

GENERAL TERMS & CONDITIONS
Commercial Off-The-Shelf Items (COTS OCTOBER 2021)

ARTICLES	PAGE
1. DEFINITIONS [Apr 2021].....	2
2. ORDER OF PRECEDENCE [Oct 2017]	2
3. AGREEMENT FOR BENEFIT OF DOE [Apr 2021].....	2
4. ACCEPTANCE OF TERMS AND CONDITIONS [Apr 2021]	2
5. COOPERATING WITH DOE OFFICE OF INSPECTOR GENERAL [Oct 2017].....	3
6. EMPLOYEE CONCERNS [Apr 2021].....	3
7. DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS [Apr 2021].....	4
8. COMPLIANCE WITH LAWS [Apr 2021].....	4
9. PUBLIC RELEASE OF INFORMATION [Apr 2021].....	4
10. CONFIDENTIALITY OF INFORMATION [Apr 2021]	5
11. BUY AMERICAN ACT – SUPPLIES [Apr 2021].....	5
12. AUTHORIZATION AND CONSENT (Ref. FAR 52.227-1, DEC 2007) [Oct 2017]	5
13. PATENT, TRADEMARK AND COPYRIGHT INDEMNITY [Apr 2021]	5
14. TAXES –FEDERAL, STATE AND LOCAL TAXES [Apr 2021].....	5
15. PAYMENT [Apr 2021]	6
16. RESOLUTION OF DISPUTES [Apr 2021]	6
17. ASSIGNMENT [Apr 2021].....	8
18. AUTHORIZED REPRESENTATIVES AND NOTICE [Oct 2017].....	8
19. CHANGES [Apr 2021].....	8
20. INSPECTION/ACCEPTANCE [Apr 2021].....	8
21. SUSPECT/COUNTERFEIT ITEMS [Oct 2017].....	9
22. DEFECT IDENTIFICATION AND REPORTING [Apr 2021].....	10
23. WARRANTY [Apr 2021]	11
24. TITLE AND RISK OF LOSS [Apr 2021].....	11
25. TERMINATION FOR CONVENIENCE [Oct 2017].....	11
26. TERMINATION FOR DEFAULT [Apr 2021]	11
27. EXCUSABLE DELAYS [Oct 2017].....	11
28. MANUALS AND REPORTS [Apr 2021]	12
29. SURVIVAL [Apr 2021]	12
30. CLAUSES INCORPORATED BY REFERENCE [Apr 2021].....	12

1. DEFINITIONS [Apr 2021]

The following terms shall have the meanings below:

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

2. ORDER OF PRECEDENCE [Oct 2017]

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

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

3. AGREEMENT FOR BENEFIT OF DOE [Apr 2021]

- (a) Funding – Company shall make all payments under this Agreement from Government funds advanced and agreed to be advanced by DOE, and not from its own funds. In almost all circumstances, funds recovered by Company from Seller are Government funds.
- (b) Administration – Administration of this Agreement may be transferred, in whole or in part, to DOE or its designee(s), and to the extent of such transfer and notice thereof to Seller, Company shall have no further responsibilities hereunder.
- (c) Company Right to Recovery – If Company seeks recovery from Seller, Seller agrees it shall not plead, assert or raise in any manner a defense that Company has no right to recover 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.

4. ACCEPTANCE OF TERMS AND CONDITIONS [Apr 2021]

- (a) Seller, by signing this Agreement, delivering the supplies, or performing the requirements indicated herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Agreement incorporates by reference or attachment.
- (b) This Agreement sets forth the *entire* agreement between Company and Seller concerning the subject matter of this Agreement. To avoid any doubt, this Agreement supersedes all prior and contemporaneous negotiations, understandings, and agreements, whether oral or written, pertaining to the subject matter hereof, and it supersedes and takes precedence over any conflicting or supplemental terms and conditions included in any Seller proposal, quote, acknowledgment, or invoice, all of which are hereby objected to and expressly rejected.

