

CONSOLIDATED NUCLEAR SECURITY, LLC

ADDITIONAL TERMS AND CONDITIONS

FOR

ACCESS TO PANTEX PLANT FOR 10 CFR 851 APPLICABILITY



Additional Terms and Conditions for Access to Pantex Plant for 10 CFR 851 Applicability

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1. ACCESS TO PANTEX PLANT

- (a) Personnel Access. All personnel of the Seller and its subcontractors who require access to the premises of Pantex Plant in performance of work under this contract will be subject to the security controls prescribed by the Government. Security and safety controls may be included in, but are not limited to, any Division Specifications applicable to the Agreement, the Purchase Order Schedule, the Company General Terms and Conditions, and these Additional Terms and Conditions for Access to the Pantex Plant. Participation in the Human Reliability Program (10 CFR 712) as outlined in Clause 7 may be required depending on the specific scope of work. Unless otherwise expressly provided in this Agreement, all Seller personnel engaged in the performance of work under this Agreement on the premises of Pantex Plant must be citizens of the United States of America. It is the responsibility of the Seller to ensure uncleared individuals employed or subcontracted under this Agreement are U.S. citizens. All Seller employees will be required to submit acceptable evidence of U.S. citizenship to Access Control prior to receiving Pantex Plant access approval, as identified in Appendix A of this document. Badges are the property of the US Government, are only for official business, and must be protected. Failure to comply with these requirements may result in denial of access to the site.
- (b) Acceptance of Personnel. Seller shall withdraw and replace any individual, including Seller or subcontractor employee assigned to work hereunder who, in the judgment of Company or the Department of Energy (DOE), is not qualified or desirable for such purpose. Requests for withdrawal or replacement may include, but are not limited to:
 - (1) Fitness to work criteria and health risk issues identified in pertinent standards appended to this statement of terms and conditions. These include, but are not limited to, applicable standards imposed through 10 CFR 851, 29 CFR 1910, 49 CFR 40 and/or implementing Company work instructions and standards. The Seller shall ensure that health services and medical evaluations are completed and restrictions are reported so that only qualified Seller employees are assigned work, as outlined in Clause 6, Seller Occupational Medicine, of this document.
 - (2) Due to the nature of work at the Pantex Plant, and for the safety and security of all personnel on the plant site, all Seller and lower tier Subcontractor employees must read, understand, and communicate in English at a level sufficient to understand all instructions that may be given during the performance of work and satisfactorily complete all training without assistance.
 - (3) The Seller is responsible for providing notification of the identity of any Seller employee to Company when that contracted employee is projected to spend 30 days or more working at any DOE facility in any 12-month rolling period or to be enrolled in a medical or exposure monitoring program required by 10 CFR 851 (Worker Safety and Health Rule). Withdrawal and/or replacement of any Seller or subcontractor employee may impact the level of services required under 10 CFR 851.
- (c) UPIV Determination. Seller personnel who require any combination of physical access or logical (cyber) access to the site for any period greater than 179 days in a given year, or as determined by Personnel Security, are subject to the requirements of

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Implementation of Uncleared Personal Identity Verification (UPIV) for Covered Seller Employees (UCN-26788).

- (d) Access control will be based upon location where work is to be performed, time duration for completion of the work, frequency of need for access, and other factors relative thereto. The type of control will be as outlined in (1) and/or (2) below as determined by Company; provided, however, that the type or method of control shall not constitute grounds for nonperformance of work specified in this Agreement.
- (1) Seller personnel engaged in the performance of work under this Agreement may require a security clearance granted by the DOE. The Seller shall, after receipt of notice of award, require personnel assigned to performance of work under this Agreement requiring a security clearance, to fill out and submit forms (provided by Company) through Company to the DOE for the purpose of investigation and processing for the granting of the security clearance. If not already cleared, the Seller shall propose a number of their personnel for clearance sufficient to assure their capability of accomplishing the work under this Agreement within the time limits specified, even though the processing time for clearance of one or more of the persons selected may extend beyond the scheduled date for beginning or completing the work. Notwithstanding the above requirements, the Seller may not request the clearance of their personnel who are not involved in performance of the work under this Agreement, and the Seller may not request the clearance of more of their employees than reasonably required and agreed upon by COMPANY as being required to meet the completion schedule for performance of the work under this Agreement. It is also agreed by the Seller that all clearances granted by the DOE shall be terminated upon completion of performance of work under this Agreement.
- (2) During the performance of work under this Agreement, restriction of the Seller's personnel from access to restricted data and other classified information will be accomplished by guard surveillance, or where the work location permits, without guard surveillance. However, this provision may not be construed to limit the Seller's responsibility of liability, should such occur, under Federal regulation and/or statute as provided in the "Security" clause.
- (e) Use of Pantex Plant Premises. In the absence of written authorization from the Company Procurement Representative, use of Pantex Plant premises by the Seller or its subcontractors of any tier, pursuant to access granted under this clause, shall be limited to work required by this Agreement to be performed on such premises. The use of the access privilege for any purpose other than to perform work required under this Agreement is prohibited and may be grounds for terminating this Agreement or for finding that an individual is unacceptable under paragraph (b) of this clause.
- (f) Notice Requirements for Employees Terminated or Reassigned by the Seller. The Seller shall (1) immediately notify the Company Procurement Representative and the Company Access Control Office if any Seller employees assigned to work under this Agreement are terminated for any reason or are assigned to other Seller non-Company

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work and will not work under this Agreement in the future and (2) ensure that any Seller employees who hold a security clearance check out through Access Control and receive a security termination briefing on the last day of assignment at the Pantex Plant and (3) ensure that any Seller employees identified under this paragraph surrender to the Company Access Control Office any Pantex Plant badge or other access documents when checking out through Access Control, or as soon as possible when requested.

