

# GENERAL TERMS & CONDITIONS

## Design-Build Construction

(DBCON JUL 2025)

ARTICLES	PAGE
1. DEFINITIONS [Jun 2025] .....	3
2. ORDER OF PRECEDENCE [Jun 2025] .....	3
3. ACCEPTANCE OF TERMS AND CONDITIONS [Jun 2025] .....	3
4. SYSTEM FOR AWARD MANAGEMENT [Jun 2025] .....	4
5. AGREEMENT FOR BENEFIT OF DOE [Jun 2025] .....	4
6. DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS [Jun 2025] .....	4
7. COOPERATING WITH DOE OFFICE OF INSPECTOR GENERAL [Jun 2025] .....	4
8. REPORTING WASTE, FRAUD, AND ABUSE [Jun 2025] .....	4
9. ETHICS AND EMPLOYEE CONCERNS [Jun 2025] .....	5
10. PUBLIC RELEASE OF INFORMATION [Jun 2025] .....	7
11. CONFIDENTIALITY OF INFORMATION [Jun 2025] .....	7
12. COMPLIANCE WITH LAWS [Jun 2025] .....	8
13. EXPORT CONTROL [Jun 2025] .....	8
14. DOE SECURITY BADGES AND CLEARANCE REQUIREMENTS [Jun 2025] .....	8
15. WORKPLACE SUBSTANCE ABUSE PROGRAM (WSAP) [Jun 2025] .....	9
16. BUY AMERICAN ACT — CONSTRUCTION MATERIALS [Jun 2025] .....	10
17. AUTHORIZATION AND CONSENT (Ref. FAR 52.227-1 JUN 2020) [Jun 2025] .....	10
18. PATENT INDEMNITY [Jun 2025] .....	11
19. PERFORMANCE AND PAYMENT BONDS [Jun 2025] .....	11
20. ALTERNATIVE PAYMENT PROTECTIONS [Jun 2025] .....	11
21. ADDITIONAL BOND SECURITY [Jun 2025] .....	12
22. PLEDGES OF ASSETS [Jun 2025] .....	12
23. PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS [Jun 2025] .....	12
24. IRREVOCABLE LETTER OF CREDIT [Jun 2025] .....	12
25. TAXES — FEDERAL, STATE AND LOCAL TAXES [Jun 2025] .....	15
26. PROFESSIONAL LIABILITY INSURANCE [Jun 2025] .....	16
27. PAYMENT [Jun 2025] .....	16
28. INTEREST [Jun 2025] .....	17
29. RESOLUTION OF DISPUTES [Jun 2025] .....	17
30. HOLD HARMLESS [Jun 2025] .....	18
31. LIABILITY FOR FINES AND PENALTIES [Jun 2025] .....	19
32. DESIGN CONFERENCES [Jun 2025] .....	19
33. SEQUENCE OF DESIGN-CONSTRUCTION [Jun 2025] .....	19
34. CONSTRUCTOR'S ROLE DURING DESIGN [Jun 2025] .....	19
35. DIFFERING SITE CONDITIONS [Jun 2025] .....	19
36. DEVIATING FROM THE ACCEPTED DESIGN [Jun 2025] .....	20
37. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK [Jun 2025] .....	20
38. TITLE TO MATERIALS FOUND [Jun 2025] .....	20
39. MATERIAL AND WORKMANSHIP [Jun 2025] .....	20
40. PROTECTION OF EXISTING IMPROVEMENTS, EQUIPMENT, UTILITIES, AND ANTIQUITIES [Jun 2025] .....	21
41. SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION [Jun 2025] .....	21
42. STANDARDS AND CODES [Jun 2025] .....	22
43. COMPANY WORKING DAYS [Jun 2025] .....	22
44. ACCESS TO SITE [Jun 2025] .....	22
45. INTERNET PROTOCOL TECHNOLOGY [Jun 2025] .....	22
46. SUBCONTRACTORS, OUTSIDE ASSOCIATES, AND CONSULTANTS [Jun 2025] .....	23
47. REQUIREMENTS FOR REGISTRATION OF DESIGNERS [Jun 2025] .....	23
48. RESPONSIBILITY FOR DESIGN [Jun 2025] .....	23
49. WORK OVERSIGHT [Jun 2025] .....	24
50. ASSIGNMENT [Jun 2025] .....	24
51. SUSPENSION OF WORK [Jun 2025] .....	24
52. STOP-WORK AUTHORITY [Jun 2025] .....	24
53. DELAYS [Jun 2025] .....	25
54. EXCUSABLE DELAYS [Jun 2025] .....	25

55. LOSS OF PRODUCTIVITY [Jun 2025] .....	25
56. ADJUSTMENTS [Jun 2025] .....	26
57. AUTHORIZED REPRESENTATIVES AND COMMUNICATIONS [Jun 2025] .....	28
58. CHANGES [Jun 2025] .....	28
59. CHANGE ORDER ACCOUNTING [Jun 2025] .....	29
60. WARRANTY OF DESIGN [Jun 2025] .....	29
61. WARRANTY OF CONSTRUCTION WORK [Jun 2025] .....	29
62. MITIGATING SUPPLY CHAIN RISK OCT 2022 [Jun 2025] .....	30
63. MITIGATING SUPPLY CHAIN RISK USING ENHANCED PROCUREMENT AUTHORITY FOR INFORMATION AND COMMUNICATION TECHNOLOGY OCT 2022 [Jun 2025] .....	30
64. MITIGATING SUPPLY CHAIN RISK USING ENHANCED PROCUREMENT AUTHORITY FOR NATIONAL SECURITY SYSTEMS, NUCLEAR WEAPONS COMPONENTS AND ASSOCIATED ITEM OCT 2022 [Jun 2025] .....	31
65. SUSPECT/COUNTERFEIT ITEMS [Jun 2025] .....	31
66. DEFECT IDENTIFICATION AND REPORTING [Jun 2025] .....	33
67. BACKCHARGE WORK [Jun 2025] .....	33
68. COMPANY'S RIGHT TO SETOFF [Jun 2025] .....	33
69. GOVERNMENT PROPERTY [Jun 2025] .....	34
70. TERMINATION FOR CONVENIENCE [Jun 2025] .....	34
71. TERMINATION FOR DEFAULT [Jun 2025] .....	36
72. SURVIVAL [Jun 2025] .....	36
73. CLAUSES INCORPORATED BY REFERENCE [Jul 2025] .....	36

## 1. DEFINITIONS [Jun 2025]

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 PanTeXas Deterrence, LLC, acting under its Contract No. 89233224CNA000004 with the DOE. In addition, the terms "Consolidated Nuclear Security, LLC", "CNS", "CNS Pantex", "Mason & Hanger Silas-Mason Co., Inc.", "BWXT Pantex, LLC", "B&W Pantex", "B&W" and "Babcock & Wilcox Technical Services Pantex, LLC" generally mean Company (e.g., drawings, specifications, statements of work, assigned agreements, etc.) unless the context indicates otherwise.
- (c) "Seller" means Contractor, Subcontractor, Supplier, or Vendor, which can be either a person or organization that has entered into this Agreement with Company.
- (d) "Agreement" means Purchase Order, Subcontract, Price Agreement, Basic Ordering Agreement, or Modification thereof.
- (e) "Article or Clause" is the numbered paragraph of General Terms & Conditions.
- (f) "Procurement Representative" means Subcontract Administrator, Buyer, Procurement Specialist, or Contract Specialist acting within the limits of a written authority to enter into, administer, and/or terminate contracts and make related determinations and finds 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) "Onsite work" means work in furtherance of this Agreement at a DOE-owned or –leased area or Company-owned or –leased area.
- (i) "Educational Institution" means an entity of the type subject to 2 CFR 220.
- (j) "FAR" means the Federal Acquisition Regulations including all amendments and changes thereto in effect on the effective date of this Agreement.
- (k) "DEAR" means the DOE Acquisition Regulations, including all amendments and changes thereto in effect on the effective date of this Agreement.
- (l) "U.S.C." means the United States Code.
- (m) "Commercial Item/Service" or "Commercial Component" or "Commercial Product" means the same as the definitions for these terms set forth at FAR 2.101.
- (n) "Pantex" means the Pantex Plant in Amarillo, TX managed and operated by Company.
- (o) "Ref." means the Article is based with variations on the cited regulation.

## 2. ORDER OF PRECEDENCE [Jun 2025]

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

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

## 3. ACCEPTANCE OF TERMS AND CONDITIONS [Jun 2025]

- (a) Seller, by signing this Agreement, delivering the supplies, or performing the requirements indicated herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Agreement incorporates by reference or attachment.
- (b) This Agreement sets forth the *entire* agreement between Company and Seller concerning the subject matter of this Agreement. To avoid any doubt, this Agreement supersedes all prior and contemporaneous negotiations, understandings, and agreements, whether oral or written, pertaining to the subject matter hereof, and it supersedes and takes precedence over any conflicting or supplemental terms and conditions included in any Seller proposal, quote, acknowledgement, or invoice, all of which are hereby objected to and expressly rejected.
- (c) Failure of Company to enforce any of the provisions of this Agreement shall not be construed as (1) evidence to interpret the requirements of this Agreement, (2) a waiver of any requirement, or (3) a waiver of the right of Company to enforce each and every provision. In accordance with Texas Code, Section 2.209 (b), no waiver of any provision or part thereof of this Agreement shall be valid unless such waiver is in a writing signed by the Procurement Representative. Any waiver shall be strictly construed and shall apply on a one-time basis unless expressly stated to apply otherwise.

#### **4. SYSTEM FOR AWARD MANAGEMENT [Jun 2025]**

- (a) In accordance with FAR 52.204-7, *System for Award Management*, the Seller represents that it has completed its annual representations and certifications in the System for Award Management (SAM). After reviewing SAM, Seller further represents by acceptance of this Agreement that:
  - (1) at the time of submission of its offer, the representations and certifications in SAM are current, accurate, complete, and applicable to this award, and;
  - (2) the Seller shall continue to be registered until time of award, during performance, and through final payment of any contract, basic agreement, or basic ordering agreement resulting from this solicitation.
- (b) Further, during performance of this Agreement, Seller will provide immediate notice to the Company's Procurement Representative, and cooperate with any Company-ensuing remedial measures, in the event:
  - (1) Seller is suspended, debarred or declared ineligible by the Department of Energy (DOE);
  - (2) Seller is placed on the List of Parties Excluded from Federal Procurement and Non-Federal Procurement Programs, published by SAM; or
  - (3) Seller receives notice of its proposed debarment from an agency.

#### **5. AGREEMENT FOR BENEFIT OF DOE [Jun 2025]**

- (a) Funding — Company shall make all payments under this Agreement from Government funds advanced and agreed to be advanced by DOE, and not from its own funds. In almost all circumstances, funds recovered by Company from Seller are Government funds.
- (b) Administration — Administration of this Agreement may be transferred, in whole or in part, to DOE or its designee(s), and to the extent of such transfer and notice thereof to Seller, Company shall have no further responsibilities hereunder.
- (c) Company Right to Recovery — If Company seeks recovery from Seller, Seller agrees it shall not plead, assert or raise in any manner a defense that Company has no right to recover (1) because Company itself, rather than DOE/NNSA, has suffered no damages on account of the cost-reimbursable nature of Company's Prime Contract with DOE, or (2) because DOE has accepted the project or task performed under this Agreement.

#### **6. DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS [Jun 2025]**

Seller will follow the regulations establishing the Defense Priorities and Allocations System (15 CFR 700) if this Agreement is a rated order.

#### **7. COOPERATING WITH DOE OFFICE OF INSPECTOR GENERAL [Jun 2025]**

- (a) Seller shall cooperate fully and promptly with requests from the DOE Office of Inspector General (OIG) for information and data relating to DOE programs and operations. Seller must ensure that its employees (1) 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 (2) not impede or hinder another employee's cooperation with the OIG.
- (b) Seller must ensure that reprisals are not taken against employees who cooperate with or disclose information to the OIG.