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

5. 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. EMPLOYEE CONCERNS [Apr 2021]

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

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

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

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

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

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

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

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

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

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

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

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

Y-12:

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

Pantex:

- a. Call: (806) 573-5348, (806) 573-5337, or (806) 573-6321;
- b. Helpline: (806) 573-6777;

- c. Online: <https://home1.y12.doe.gov/eec>;
- d. Form: UCN-21222, *Employee Concerns Submittal*; or
- e. *No More Surprises*: <https://pantex.y12.doe.gov/nms/>.

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

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

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

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

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

(g) Seller shall notify Company when it becomes aware that a Seller employee filed a formal complaint of Retaliation/Reprisal, including a complaint submitted pursuant to 10 CFR 708, DOE Contractor Employee Protection Program; 41 USC § 4712, Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information; or a complaint filed with the U.S. Department of Labor under 29 CFR 24, Procedures for Handling Retaliation Complaints.

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

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

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

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

7. DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS [Apr 2021]

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

8. COMPLIANCE WITH LAWS [Apr 2021]

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

9. PUBLIC RELEASE OF INFORMATION [Apr 2021]

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

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

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

10. CONFIDENTIALITY OF INFORMATION [Apr 2021]

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 during or after the term of this Agreement unless specifically authorized by Company in writing. The foregoing obligations, however, shall not apply to (1) information which, at the time of receipt by Seller is in public domain; (2) information which is published after receipt thereof by Seller or otherwise becomes part of the public domain through no fault of Seller; (3) information which Seller can demonstrate was in its possession at time of receipt thereof and was not acquired directly or indirectly from Government or Company; (4) information which Seller can demonstrate was received by it from a third party who did not require Seller to hold it in confidence.

11. BUY AMERICAN ACT – SUPPLIES [Apr 2021]

This Agreement is subject to the Buy American Act – Supplies clause as stated in Article 29 titled “Clauses Incorporated by Reference.” Seller is solely responsible for compliance with such clause and agrees to indemnify and hold harmless Company from any and all direct, indirect or consequential expenses or other damages relating to or arising out of the failure of Seller or its suppliers to comply with said clause.

12. AUTHORIZATION AND CONSENT (Ref. FAR 52.227-1, DEC 2007) [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 herein above 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 as defined at FAR 2.101. However, omission of this clause from any subcontract, including those at or below the Simplified Acquisition Threshold, does not affect this authorization and consent.

13. PATENT, TRADEMARK AND COPYRIGHT INDEMNITY [Apr 2021]

Seller shall indemnify, defend and hold harmless Company and the U.S. Government and their respective officers, employees and agents against liability, including all damages and costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this Agreement, provided Seller is reasonably notified of such claims and proceedings.

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

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

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

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

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

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

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

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

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

15. PAYMENT [Apr 2021]

(a) Unless otherwise provided, terms of payment shall be net 30 calendar days from the latter of (1) receipt of Seller's proper invoice, if required (unless such invoice is not approved), or (2) delivery of items 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 by electronic funds transfer. Payment shall be deemed to have been made as of the date on which an electronic funds transfer was made.

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

16. RESOLUTION OF DISPUTES [Apr 2021]

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

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

(c) A Claim by the 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 \$100,000 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 the Seller if that Claim exceeds \$100,000 unless Seller's Claim is accompanied by the below certification from the 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 \$100,000 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 \$100,000.

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 Director, Procurement Operations and Business Management may, but is not required to issue a written Final Decision after a Claim is deemed denied.

(2) The Director, Procurement Operations and Business Management's written Final Decision on any Seller Claim shall be final and conclusive between the parties with no right of judicial review, provided however, that the Final Decision shall not be final and binding against either party, and shall be given no evidentiary weight by the trier of fact, if the 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) (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 Y-12 site) shall be brought in either Anderson, Knox, or Roane County, Tennessee, in the Circuit or Chancery Court, as appropriate. In the event requirements for jurisdiction in Federal District Court are not present for an Agreement related to the Pantex site, such litigation shall be brought in Carson County, TX or, in the event that such court lacks jurisdiction, in the highest trial court in the state of Texas having jurisdiction.