2. ACCESS TO PANTEX PLANT COMPUTING RESOURCES

- (a) Seller personnel who are granted unescorted access to Pantex Plant computing resources are subject to the cyber security procedures outlined in this clause. Computing resources include but are not limited to remote dial-in; Argus personnel access booths; computer based training (CBT); the Internet, and desktop personal computers. The procedures are applicable to Seller personnel located at Pantex Plant or at the Seller's facility. If the Seller does not comply with the provisions of this clause, Company may withdraw the Seller's access to Pantex Plant computers and may also terminate this Agreement for default. Misuse of a Pantex Plant computer may be a violation of law and could result in appropriate action including prosecution.
- (b) Access to Pantex Plant computing resources by Seller personnel may be permitted as required to perform the Agreement Statement of Work. Pantex Plant computing resources may be used only to perform work authorized in the Agreement.
- (c) the Company and the Government unless provided otherwise in the Agreement.
- (d) Information or data furnished by Company or obtained from a Pantex Plant computer by Seller personnel must be protected by the Seller to prevent disclosure to any person other than Seller's employees having a need to know unless such disclosure is authorized in writing by the Company Procurement Representative.
- (e) Classified material or information shall be protected in accordance with the security provisions of the Agreement, if applicable. If this Agreement does not include security provisions and the Seller is furnished or comes in contact with classified material or information, it shall be reported immediately to the Company Procurement Representative.
- (f) Files of any other user may not be accessed without specific permission from that user.
- (g) Company reserves the right to monitor the use of computing resources or electronic communications by reviewing the contents of such data on Pantex Plant computers.
- (h) Computer passwords are created by individuals and must not be shared or written down. Computer passwords must be protected by each Seller employee to prevent disclosure or potential disclosure. The Seller must notify Company immediately so that corrective actions may be taken and a new password can be issued.
- (i) Seller personnel must have at least a background investigation before access is granted to Pantex Plant computer resources per NIST 800-53/CNSSI 1253. Seller Personnel must receive initial cyber security training by reading the Initial Cyber Security Briefing, and sign a PX-3864 for course 75.20, "Initial Cyber Security", course 75.31, "Code of Conduct Statement for Computer Users", and course 75.35, "NNSA Consent Form". Following the initial briefing, CBT course 75.37, "Cyber Security at Pantex" must also be completed within three weeks of the initial

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training if the personnel will be on Plant site longer than ten days. If the scope of work is longer than one year, Seller' employees must receive refresher training. Agreement with the Code of Conduct Statement is part of the refresher training.

- (j) Cyber Security will address off-normal or unusual situations on a case-by-case basis.

3. PROHIBITED ITEMS AT PANTEX PLANT

- (a) General. The prohibitions in this clause apply at the Pantex National Security Complex and at sites leased by Pantex.
- (b) Alcohol. Alcoholic beverages are prohibited.
- (c) Information Technology (IT) devices.
- (1) A current list of acceptable IT devices for use at Pantex is available to Seller and its employees on E-POL-0049 "CNS Safeguards and Security Prohibited and Controlled Articles". Seller agrees to review the list before entering this agreement and to check it periodically for updates before reporting for on-site work.
 - (2) Within Pantex's Limited Areas, Exclusion Areas, Material Access Areas, and Protected Areas (security areas designated by DOE for the protection of classified and other materials), all personally owned IT devices are prohibited without prior written approval obtained through the Subcontract Technical Representative (STR). The prohibited IT devices include, without limitation, cellular telephones, smart phones, personal digital assistants, personal electronic devices, pagers, and flash memory storage devices. Examples include the iPhone, iPod, iPad, Droid, BlackBerry, Evo, Pro Plus, Rogue, e-readers such as the Kindle or Nook, netbooks, and laptop computers. These are only examples and this list is not exhaustive.
 - (3) Personally owned IT devices may be taken into, and used in, Pantex's designated Property Protection Areas unless otherwise posted as prohibited. Seller must confirm with the STR whether a particular area is a Property Protection Area. However, if any IT device contains one of the following features, then that feature cannot be used at any time: (A) camera capability; (B) built-in recording capability; or (C) Wi-Fi connection to the Pantex networks, unless the STR has provided prior written approval.
 - (4) Personally owned IT devices may not be connected to Pantex networks or Pantex issued IT computing devices or components (i.e., printers) without prior written approval obtained through the STR. In no event may Pantex data be stored on personally owned IT devices.
 - (5) In the event of a personal emergency while within the Pantex NSC boundary, do not dial 911 from a cellular telephone. A personal cellular telephone may be used to contact the Plant Shift Superintendent's (PSS) office at 574-7172 for assistance. Dialing 911 from a cellular telephone does not contact the Pantex plant's emergency services and will therefore delay assistance.
 - (6) Seller employees must self-report to the STR any violation of these restrictions on IT devices.

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- (d) Dangerous instruments. Instruments likely to produce substantial injury to persons or property are prohibited. This prohibition includes:
- Bows and arrows
 - Explosive devices
 - Firearms and any ammunition
 - Knives with blades longer than three inches and switchblades
 - Stun guns, mace, pepper spray
 - Martial arts weapons and equipment
 - Weapons or simulated weapons
- (e) Media.
- (1) Use of any personally owned media, such as Universal Serial Bus (USB) flash memory drives, USB memory keys, memory sticks, compact discs, floppy discs, etc., is prohibited without prior written approval obtained through the STR. Approval will require, among other things, that the media or device be labeled according to Pantex guidance pertaining to data content type and thereafter properly accounted for and destroyed if required. In no event may Pantex data be stored on personally owned media.
 - (2) Government owned media that has been used in private personal computers may not be connected, attached, or inserted into any government device without prior written approval obtained through the STR.
- (f) Pagers. Two-way pagers are prohibited. One-way pagers and pagers with the capability for the user to select and transmit one of several manufacturers' pre-programmed responses (for example, "Message received") are allowed.
- (g) Transmitting, recording and photographic equipment. Transmitting, recording, or photographic equipment is prohibited without prior written approval obtained through the STR. Such equipment includes, but is not limited to:
- Cameras
 - Portable tape players
 - Portable two-way radios
 - Recording Devices
 - Video recorders
- (h) Wireless devices. The following devices are prohibited without prior written approval obtained through the STR:
- Cordless telephones

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- Devices with infrared, Bluetooth, or radio frequency (RF) capability; Bluetooth may, however, be used outside in facility parking lots designated as PPAs and while driving on Bear Creek Road and access road leading to or from PPA parking areas
 - Global Positioning System (GPS) units
 - Wireless local area networks (WLAN) and wide area networks (WANs)
 - Wireless mice and keyboards
 - Wireless-enabled computers, including laptop and netbook computers, in Limited Areas, Exclusion Areas, Material Access Areas, and Protected Areas
 - Wireless radios (such as Nextel)
 - Wireless wide area networks
 - Wireless audio-visual support equipment (such as wireless microphones, remote controls, headsets, and electronic white boards)
 - Wireless scanners and bar code readers
 - Wireless survey or testing equipment
 - Wireless tags
 - Wireless special purpose sensors and other wireless instruments
 - Wireless data acquisition equipment and data loggers
 - Wireless Wi-Fi or broadband cards in Limited Areas, Exclusion Areas, Material Access Areas, and Protected Areas
- (i) Subcontracts. The Seller must include this clause in lower-tier subcontracts requiring on-site work.
- 4. FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE (FOCI) OVER SELLER**
- (a) For purposes of this clause, a "foreign interest" is defined as any of the following:
- (1) A foreign government or foreign government agency;
 - (2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;
 - (3) Any form of business enterprise organized or incorporated under the laws of the U.S., or a State or other jurisdiction within the U.S., which is owned, controlled, or influenced by a foreign government, agency, firm, corporation, or person; or
 - (4) Any person who is not a U.S. citizen;
- (b) "Foreign ownership, control, or influence (FOCI)" means the situation where the degree of ownership, control, or influence over a Seller by a foreign interest is such that a reasonable basis