#### **8. REPORTING WASTE, FRAUD, AND ABUSE [Jun 2025]**

- (a) Business Ethics and Conduct
 

The Company is committed to the highest standards of integrity, honesty, and ethical conduct in its business dealings. Accordingly, all Sellers, and their employees who work with them, are expected to conduct themselves in a manner consistent with those standards and to avoid even the appearance of impropriety or conflict of interest. To that end, Seller specifically agrees that, during the term of the Agreement, it as an entity and its employees as individuals will comply with the following Business Ethics and Conduct Policy, and that the Company may periodically audit Seller's records relating to its compliance:

  - (1) Seller will exercise due diligence to prevent and detect criminal conduct related to performance of work under this Agreement and promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.
  - (2) Seller will not act on behalf of, represent, or act as an agent of the Company in any forum, Seller agreement or in any other context without prior written approval from the Senior Supply Chain Manager or his/her designee.
  - (3) Seller employees will not suggest or cause others to believe that they are employees of the Company. Seller agrees to follow the instructions of the Company with respect to how Seller and its employees may properly identify themselves in communications made during the performance of this Agreement.
  - (4) Seller will not direct or manage the Company's employees.
  - (5) If Seller's employees have (i) any outside employment or engagement with, or (ii) ownership or substantial financial interests in, any known subcontractors to the Company, then Seller will promptly disclose such relationships to the

Procurement Representative in writing upon discovery, and then annually thereafter.

- (6) Seller will promptly disclose in writing to the Procurement Representative any instance in which Seller, or one of its principals, employees, agents, or subcontractors, has committed either: (i) a violation of federal or state criminal law other than traffic violations resulting in a fine less than \$300.00; (ii) a violation of the civil False Claims Act, 31 U.S.C. Section 3729-3733; (iii) a violation of Seller's own internal policies and procedures related to ethical and lawful conduct; or (d) a known violation of the Company's policies and procedures.
- (7) Seller's employees, after obtaining authorization from the Company, may use the Company's computers, communication equipment, systems, and materials for the Company's business purposes only. However, occasional, limited use of those resources for personal communications to handle emergency or unexpected situations (e.g., child care) is permitted. Seller's employees will have no reasonable expectation of privacy in any communications they make using Company's resources.
- (8) Seller's employees will not, for any reason, accept or provide gifts, meals, or other business courtesies to or from any government employee, the Company, its employees, or any of its known subcontractors.
- (9) Seller's employees, agents, and officers, during the term of this Agreement, will not, while physically on Company premises ("onsite"), market Seller's services for future Company work. Seller may compete for future work for the Company during the terms of this Agreement provided that Seller takes all reasonable steps to avoid the appearance of and actual conflicts of interest (such as gaining an unfair competitive advantage) including without limitation instructing its employees to undertake such efforts only on the Seller's time, and not while working on Company premises.
- (10) Seller's employees will contact the Procurement Representative if they have any questions, at any time, regarding compliance with this Policy or any other Company policy or procedure.

Seller and its employees acknowledge and understand that this Policy is intended as a guide for ethical conduct while Seller is under an Agreement to the Company, and that it in no way describes expectations for employment between any individual employee of Seller and either the Company or the Seller itself. Seller shall immediately investigate any alleged Seller misconduct when requested by the Company. Seller shall take appropriate action to resolve concerns regarding any Seller employee's performance, conduct, competence to the Company's satisfaction. The Company shall investigate any allegation of harassment, discrimination, retaliation, or other misconduct made by or against a Seller employee when a Company employee is either the alleged victim or the alleged perpetrator, or when government property of resources is involved. Seller must insert these terms, including this paragraph, in all lower-tier subcontracts that exceed the threshold specified in FAR 3.1004(a) on the date of subcontract award and a performance period of more than 120 days.

- (b) Applies to — This Article applies to agreements that have a value in excess of \$6,000,000 and a performance period of more than 120 days.
  - (1) General Requirements — Seller shall ensure its employees having information about actual or suspected violations of laws, regulations, or policies including fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement relating to DOE programs, operations, facilities, contracts, or information technology systems notify an appropriate authority. Examples of violations to be reported include, but are not limited to, allegations of false statements; false claims; bribery; kickbacks; fraud; environmental, safety, and health violations; theft, computer crimes; subcontractor mischarging; conflicts of interest; and conspiracy to commit any of these acts. Seller must ensure that its employees are aware that its employees are required to report actual or suspected violations. Reporting can be as follows: Pantex 806-477-6777; Fax 806-477-3005; Office of Inspector General; 1-800-541-1625 (M-F 8:00AM – 4PM EST).
  - (2) Seller Specific Requirements — Seller shall inform its employees annually of their duty to report allegations of information described in General Requirements above; display the OIG hotline telephone number in buildings and common areas under its responsibility such as cafeterias, public telephone areas, official bulletin boards, reception rooms, and building lobbies; publish the OIG hotline telephone number in telephone books, newsletters, or other means of widespread communication to employees under its responsibility; Seller and its employees shall report to the OIG within a reasonable period of time, but not later than 24 hours after discovery of any alleged violations; shall not take any reprisal action against an employee for reporting actual or suspected violations to the OIG.
  - (3) Flowdown — Requirements of this Article, including paragraph (b)(3), shall be flowed down to all lower-tier subcontracts.

## 9. ETHICS AND EMPLOYEE CONCERNS *[Jun 2025]*

- (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) Indemnity For Lobbying.
- (1) Seller shall not perform local, state or federal lobbying activities, as those terms are defined by federal and Texas laws. Any lobbying activities by Seller constitutes a material breach of the Agreement and is a basis for termination of the Agreement for default. Seller agrees to indemnify and hold harmless company from any liabilities, losses, costs, or fees of any nature that may arise as a result of company defending, settling or paying assessments of damages or penalties by the U.S. government or state of Texas related to seller lobbying activities. Seller further agrees to promptly reimburse Company the full amount of any payment made related to Seller lobbying activities.
- (c) Conflict of Interest Involving Former U.S. Government Official.
- (1) The Seller agrees that it is not presently engaged and will not engage during the term of this Agreement in any activity which might reasonably create a conflict of interest between Seller and the Company or which might reasonably and adversely affect the Seller’s judgement with respect to the business of the Company. Seller further agrees that it will accept no payment from any competitor or supplier(s) of materials or services, customer, borrower or lender of the Company.
  - (2) The Company may terminate this Agreement at will if it determines at its sole discretion, that Supplier has engaged in any course of conduct which has, or may reasonably be expected to have, the effect of demeaning the name of business reputation of the Company or adversely effects, or may reasonably be expected to adversely effect, the Company’s best interest, economic or otherwise.
  - (3) Each former U.S. government employee who is to perform services for Seller, pursuant to this Agreement shall submit to the Company an executed Conflict of Interest form. In the event such individual is required to obtain an opinion of the Ethics Officer of the cognizant Federal Agency verifying that the activities of such individual do not violate federal ethics laws and regulations (“Opinion Letter”), Seller agrees that the Company shall not be obligated to pay Seller for the services of such individual until the Company has received said Opinion Letter. Moreover, seller agrees to indemnify and hold harmless company from any liabilities, losses, costs or fees of any nature that may arise as a result of company defending, settling or paying assessments of damages or penalties by the U.S. government related to seller or seller employee violates of post-employment ethic laws and regulations.
- (d) Employee Concerns
- (1) 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.
  - (2) 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.
    - (i) 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:

Call: (806) 573-5348, or (806) 573-5337

Helpline: (806) 573-6777;

Form: [UCN-21222, Employee Concerns Submittal](#); or

Seller Employees may also call the NNSA Production Office 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.

- (ii) 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.
- (3) Seller shall cooperate with and assist Company in (1) assessments of Seller's ECP Program, and (2) 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.
- (4) 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.
- (5) Seller shall implement corrective actions as directed by the Company Procurement Representative.
- (6) 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.
- (7) 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.
- (8) As a means of establishing an effective program, Seller's ECP should utilize ECP best practices, which may include, but are not limited to:
  - (i) Ensuring that there is an ECP Manager who reports to a designated executive in Seller's management chain;
  - (ii) Establishing a case-file system of documentation and records for Employee Concerns;
  - (iii) Establishing a process that provides anonymity and confidentiality for Seller Employees who raise Employee Concerns unless Seller is legally compelled to disclose such information;
  - (iv) Providing avenues for informal resolution of concerns;
  - (v) Allowing for the use of alternate dispute resolution;
  - (vi) Referring Employee Concerns to other appropriate organizations to investigate an Employee concern; and
  - (vii) Documenting acceptance of dismissal of concerns, including "closure" of a concern after an investigation into its merits.
- (9) Flowdown — Requirements of this Article, including paragraph (d)(9), shall be flowed down to all lower-tier subcontracts.

## **10. PUBLIC RELEASE OF INFORMATION [Jun 2025]**

- (a) Seller shall not publicly disclose information concerning any aspect of the materials or services relating to this Agreement without the prior written approval of the Procurement Representative unless specifically required by law.
- (b) The interest of Company or DOE in this Agreement may not be used in advertising or publicity without advance written approval of the Procurement Representative.
- (c) Flowdown — Requirements of this Article, including paragraph (c), shall be flowed down to all lower-tier subcontracts.

## **11. CONFIDENTIALITY OF INFORMATION [Jun 2025]**

- (a) To the extent that work under this Agreement requires that Seller be given access to confidential or proprietary business, technical, or financial information belonging to the Government, Company, or other parties, Seller shall after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties during or after the term of this Agreement unless specifically authorized by Company in writing. The foregoing obligations, however, shall not apply to (1) information which, at the time of receipt by Seller is in public domain; (2) information which is published after receipt thereof by Seller or otherwise becomes part of the public

domain through no fault of Seller; (3) information which Seller can demonstrate was in its possession at time of receipt thereof and was not acquired directly or indirectly from Government or Company; (4) information which Seller can demonstrate was received by it from a third party who did not required Seller to hold it in confidence.

- (b) Seller shall obtain written agreement, in a form satisfactory to Company, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within Seller's organization directly concerned with performance of this Agreement.
- (c) Seller agrees, if requested by Company or DOE, to sign an agreement identical, in all material respects, to the provisions of this Article, with each company supplying information to Seller under this Agreement, and to supply a copy of such agreement to Company.
- (d) Seller agrees that upon request by Company or DOE, it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by Company or DOE, such an agreement shall also be signed by Seller's personnel.
- (e) This provision shall not extend to, and Confidentiality Agreements shall include the following:

Nothing within this Agreement is designed to conflict with or alter, nor shall it be construed as conflicting with or altering, the rights of any Party's employee's obligation, right, or liability created by existing statute or Executive Order relating to (i) classified information, (ii) communications to Congress, (iii) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (iv) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this Agreement and are controlling.

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

## **12. COMPLIANCE WITH LAWS [Jun 2025]**

- (a) In performing work under this Agreement, Seller shall comply with the requirements of applicable Federal, State, and local laws and regulations, unless relief has been granted in writing by the appropriate regulatory agency.
- (b) Except as otherwise directed by Company, Seller shall procure all necessary permits or licenses required for the performance of work under this Agreement.
- (c) Irrespective of local prevailing trade practices, uses, or customs, the requirements (including all specifications) shall be literally and strictly complied with. Any request by Seller for variation from literal requirement shall be treated as a request for a change order pursuant to the "Changes" clause of this Agreement.
- (d) Regardless of the performer of the work, Seller is responsible for compliance with the requirements of this Article. Seller is responsible for flowing down the requirements of this Article to subcontracts at any tier to the extent necessary to ensure Seller's compliance with the requirements.

## **13. EXPORT CONTROL [Jun 2025]**

- (a) Seller must comply with all U.S. export control laws and regulations, including, but not limited to, the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this Agreement (see also the illustrated list of additional export laws at DEAR 970.5225-1). In the absence of available license exemptions or exceptions, Seller must obtain required licenses or other approvals for exports of hardware, technical data, and software, or for the provision of technical assistance.
- (b) Seller must obtain export licenses, if required, before using foreign persons in performance of this Agreement, if the foreign person will have access to export-controlled technical data or software.
- (c) Seller is responsible for all regulatory record-keeping requirements associated with the use of licenses and license exemptions and exceptions.
- (d) Guidance regarding national policy set forth in National Security Directive 189, concerning fundamental research and export control is at DEAR 970.5225-1.
- (e) Flowdown — Requirements of this Article, including paragraph (e), shall be flowed down to all lower-tier subcontracts.