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

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

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

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

17. ASSIGNMENT [Apr 2021]

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

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

18. AUTHORIZED REPRESENTATIVES AND NOTICE [Oct 2017]

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

19. CHANGES [Apr 2021]

(a) The Procurement Representative may at any time, by written order make changes within the general scope of this Agreement in any one or more of the following:

- (1) Additions to or deletions from the quantities ordered.
- (2) Method of shipment or packing.
- (3) Place of delivery.
- (4) Delivery schedule.

(b) If any such change causes an increase or decrease in the cost of or the time required for performance, Company shall, subject to the submission requirement in paragraph (c), make an equitable adjustment in the price, delivery/performance schedule, or both, and modify the Agreement in writing.

(c) 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.

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

(e) No modifications of these General Terms and Conditions or any other provision of this Agreement shall be valid unless reduced to writing and signed by the authorized representatives of Seller and Company.

20. INSPECTION/ACCEPTANCE [Apr 2021]

(a) Unless otherwise specified in this Agreement, Seller shall be responsible for all quality assurance measures necessary to ensure that only items conforming to the requirements of this Agreement are tendered to Procurement Representative for acceptance. This shall include such testing, in process inspections and other verification measures as are customary in the industry to ensure that parts, components, and materials furnished by suppliers of the Seller and incorporated into end items furnished to Procurement Representative are not counterfeit or of suspect quality.

(b) Procurement Representative reserves the right to inspect and test all items that have been tendered for acceptance. Procurement Representative has the right to reject nonconforming items with or without disposition instructions from Seller; the right to require their correction, replacement, reperformance; the right to accept nonconforming items and reduce the Agreement amount to reflect the reduced value of the nonconformance(s); or the right to terminate this Agreement for default. Procurement Representative must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have

been discovered; and (2) before any substantial change occurs in the conditions of the item, unless the change is due to the defect in the item.

(c) Procurement Representative shall not be obligated to inspect the items, and neither the inspection nor the lack of inspection by Procurement Representative shall relieve Seller of its responsibility for providing the items in accordance with the terms of the Agreement. The inspection or use of or payment for an item under this Agreement, either wholly or in part, shall not be construed as acceptance.

21. 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 rope, lifting materials (shackles, hooks, slings, cables, forklifts, hoists, etc.), welding material (rods, wire, flux, etc.) on any equipment, assemblies, components, or facilities under this contract. Any suspect or counterfeit material provided by 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/ehts/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 Agreement, the inspection and testing of a greater number of fasteners from a lot than is specified in the applicable standards or specifications to which the manufacturer represents the fasteners to have been manufactured or in the applicable sampling procedures specified by the Secretary of Commerce.

(d) Electrical Equipment, Items, and Components.

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

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

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

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

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

(e) Mechanical Equipment, Items and Components.

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

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

(f) Packaging and Labeling.

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

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

Headmark List, Suspect Fastener Headmark List).

- (3) All fasteners shall be separately boxed by lot number, with no mixing of lots.
 - (4) The manufacturer's lot numbers shall be listed on the packing list as part of the descriptive information.
 - (5) Each individual box shall be marked with the lot number.
 - (6) All shipments of graded fasteners indicated in this contract, and other items as specified, shall include an authenticated "Certified Material Test Report" traceable to the manufacturer by lot number, such that the manufacturer's test data (such as physical and chemical test reports for fasteners) can be certified by Company, if required.
 - (7) All remanufactured, refurbished or rebuilt replacement equipment and components, if specifications permit, shall be clearly marked as such and shipped in the manufacturer's original packing, and have any designated serial numbers listed on the packing list.
 - (8) Seller shall affix a "certificate of conformance" stamp on each packing list, authenticated by a designated company official responsible for this function, if required by this 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 items specifically prohibited under this contract, may result in an investigation by the OIG.
- (i) Unauthorized Substitution.

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

22. DEFECT IDENTIFICATION AND REPORTING [Apr 2021]

- (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.