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- exists for concluding that compromise of classified information, special nuclear material as defined in 10 CFR Part 710, may result.
- (c) For purposes of this clause, "Seller" means any Subcontractor at any tier and the term "Company" shall mean Consolidated Nuclear Security (CNS), when this clause is included in a subcontract, the term "Contractor" shall mean subcontractor and the term "Contract" shall mean subcontract.
 - (d) The Seller shall immediately provide the Company Procurement Representative written notice of any changes in the extent and nature of FOCI over the Seller which would affect the answers to the questions presented in 48 CFR 952.204-73 (SF 328). Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the Company Procurement Representative and Facility Security Administrator.
 - (e) In those cases, where a Seller has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the DOE shall consider proposals made by the Seller to avoid or mitigate foreign influences.
 - (f) If Company at any time determines that the Seller is, or is potentially, subject to FOCI, the Seller shall comply with such instructions as Company shall provide in writing to safeguard any classified information or significant quantity of special nuclear material.
 - (g) The Seller agrees to insert terms that conform substantially to the language of this clause including this paragraph (g) in all subcontracts under this Agreement that will require a facility clearance. A facility clearance is an administrative determination that a company is eligible for access to classified information or award of a classified contract. Contract award may be made prior to the issuance of a facility clearance. In those cases, the Seller will be processed for a facility clearance at the appropriate level and must meet eligibility requirements for access to classified information. However, Seller personnel will not be afforded access to classified information until the facility clearance has been granted and their individual clearances have been attached to the registered activity. Additionally, the Seller shall require such subcontractor and their tier parents involved in subcontracts under this Agreement, whether at Pantex Site or at another facility which meet the aforementioned criteria, to submit Foreign Ownership, Control, or Influence Determination documents completed via the e-FOCI website. Such subcontracts or purchase orders shall not be entered into until such time that the subcontractor(s) and its tier parent(s) are notified of a favorable FOCI Determination being rendered and Facility Clearance granted.
 - (h) Information submitted by the Seller or any affected subcontractor as required pursuant to this clause shall be treated by the DOE and Company to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.
 - (i) The requirements of this clause are in addition to the requirement that a Seller obtain and retain security clearances for key management personnel as directed by DOE and the Seller or employees required by this Agreement. This clause shall not operate as a limitation on Company's rights, including its rights to terminate this Agreement.

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- (j) Company may terminate this Agreement for default either if the Seller fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with Company's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if, in Company's judgment, the Seller creates a FOCI situation in order to avoid performance or a termination for default. Company may terminate this Agreement for convenience if the Seller becomes subject to FOCI and for reasons other than avoidance of performance of the Agreement, cannot, or chooses not to, avoid or mitigate the FOCI problem.

5. DEAR 970.5223-1 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION: (DEC 2000) (MODIFIED)

- (a) For the purposes of this clause:
- (1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization.
 - (2) Work shall be performed in accordance with 10 CFR 851, Worker Safety and Health Program, which establishes the mandatory requirements for implementing the applicable functional areas, including at a minimum: construction safety; fire protection; firearms safety; explosives safety; pressure safety; electrical safety; industrial hygiene; occupational medicine; biological safety; and motor vehicle safety.
 - (3) Work performed under this Agreement shall comply with 10 CFR 851.20 through 851.27.
 - (4) Seller means the lowest tiered Seller with primary responsibility for the execution of all work described within a procurement or authorization document (e.g., statement of work, construction contract, and work order).
 - (5) Employees include subcontractor employees.
- (b) In performing work under this Agreement, the Seller shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Seller shall exercise a degree of care commensurate with the work and the associated hazards. The Seller shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the Seller's work planning and execution processes. The Seller shall, in the performance of work, ensure that:
- (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Seller and subcontractor employees managing or supervising employees performing work.
 - (2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.
 - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

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- (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
 - (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
 - (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
 - (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by Company and the Seller. These agreed-upon conditions and requirements are requirements of the Agreement and binding upon the Seller. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.
- (c) The Seller shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the Seller will:
- (1) Define the scope of work.
 - (2) Identify and analyze hazards associated with the work.
 - (3) Develop and implement hazard controls.
 - (4) Perform work within controls.
 - (5) Provide feedback on adequacy of controls and continue to improve safety management.
- (d) The System shall describe how the Seller will establish, document, and implement safety performance objectives, performance measures, and commitments in response to Company program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the Seller will measure system effectiveness.
- (e) The Seller shall submit to Company documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by Company. Guidance on the preparation, content, review, and approval of the System will be provided by Company. On an annual basis, the Seller shall review and update, for Company approval, its safety performance objectives, performance measures, and commitments consistent with and in response to Company's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the Seller's business processes for work planning, budgeting, authorization, execution, and change control.

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- (f) The Seller shall comply with, and assist Company in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this Agreement entitled "Laws, Regulations, and DOE Directives." The Seller shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this Agreement.
- (g) The Seller shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Seller fails to provide resolution or if, at any time, the Seller's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, Company may issue an order stopping work in whole or in part. Any stop work order issued by Company under this clause (or issued by the Seller to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of Company or the Government. In the event that Company issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of Company. The Seller shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- (h) Regardless of the performer of the work, the Seller is responsible for compliance with the ES&H requirements applicable to this Agreement. The Seller is responsible for flowing down the ES&H requirements applicable to this Agreement to subcontracts at any tier to the extent necessary to ensure the Seller's compliance with the requirements.
- (i) The Seller shall include a clause substantially the same as this clause in lower-tier subcontracts involving complex or hazardous work on site at a DOE-owned or-leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the Seller may choose not to require the subcontractor to submit a Safety Management System for the Seller's review and approval.

6. SELLER OCCUPATIONAL MEDICINE

- (a) All Sellers, as defined in 3(a)(4), performing work under this Agreement must provide Occupational Medicine services, in compliance with 10 CFR 851, Appendix A.8 (as provided in the specifications of this Agreement), to all workers employed under this Agreement. Seller's Management will only place qualified contract employees in a given job on the contract.

NOTE: In order to assist Sellers in complying with the 10 CFR 851 Occupational Medicine requirements, Seller may reference Implementation of 10 CFR 851 Requirements contained in E-SD-2009, Integrated Safety Management Program. E-SD-2009 is available at <https://pantex.energy.gov/suppliers/documents-and-forms>.

Additional information on 10 CFR 851, including frequently asked questions and answers, is available using The DOE's Office of Environment, Health, Safety and Security: 10 CFR 851 Worker Safety and Health website available at <https://www.energy.gov/ehss/worker-safety-and-health>.

- (b) The Seller shall include a clause substantially the same as this clause in all lower-tier subcontracts for performance of work under this Agreement.

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7. HUMAN RELIABILITY PROGRAM (HRP)

Work performed in restricted areas of the Pantex Plant may require Seller personnel, including subcontractors at any lower tier, to be included in the Human Reliability Program (HRP). The components of the Human Reliability Program (HRP) as outlined in 10 CFR 712 include supervisory review, medical assessment, psychological examination, initial testing and random testing thereafter for the use of illegal drugs or misuse of legally prescribed drugs, initial and random alcohol testing, management recommendation, and DOE security review and clearance determination. Seller personnel must successfully complete all of the above components to perform work in designated HRP positions.