## **14. DOE SECURITY BADGES AND CLEARANCE REQUIREMENTS [Jun 2025]**

- (a) Security badges issued by Company to Seller employees and Seller's lower-tier subcontractor employees are Government property and are issued for official use only onsite at Pantex, while performing duties within the scope of their contract. The badges are not to be retained by the seller or subtier vendors or employees and must be returned to Personnel Security when access is no longer needed, when the work scope/activity is concluded, or as directed by Personnel Security, other Security employees, the STR, or Procurement. Seller must ensure that badges issued to its employees and employees of



its subcontractors at all tiers are returned to Company. Seller is not authorized to destroy, modify, or store any badge offsite or at its offsite business premises, locations, vehicles or facilities. Employees must return badges upon expiration of this Agreement, termination of employment, or when access to the Pantex Plant is no longer needed. Employees holding an L or Q clearance must attend a security termination debriefing conducted by Company when returning badges. When possible, Seller must notify the STR three business days before an employee holding an L or Q clearance will be returning a badge so that debriefings may be scheduled. However, in all cases, the Personnel Security Clearance Office should be notified by Seller within one working day of a termination of employment or need for access to the Complex if the employee holds an L or Q clearance in order to provide notification to DOE/NNSA within two business days per DOE/NNSA directives.

- (b) Seller must immediately notify the Procurement Representative in writing when a badge of its employee or the employee of a lower-tier subcontractor is lost or stolen. These employees must report in person to the Badging Office (or contact PSS after hours/weekends) to complete an affidavit concerning the loss or theft and to obtain replacement badges.
- (c) Seller must immediately notify the Procurement Representative in writing whenever any employee of Seller or a lower-tier subcontractor who has been badged or holds a security clearance under this Agreement terminates employment or no longer needs access to the Sites.
- (d) Seller must work with the STR to ensure all its employees and its lower-tier subcontractor employees return badges before exiting the site for the final time.
- (e) Seller's payment may be withheld until all requirements of this Article have been met. Failure by employees of Seller and its lower-tier subcontractors to promptly return badges will result in a charge of \$1,000 per badge, to be withheld from payment or billed to Seller. In addition, failure to return a badge may result in the denial of future access to the Sites for the individual. This \$1,000 charge will not be assessed against badges that are lost or stolen during performance if replacement badges are issued to allow Seller or lower-tier subcontractor employees to return to work.

## **15. WORKPLACE SUBSTANCE ABUSE PROGRAM (WSAP) [Jun 2025]**

- (a) Applies to — This Article applies to subcontracts \$25,000 or greater and which involve: (1) access to or handling of classified information or special nuclear materials; (2) high risk of danger to life, the environment, public health and safety, or national security; (3) transportation of hazardous materials to or from a DOE site, (4) employees who are required to have L or Q clearances to perform work under this Agreement, or (5) on-site construction activities.
- (b) WSAP Covered Work — For purposes of this Article, "WSAP covered work" means both onsite work, and work that is not onsite but that is performed by subcontractor employees with Q or L clearances at facilities that have Limited Areas (security areas designated by DOE for the protection of classified matter). Facilities that are not DOE-owned or — leased or Company-owned or — leased but have Limited Areas within them are known as "possessing facilities."
- (c) Sub-tier contractors to Seller — Seller shall include this requirement in its subcontracts with applicable lower tier subcontractors, and will require those subcontractors to include this requirement in their subcontracts, if the applicability standards listed in the "Applies to" section above are met. References to "Seller" include all lower tier subcontractors falling within the "Applies to" criteria listed in paragraph (a) above.
- (d) Company approval of Seller Program.
  - (1) All work falling within the "Applies to" criteria above is subject to 10 CFR 707, "Workplace Substance Abuse Programs at DOE Sites." This Article highlights certain provisions of 10 CFR Part 707, but Seller is directed to the entire provision to ensure compliance. Seller shall develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR Part 707. In accordance with 10 CFR 707.5(d), Seller's WSAP requires Company approval. Seller's proposed WSAP must be submitted to the Procurement Representative and approved before the start of work.
  - (2) Seller shall also submit applicable lower-tier subcontractor WSAPs for Company approval. Seller may either include employees of some or all subcontractors in its WSAP, or include this Article in subcontracts for WSAP covered work and require subcontractors to submit WSAPs for Company approval.
- (e) General Workplace Substance Abuse Program Requirements.
  - (1) Seller's WSAP shall be consistent with the baseline elements in 10 CFR Part 707 and the guidelines of the U.S. Department of Health and Human Services found at: <http://www.samhsa.gov/>.
  - (2) For all WSAP covered work, Seller's WSAP must provide for pre-employment testing for illegal drugs before final selection of applicants for employment, regardless of whether such applicants will fill testing designated positions (TDPs) as described in paragraph (f) below. Pre-employment testing must comply with all applicable provisions of 10 CFR 707.
  - (3) Seller must notify the Procurement Representative in writing, as soon as possible, or at the latest by the next business day, after Seller receives notice—
    - of an employee's conviction under a criminal drug statute; or

- for employees in TDPs (defined below), of a drug related arrest or conviction or a receipt of a positive drug test result.
- (4) Seller shall maintain files of chain-of-custody records required by 10 CFR 707.12(a) and 10 CFR 707.16(d) and submit copies to Company upon request. Seller and lower-tier subcontractors shall require that laboratory records relating to positive drug test results be maintained in the manner and for the periods required by 10 CFR 707.16(c).
  - (5) Seller shall use only drug-testing laboratories certified by the Department of Health and Human Services under Subpart C of the HHS “Mandatory Guidelines for Federal Workplace Drug Testing Programs.” [See 10 CFR 707.12(a)]. The HHS Mandatory Guidelines are available at <http://www.samhsa.gov/>. Seller shall provide a copy of the certification to the Procurement Representative upon request. Seller shall retain pre-employment testing records in accordance with 10 CFR 707.16. When an applicant has been tested and determined to have used an illegal drug, Seller must terminate processing for employment and so notify the applicant.
  - (6) As required by 10 CFR 707.5(d), Company will monitor Seller’s implementation of its program for effectiveness and compliance with 10 CFR Part 707. Seller shall submit a written report, if appropriate, to the Procurement Representative of drug tests completed before mobilization or commencing authorized work. At Company’s request, Seller shall submit additional reports of tests completed during performance.
  - (7) Company will require Seller to remove from WSAP covered work any Seller employee who is determined to have used an illegal drug.
- (f) Testing Designated Positions.
- (1) In addition to the general WSAP provisions, Seller shall determine if it has employees in TDPs as defined below and performing WSAP covered work. If Seller has no TDPs (potentially the case for uncleared construction subcontractor’s employees not possessing a Facility Clearance) the WSAP shall so state. If Seller has employees in TDPs performing WSAP covered work, then prior to beginning work under this Agreement, Seller shall provide the Procurement Representative with a list of all TDP employees, and Seller’s WSAP must comply with the provisions of 10 CFR Part 707 regarding TDPs. Thereafter, Seller shall notify the STR of any additions or deletions of employees in TDPs within 48 hours.
  - (2) TDPs are defined as those positions involving certain high-risk work listed in Part 707, access to classified information, construction, and crane operators, and any positions filled by employees holding an L- or Q-clearance.
  - (3) Seller’s employees in TDPs who perform onsite will be subjected to the following drug testing by Company:
    - (i) Random drug testing at the rates specified in 10 CFR 707.7;
    - (ii) Drug testing as a result of an occurrence (see 10 CFR 707.9); and
    - (iii) Drug testing for reasonable suspicion of illegal drug use (see 10 CFR 707.10).
  - (4) Seller’s employees performing onsite work shall be placed in Company’s pool of employees for random drug testing, and these employees will be subject to testing by Company’s Occupational Health Services (OHS). Seller’s employee will be notified by Company’s representative when Seller’s employee is selected for random drug testing. Company’s representative will notify Company’s OHS when Seller’s employee has been notified of his/her duty to report to Company’s OHS. Upon notification by Company’s representative, Seller’s employee will have one and one-half hours to report to Company’s OHS.
- (g) Seller’s failure to comply with the requirements of 10 CFR Part 707 or to perform in a manner consistent with its approved WSAP may render Seller subject to suspension of payments, termination for default, suspension and debarment, and any other remedies available to Company and/or to DOE.
- (h) If Seller believes that an anticipated lower tier subcontract for onsite work may require a WSAP that complies with 10 CFR 707, then Seller must notify the Procurement Representative not later than ten calendar days before Seller awards that subcontract.

## **16. BUY AMERICAN ACT — CONSTRUCTION MATERIALS [Jun 2025]**

This Agreement is subject to the Buy American Act – Construction Materials (FAR 52.225-9) and Buy American Act – Construction Materials under Trade Agreements (FAR 52.225-11) clauses as stated in Article 67 titled “Clauses Incorporated by Reference.” Seller is solely responsible for compliance with such clauses and agrees to indemnify and hold harmless Company from any and all direct, indirect or consequential expenses or other damages relating to or arising out of the failure of Seller or its sub-suppliers to comply with said clauses.

## **17. AUTHORIZATION AND CONSENT (Ref. FAR 52.227-1 JUN 2020) [Jun 2025]**

- (a) The Government authorizes and consents to all use and manufacture, in performing this Agreement or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any Article the delivery of which is accepted by Company under this Agreement or (2) used in machinery, tools, or methods whose use necessarily results from compliance by Seller or a subcontractor with (i) specifications or written

provisions forming a part of this Agreement or (ii) specific written instructions given by Company directing the manner of performance. The entire liability to the Government or Company for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity Article, if any, included in this Agreement or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

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

## **18. PATENT INDEMNITY [Jun 2025]**

- (a) Seller shall indemnify Company and the Government and their officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as “construction work”) under this Agreement, or out of the use or disposal by or for the account of Company or the Government of such supplies or construction work.
- (b) This indemnity shall not apply unless Seller shall have been informed as soon as practicable by Company or Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to—
  - (1) An infringement resulting from compliance with specific written instructions of Company directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the Agreement not normally used by Seller;
  - (2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or
  - (3) A claimed infringement that is unreasonably settled without the consent of Seller, unless required by final decree of a court of competent jurisdiction.

## **19. PERFORMANCE AND PAYMENT BONDS [Jun 2025]**

- (a) As used in this clause, “original Agreement price” means the award price of this Agreement. Original Agreement price does not include the price of any options, except those exercised at the time of award.
- (b) If the price of this Agreement is greater than \$150,000, Seller must furnish performance and payment bonds to Company as follows:
  - (1) Performance Bonds on Company form shall be 100 percent of the original Agreement price; forms are available at [\*Special Articles and Forms\*](#). Electronic submission of bond and notarial documents for verification is acceptable where allowed by respective state law.
  - (2) Payment Bonds on Company form shall be 100 percent of the original Agreement price; forms are available at [\*Special Articles and Forms\*](#). Electronic submission of bond and notarial documents for verification is acceptable where allowed by respective state law.
  - (3) (i) Company may require additional performance and payment bond protection if the price is increased. The increase in protection shall generally equal 100 percent of the increase in price.
  - (ii) Company may secure the additional protection by directing Seller to increase the penal amount of the existing bond or to obtain an additional bond.
- (c) Seller shall furnish all executed bonds, including any necessary reinsurance Agreements, to Company within the time specified in the solicitation, but in any event before starting work.
- (d) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is available at [Surety Bonds - Circular 570 \(treasury.gov\)](#).

## **20. ALTERNATIVE PAYMENT PROTECTIONS [Jun 2025]**

- (a) If the price of this Agreement is greater than \$35,000 but not greater than \$150,000, Seller shall submit one of the following payment protections:
  - (1) A payment bond on Company form, available at [Special Articles & Forms](#) ; or
  - (2) An irrevocable letter of credit (see the “Irrevocable Letter of Credit” Article).
- (b) The amount of the payment protection shall be 100 percent of the Agreement price.

- (c) The payment protection must be submitted within ten calendar days of award of the Agreement.
- (d) The payment protection shall provide protection for the Agreement's period of performance plus one year.
- (e) Except for payment bonds, which provide their own protection procedures, Company is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a nonpayment has occurred and to withhold such funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.