23. WARRANTY [Apr 2021]

Seller warrants that items delivered under this Agreement shall be new; most suitable grade for intended purpose; free from defects in design, material, and workmanship; in accordance with Seller's affirmation, description, sample, or model; and fully compliant with all requirements of this Agreement. The warranty shall begin upon acceptance and extend for a period of (1) the manufacturer's warranty period or six months, whichever is longer, if Seller is not the manufacturer and has not modified the item or (2) one year or the manufacturer's warranty period, whichever is longer, if Seller is the manufacturer of the item or has modified it. If any nonconformity with items appear within the warranty period, Seller shall promptly repair or replace such items. Seller's liability hereunder shall extend to all damages proximately caused by the breach of any of the foregoing warranties, including, but not limited to, incidental damages such as disassembly, removal, inspection, re-inspection, re-installation, re-testing, and costs of transportation or warehousing. If repair or replacement is not timely, Company may elect to return the nonconforming items or repair or replace them at Seller's expense.

24. TITLE AND RISK OF LOSS [Apr 2021]

(a) Unless specified elsewhere in this Agreement, title to items provided to Company shall pass to the Government upon acceptance, regardless of where or when Company takes physical possession.

(b) Notwithstanding paragraph (a), Seller shall be responsible for and bear any and all risk of loss or damage to items provided to or intended to be provided to Company until delivery thereof in accordance with the delivery provisions of this Agreement; provided, however, that any loss or damage, whenever occurring, which results from Seller's nonconforming packaging or crating shall be borne by Seller.

25. TERMINATION FOR CONVENIENCE [Oct 2017]

Company reserves the right to terminate this Agreement, or any part hereof, for the convenience of itself or the Government. In the event of such termination, Seller shall immediately stop all work terminated and shall immediately cause any and all of its affected suppliers and subcontractors to cease work. Subject to the terms of this Agreement, Seller shall be paid a percentage of the price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that Seller can demonstrate to the satisfaction of Company using its standard record keeping system, have resulted from the termination. Seller shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This clause does not give Company or the Government the right to audit Seller's records. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

26. TERMINATION FOR DEFAULT [Apr 2021]

(a) Company may terminate this Agreement for default, in whole or in part, if, after 10 calendar days from Company's written notice, Seller fails to comply with any of the terms of this Agreement, or fails to provide adequate assurance of future performance. In that event, Company shall not be liable for any amount for items not accepted, and the Seller shall be liable to Company for any and all rights and remedies provided by law. If it is determined that Company improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(b) Without limiting Company's other rights, if Company terminates this Agreement in whole or in part as provided in this Article, Company may procure items similar to those so terminated, and Seller shall be liable to Company for any additional costs for obtaining such similar products.

27. EXCUSABLE DELAYS [Oct 2017]

(a) Seller shall not be liable to Company if its nonperformance is caused by an occurrence beyond the reasonable control of the Seller and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. However, if Seller's failure to perform is caused by the failure of its supplier/subcontractor at any tier to perform or make progress, and if the cause of such failure was beyond the reasonable control of both Seller and the supplier/subcontractor and without the fault or negligence of either, then Seller shall not be deemed to be in default, unless the supplies or services were timely obtainable from other sources. Seller shall notify the Procurement Representative in writing as soon as possible after any excusable delay period begins and ends.

(b) Company shall not be liable to Seller if Company's nonperformance is caused by an occurrence beyond the reasonable control of Company 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. The Procurement Representative shall notify Seller in writing as soon as reasonably possible after an excusable delay period begins and ends.

28. MANUALS AND REPORTS [Apr 2021]

For each item of supply to be delivered by Seller (not including computer software), Seller shall deliver the following data: any accompanying manual and instruction or training material for installation, operation, or routine maintenance and repair of such item. The Company shall have the following rights in such data: the right to use, reproduce without limitation, prepare derivative works, distribute internally or on behalf of the Government such as posting on electronic bulletin boards or libraries, and to exercise any such right in any manner and for any purpose.

29. SURVIVAL [Apr 2021]

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.