8. WORKPLACE SUBSTANCE ABUSE PROGRAM

- (a) Drug-Free Workplace. Company is committed to providing a safe working environment and to maintaining the security of our mission. Toward that end, each individual performing work required by this Agreement, whether Seller or subcontractor at any lower tier, is entrusted to avoid misusing or abusing alcohol or licit drugs, and to abstain from using illicit drugs or intoxicants. Violation of this trust can result in removal from the Agreement, contract termination for default, and/or appropriate legal consequences.
- (1) No individual performing work required by this Agreement may buy, sell, use, or possess illegal drugs such as depressants, stimulants, hallucinogens, and other illegal substances either on or off the Pantex Plant Site. Pantex requires eight hours between consumption of alcohol and reporting for site work (8-Hour Rule). The use or possession of alcohol on Pantex Plant Site, or inappropriate use of alcohol while on Company business is similarly prohibited. Drug-related paraphernalia are not permitted on Pantex Plant Site.
 - (2) Any use of drugs (including misuse of prescribed substances) or alcohol that affects an individual's ability to perform his/her job can result in removal of the individual from the Agreement and/or other corrective action including Agreement termination for default. Elimination of personnel under this clause will not be deemed to be an excusable delay or a termination for convenience on the part of Company.
 - (3) Company reserves the right to require Seller personnel on Pantex Plant Site to cooperate in testing by Company for the use of illegal drugs or misuse of alcohol prior to assignment (pre-assignment) to Pantex Plant Site work, as the result of an incident, accident or occurrence, or where there appears to be cause or reasonable suspicion for such testing, as determined by Company personnel.
 - (4) In the event of a confirmed positive drug-screen, individuals have the right to have the split specimen tested at their own expense or the expense of their contracting organization. A breath-alcohol test confirmed as over 0.020 results in the individual being removed from the Pantex Plant Site for twenty-four (24) hours. A second test, given for any of the reasons stated above, for which results are confirmed to be over 0.020, will result in the individual being permanently removed from performance of work on the Pantex Plant Site. Those individuals identified as having a problem related

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to substance abuse, defined as breath-alcohol test over 0.040 or a confirmed positive illegal drug test will be permanently removed from performance of work on the Pantex Plant Site.

- (b) Pre-assignment and Random Drug Testing. All Seller personnel, including subcontractors at any lower tier, who have a requirement for unescorted access to Pantex Plant and are assigned to "designated positions", are subject to Company's pre-assigned drug testing and random drug testing programs.
- (1) The Seller shall notify the Company Procurement Representative at least forty-eight (48) hours prior to badging of those personnel assigned to designated positions.
 - (2) The designated positions subject to pre-assignment, reasonable suspicion, as a result of an incident (accident for DOT), or random drug and breath alcohol testing are:
 - (A) Positions that entail critical duties that require Seller personnel to perform work that affords both technical knowledge of and access to nuclear explosives sufficient to enable the individual to cause a detonation (high explosive or nuclear), in what is commonly known as the Human Reliability Program (HRP). HRP personnel shall be subject to the drug and alcohol testing standards of this part and any additional requirements of the HRP.
 - (B) Positions identified by the Seller which entail duties where failure of Seller personnel adequately to discharge his or her position could significantly harm the environment, public health or safety, or national security, such as:
 - Pilots.
 - Firefighters.
 - Protective force personnel in positions involving use of firearms where the duties also require potential contact with, or proximity to, the public at large.
 - Personnel directly engaged in construction, maintenance, or operation of nuclear reactors.
 - Personnel directly engaged in production, use, storage, transportation, or disposal of hazardous materials sufficient to cause significant harm to the environment or public health and safety.
 - (C) Other positions determined by Company, after consultation with the Seller, to have the potential to significantly affect the environment, public health and safety, or national security.
 - (D) A position otherwise subject to testing under this part may be exempted from such testing if it is within the scope of another comparable Federal drug testing program, as determined by DOE, after consultation with the Seller, to avoid unnecessary multiple tests.
 - (3) Seller personnel assigned to "designated positions" shall report to the Pantex Medical Office located on the first floor of the John C. Drummond Center (JCDC), for pre-

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assignment drug and breath-alcohol testing. Any individual with a confirmed positive pre-assignment drug or breath-alcohol test may not be assigned to perform work at Pantex Plant.

- (4) Seller personnel assigned to "designated positions" will be included in the Company pool for random selection for drug and breath-alcohol testing. In the event of a confirmed positive random drug test, or exceeding the maximum allowable limit of a breath-alcohol test, the Seller will be notified and shall promptly remove such personnel from the Pantex Plant Site and surrender to the Company Access Control Office in Building 16-12, any Pantex Plant badge or other access documents within five (5) calendar days of termination. Any individual with a confirmed positive pre-assignment drug test, or exceeding the maximum allowable limit for a breath-alcohol test, may not be assigned to perform work at Pantex Plant.

NOTE: Seller employees who do not consent to a requested drug or breath alcohol test provided for under this clause or other provisions of this Agreement (if any), must be removed from the Pantex Plant Site and any further performance of work under this Agreement. Elimination of personnel under this clause will not be deemed to be an excusable delay or a termination for convenience on the part of Company.

- (c) Application to Lower Tier Sellers. The Seller shall insert the provisions of this clause with the parties appropriately identified, including this paragraph, in all subcontracts where the subcontractor at any tier is performing work required by this Agreement.

9. DEAR 952.223-72 RADIATION PROTECTIONS AND NUCLEAR CRITICALITY: (APR 1984) (MODIFIED)

The Seller shall take all reasonable precautions in the performance of work under this Agreement to protect the safety and health of their employees, Pantex Plant employees, and members of the public against the hazards of ionizing radiation and radioactive materials and shall comply with all applicable radiation protection and nuclear criticality safety requirements (including reporting requirements) of the DOE, and Pantex Radiation Protection Program, as implemented by the Pantex Radiological Controls Manual. No minor employee (under 18 years old) of the Seller or lower tier subcontractor shall be used for work at the Pantex Plant for operations or locations where there exists the possibility of exposure to ionizing radiation. If required by the Agreement or requested by the Company Procurement Representative, the Seller shall submit a management program and implementation plan to Company for review and approval within 30 days after the effective date of this Agreement or modification. In the event that the Seller fails to comply with said conditions of the Pantex Radiological Protection Program standards and requirements of the DOE, the Company Procurement Representative may, without prejudice to any other legal or contractual rights of Company or the DOE, issue an order stopping all or any part of the work. Thereafter, a start order for resumption of the work may be issued at the discretion of Company. The Seller shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

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10. DEAR 952.223-75PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS: (APR 1984) (MODIFIED)

Individual occupational radiation exposure records generated in the performance of work under this Agreement shall be subject to inspection by the DOE and shall be preserved by Company until disposal is authorized by the DOE or at the option of Company delivered to the DOE upon completion or termination of the Agreement. Prior to commencement of work, records of individual occupational radiation doses for employees in previous programs shall be provided to Company for all Seller and lower tier subcontractor employees. Access to the Pantex Plant and work under this Agreement shall be subject to submittal of these records of radiation doses, and the determination by Company or the DOE that the cumulative doses of an individual Seller employee permit work under this Agreement.