## **21. ADDITIONAL BOND SECURITY [Jun 2025]**

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

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

## **22. PLEDGES OF ASSETS [Jun 2025]**

- (a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond—
  - (1) Pledge of assets; and
  - (2) Standard Form 28, Affidavit of Individual Surety.
- (b) Pledges of assets from each person acting as an individual surety shall be in the form of—
  - (1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203-2 (except see 28.203-2(b)(2) with respect to Government securities held in book entry form) and/or;
  - (2) A recorded lien on real estate. The offeror will be required to provide—
    - (i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d);
    - (ii) Evidence of the amount due under any encumbrance shown in the evidence of title;
    - (iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

## **23. PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS [Jun 2025]**

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

## **24. IRREVOCABLE LETTER OF CREDIT [Jun 2025]**

- (a) "Irrevocable letter of credit" (ILC), as used in this Article, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by Company (the beneficiary) of a written demand therefore. Neither the financial institution nor the offeror/Seller can revoke or condition the letter of credit.
- (b) If the offeror intends to use an ILC in lieu of a bid bond, as an alternative payment protection, or to secure performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this Article shall be used.
- (c) The ILC shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this Article, and—
  - (1) If used as a bid guarantee, the ILC shall expire no earlier than 60 calendar days after the close of the bid acceptance period;
  - (2) If used as an alternative payment protection or as security for a performance or payment bond, the offeror/Seller may

submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 calendar days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and Company provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

- (i) For Agreements exceeding \$150,000 the later of—
  - (A) One year following the expected date of final payment;
  - (B) For performance bonds only, until completion of any warranty period; or
  - (C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.
- (ii) For Agreements of \$150,000 or less, 90 calendar days following final payment.
- (d) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. The offeror/Seller shall provide Company a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.
- (e) The following format shall be used by the issuing financial institution to create an ILC:

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

Issue Date \_\_\_\_\_

Irrevocable Letter of Credit No. \_\_\_\_\_

Account party's name \_\_\_\_\_

Account party's address \_\_\_\_\_

For Solicitation No. \_\_\_\_\_ (for reference only)

To: PanTeXas Deterrence, LLC (PXD)

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States \$\_\_\_\_\_. This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [issuing
2. financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on \_\_\_\_\_, or any automatically extended expiration date.
3. We hereby undertake to honor you or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.
4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 calendar days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.
5. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be affected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written

direction of CNS (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

6. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of \_\_\_\_\_ [state of confirming financial institution, if any, otherwise state of issuing financial institution].
7. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 calendar days after the resumption of our business.

Sincerely,

\_\_\_\_\_

[Issuing financial institution]

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

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

(Date) \_\_\_\_\_

Our Letter of Credit Advice Number \_\_\_\_\_

Beneficiary: PXD

Issuing Financial Institution: \_\_\_\_\_

Issuing Financial Institution's LC No.: \_\_\_\_\_

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by \_\_\_\_\_ [name of issuing financial institution] for drawings of up to United States dollars \_\_\_\_\_/U.S. \$\_\_\_\_\_ and expiring with our close of business on \_\_\_\_\_ [the expiration date], or any automatically extended expiration date.
2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at \_\_\_\_\_.
3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.
4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:
  - (a) At least 60 calendar days prior to any such expiration date, we shall notify Company, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or
  - (b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.
5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision,

International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of \_\_\_\_\_ [state of confirming financial institution].

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

Sincerely,

\_\_\_\_\_  
[Confirming financial institution]

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

Sight Draft

[City, State]

(Date)\_\_\_\_\_

[Name and address of financial institution]

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

PXD

\_\_\_\_\_  
[By]

## 25. TAXES — FEDERAL, STATE AND LOCAL TAXES [Jun 2025]

- (a) Definitions. As used throughout this clause, the following terms shall have the meaning set forth below:
- (1) The term “direct tax” means any tax or duty directly applicable to the completed supplies or services covered by this agreement, or any other tax or duty from which Seller or this transaction is exempt. The term includes any tax or duty directly applicable to the importation, production, processing, manufacture, construction, sale, or use of such supplies or services; it also includes any tax levied on, with respect to, or measured by sales, receipt from sales, or use of the supplies or services covered by this agreement. The term does not include transportation taxes, unemployment compensation taxes, social security taxes, income taxes, excess-profits taxes, capital stock taxes, property taxes, and such other taxes as are not within the definition of the term “direct tax” as set forth herein.
- (2) The term “agreement date” means the effective date of this agreement if it is a negotiated agreement, or the date set for the opening of bids if it is an agreement entered into as a result of sealed bidding.
- (b) Federal Taxes. Except as may be otherwise provided in this agreement, the agreement price includes all applicable Federal taxes in effect on the agreement date.
- (c) State or Local Taxes. Except as may be otherwise provided in this agreement, the agreement price does not include any State or local direct tax in effect on the agreement date. For subcontractors providing and installing tangible personal property, which becomes part of real property, the agreement price should include all state and local direct taxes on such installed tangible personal property.
- (d) Evidence of Exemption. Company agrees, upon request of Seller, to furnish a tax exemption certificate or other similar evidence of exemption with respect to any direct tax not included in the agreement price pursuant to this clause; and the Seller agrees, in the event of the refusal of the applicable taxing authority to accept such evidence of exemption, (1) promptly to notify the Company of such refusal, (2) to cause the tax in question to be paid in such manner as to preserve all rights to refund thereof, and (3) if so directed by Company to take all necessary action, in cooperation with and for the benefit of Government, to secure a refund of such tax (in which event Company agrees to reimburse the Seller for any and all reasonable expenses incurred at its direction).

- (e) Price Adjustment. If, after the agreement date, the Federal Government or any State or local Government either (1) imposes or increases (or removes an exemption with respect to) any direct tax, or any tax directly applicable to the materials or components used in the manufacture of furnishing of the completed supplies or services covered by this agreement, or (2) refuses to accept the evidence of exemption, furnished under paragraph (d) hereof, with respect to any direct tax excluded from the agreement price, and if under either (1) or (2) Seller is obliged to and does pay or bear the burden of any such tax (and does not secure a refund thereof), the agreement price shall be correspondingly increased. If, after the agreement date, Seller is relieved in whole or in part from the payment or the burden of any direct tax included in the agreement price, or any tax directly applicable to the materials or components used in the manufacture or furnishing of the completed supplies or services covered by this agreement, the Seller agrees promptly to notify Company of such relief, and the agreement price shall be correspondingly decreased or the amount of such relief paid over to Company for the benefit of the Government. Invoices or vouchers covering any increase or decrease in the agreement price pursuant to the provisions of this paragraph shall state the amount thereof, as a separate added or deducted item, and shall identify the particular tax imposed, increased, eliminated, or decreased.
- (f) Refund or Drawback. If any tax or duty has been included in the agreement price or the price as adjusted under paragraph (e) of this Article, and if Seller is entitled to a refund or drawback by reason of the export or re-export of supplies covered by this agreement, or of materials or components used in the manufacture or furnishing of the completed supplies or services covered by this agreement, Seller agrees that he will promptly notify Company thereof and that the amount of any such refund or drawback obtained will be paid over to Company for the benefit of the Government or credited against amounts due from the Company under this agreement: Provided, however, that the Seller shall not be required to apply for such refund or drawback unless so requested by Company.

## **26. PROFESSIONAL LIABILITY INSURANCE [Jun 2025]**

- (a) Seller warrants that it is insured for \$1,000,000.00 (unless a different amount is set forth in the Schedule) for errors and omissions per claim in an amount in excess of the minimum set forth in the performance of this Agreement.
- (b) (1) Unless Seller's policy is prepaid, noncancelable, and issued for a period at least equal to the term of the Agreement, Seller must have the policy amended to include substantially the following provision:  
 (2) "It is a condition of this policy that the insurer furnishes written notice to PanTeXas Deterrence, LLC 30 days in advance of the effective date of any reduction in or cancellation of this policy."
- (c) If the policy is issued on a claim made basis rather than on an occurrence basis, coverage must continue for three years following completion or termination of this Agreement.
- (d) The retroactive date of insurance coverage must be before or the same date that performance of this Agreement begins. Evidence of acceptable insurance must be furnished to the Procurement Representative before beginning performance. Evidence of renewal must be furnished not later than five days before a policy expires.

## **27. PAYMENT [Jun 2025]**

- (a) Company shall pay Seller the price as provided in this Agreement.
- (b) (1) Company may make progress payments monthly as the work proceeds, or at more frequent intervals as determined by Company, on estimates of work accomplished which meets the standards of quality established under the Agreement, as approved by Company.  
 (2) Pay estimates shall be submitted monthly. In the preparation of estimates, Company may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to Seller at locations other than the site may also be taken into consideration if (i) consideration is specifically authorized by this Agreement and (ii) Seller furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this Agreement.  
 (3) An updated progress report shall be submitted by Seller with each pay estimate.  
 (4) Before a request for payment is approved, Seller shall submit to the Subcontract Technical Representative all required plans and reports for the work period in question.
- (c) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as: (1) relieving Seller from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or (2) waiving the right of Company to require the fulfillment of all of the terms of the Agreement.
- (d) In making these progress payments, Company shall, upon request, reimburse Seller for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance Agreements, when applicable) after Seller has furnished evidence of full payment to the surety.
- (e) Company shall pay the final amount due Seller under this Agreement after: (1) completion and acceptance of all work; and (2) Seller has submitted: (i) "Certified-as-Built" shop drawings and manufacturer's data and a bound copy of certified



test data and reports; (ii) a certified statement that all payrolls have been submitted under this Agreement; (iii) a properly executed voucher; and (iv) a release of all claims against Company and the Government arising under or related to this Agreement, other than claims, in stated amounts, that Seller has specifically excepted from the operation of the release. Release may also be required of the assignee if Seller claims amounts payable that have been assigned in accordance with the Article titled "Assignment".

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

## **28. INTEREST [Jun 2025]**

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

## **29. RESOLUTION OF DISPUTES [Jun 2025]**

- (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 Amarillo, TX; the parties shall share the cost of obtaining the mediator or arbiter, and each party shall bear its discretionary costs.
- (b) "Claim," as used in this Article, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Agreement terms, or other relief arising from or relating to this Agreement, or its breach. However, a written demand or written assertion by Seller seeking the payment of money is not a Claim until certified, if certification is required by paragraph (d) below. A request for payment (e.g., a voucher, invoice, or other routine request for payment, a termination settlement proposal, or a request for an adjustment or equitable adjustment) that is not in dispute when submitted is not a Claim. An initially undisputed request for payment may be converted to a Claim by Seller by complying with the submission and applicable certification requirements in paragraphs (c) and (d) below.
- (c) A Claim by Seller shall be made in writing, cite this Article, and be submitted to Company's Senior Director, Supply Chain Management with a request for a Final Decision.
- (d) Seller and any lower-tier subcontractors whose portion of the Claim exceeds \$50,000 shall certify its portion of the Claim; provided however, if Seller cannot certify the lower-tier subcontractor's portion of Seller's Claim, Seller shall explain in writing why it cannot certify that portion.
  - (1) Company shall not be liable for, and shall not pay, any Claim originated by Seller if that Claim exceeds \$50,000 unless Seller's Claim is accompanied by the below certification from Seller.
  - (2) Company shall not be liable for, and shall not pay, any Claim of a lower-tier subcontractor to Seller if that Claim, without mark-ups by a higher-tier subcontractor or Seller, exceeds \$50,000 unless that Claim is accompanied by the below certification from the lower-tier subcontractor that originated the Claim.
  - (3) The aggregate amount of both increased and decreased costs shall be used in determining when the dollar threshold requiring certification is met.
  - (4) If Seller certified its costs under the Adjustments Article, Seller is not required to certify under this Article as a Claim, unless Seller certified more than 180 calendar days before Seller submits its Claim or the Claim amount exceeds the prior certified amount by more than \$50,000.

### **CERTIFICATION**

I acknowledge the expectation that any payment by Company for this requested contract adjustment will be reimbursed by funds of the Federal Government, and, under penalty of law, I certify that this Claim request is made

in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, that the amount requested accurately reflects the contract adjustment for which Seller and I believe Company is liable, and that I am duly authorized to certify the request on behalf of [Seller or lower-tier subcontractor, as appropriate].

