DEC 2007)
- FAR 52.223-17 Affirmative Procurement of EPA Designated Items in Service and Construction Contracts (MAY 2008) .
- FAR 52.224-2 Privacy Act (APR 1984)
  (Applies to scope of work for system of records on individuals)
- FAR 52.225-13 Restrictions on Certain Foreign Purchases (JUN 2008)
- FAR 52.244-6 Subcontracts for Commercial Items (DEC 2013)
- FAR 52.246-2 Inspection of Supplies –Fixed Price (APR 1996)
- FAR 52.246-4 Inspection of Services – Fixed Price (AUG 1996)
- FAR 52.246-16 Responsibility of Supplies (APR 1984)
- FAR 52.247-64 Preference for Privately Owned U.S.- Flag Commercial Vessels (FEB 2006)
- DEAR 952.204-71 Sensitive Foreign Nations Controls (MAR 2011)
- DEAR 952.204-77 Computer Security (AUG 2006)
- Nuclear Hazards Indemnity and Price-Anderson Amendments Act (UCN-22433) (JUL 2017) (Company)
- Hazardous Material Identification and Material Safety Data (UCN-22480) (JUL 2014) (Company)
- Identification and Protection of UCNI/OUO Information (UCN-22414) (APR 2018) (Company)
- Travel Reimbursement Policy (UCN-22427) (NOV 2016) (Company)

(c)(2) The following clauses are incorporated when the Agreement exceeds $2,500:

- FAR 52.222-41 Service Contract Labor Standards (MAY 2014)
- FAR 52.222-42 Statement of Equivalent Rates for Federal Hires (MAY 2014)
- FAR 52.222-43 Fair Labor Standards Act & Service Contract Labor Standards-Price Adjustment (Multi-Year & Option Contracts (MAY 2014)
- FAR 52.222-44 Fair Labor Standards Act and Service Contract Labor Standards – Price Adjustment (MAY 2014)

(c)(3) The following clauses are incorporated when the Agreement exceeds $3,500:

- FAR 52.222-54 Employment Eligibility Verification (OCT 2015) (not applicable to COTS as defined by FAR)

(c)(4) The following clauses are incorporated when the Agreement exceeds $10,000:

- FAR 52.222-3 Convict Labor (JUN 2003)
- FAR 52.222-21 Prohibition of Segregated Facilities (FEB 1999)
- FAR 52.222-26 Equal Opportunity (MAR 2007) (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)
- FAR 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (DEC 2010)
- FAR 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011)
- FAR 52.225-1 Buy American Act --Supplies (FEB 2009)

(c)(5) The following clauses are incorporated when the Agreement exceeds $15,000:

- FAR 52.222-20 Walsh-Healey Public Contracts Act (OCT 2010)
- FAR 52.222-36 Equal Opportunity for Workers with Disabilities (JUL 2014)

(c)(6) The following clauses are incorporated when the Agreement exceeds $30,000:

- FAR 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (OCT 2016)

(c)(7) The following clauses are incorporated when the Agreement exceeds $35,000:

- FAR 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (OCT 2015)

(c)(8) 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:

- DEAR 952.204-2 Security (MAR 2011)
- DEAR 952.204-70 Classification/Declassification (SEP 1997)
- Exhibit 7 Classified Inventions (UCN-22508) (MAY 2017) (Company)
- Civil Penalties for Classified Information Security Violations (UCN-22381) (JUL 2014) (Company)

(c)(9) The following clauses are incorporated if this Agreement exceeds $100,000:

- DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)

(c)(10) The following clauses are incorporated if this Agreement exceeds $150,000:

- FAR 52.203-7 Anti-Kickback Procedures (OCT 2010), except paragraph (c)(1)
- FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (OCT 2010)
- FAR 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation (JUL 2005)
- FAR 52.222-35 Equal Opportunity for Veterans (OCT 2015)
- FAR 52.222-37 Employment Reports on Veterans (FEB 2016)
- Sustainable Acquisition Program (UCN-22645) (JUL 2014) (Company)

(c)(11) The following clauses are incorporated if this Agreement exceeds $250,000:

- FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (SEP 2006)
- FAR 52.203-17 Contractor Employee Whistleblower Rights and Requirements to Inform Employees of Whistleblower Rights (APR 2014)
- FAR 52.215-2 Audit and Records - Negotiation (OCT 2010)
- FAR 52.219-8 Utilization of Small Business Concerns (JUL 2013)
- FAR 52.242-13 Bankruptcy (JUL 1995)
- FAR 52.247-63 Preference for U.S. Flag Air Carriers (JUN 2003)

(c)(12) The following clauses are incorporated if this Agreement exceeds $500,000:

- DEAR 952.226-74 Displaced Employee Hiring Preference (JUN 1997)
- DEAR 970.5226-2 Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for FY1993 (DEC 2000)

(c)(13) The following clauses are incorporated if this Agreement exceeds $700,000:

- FAR 52.219-9 Small Business Subcontracting Plan (JAN 2017) (Alternate II) (NOV 2016)

(c)(14) The following clauses are incorporated if this Agreement exceeds $750,000:

- FAR 52.215-10 Price Reduction for Defective Cost or Pricing Data (AUG 2011)
- FAR 52.215-12 Subcontractor Certified Cost or Pricing Data (OCT 2010)
- FAR 52.215-13 Subcontractor Certified Cost or Pricing Data-Modification (OCT 2010)
- Cost Accounting Standards--Clauses (UCN-22380) (Company) (NOV 2016) Ref. FAR 52.230-2

(**c)(15) The following clause is incorporated if this Agreement exceeds $1,000,000:**

- Bid Escrow Documents (UCN-22526) (JUL 2018) (Company)

(c)(16) The following clauses are incorporated if this Agreement exceeds $5,500,000:

- 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) (DEC 2007) Required poster is: 'DOE Hotline Poster http://energy.gov/ig/downloads/office-inspector-general-hotline-poster'

(c)(17)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)

- DEAR 970.5208-1 Printing (DEC 2000)