11. NOTIFICATION AND REPORTING BY SELLER FOR OCCURRENCES

(a) Seller and subcontractor personnel shall immediately (a period of time specifically agreed to not exceed 1 hour) notify Company's Emergency Operations Center of any event, condition, noncompliance, or programmatic breakdown as defined in 10 CFR 851, 10 CFR 830, or 10 CFR 835 which comes to their attention by calling 477-5000. Additionally, Company's Technical Representative, and/or his or her designee, shall be notified. An event or condition is defined as:

- "Event," a real-time occurrence which is unusual or which results in disruption of services, the work, or operating conditions. Some examples of events include injuries, accidents, near misses, potential environmental releases, a pipe break, valve failure, water leak, loss of power, etc.
- "Condition," any as-found circumstance, whether or not resulting from an event, which may have adverse safety, health, quality assurance, security, operation, or environmental implications (e.g., the discovery of a chemical spill, location of asbestos during demolition work, a wrecked construction vehicle, and/or lost or stolen equipment, etc.)
- "Repetitive or recurring noncompliance," a noncompliance or closely similar noncompliance that continues to occur, indicating the corrective action, including root cause determination, has not been effective.
- "Programmatic Breakdown," several noncompliances have occurred that are related but not identical, indicating a common breakdown in a program or program area. These noncompliances might have a common cause indicating a programmatic weakness. A programmatic breakdown generally involves some weakness in administrative or management controls, or their implementation, to such a degree that systematic problems occur. This weakness might be identified as part of the root cause determination for a single event.

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- (a) Seller and subcontractor personnel shall immediately stop operations associated with an event, preserve the location in the condition it was in at the time of the event, and assist Company in any subsequent investigation(s).
- (b) Seller and subcontractor personnel shall take immediate and appropriate corrective actions to mitigate events or conditions that could adversely affect employees, the public, or the environment. Corrective actions will be associated with documented proof of completion.
- (c) If there is confusion or uncertainty as to whether an event or condition should be reported, the Seller or subcontractor shall immediately report the event or condition in accordance with the requirements set forth herein.

12. MAJOR BREACH OF SAFETY

Safety is freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to Company and is a material part of this Agreement. Company's safety priority is to protect: (1) the public; (2) the Pantex Plant workforce (including Seller employees working on Company subcontracts); and (3) Plant facilities, equipment, and property. A Major Breach of Safety may constitute a breach of contract that entitles Company to exercise any of its rights and remedies applicable to material parts of this Agreement, including termination. A Major Breach of Safety is an act or omission of the Seller (or lower-tier subcontractor) that causes a serious incident (accident or exposure resulting in serious consequences such as a lost time injury greater than 10 days, fatality, mission failure, or damage to Plant equipment or property greater than \$100,000). Company may determine that a Major Breach of Safety occurs when the Seller or lower-tier subcontractor causes repeated (three or more) incidents (accidents or exposures resulting in an OSHA recordable injury or damage to Plant equipment or property greater than \$10,000) within a period of twelve months. In determining whether repeated incidents have occurred, Company may consider all subcontracts for work at Pantex under which Seller is performing.

13. INDEMNIFICATION AND LIABILITY

- (a) The Seller shall comply, at the Seller's own expense, with all Federal, State, County, and municipal laws, codes, and regulations, if any, applicable to the work under this Agreement, and before starting any work, to secure all local and/or state licenses or permits required for the performance of work. Seller shall save Company and the Government harmless from all damages of any nature whatsoever that Company or the Government may suffer as a result of Seller's failure to do so.
- (b) All agents or employees furnished by the Seller for the performance of work under this Agreement shall, at all times and for all intents and purposes, be considered as Seller's agents or employees, and Seller shall be responsible for maintaining at all times suitable worker's compensation and occupational disease insurance, or self-insurance permitted by law, covering each person whose services are furnished under this Agreement. Seller shall assume full responsibility for and agrees to indemnify and save Company and the Government harmless from all losses, liability, and expenses, including attorney's fees, on account of injuries or accidents covered by laws concerning worker's compensation and occupational disease for persons providing services under this Agreement, or accidents, injuries, or damage to property

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- occurring to Seller's agents or employees or others (including Company, the DOE, and their agents and employees) by reason of any negligent or willful acts or omissions of Seller's agents or employees.
- (c) The Seller certifies by acceptance of this Agreement that all work performed hereunder shall be in compliance with the requirements of 10CFR 851, Worker Safety and Health Program, and pursuant to this clause of the Agreement, agree to indemnify and save Company and the Government harmless from all liability and expenses, including attorney's fees, on the account of the Seller's failure to comply with such health and safety requirements.
- (d) The Seller further acknowledges that failure to comply with the requirements of 10 CFR 851 may subject Seller to the following fines and penalties:
- (1) Seller that violates (or whose employee violates) any requirement of the part shall be subject to a civil penalty of up to \$70,000 for each such violation. If any violation under this subsection is a continuing violation, each day of the violation shall constitute a separate violation for the purpose of computing the civil penalty.

14. GENERAL EMPLOYEE TRAINING (GET) FOR SELLER EMPLOYEES

- (a) General Employee Training (GET)
- (1) The Seller shall inform employees and the employees of lower tier subcontractors and agents that it is the policy of Company to apply the requirements of DOE Order 426.2, Chapter I, 4b (1), "General Employee Training (GET)," across the plant. This includes periodic continuing training.
- (2) All Seller employees (cleared/uncleared) must read and comply with all rules and requirements contained in course 553.05, Pantex Visitor/Contractor Orientation. Company shall maintain a record of course completions as documented by the Seller employee on the PX-3864.
- NOTE:** Additional training may be required depending on job and/or facility requirements.
- (3) All Seller employees involved with lockout/tag out will be trained per Pantex Plant procedures.
- (4) All Seller employees who have a security clearance recognized by the DOE (Q or L) and require unescorted access to the plant except Zone 12 MAA and Zone 4 for more than 10 consecutive days must successfully complete the following General Employee Training (GET) classes:
- (A) General Overview of Facilities (505.00), this course includes Walker Spotter Overview (553.08).
- (B) Hazard Communication (31.01).
- (C) Explosives Safety (5.01).
- (D) Fire Protection (60.18).
- (E) Emergency Management (141.01).