30. CLAUSES INCORPORATED BY REFERENCE [Apr 2021]

(a) The clauses listed in the table below are incorporated herein by reference when the conditions for applicability are met. The texts of FAR and DEAR clauses are available at a variety of Internet Sites including URL: www.acquisition.gov and the texts of Company clauses are available on the "Procurement" link at: <https://www.12.doe.gov/suppliers/procurement/subcontracting/subcontract-provisions>.

(b) 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. These modifications to the terms are intended to properly identify the parties and shall not apply to the extent they (1) would adversely affect the U.S. Government's rights or (2) are inconsistent with the text of the incorporated clause.

THE FOLLOWING CLAUSES ARE INCORPORATED INTO THIS AGREEMENT:		
Clause Number	Title and Date	Instructions
FAR 52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	Applies unless this Agreement is a personal services contract with individuals.
FAR 52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and other Covered Entities (JUL 2018)	None.
FAR 52.204-24	Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment	Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2019). The Schedule Section I, Representations and Certifications, requires Offerors to provide the representation in paragraph (c) and complete the disclosures in paragraph (d).
FAR 52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2019).
FAR 52.222-50	Combating Trafficking in Persons (FEB 2009)	The FEB 2009 clause requires the substance of this clause to be included in all subcontracts.
FAR 52.244-6	Subcontracts for Commercial Items (DEC 2013)	None.
FAR-52.232-39	Unenforceability of Unauthorized Obligations (JUN 2013)	None.

UCN - 22427	Travel Reimbursement Policy (NOV 2016) (Company)	Applies to all cost-reimbursement, time-and materials, and labor-hour agreements. It also applies to those fixed-price agreements that have travel as a separate pay line item, but its applicability in such cases is only to that line item.
-------------	---	--

THE FOLLOWING CLAUSES ARE INCORPORATED IF THIS AGREEMENT EXCEEDS \$10,000:		
Clause Number	Title and Date	Instructions
FAR 52.222-21	Prohibition of Segregated Facilities (FEB 1999)	Applies if FAR 52.222-26 Equal Opportunity applies.
FAR 52.222-26	Equal Opportunity (MAR 2007)	Applies if twelve (12) month aggregate value of Seller's federal contracts and subcontracts exceeds \$10,000, unless exempted per FAR Subpart 22.807. The required poster is available at: http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm
FAR 52.222-40	Notification of Employee Rights Under the National Labor Relations Act (DEC 2010)	Applies if Agreement will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009.
FAR 52.225-1	Buy American Act – Supplies (FEB 2009)	But see exceptions at FAR 25.1101(a)(1), e.g., information technology that is a commercial item.

THE FOLLOWING CLAUSE IS INCORPORATED IF THIS AGREEMENT EXCEEDS \$15,000:		
Clause Number	Title and Date	Instructions
FAR 52.222-36	Equal Opportunity for Workers with Disabilities (JUL 2014)	Applies if Agreement exceeds or is expected to exceed \$15,000.

THE FOLLOWING CLAUSES ARE INCORPORATED IF THIS AGREEMENT EXCEEDS \$150,000:		
Clause Number	Title and Date	Instructions
FAR 52.203-7	Anti-Kickback Procedures (OCT 2010), except paragraph (c)(1)	None.
FAR 52.203-12	Limitation on Payments to Influence Certain Federal Transactions (OCT 2010)	None.
FAR 52.222-35	Equal Opportunity for Veterans (OCT 2015)	Applies if Agreement equals or exceeds \$150,000.
FAR 52.222-37	Employment Reports on Veterans (FEB 2016)	Applies if FAR 52.222-35 applies.

THE FOLLOWING CLAUSES ARE INCORPORATED IF THIS AGREEMENT EXCEEDS \$250,000:		
Clause Number	Title and Date	Instructions
FAR 52.203-6	Restrictions on Subcontractor Sales to the Government (SEP 2006) ALT I (OCT 1995)	None.
FAR 52.203-17	Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights	CNS will include the clause in subcontracts over the simplified acquisition threshold.

FAR 52.219-8	Utilization of Small Business Concerns (JUL 2013)	Applies if Agreement amount is expected to exceed \$250,000 unless performed entirely outside of the United States and its outlying areas.
--------------	--	--