- (e) (1) A Claim from Seller shall be deemed denied if the Senior Director, Supply Chain Management does not issue a written Final Decision (i) by the date the Senior Director, Supply Chain Management notified Seller that the decision would be issued, or (ii) within 60 calendar days after receipt of the Claim if the Senior Director, Supply Chain Management did not notify Seller of a date by which the Final Decision would be issued. The Senior Director, Supply Chain Management may, but is not required to issue a written Final Decision after a Claim is deemed denied.
- (2) The Senior Director, Supply Chain Management's written Final Decision on any Seller Claim shall be final and conclusive between the parties with no right of judicial review, provided however, that the Final Decision shall not be final and binding against either party, and shall be given no evidentiary weight by the trier of fact, if Seller files suit within 90 calendar days of the written Final Decision in the appropriate court as provided for in paragraph (f) below.
- (3) Seller shall have no right to file suit prior to the date of the written Final Decision or 60 calendar days from the Senior Director, Supply Chain Management's receipt of the Claim, whichever occurs earlier.
- (f) (1) State Agency. Where Seller is a State agency, such as an Educational Institution, the applicable constitutional provisions or statutes that govern sovereign immunity shall dictate the appropriate forum and law governing substantive issues.
- (2) Seller not a State Agency. (i) Any litigation for an Agreement related to the Pantex Plant shall be brought and prosecuted exclusively in the United States District Court for the Northern District of Texas, Amarillo Division. (ii) In the event the requirements for jurisdiction in Federal District Court are not present, such litigation In the event requirements for jurisdiction in Federal District Court are not present for an Agreement related to the Pantex Plant, such litigation shall be brought in Carson County, TX or, in the event that such court lacks jurisdiction, in the highest trial court in the state of Texas having jurisdiction.
- (3) THE PARTIES AGREE TO TRIAL BY JUDGE ALONE AND HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO DEMAND A TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION ARISING UNDER, CONNECTED WITH, OR RELATED TO THIS AGREEMENT, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE.
- (4) If a court awards interest of any kind, interest shall be simple interest at the applicable rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563). If a court awards prejudgment interest, interest shall accrue from no earlier than the date a Claim is received by the Senior Director, Supply Chain Management.
- (g) Subject to (f)(1), the resolution of all issues arising from or relating to this Agreement shall be governed to the maximum extent practicable by the common law of federal contracts; provided, however, that (i) the "Christian Doctrine" shall not apply, meaning that federal procurement clauses (e.g., the FAR, including agency supplements) or portions thereof not appearing in this Agreement shall not be read into this Agreement, and (ii) where the language of any article, provision or term herein differs from the language of a federal procurement clause, provision or term, the differing language of this Agreement shall control. Where the common law of federal contracts does not apply, then subject to (f)(1), resolution shall be governed by the laws of the State of Texas, without regard to its Conflicts of Laws rules.
- (h) There shall be no interruption in the performance of the work, and Seller shall proceed diligently with the performance of this Agreement pending final resolution of any dispute arising under or related to this Agreement between the parties or between Seller and its sub-tier subcontractors.
- (i) The contractual remedies in this Article shall not be deemed to waive, postpone the running of, extend, or otherwise affect any statute of limitation applicable to any request for payment or Claim.

### **30. HOLD HARMLESS [Jun 2025]**

Seller shall be solely responsible for all liability and related expenses resulting from injury, death, damage to, or loss of property which is in any way connected with seller's negligent performance of work under this agreement. Seller shall also be responsible for all materials and work until acceptance by company. Seller's responsibility shall apply to activities of seller, its agents, lower-tier subcontractors, or employees and such responsibility includes the obligation to indemnify, defend, and hold harmless the government and company. However, such liability and indemnity does not apply to injury, death, or damage to property to the extent of company fault or negligence.

### **31. LIABILITY FOR FINES AND PENALTIES [Jun 2025]**

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

### **32. DESIGN CONFERENCES [Jun 2025]**

- (a) As part of the Pre-Work Conference conducted after award of this Agreement, key representatives of Company and Seller will review the design submission and review procedures specified herein, discuss the preliminary design schedule and provisions for phase completion of the D-B documents with construction activities (e.g., fast tracking) as appropriate, meet with Company Design Review personnel and key Company points of contact and discuss any other appropriate pre-design items.
- (b) After award of the Agreement, Seller shall visit the site and conduct extensive interviews, and problem-solving discussions with Company personnel to acquire all necessary site information, review user options, and discuss user needs. Seller shall document all discussions. The design shall be finalized as a direct result of these meetings.
- (c) Design Review conferences will be held at the Pantex Plant following each design submittal. Seller will bring the persons who developed the submittals to the review conferences. The conferences will take place the week after the review is complete.

### **33. SEQUENCE OF DESIGN-CONSTRUCTION [Jun 2025]**

- (a) After receipt of the Notice to Proceed (NTP), Seller shall initiate design, comply with all design submission requirements, and obtain Company review of each submission. No construction may be started, with the exception of clearing the site, until Company reviews the Final Design submission and determines it satisfactory for purposes of beginning construction. The STR will notify Seller when the design is cleared for construction. Company will not grant any time extension for any design resubmittal required when, in the opinion of the STR, the initial submission failed to meet the minimum quality requirements as set forth in the Agreement.
- (b) If Company allows Seller to proceed with limited construction based on pending minor revisions to the reviewed Final Design submission, no payment will be made for any in-place construction related to the pending revisions until they are completed, resubmitted and are satisfactory to Company.
- (c) No payment will be made for any in-place construction until all required submittals have been made, reviewed and are satisfactory to Company.

### **34. CONSTRUCTOR'S ROLE DURING DESIGN [Jun 2025]**

Seller's construction management key personnel shall be actively involved during the design process to effectively integrate the design and construction requirements of this Agreement. In addition to the typical required construction activities, the constructor's involvement includes, but is not limited to actions such as: integrating the design schedule into the Master Schedule to maximize the effectiveness of fast-tracking design and construction (within the limits allowed in the Agreement), ensuring constructability and economy of the design, integrating the shop drawing and installation drawing process into the design, executing the material and equipment acquisition programs to meet critical schedules, effectively interfacing the construction QC program with the design QC program, and maintaining and providing the design team with accurate, up-to-date redline and as-built documentation. Seller shall require and manage the active involvement of its key trade subcontractors in the above activities.

### **35. DIFFERING SITE CONDITIONS [Jun 2025]**

- (a) Seller shall promptly, within 24 hours, and before the conditions are disturbed, give a written notice to Company of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Agreement, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.
- (b) Company shall investigate the site conditions promptly after receiving the notice. If the conditions materially differ and cause an increase or decrease in Seller's cost of, or the time required for, performing any part of the work under this Agreement, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this Article and the Agreement modified in writing accordingly.
- (c) No request by Seller for an equitable adjustment under this Article shall be allowed unless (1) the written notice required in paragraph (a) above is given within 24 hours and (2) the request is made in writing before final payment under this Agreement.

### **36. DEVIATING FROM THE ACCEPTED DESIGN [Jun 2025]**

- (a) Seller must obtain the approval of the Designer of Record and Company's concurrence for any Seller-proposed revision to the professionally stamped and sealed and Company reviewed and concurred design, before proceeding with the revision.
- (b) Company reserves the right to non-concur with any revision to the design, which may impact furniture, furnishings, equipment selections or operations decisions that were made, based on the reviewed and concurred design.
- (c) Any revision to the design, which deviates from the Agreement requirements (i.e., the RFP and the accepted proposal), will require a modification, pursuant to the Changes Article, in addition to Company concurrence. Company reserves the right to disapprove such a revision.
- (d) Unless Company initiates a change to the Agreement requirements, or Company determines that Company-furnished design criteria are incorrect and must be revised, any Seller-initiated proposed change to the Agreement requirements, which results in additional cost, shall strictly be at Seller's expense.
- (e) Seller shall track all approved revisions to the reviewed and accepted design and shall incorporate them into the as-built design documentation, in accordance with agreed procedures. The Designer of Record shall document its professional concurrence on the as-builts for any revisions in the stamped and sealed drawings and specifications.

### **37. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK [Jun 2025]**

- (a) Seller acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. Seller also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Company, as well as from the drawings and specifications made a part of this Agreement. Any failure of Seller to take the actions described and acknowledged in this paragraph will not relieve Seller from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to Company.
- (b) Company assumes no responsibility for any conclusions or interpretations made by Seller based on the information made available by Company. Nor does Company assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this Agreement, unless that understanding or representation is expressly stated in this Agreement.

### **38. TITLE TO MATERIALS FOUND [Jun 2025]**

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

### **39. MATERIAL AND WORKMANSHIP [Jun 2025]**

- (a) All equipment, material, and Articles incorporated into the work covered by this Agreement shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Agreement. References in the specifications or drawings to equipment, material, Articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Seller may, with Company's written approval, use any equipment, material, Article, or process that is equal to that specified, unless the words "No Substitution" follow the listing of the item in the specifications or drawings.
- (b) Seller shall obtain Company approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, Seller shall furnish to Company the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by Company, Seller shall also obtain Company's approval of material or Articles that Seller contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When so directed, Seller shall submit samples for approval at Seller's expense. Machinery, equipment, material, and Articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

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

#### **40. PROTECTION OF EXISTING IMPROVEMENTS, EQUIPMENT, UTILITIES, AND ANTIQUITIES** **[Jun 2025]**

- (a) Seller shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site that are not to be removed and that do not unreasonably interfere with the required work. Seller shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance, or by the careless operation of equipment, or by workmen, Seller shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by Company.
- (b) Seller shall protect from damage all existing improvements and utilities at or near the work site and on adjacent property of a third party, the locations of which are made known to or should be known by Seller. Seller shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Agreement or failure to exercise reasonable care in performing the work. If Seller fails or refuses to repair the damage promptly, Company may have the necessary work performed and charge the cost to Seller.
- (c) Federal law provides for the protection of antiquities located on land owned or controlled by the Government. Antiquities include Indian graves or campsites, relics and artifacts. Seller shall control the activity at the jobsite to ensure that any existing antiquities discovered thereon will not be disturbed or destroyed. Seller shall report the discovery of any antiquities at the jobsite and, upon discovery of unusual materials (e.g., obsidian chips or flakes, bones, darkly stained soils, "arrowheads"), Seller shall stop work at/or around such materials and notify Company.
- (d) Should Seller encounter any utilities, lines, or structures not shown on the drawings or not correctly located thereon, it shall immediately stop all work adjacent thereto. Seller shall immediately notify Company, which will issue instructions indicating the method of proceeding. If Seller damages any utility, line, or structure, whether or not shown on the drawings, Company shall be immediately notified.

#### **41. SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION [Jun 2025]**

- (a) Seller shall be furnished the number of drawings and specifications specified in the Statement of Work at no cost.
- (b) Seller shall keep on the work site a copy of the drawings and specifications and shall at all times give Company access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. Within the specifications, Division One (the "Special Conditions") shall govern. In case of discrepancy in the figures, in the drawings, or in the remainder of the specifications, the matter shall be promptly submitted to the Construction Engineer and the Procurement Representative, who shall promptly make a determination in writing. Any adjustment by Seller without such a determination shall be at its own risk and expense. Company shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- (c) (1) The drawings and specifications incorporated into this Agreement are intended to include everything requisite and necessary to complete the entire work properly, notwithstanding the fact that every item necessarily involved may not be specifically mentioned. (2) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve Seller from performing such omitted or misdescribed details of the work, but they shall be performed as if fully and correctly set forth and described in the drawings and specifications. (3) The specifications and drawings may identify and list quantities of items to be furnished and installed by Seller. These identifications may be incomplete and the quantities are estimates only. Seller is responsible for furnishing the items and quantities manifestly necessary to carry out the intent of the drawings and specifications. (4) The drawings furnished by Company are, in general, to scale. Scales shown on a microfilmed reproduced drawing change in proportion to the reduction of the drawing from original size. Figured dimensions shall always be followed and the drawings not scaled. (5) Prior to fabricating any item (structural steel, piping, ductwork, etc.) Seller shall field-verify all dimensions critical to the installation. Any discrepancies between existing or new conditions and the drawings shall be reported to Company for resolution. (6) The specifications are divided into sections for convenience only, and such sections do not define or establish the limits of work of any subcontractor. It is Seller's responsibility to define lower-tier subcontractors' limits of work and to ensure that all lower-tier subcontractors and suppliers at whatever level are familiar with all provisions of this Agreement that may affect their work. (7) The data sheet equipment numbers are not unique. Multiple pieces of equipment may utilize the same number. Seller shall determine the quantity of equipment and material needed to complete the work.

- (d) Shop drawings means drawings submitted to Company by Seller or any lower tier subcontractor showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (*i.e.*, fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by Seller to explain in detail specific portions of the work. Company may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this Agreement.
- (e) If this Agreement requires shop drawings, Seller shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with requirements of this Agreement and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to Company without evidence of Seller's approval may be returned for resubmission. Company will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate its reasons therefore. Any work done before such approval shall be at Seller's risk. Approval by Company shall not relieve Seller from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Agreement, except with respect to variations described and approved in accordance with (f) of this Article.
- (f) If shop drawings show variations from the requirements of this Agreement, Seller shall describe such variations in writing, separate from the drawings, at the time of submission. If Company approves any such variation, Company shall issue an appropriate modification to this Agreement, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
- (g) Seller shall submit to Company for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of the specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by Company and one set will be returned to Seller.