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- (F) Occupational Safety & Health (145.01).
 - (G) Procedures Adherence (35.41).
 - (H) Radiological Safety training as required by the Company Radiation Safety Department. The type of radiological training required will be dependent on the job and location of work.
 - (I) Issued a Dosimeter (114.70) (Depends on job requirements and /or facility requirements).
 - (J) Initial Cyber Security Briefing (75.20) and Cyber Security at Pantex (75.37) (If access/use of Pantex computer equipment is required).
 - (K) Code of Conduct (75.31) (If access/use of Pantex computer equipment is required).
 - (L) NNSA Computer Consent Form (75.35) (If access/use of Pantex computer equipment is required).
 - (M) Classified Cyber Security (75.36) (If use of a Pantex classified computer is required).
 - (N) Comprehensive Security Briefing (66.02) (If your clearance is granted or extended by Company or transferred to Company).
 - (O) Counterintelligence (66.13) (If your clearance is granted or extended by Company or transferred to Company).
 - (P) Operations Security (66.10) (If your clearance is granted or extended by Company or transferred to Company).
 - (Q) Plant-wide TSR Controls (as required).
 - (R) Facility job requirements as specified by the Facility Representative (as required).
 - (S) Classified Matter Protection and Control (66.15)
- (5) All Seller employees who have a security clearance recognized by the DOE (Q) and require unescorted access to the plant including Zone 12 MAA and Zone 4 must complete the following:
- Items i-xviii under paragraph (a) (4), General Employee Training (GET) for Seller employees.
 - "M" Only (3.03).
 - Breath-Alcohol Testing (3.19) (as required).
 - Drug Screen (3.09) (as required).
 - HRP Documentation (3.08) (as required).
 - USDOE HRP Overview (3.20) (as required).

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- (6) All Seller employees who have a security clearance recognized by the DOE (Q) and requiring escorted access into the Zone 12 PA/MAA and Zone 4 must complete the following:
- Items viii-xiii and xvii and xviii as specified in paragraph (a) (4), General Employee Training (GET) for Seller employees.
- (7) All uncleared Seller employees who require access to the plant for more than 10 consecutive days unescorted must complete the following:
- Items i-xii and xvii and xviii as specified in (a) (4), General Employee Training (GET) for Seller employees.
- (8) All uncleared Seller employees who require escorted access to the plant for more than 10 consecutive days must complete the following:
- Item viii-xii and xvii and xviii in paragraph (a) (4), General Employee Training (GET) for Seller employees.
- (b) Additional Training Requirements for plant access may be required. Contact your Project Subcontract Technical Representative (PSTR) for additional information.
- (c) Special Assistance.
- (1) Contact the PSTR in advance of training if special assistance is required for any Subcontract personnel.
- (d) Successful Completion Required. Said employees, referred to in the remainder of this clause as "individual," must successfully complete the required training offered by Company. To schedule personnel for training, contact your Company PSTR.
- (1) Successful Completion Defined. Successful completion occurs when the individual:
- Satisfactorily completes an examination at the conclusion of the training or test out.
 - Obtains a test score of 80 percent or greater (with 100 percent as the highest obtainable score).
 - All documents (exam, answer sheet, etc.) are properly completed and formally documented.
 - Completes a PX-3864, "Training Completion Report", for a training requirement/course which does not require an examination.
- (2) Unsuccessful Completion Defined. If the individual fails to successfully complete the required training, the individual is to notify the Company PSTR for rescheduling of training and/or for a re-test. The individual will be allowed two additional opportunities to successfully complete the required training. Continued failure to successfully complete required training will result in resolution by the Company PSTR.
- (e) Training Frequency. Designated re-qualification courses must be successfully completed as required after an individual's initial successful completion.

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- (f) CNS may deny access to the site for failure to complete required training.
- (g) Records. Training records will be maintained by the Company PSTR.

15. FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION: (MAY 2011) AS MODIFIED BY DOE ACQUISITION LETTER 2008-05

- (a) Definitions. As used in this clause—
 - “Priority chemical” means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to Implementation Instruction VIII of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.
 - “Toxic chemical” means a chemical or chemical category listed in 40 CFR 372.65.
- (b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) ([42 U.S.C. 11001-11050](#)) and the Pollution Prevention Act of 1990 (PPA) ([42 U.S.C. 13101-13109](#)).
- (c) The Seller shall provide all information needed by the Federal facility to comply with the following:
 - (1) The emergency planning reporting requirements of Section 302 of EPCRA.
 - (2) The emergency notice requirements of Section 304 of EPCRA.
 - (3) The list of Material Safety Data Sheets, required by Section 311 of EPCRA.
 - (4) The emergency and hazardous chemical inventory forms of Section 312 of EPCRA.
 - (5) The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA.

The toxic chemical, priority chemical and hazardous substance release and use reduction goals of Implementation Instruction VIII of Executive Order 13148.

16. FAR 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION: (APR 1984) (MODIFIED)

- (a) The Seller shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on Pantex Plant. If the Seller's failure to use reasonable care causes damage to any of this property, the Seller shall replace or repair the damage at no expense to Company or the Government as the Company Procurement Representative directs. If the Seller fails or refuses to make such repair or replacement, the Seller shall be liable for the cost, which may be deducted from the Agreement price.

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- (b) All facilities, property, equipment, and materials at Pantex Plant are Government-owned. Acts of theft, illegal possession, and unlawful destruction or use of Government property violations are punishable under Federal law, and may also result in administrative action. The Federal Bureau of Investigation is the investigative authority for all such incidents including cases involving the personal property of individuals when the incident occurs at a Government-owned installation. Every user of Government property is responsible for its physical protection and for reporting immediately the loss, theft, destruction, or damage of such property.

17. INSURANCE

- (a) General. Unless otherwise specified elsewhere in this Agreement, Seller, at its own expense, must provide and maintain during the entire performance period of this Agreement the following kinds and at least the minimum amounts of insurance:
- (1) Workers' Compensation – As required by applicable federal and state workers' compensation and occupational disease statutes or regulations;
 - (2) Employer's Liability - \$1 million each accident, \$1 million each employee, \$1 million policy limit for disease;
 - (3) Commercial General Liability (Occurrence basis) – \$1 million combined single limit for bodily injury and property damage per occurrence; \$1 million personal injury limit each occurrence; must also include products-completed operations annual aggregate limit of \$2 million and a general annual aggregate limit of \$2 million (other than products-completed operations).
 - (4) Comprehensive Automobile Liability – Minimum of \$1 million per person and \$1 million per occurrence for bodily injury and \$1 million per occurrence for property damage;
 - (5) Equipment Liability – Replacement or repair cost as determined by the manufacturer for any equipment Seller either provides or takes into its care, custody, or control in performing the Agreement;
 - (6) Builders Risk (applicable only for construction subcontracts) – Value of the subcontract, written on an "all risk" basis. This insurance must cover all material and equipment installed or to be installed in permanent buildings and facilities and must include coverage for material in transit and in offsite storage;
- (b) Certificates. No later than ten calendar days after award and before beginning on-site work under this Agreement, Seller must submit to the Procurement Representative a certificate of liability insurance (former Acord form 25 or equivalent compliant with applicable state laws) certifying that the required insurance has been obtained. All insurers on the certificate must have an A.M. Best Company financial strength rating of "A-VII" or higher or an equivalent S&P rating of BBB. The certificate must:
- (1) Include the number of this Agreement,
 - (2) Identify Company as the certificate holder,
 - (3) State that Company and the U.S. Department of Energy have been added as Additional Insureds on all liability policies other than workers' compensation, and

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- (4) Contain an endorsement to the effect that any policy cancellation or modification affecting Company's or the U.S. Department of Energy's interests will not be effective either (A) for such period as may be prescribed by the laws of the state where Seller is to perform the on-site work, or (B) until 30 days after the insurer or the Seller gives written notice to the Procurement Representative, whichever period is longer.
- (c) Replacement certificates. Seller must submit a replacement certificate if a required policy expires before work is complete.
- (d) Waiver of subrogation. Seller waives subrogation under all liability policies against Company and the U.S. Department of Energy.
- (e) No limitations. None of the requirements for insurance in this clause limits or qualifies the liabilities or obligations assumed by Seller under this Agreement.
- (f) Non-Waiver. Company's acceptance of any evidence of insurance, including any certificate of insurance, shall not: (i) constitute acceptance of the adequacy of Seller's insurance coverage, (ii) imply that any insurance coverage provided by Seller complies with the requirements of this Agreement, (iii) be deemed as a modification of any of Seller's requirements in the Agreement, or (iv) waive Company's or the U.S. Department of Energy's rights to enforce any of Seller's requirements in this Agreement, including the requirements concerning insurance coverage amounts, insurance terms and conditions, and qualifications of insurance companies.
- (g) Acknowledgment. Seller acknowledges that neither Company nor the U.S. Department of Energy is maintaining any insurance on behalf of Seller including insurance covering loss or damage to the work performed under this Agreement or to any other property of Seller unless otherwise specifically set forth herein. Any liability insurance maintained by Company is excess of and shall not in any manner contribute to any loss covered by Seller's primary insurance or with any other insurance available to Seller in excess of such primary insurance and applicable to such loss.
- (h) Non-compliance. Company has no duty to advise Seller in the event Seller's insurance does not comply with the requirements of this Agreement. If Seller fails to procure and maintain all the insurance coverage required by this clause, Seller must indemnify and hold harmless Company and the U.S. Department of Energy from and against all claims, demands, costs, charges and expenses that would have been covered by such insurance had Seller complied with its obligations herein.
- (i) Flowdown. Seller must include this clause, including this paragraph (i), modified to identify the parties, in all lower-tier subcontracts that require work on site and must require subcontractors to provide and maintain the insurance required in this clause. At least five days before entry of each such subcontractor's personnel into an on-site area, Seller must furnish (or ensure that there has been furnished) to the Procurement Representative a certificate of liability insurance, meeting the requirements of paragraphs (a), (b), and (c) above, for each such subcontractor.

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18. CONTROL OF EXTENDED WORK HOURS

- (a) The Seller shall manage and control extended work hours (overtime) to efficiently conduct business, provide for cost-effective utilization of human resources, and to minimize the potential of excessive employee fatigue.
- (b) The Seller shall not assign extended work hours if the employee creates a risk to themselves or others as a result of fatigue. The Seller shall limit extended work hours at the Pantex Plant as follows:
 - (1) Do not work employees more than 16 consecutive hours in any 24-hour period.
 - (2) Do not work employees more than 26 hours in any 48-hour period.
 - (3) Do not work employees more than 72 hours in any 7-day period.
 - (4) Do not work employees more than 14 consecutive days without at least two consecutive days of rest before the next workday.
 - (5) Give employees who work 16 or more consecutive hours at least eight hours off duty before reporting to the next scheduled shift, unless otherwise stipulated for bargaining employees under a collective bargaining agreement.
- (c) Should an emergency (as defined and agreed upon by the Seller's representative and the COMPANY Procurement Representative) occur, Seller employees may be required to work more than stated in 1 through 5 above, which will require approval by the COMPANY Procurement Representative prior to the assignment of the work.
- (d) The seller shall insert the substance of this clause, including this paragraph (d), in lower tier subcontracts under this Agreement that require work on the Pantex Plant.

19. MOTOR VEHICLE AND PEDESTRIAN SAFETY

- (a) The Seller must operate motor vehicles at the Pantex Plant in a careful and safe manner, complying with established driving rules, including posted signs, pavement markings, Pantex guidelines, and Federal, state and local laws and regulations.
 - (1) Pedestrians must remain alert to hazards posed by vehicle traffic and use crosswalks where provided. Pedestrians should not leave a curb or other safe waiting place suddenly and walk into the path of vehicle traffic. In parking areas, pedestrians should walk in provided walkways or walk facing on-coming vehicles, were possible.
 - (2) Pedestrians have the right of way; however, they should make eye contact with drivers to ensure they are seen and the vehicle stops/yields before crossing a roadway.
 - (3) Drivers of motor vehicles entering, crossing, or turning at an intersection/crosswalk must slow down, stop, or maneuver as necessary to permit pedestrians to cross safely and expeditiously.
- (b) Seller and Seller employees are prohibited from using a cellular telephone (including hands-free) while operating a motor vehicle on Company-managed sites. Also, while operating Government vehicles during offsite Company business.

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- (c) The Seller will be asked to remove from the Pantex Site, any Seller employee who violates these requirements.
- (d) Flowdown – Requirements of this clause shall be flowed down to all lower-tier subcontracts involving on-site work or activities directly related to on-site work.

20. FOREIGN GOVERNMENT-SPONSORED TALENT RECRUITMENT PROGRAMS

- (a) **Applicability.** This clause is required by DOE Order 486.1A. It applies only to Research and Development (“R&D”) or Demonstration Subcontracts where Seller’s work within the scope of this Agreement is performed on or at a DOE/NNSA-owned or –leased area or Company-owned or –leased area.
- (b) **Definitions.** For purposes of this clause, the following terms have the meaning set forth below:
 - (1) “Demonstration Subcontract” means a subcontract, in effect on or after September 4, 2020, for the performance of work that involves a project designed to determine the technical feasibility and economic potential of a technology on either a pilot or prototype scale.
 - (2) “Foreign Country of Risk” means any foreign country determined to be of risk, following consideration of, but not limited to, the Office of the Director of National Intelligence WorldWide Threat Assessment and The National Counterintelligence Strategy of the United States of America, by the Under Secretary for Science in consultation with the Under Secretary of Energy; the Under Secretary for Nuclear Security; and the Office of Intelligence and Counterintelligence.
 - (3) “Foreign Government-Sponsored Talent Recruitment Program” means an effort directly or indirectly organized, managed, or funded by a foreign government to recruit science and technology professionals or students (regardless of citizenship or national origin, and whether having a full-time or part-time position). Some Foreign Government-Sponsored Talent Recruitment Programs operate with the intent to import or otherwise acquire from abroad, sometimes through illicit means, proprietary technology or software, unpublished data and methods, and intellectual property to further the military modernization goals and/or economic goals of a foreign government. Many, but not all, programs aim to incentivize the targeted individual to physically relocate to the foreign state for the above purpose. Some programs allow for or encourage continued employment at U.S. research facilities or receipt of Federal research funds while concurrently working at and/or receiving compensation from a foreign institution, and some direct participants not to disclose their participation to U.S. entities. Compensation could take many forms including cash, research funding, complimentary foreign travel, honorific titles, career advancement opportunities, promised future compensation, or other types of remuneration or consideration, including in-kind compensation.
 - (4) “R&D Subcontract” means a subcontract, in effect on or after June 7, 2019, for the performance of work that involves efforts and scientific and technological work of