#### **42. STANDARDS AND CODES [Jun 2025]**

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

#### **43. COMPANY WORKING DAYS [Jun 2025]**

- (a) The Company's normal work schedule is a 9/80 schedule. Seller's employees must adopt the work schedule and work shifts acceptable to the STR. A work day is considered nine hours; however, alternate work days and shifts may be required. Approval for Seller employees to work outside of normal hours requires written approval in advance from the STR. Access limitations and restrictions to the site and work area experienced by a Seller due to working outside normal working hours for Seller's own convenience, shall not be grounds for increased cost or adjustment to the schedule.
- (b) Working hours while on official travel authorized by the Company are not subject to the limitations set forth in this paragraph.
- (c) The Company will not reimburse Seller during closure of the Company facility or at Company leased facilities when security or inclement weather conditions arise. Seller agrees to recognize Company holidays. The list of observed Company holidays is located at: [Pantex Holiday Schedule](#).
- (d) The Seller must request approval, in writing, at least 72 hours in advance for access to Company on any observed holiday.

#### **44. ACCESS TO SITE [Jun 2025]**

- (a) If this agreement contains a Statement of Work wherein work will be performed onsite, then [PX-200STC-1B, Access to Pantex Plant](#) shall apply to this Agreement.
- (b) Any equipment under this purchase with wireless (Bluetooth, Wi-Fi, GPS, Near Field Communication (NFC), Cellular, etc.) or networking capabilities, must be identified prior to shipping or coming onsite to Pantex owned or leased properties. PXD will perform a Technical Review of the equipment identified to determine if it is permitted onsite.

#### **45. INTERNET PROTOCOL TECHNOLOGY [Jun 2025]**

- (a) In order to facilitate the wide-scale adoption of IPv6, if this agreement involves the acquisition of Information Technology (IT) that uses Internet Protocol (IP) technology, Seller agrees:
  - (1) That all deliverables that involve IT that use IP (products, services, software, etc.) are fully functional in an IPv6-only environment and comply with current IPv6 standards and technical capabilities as defined in the USGv6 Profile; and
  - (2) To provide IPv6 technical support for fielded product management, development, and implementation available.
- (b) If Seller plans to offer a deliverable that involves IT that is not initially compliant, then Seller agrees to:
  - (1) Obtain the Procurement Representative's approval before starting work on the deliverable
  - (2) Have IPv6 technical support for fielded product management, development and implementation available.

- (c) Should Seller find that the Statement of Work or specifications of this agreement do not conform to IPv6 standards, Seller should notify the Procurement Representative of such nonconformance and act in accordance with the instructions of the Procurement Representative.

#### **46. SUBCONTRACTORS, OUTSIDE ASSOCIATES, AND CONSULTANTS [Jun 2025]**

- (a) By entering into this Agreement, Seller certifies that it and all associates and subcontractors under the Agreement are licensed, certified, and registered to perform the professional and technical services required to complete the work under this Agreement. Seller shall ensure that such licenses, certifications, and registrations are maintained throughout performance of this Agreement and failure to do so may be cause for default termination.
- (b) Seller shall act in performance of this Agreement as an independent contractor and not as an agent of Company or the Government, maintaining complete control over its employees and all lower-tier subcontractors. Nothing contained in this Agreement or any lower-tier subcontract shall create any contractual relationship between any such lower-tier subcontractor and the Government or Company. Seller is solely responsible for the actions of itself and its lower-tier subcontractors, agents, or employees.
- (c) Seller is responsible for the management of its subcontractors, suppliers and vendors with visibility through the lowest tier of subcontractors. The Seller shall ensure that each lower tier subcontract contains all applicable specifications, special requirements, and clauses needed to comply with the requirements of this Agreement.
  - (1) The Seller and lower-tier(s) are required to submit a fully executed SF1413, Statement and Acknowledgement, upon award of each Agreement to the Procurement Representative.
  - (2) The Procurement Representative may require the Seller to provide a complete copy of Seller's lower-tier agreement(s), or specified portions thereof. Seller shall have 10 calendar days to provide the required agreement(s). Seller may redact price/cost information.
- (d) Any subcontractors and outside associates or consultants required by Seller in connection with the services covered by this Agreement will be limited to individuals or firms that were specifically identified in Seller's proposal, or during negotiations, and agreed to. Seller shall obtain the Procurement Representative's written consent before making any substitution for these subcontractors, associates, or consultants.
- (e) Company may award other subcontracts for work at or near the site of the work under this Agreement. Seller shall cooperate fully with other subcontractors and with Company employees and shall carefully adapt scheduling and performance of work under this Agreement to accommodate the additional work, heeding any direction that may be provided by the STR. Seller shall not commit or permit any act that will interfere with performance by other subcontractors or by Company employees.
- (f) The Company will not pay for personal business, sick leave, holidays, vacation, and work performed off-site (unless on Company-authorized travel or otherwise approved by the Company). Furthermore, the Company will not reimburse Seller during closure or delays at the site or leased facilities when security or inclement weather conditions arise. The Company may terminate the work effort at any time without recourse or liability for hours not worked or funds not expended pursuant to the *Termination Articles*.

#### **47. REQUIREMENTS FOR REGISTRATION OF DESIGNERS [Jun 2025]**

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

#### **48. RESPONSIBILITY FOR DESIGN [Jun 2025]**

- (a) Seller shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other non-construction services furnished by Seller under this Agreement. Seller shall, without additional compensation, correct or revise any errors or deficiency in its designs, drawings, specifications, and other non-construction services and perform any necessary rework or modifications, including any damage to real or personal property, resulting from the design error or omission.
- (b) The standard of care for all design services performed under this Agreement shall be the care and skill ordinarily used by members of the architectural or engineering professions practicing under similar conditions at the same time and locality. Notwithstanding the above, if the Agreement specifies that portions of the Work be performed in accordance with a performance standard, the design services shall be performed so as to achieve such standards.
- (c) Neither Company's review, approval or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement. Seller shall be and remain liable to Company in accordance with applicable law for all damages to Company caused by Seller's negligent performance of any of the services furnished under this Agreement.

- (d) The rights and remedies of Company provided for under this Agreement are in addition to any other rights and remedies provided by law.
- (e) If Seller is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

#### **49. WORK OVERSIGHT [Jun 2025]**

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

#### **50. ASSIGNMENT [Jun 2025]**

- (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. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence. Unless otherwise stated in this Agreement, payments to an assignee of any amounts due or to become due under this Agreement shall not be subject to reduction or setoff.
- (c) Any assignment or reassignment authorized under this Article shall cover all unpaid amounts payable under this Agreement, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Agreement.
- (d) Seller shall not furnish or disclose to any assignee under this Agreement any classified document (including this Agreement) or information related to work under this Agreement until the Procurement Representative authorizes such action in writing.

#### **51. SUSPENSION OF WORK [Jun 2025]**

- (a) The Procurement Representative may order Seller, in writing, to suspend, delay, or interrupt all or any part of the work of this Agreement for the period of time that the Procurement Representative determines appropriate.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of Company in the administration of this Agreement, or (2) by Company's failure to act within the time specified in this Agreement (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this Agreement (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Agreement modified in writing accordingly. However, no adjustment shall be made under this Article for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of Seller, or for which an equitable adjustment is provided or excluded under any other term or condition of this Agreement.
- (c) A request for adjustment under this Article shall not be allowed—
  - (1) For any costs incurred more than 14 calendar days before Seller shall have notified the Procurement Representative in writing of the act or failure to act involved (but this requirement shall not apply as to a request for adjustment resulting from a suspension order); and,
  - (2) Unless the request for adjustment, in an amount stated, is submitted in writing as soon as practicable, but no later than the earlier of final payment under this Agreement or 180 calendar days after the termination of the suspension, delay, or interruption. Requests for adjustment not submitted before final payment and within the 180-day period are waived.

#### **52. STOP-WORK AUTHORITY [Jun 2025]**

- (a) Unless the provisions for stop work under the *Supplemental Conditions Pantex Construction Management Master Specifications* apply, the Procurement Representative, may under this Article, at any time, by written order, require Seller to stop all or any portion of the work called for by this Agreement for 90 calendar days, and for any other further period to which the parties may agree. Seller shall immediately comply with the order and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the work stoppage.
- (b) Before expiration of the stop-work order, Company may—
  - (1) Cancel the stop-work order; or
  - (2) Terminate the work covered by the order for default or convenience.
- (c) If the order is canceled or expires, Seller shall resume work. Company shall make an equitable adjustment in the delivery schedule or price, or both, and the Agreement shall be modified, in writing, accordingly, if the stop-work order results in



an increase in the time required for, or cost properly allocable to, performance of this Agreement. As a condition precedent to an equitable adjustment, Seller shall submit its request for equitable adjustment in writing to the Procurement Representative within 30 calendar days after the work stoppage ends.

- (d) If the work covered by the order is terminated for convenience, Company shall allow reasonable costs resulting from the order in arriving at the termination settlement.
- (e) If the work covered by the order is terminated for default, Company shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the order.

### **53. DELAYS [Jun 2025]**

- (a) Conditions Precedent — As conditions precedent for entitlement to any price adjustment or schedule extension:
  - (1) Written Notice — For each separate delay, Seller shall give prompt written notice of the delay-causing event to the Procurement Representative. Such written notice must be given even if Company has independent knowledge of the delay-causing event. Seller proposed revisions to the Schedule (e.g., Fragmentary Networks or “Fragnets”), “Daily Logs,” “Daily Reports,” meeting minutes and the like do NOT constitute the required notice. On the basis of the most accurate information available to the Seller, the notice shall state:
    - (i) “This notice is submitted pursuant to the Article titled, “Delays,” or equivalent specific reference to this Article;
    - (ii) date, cause, and circumstances regarding the delay;
    - (iii) name and function of Seller and Company individuals knowledgeable about the delay;
    - (iv) identification of documents and substance of oral communications involving the delay; and
    - (v) the particular elements of performance impacted by the delay, including
      - (A) adjustment in labor and/or materials,
      - (B) estimated resulting price and schedule adjustments, and
      - (C) time by which Company must respond to minimize cost, delay, or disruption to performance of the work. In no event shall Seller recover any delay costs incurred **prior to 14 calendar days** before Seller gives such written notice.
  - (2) CPM — Seller shall include with any delay claim a Critical Path Method (CPM) schedule that shows the delay is on the critical path affecting the subcontract’s overall completion date.
- (b) Notwithstanding any other provision in this Agreement, Seller shall not be entitled to recover:
  - (1) profit for delay costs of any kind, including, but not limited to acceleration, extended costs, and loss of efficiency or productivity, regardless of the theory of recovery; or
  - (2) home office overhead, whether unabsorbed, under-absorbed, extended, or other basis.

### **54. EXCUSABLE DELAYS [Jun 2025]**

- (a) Company shall not be liable to Seller if Company’s nonperformance is caused by an occurrence beyond its reasonable control and without its fault or negligence, such as Acts of God or the public enemy, fires, floods, epidemics, pandemics, 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.
  - (1) This provision is in addition to, and does not derogate from, the Article titled, “Termination for Default.”

### **55. LOSS OF PRODUCTIVITY [Jun 2025]**

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

- (a) Time Limits.
  - (1) Seller shall initiate any request for adjustment (excluding profit) for loss of productivity within 14 days from the beginning of the loss of productivity. A request for adjustment shall be initiated by written notice to the Procurement Representative and shall explicitly state that the request is due to loss of productivity. Seller shall not recover for loss of productivity occurring more than 14 days prior to Seller’s initiating its request.
  - (2) After initiating its request for adjustment, Seller shall attend the weekly productivity meeting addressed in paragraph (b). The purpose of the weekly meetings is to enable Company to verify the loss of productivity claimed by Seller, and to allow both parties to work together to mitigate future loss of productivity.
- (b) Weekly Productivity Meeting.
  - (1) After Seller has initiated its request for adjustment for loss of productivity, Company shall establish a weekly meeting to address loss of productivity. Seller, and a representative from each subcontractor to Seller that incurred a loss of productivity in the prior week, shall attend the weekly productivity meeting.
  - (2) At the weekly productivity meeting, Seller and each subcontractor to Seller shall address:
    - (i) any loss of productivity incurred during the prior week;

- (ii) specifics regarding that loss of productivity; and
- (iii) how to mitigate or avoid that loss in the current week and future weeks.
- (3) Seller and each subcontractor to Seller attending the weekly meeting shall:
  - (i) identify the specific impacted tasks (by type and area) on which it suffered a loss of productivity in the prior week;
  - (ii) by each impacted task and area, estimate the percentage loss of productivity suffered the prior week and explain the basis of this estimate;
  - (iii) by each impacted task and area, identify the total labor hours expended the prior week, and of that total, identify the number of labor hours the subcontractor attributes to loss of productivity;
  - (iv) by each impacted task and area, identify the change(s) in working conditions that caused the loss of productivity for the prior week – if more than one cause is identified, estimate the loss of productivity attributable to each cause. If a cause is due to changed work, identify the specific changes;
  - (v) list by name and position any employee for whom loss of productivity is claimed due to excessive overtime; and
  - (vi) suggest ways to mitigate or avoid the loss of productivity going forward.
- (4) Attendance and presentation at the weekly meeting of all the information required in subparagraph (3) shall be a condition precedent to recovery of any amount for loss of productivity for the prior week.
- (5) When Seller no longer experiences a loss of productivity for which it seeks an upward adjustment to the Subcontract price, Seller may submit a written request to the Procurement Representative to cancel the weekly productivity meetings and the Procurement Representative shall cancel the meetings.
- (c) No profit. Seller and subcontractors to Seller shall not receive profit on requests for adjustment due to loss of productivity.