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scientists, researchers, and engineers involving research activities, both basic and applied, and all development activities. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

- (5) "Seller Personnel" means (a) any Seller employee, joint appointee from another institution, and any other individual performing R&D or Demonstration work, whether compensated or uncompensated, within the scope of this Agreement at a DOE/NNSA - owned or -leased area or Company-owned or -leased area and (b) any individual performing R&D work, whether compensated or uncompensated, within the scope of a Cooperative Research and Development Agreement, Strategic Partnership Project, or Agreement for Commercializing Technology at a DOE/NNSA -owned or -leased area or Company-owned or -leased area. The following are not included in this definition:
- (A) Users performing work under a DOE User Facility Agreement; and
 - (B) Individuals under subsections (a) and (b) of this definition considered Seller Personnel solely because they perform activities at a DOE/NNSA -owned or -leased area or Company-owned or -leased area.
 - (C) Specifically implementing a DOE program-sponsored international collaboration project; and
 - (D) Within the scope of the DOE-level or U.S. Government-level bilateral or multilateral international agreement.
- (c) Requirements
- (1) No Participants. Seller must utilize due diligence to ensure that Seller Personnel performing work within the scope of this Agreement are not participants in any Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk.
 - (2) Notice of Disclosed or Otherwise Identified Activity. Seller must notify the Company Procurement Representative and the Oak Ridge Counterintelligence Field Office (currently at CIStaff@cns.doe.gov) or the Pantex Field Office (currently at CI@cns.doe.gov) within five (5) business days upon, at any time during the term of the Agreement, including options and extensions, learning that it or any Seller Personnel performing work under the Agreement are, or are reasonably believed to be, participants in a Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk.
 - (3) Stop Work or Participation. Seller shall ensure that Seller Personnel participating in, or reasonably believed to be participating in, a disclosed or otherwise identified Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk either (a) stop performing work within the scope of this Agreement or (b) stop participation in such activity within a reasonable period of time, not to exceed thirty (30) days, until Company makes a final determination on whether the disclosed or otherwise identified activity is participation in a Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk.

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- (4) Company's Determination. Seller must work with Company, as needed, to determine if any disclosed or otherwise identified activity is participation in a Foreign Government-Sponsored Talent Recruitment Program. If it is determined that any disclosed or otherwise identified activity is participation in a Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk, then Seller must take appropriate action in accordance with the requirements of this clause.
- (5) Quarterly Reporting. (a) Seller must file reports with Company's Procurement Representative and the Oak Ridge Counterintelligence Field Office (currently at CIStaff@cns.doe.gov) or the Pantex Field Office (currently at CI@cns.doe.gov) on a quarterly basis providing the following information, to the extent applicable, for each disclosed or otherwise identified activity in subsection (c)(2): name, e-mail and phone number of participating Seller Personnel; laboratory; country; description of activity; type of activity, i.e., Foreign Government-Sponsored Talent Recruitment Program; funding or other value received or expected; duration; technical area; Seller action; status or disposition; and any other information requested by Company. (b) Each disclosed or otherwise identified activity must be included in each quarterly report until Company informs Seller that all actions for an activity are reported as complete.
- (d) Compliance with Clause Requirements. If Company's Procurement Representative notifies Seller in writing of any noncompliance with the requirements of this clause, then Seller must take appropriate action to ensure that, within thirty (30) days or other reasonable time period determined by the Procurement Representative, Seller is in compliance with the requirements of this clause.
- (e) Remedies. Failure by Seller to reasonably ensure that neither it nor any Seller Personnel participating in a Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk may result in Company exercising contractual remedies in accordance with federal regulations and the terms of this Agreement.
- (f) Flowdown. Seller must flow the substance of this clause to R&D or Demonstration subcontracts at any tier where the subcontractor's work within the scope of this Agreement is performed on or at a DOE/NNSA-owned or -leased area or Company-owned or -leased area.

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21. CLAUSES INCORPORATED BY REFERENCE

- (a) The clauses listed 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> for Y-12 site forms and <http://www.pantex.energy.gov> for Pantex site forms. 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) The following clauses are incorporated by reference:
- FAR 52.204-9 Personal Identity Verification of Contractor Personnel (Jan 2011)
 - DEAR 952.203-70 Whistleblower Protection for Contractor Employees (DEC 2000)
 - DEAR 970.5222-1 Collective Bargaining Agreements – Management and Operating Contracts (DEC 2000)
 - DEAR 970.5204-1 Counterintelligence (DEC 2010)

APPENDIX A

ACCEPTABLE EVIDENCE OF U.S. CITIZENSHIP

1. For an individual born in the United States

- (a) Birth certificate:
- (1) Must show that the record was filed shortly after birth,
 - (2) Must be certified with the registrar’s signature, and
 - (3) Must bear the raised, impressed, or multi-colored seal of the registrar’s office.
- (b) The only exception is if a state or other jurisdiction does not issue such seals as a matter of policy.
- (c) Uncertified copies of birth certificates are not acceptable.
- (d) A delayed birth certificate (one created when a record was filed more than 1 year after the date of birth) is acceptable if:
- (1) It shows that the report of birth was supported by acceptable secondary evidence of birth. Secondary evidence may include:
 - (A) Baptismal or circumcision certificates,
 - (B) Hospital birth records, or
 - (C) Affidavits of persons having personal knowledge about the facts of the birth.
- (e) Other documentary evidence can be early census, school, or family records; newspaper files; or insurance papers.

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- (f) All documents submitted as evidence must be original or certified.
- 2. For an individual claiming citizenship by naturalization**
 - (a) A certificate of naturalization showing the individual's name is required.
- 3. For an individual claiming citizenship acquired by birth abroad to a U.S. citizen**
 - (a) One of the following (showing the individual's name) is required:
 - (1) Certificate of Citizenship issued by the Immigration and Naturalization Service,
 - (2) Report of Birth Abroad of a Citizen of the U.S. of America (Form FS 240), or
 - (3) Certificate of Birth (Form FS 545 or DS 1350).
- 4. A U.S. passport, current or expired**
- 5. A DD-1966, 'Record of Military Processing-Armed Forces of the U.S.', provided it reflects that the individual is a U.S. citizen.**