## 56. ADJUSTMENTS [Jun 2025]

- (a) Articles in this Agreement that provide for an adjustment or for an equitable adjustment are supplemented by paragraphs (b) through (j).
- (b) Requests for adjustments or equitable adjustments, whether submitted in response to a request by Company for a proposal or submitted on Seller's initiative, must include an itemized breakdown of cost for Seller and each lower-tier subcontractor in at least the following detail: direct material quantities and costs; direct labor hours and rates for each trade; employment taxes; Workers' Compensation Insurance; equipment hours and rates; and bond premiums paid for Seller's bonds (Seller shall not be entitled to any adjustment for bond premiums paid by its lower-tier subcontractors).
- (c) (1) This paragraph (c) does not apply when the change to the Agreement price has been agreed upon prior to commencement of the changed work.
- (2) When submitting a request for adjustment or an equitable adjustment exceeding \$50,000, the originator of the request (whether Seller or a lower-tier subcontractor), shall, as a condition precedent to any recovery, submit sufficient data supporting the request and certify as follows:

### **CERTIFICATION**

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

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

- (d) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, as supplemented by DEAR Part 931, in effect on the date of this Agreement, shall govern allowability of all costs claimed, agreed to, or determined under this Article.
- (e) Only those reasonable proposal preparation costs incurred in response to the Procurement Representative's written change order or written request for a proposal are recoverable, but only to the extent the costs are fully documented and exclude overhead or profit; provided however, that in no event shall Company pay for (and Seller shall not include in its proposal) any proposal preparation costs relating to delay, schedule analysis, cumulative impacts, loss of productivity, or any time-related costs.
- (f) Seller shall not be entitled to any adjustment for bond premiums paid by its lower-tier subcontractor(s).
- (g) (1) The table below does not apply to a request for an adjustment or equitable adjustment below or equal to \$50,000;

however, the table does apply to related requests below \$50,000 that when aggregated exceed \$50,000 and to requests below or equal to \$50,000 when first submitted but when amended exceed \$50,000.

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

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

**NOTES:**

1. The percentages for overhead and profit for Category ONE (A and B) are subject to negotiation according to the nature, extent, and complexity of the work involved. In no event shall overhead (subject to Note 3) and profit for Category ONE B exceed the stated maximum percentage.
  2. No profit is allowed under Category ONE (A and B) where recovery is sought under an Article (i) providing for an adjustment as opposed to an equitable adjustment, or (ii) stating profit is not allowed.
  3. Federally approved overhead rates shall be (i) the maximum overhead for Category ONE B, and (ii) the Commission in-lieu-of the Commission stated in the table for Categories TWO (X and Y).
  4. The percentage for overhead includes all indirect costs including, but not limited to, field and office supervisors and assistants, incidental job burdens, small tools, and general overhead allocations.
  5. Category TWO X applies where Seller or higher-tier subcontractor certifies (per paragraph (c)) the originating lower-tier subcontractor's request.
  6. Category TWO Y applies where Seller or higher-tier subcontractor does not certify the originating lower-tier subcontractor's request.
  7. **EXAMPLE:** Seller performs 60% of changed work and subcontracts 40% to 1<sup>st</sup>-tier which performs 30% of changed work and subcontracts 10% to 2<sup>nd</sup>-tier. 2<sup>nd</sup>-tier gets CAT ONE. 1<sup>st</sup>-tier gets CAT TWO on 2<sup>nd</sup>-tier work and CAT ONE on its own work. Seller gets CAT TWO on 2<sup>nd</sup>-tier's work (not 1<sup>st</sup>-tier's commission on 2<sup>nd</sup>-tier's work), CAT TWO on 1<sup>st</sup>-tier's work, and CAT ONE on work Seller performs.
- (h) Equitable adjustments for deleted work shall include credits, limited to the same restrictions for overhead, profit, and commission in paragraph (g) of this Article.
- (i) On proposals covering both increases and decreases in price, the overhead, profit, and commission shall be applied to the net change in direct costs for the Seller or the subcontractor performing the work.
- (j) The Procurement Representative may make adjustments by unilateral modification to the subcontract (for example, for a no-cost change or where the parties fail to agree on an increase or decrease in price or time). The unilateral modification shall be final and conclusive between the parties without the right of judicial review unless Seller submits a Claim requesting a Senior Director, Supply Chain Management Final Decision under the Resolution of Disputes clause within 60 calendar days after receipt of the unilateral modification.
- (k) For any Seller request for adjustment or equitable adjustment (or "Claim" under the Resolution of Disputes Article) exceeding \$100,000, Company, or its authorized representative, shall have the right during customary business hours to

examine, audit, and copy all Seller (and applicable lower-tier subcontractor) books, records, accounts, correspondence, and other evidence relating to the amount of, or entitlement to, the request. Company may choose as its authorized representative the Defense Contract Audit Agency (DCAA) or an independent public accounting firm. Seller shall provide adequate workspace in order to conduct the examination and audit. Seller expressly agrees this provision authorizes the DCAA or the selected independent accounting firm to provide a complete audit report to (and discuss with) Company without additional prior approval from Seller, the audited lower-tier subcontractor, or the NNSA.

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

## **57. AUTHORIZED REPRESENTATIVES AND COMMUNICATIONS [Jun 2025]**

- (a) 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.
- (b) The Company has appointed a Vendor Advocate to hear concerns from Offerors during all phases of this procurement. Upon request, the Vendor Advocate will communicate concerns and recommendations to the appropriate Company personnel for resolution. The name and phone number of this Advocate may be obtained from the Procurement Representative.

## **58. CHANGES [Jun 2025]**

- (a) The Procurement Representative may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Agreement in any one or more of the following:
  - (1) Drawings, designs, or specifications.
  - (2) In the method or manner of performance of the work.
  - (3) In the Government-furnished property or services.
  - (4) Directing acceleration in the performance of the work.
  - (5) Place of delivery of supplies.
  - (6) Description of services to be performed.
  - (7) Time of performance of the services (*i.e.*, hours of the day, days of the week, etc.).
  - (8) The modification to, or addition or deletion of, the FAR and/or DEAR clauses located in Article *Clauses Incorporated by Reference*.
- (b) If any such change causes a difference in the cost, or the time required for performance, Company shall, subject to the submission requirement in paragraph (d), make an equitable adjustment in the price, delivery/performance schedule, or both, and modify the Agreement in writing. If Seller's proposal includes the cost of property made obsolete or excess by the change, Company has the right to prescribe the manner of disposition of the property.
- (c) Only the Procurement Representative is authorized on behalf of Company to issue a change, which must be in writing and clearly designated as a change order. If Seller considers that any oral direction or instruction by any Company personnel (including the Procurement Representative) constitutes a change, or if Seller considers that any written direction or instruction by any Company personnel (other than a designated change order issued by the Procurement Representative) constitutes a change, Seller shall not rely upon such direction or instruction and shall not be eligible for an equitable adjustment arising there from, without prior written confirmation from the Procurement Representative directing Seller to perform as stated in the direction or instruction. If such written confirmation from the Procurement Representative to perform also confirms the direction or instruction to be a change, the confirmation shall be deemed a change order for purposes of paragraph (d). If, however, such written confirmation from the Procurement Representative to perform does not confirm the direction or instruction to be a change, any request by Seller for an equitable adjustment arising from such direction or instruction shall comply with paragraph (e).
- (d) If the Procurement Representative issues a change order, any request for equitable adjustment by Seller must be submitted in writing to the Procurement Representative within 30 calendar days of receiving Company's change order. If the request is not submitted within such time, the request shall be late and may be denied by the Procurement Representative whether or not Company is prejudiced by the late request. If Company, in its sole discretion, decides to act upon a particular late request submitted prior to final payment, such action shall not constitute or be deemed to be a waiver of this submission requirement with regards to any other late request, nor shall such action be considered in any way in interpreting this provision as a course of dealing or in any other manner.
- (e) (1) If the Procurement Representative has not issued a written change order but Seller considers a change to this Agreement has occurred because, for example: (i) Company did not satisfy one of its expressed or implied duties

under the Agreement, or (ii) the Procurement Representative did not provide written confirmation that a change occurred in response to Seller's request for confirmation as provided for in paragraph (c), then as a condition precedent for entitlement to an equitable adjustment, Seller shall notify the Procurement Representative, in writing, that a change has occurred for which Seller intends to seek an equitable adjustment and identify: (A) date, nature and circumstances regarding the change, (B) name of each person knowledgeable about the change, (C) documents and substance of oral communications involving the change, and (D) the particular elements of performance impacted by the change, including (1) adjustment in labor and/or materials, (2) delay or disruption caused, (3) estimated resulting price and schedule adjustments and (4) time by which Company must respond to minimize cost, delay, or disruption to performance of the work.

- (2) In no event shall Seller recover any costs caused by the change incurred prior to 14 calendar days before Seller gives such written notice.
- (3) Any request for equitable adjustment by Seller must be submitted in writing to the Procurement Representative no later than 30 calendar days after Seller gives the written notice specified in subparagraph (e)(1). If the request is not submitted within such time, the request shall be late and may be denied by the Procurement Representative whether or not Company is prejudiced by the late request. If Company, in its sole discretion, decides to act upon a particular late request submitted prior to final payment, such action shall not constitute or be deemed to be a waiver of this submission requirement with regards to any other late request, nor shall such action be considered in any way in interpreting this provision as a course of dealing or in any other manner.
- (f) Nothing in this Article, including any disagreement with Company about an equitable adjustment, shall excuse Seller from proceeding with the Agreement as changed.

#### **59. CHANGE ORDER ACCOUNTING [Jun 2025]**

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

#### **60. WARRANTY OF DESIGN [Jun 2025]**

- (a) Seller warrants that the design shall be performed in accordance with the Agreement requirements. Design and design related construction not conforming to the Agreement requirements shall be corrected at no additional cost to Company. The standard of care for design is defined in paragraph (b) of the "RESPONSIBILITY FOR DESIGN" Article.
- (b) The period of this warranty shall commence upon final completion and Company's acceptance of the work, or in the case of Company's beneficial occupancy of all or part of the work for its convenience, prior to final completion and acceptance, at the time of such occupancy.
- (c) This design warranty shall be effective from the above event through the Statute of Limitations and Statute of Repose, as applicable to the state that the project is located in.
- (d) The rights and remedies of Company provided for under this Article are in addition to any other rights and remedies provided in this Agreement or by law.

#### **61. WARRANTY OF CONSTRUCTION WORK [Jun 2025]**

- (a) In addition to any other warranties in this Agreement, Seller warrants that work performed under this Agreement conforms to the Agreement requirements and is free of any defect in equipment, material, or workmanship performed by Seller or any subcontractor or supplier at any tier.
- (b) This warranty shall continue for a period of one year from the date of final acceptance of the work. If Company takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one year from the date Company takes possession.
- (c) Seller shall remedy, at Seller's expense, any failure to conform, or any defect. In addition, Seller shall remedy, at Seller's expense, any damage to Government-owned or controlled real or personal property, when that damage is the result of Seller's failure to conform to applicable requirements, or any defect of equipment, material, or workmanship.
- (d) Seller shall restore any work damaged in fulfilling the terms and conditions of this Article. Seller's warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.
- (e) Company shall notify Seller, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

- (f) If Seller fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Company shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at Seller's expense.
- (g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Agreement, Seller shall: (1) obtain all warranties that would be given in normal commercial practice; (2) require all warranties to be executed, in writing, for Company's benefit, as directed; and (3) enforce all warranties for Company's benefit, as directed.
- (h) If Seller's warranty under paragraph (b) of this Article has expired, Seller agrees to subrogate any of its rights and to aid Company in enforcing lower-tier subcontractor's, manufacturer's, or supplier's warranties.
- (i) Unless a defect is caused by the negligence of Seller or subcontractor or supplier at any tier, Seller shall not be liable for the repair of any defects of material furnished by Company nor for the repair of any damage that results from any defect in Government-furnished material.
- (j) This warranty shall not limit Company's rights under the Inspection of Construction Article of this Agreement (incorporated by reference) with respect to latent defects, gross mistakes, or fraud.

## **62. MITIGATING SUPPLY CHAIN RISK OCT 2022 [Jun 2025]**

DOE/NSA utilizes a Supply Chain Risk Management (SCRM) Program to identify, assess, and monitor supply chain risks of critical vendors. The Government may use any information, public and non-public, including all-source intelligence for its analysis. The Contractor agrees that the Government may, at its own discretion, perform audits of supply chain risk processes or events consistent with other terms in the contract regarding access to records and audits. An onsite assessment may be required. Through the information obtained from a SCRM program, DOE may assess vendors and products through multiple risk lenses such as national security, cybersecurity, compliance, and finance. If supply chain risks are identified and corrective action becomes necessary, mutually agreeable corrective actions will be sought based upon specific identified risks. Failure to resolve any identified risk may result in Contract termination

## **63. MITIGATING SUPPLY CHAIN RISK USING ENHANCED PROCUREMENT AUTHORITY FOR INFORMATION AND COMMUNICATION TECHNOLOGY OCT 2022 [Jun 2025]**

- (a) Definitions. As used in this clause—Covered article - The term "covered article" includes-
  - (1) "Information technology" which means –
    - (i) any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use-
      - (A) of that equipment, or
      - (B) of that equipment to a significant extent in the performance of a service or the furnishing of a product;
    - (ii) computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; however,
    - (iii) does not include any equipment acquired by a federal contractor incidental to a federal contract.
  - (2) "Telecommunications Equipment", which means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).
  - (3) "Telecommunications Service", which means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.
  - (4) the processing of information on a Federal or non-Federal information system, subject to the requirements of the Controlled Unclassified Information program; or
  - (5) hardware, systems, devices, software, or services that include embedded or incidental information technology.
- Supply Chain Risk- The term "Supply Chain Risk" means the risk that a person may sabotage, maliciously introduce unwanted function, extract data, or otherwise manipulate the design, integrity, manufacturing, production, distribution, installation, operation, maintenance, disposition, or retirement of covered articles so as to surveil, deny, disrupt, or otherwise manipulate the function, use, or operation of the covered articles or information stored or transmitted on the covered articles.
- (b) The Contractor shall take all prudent actions, and comply with all Government directions (as identified in (c)), to mitigate supply chain risk when providing covered articles or services affecting covered articles to the Government.

- (c) In order to manage supply chain risk, the Government may use the authority provided by 41 U.S.C. 4713 to, among other things, withhold consent for the Contractor to subcontract with a particular source or direct the Contractor to exclude a particular source from consideration for a subcontract under the contract.
- (d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

#### **64. MITIGATING SUPPLY CHAIN RISK USING ENHANCED PROCUREMENT AUTHORITY FOR NATIONAL SECURITY SYSTEMS, NUCLEAR WEAPONS COMPONENTS AND ASSOCIATED ITEM OCT 2022 [Jun 2025]**

- (a) Definitions. As used in this clause—
  - (1) “Covered system” means—
    - (A) National security systems (as defined at 44 U.S. Code § 3552) and components of such systems;
    - (B) Nuclear weapons and components of nuclear weapons;
    - (C) Items associated with the design, development, production, and maintenance of nuclear weapons or components of nuclear weapons;
    - (D) Items associated with the surveillance of the nuclear weapon stockpile; or
    - (E) Items associated with the design and development of nonproliferation and counterproliferation programs and systems.
  - (2) “Covered item of supply” means an item—
    - (A) *that is purchased for inclusion in a covered system; and*
    - (B) *the loss of integrity of which could result in a supply chain risk for a covered system.*
  - (3) “Supply Chain Risk” means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system or covered item of supply so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of the system or item of supply.
- (b) The Contractor shall take all prudent actions, and comply with all Government directions (as identified in (c)), to mitigate supply chain risk when providing covered systems or covered items of supply to the Government, and services affecting covered systems or covered items of supply.
- (c) In order to manage supply chain risk, the Government may use the authority provided by 50 U.S.C. 2786, to, among other things, withhold consent for the Contractor to subcontract with a particular source or direct the Contractor to exclude a particular source from consideration for a subcontract under the contract. When the Government exercises this authority, it will only provide the Contractor with information pertaining to the basis of the action to the extent necessary to carry out the action. No action taken by the Government pursuant to 50 U.S.C. § 2786 shall be subject to review in any Federal court.
- (d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

#### **65. SUSPECT/COUNTERFEIT ITEMS [Jun 2025]**

- (a) Definitions.
  - (1) “Suspect material” as used in this Article, means any material or item that is not known to conform to established U.S. Company or industry-accepted specifications and national consensus standards.
  - (2) “Counterfeit material” as used in this Article, means any suspect material or item that is a copy or substitute without legal right or authority to do so, or one whose material, performance, or characteristics are knowingly misrepresented by the vendor, supplier, distributor, or manufacturer.
- (b) Seller shall not use or provide suspect or counterfeit materials or parts as part of the end item for delivery, including any fasteners (Grade 5, Grade 8, Grade 8.2, ASTM A325, bolts, studs, cap screws, washers, nuts, etc.), electrical components (circuit breakers, relays, fuses, transformers, etc.), piping components or mechanical piping components (pipe valves, fittings, nipples, flanges, couplings, plugs, spacers, and nozzles, etc.) valves, metal framing (plate fittings, post base, beam clamp channel, spring clips, square washers), wire rope, lifting materials (shackles, hooks, slings, cables, forklifts, hoists, etc.), welding material (rods, wire, flux, etc.) on any equipment, assemblies, components, or facilities under this contract. Any suspect or counterfeit material provided by Seller to Company is subject to seizure and will not be returned to the Seller. Seller shall replace any and all suspect or counterfeit material at no additional charge to Company.
- (c) Fasteners.
  - (1) SAE Grades 5, 8 and 8.2 and ASTM Grade A325 fasteners, identified at [SUSPECT/COUNTERFEIT & DEFECTIVE FASTENER INSPECTION](#), cannot be introduced into DOE facilities. Therefore, such fasteners shall not be provided as deliverable end items or incorporated into deliverable end items under this contract.

- (2) Any fasteners delivered under this Agreement shall be subject to the requirements of the Fastener Quality Act (“the Act”), Public Law 101-592, Title 15, United States Code (U.S.C.), Chapter 80, and those requirements as stated in this Agreement. No fastener, as defined in the Act and regulations issued thereunder by the Secretary of Commerce, shall be supplied to Company, regardless of lot size.
  - (3) Nothing in this Article shall prohibit Company from requiring in this Agreement, the inspection and testing of a greater number of fasteners from a lot than is specified in the applicable standards or specifications to which the manufacturer represents the fasteners to have been manufactured or in the applicable sampling procedures specified by the Secretary of Commerce.
- (d) Electrical Equipment, Items, and Components.
- (1) All electrical equipment, items and components shall exhibit manufacturers’ labels and identification. Specifically, the labeling of voltage and current values for equipment and the marking of purged and pressurized enclosures with an asphyxiation hazard warning where the protective gas is other than air.
  - (2) Electrical equipment, items or components must be approved by a Nationally Recognized Testing Laboratory (NRTL) (e.g., UL, CSA, FMRS, or MET). Equipment approved by an NRTL shall bear written evidence by listing or labeling that it has received certification from the NRTL. If no certification is available, the manufacturer shall provide any test data, design documentation, etc., which certifies the equipment to be free of electrical hazards as recognized by the National Electric Code and OSHA. This documentation may include, where applicable, references to UL Standard 508 and 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 [SUSPECT/COUNTERFEIT & DEFECTIVE FASTENER INSPECTION](#)).
  - (3) All fasteners shall be separately boxed by lot number, with no mixing of lots.
  - (4) The manufacturer’s lot numbers shall be listed on the packing list as part of the descriptive information.
  - (5) Each individual box shall be marked with the lot number.
  - (6) All shipments of graded fasteners indicated in this contract, and other items as specified, shall include an authenticated “Certified Material Test Report” traceable to the manufacturer by lot number, such that the manufacturer’s test data (such as physical and chemical test reports for fasteners) can be certified by Company, if required.
  - (7) All remanufactured, refurbished or rebuilt replacement equipment and components, if specifications permit, shall be clearly marked as such and shipped in the manufacturer’s original packing, and have any designated serial numbers listed on the packing list.
  - (8) Seller shall affix a “certificate of conformance” stamp on each packing list, authenticated by a designated company official responsible for this function, if required by this Agreement.
- (g) Confirmation of Source and Performance Characteristics.
- (1) Company may obtain an opinion concerning legitimacy of the equipment from the original manufacturer. Such opinion shall be a sufficient basis for rejection of any item provided by the Seller. In addition to other rights provided by law or this contract, Company may reject the item or equipment provided by the Seller that does not meet the OEM’s published performance requirements.
- (h) Reporting of Suspect/Counterfeit Materials and Investigation.
- (1) Company investigates incidents of suspect or counterfeit materials. Seller shall cooperate with such investigations by providing evidence, documentation, or information as may be requested by Company in conducting the investigation.
  - (2) Company will report to the Office of Inspector General (OIG) any suspect/counterfeit material that is discovered during receipt, maintenance, testing, inspection or use and when there is reason to believe that a fraudulent act occurred during the manufacture, shipping, testing, or certification of the suspect/counterfeit material.



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

(i) Unauthorized Substitution.

All equipment and material furnished shall be the exact item 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.

## **66. DEFECT IDENTIFICATION AND REPORTING [Jun 2025]**

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

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

(1) Name and address of the person making the notification.

(2) Nature of the defect and any substantial safety hazard that could result, if known.

(3) Description of the defective item or service, including the following specific information:

- Manufacturer's name.
- Item model number(s).
- Name and addresses of the original and any intermediate supplier.
- Potential failure modes.
- Identification of the facilities where the defective item(s) and/or service(s) have been supplied, to the extent known.
- Actions that have been taken or are being planned to correct the defective item(s) or service(s), including designation of the organization responsible for implementing the corrective actions and schedule for completion.
- Additional pertinent information.

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

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

Note: Mark document "URGENT - DELIVER IMMEDIATELY."

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

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

## **67. BACKCHARGE WORK [Jun 2025]**

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

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

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

## **68. COMPANY'S RIGHT TO SETOFF [Jun 2025]**

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

**69. GOVERNMENT PROPERTY [Jun 2025]**

- (a) If Seller purchases property for which it is entitled to reimbursement as a direct item of cost, title for said property shall pass directly to the Government upon delivery to Seller. Title to all other property, the cost of which is reimbursable to Seller, shall pass to the Government upon the earliest of issuance of property for use in performance, or processing property for use in performance, or reimbursement of cost of property.
- (b) As may be required by this Agreement, Company shall deliver to Seller at the time and locations stated in this Agreement the Government property described in this Agreement. If the property is not suitable for its intended use or is not delivered to Seller as specified in this Agreement, Company shall equitably adjust affected provisions in accordance with the Changes Article when the facts warrant an equitable adjustment and Seller submits a timely written request for such adjustment. Said equitable adjustment shall be Seller's exclusive remedy.
- (c) Title to all Government property, whether provided by Company or acquired by Seller, shall remain in the Government. Title shall not be affected by the incorporation or attachment to any property not owned by the Government, nor shall any Government property become a fixture or lose its identity because it is affixed to any realty.
- (d) For all Government property in Seller's possession or for which Seller is responsible for, Seller assumes the risk and responsibility for its loss or damage, except—
  - (1) For reasonable wear and tear;
  - (2) To the extent property is consumed in performing this Agreement; or
  - (3) As otherwise provided for by this Agreement.
- (e) Seller shall establish and maintain a property control program for use, maintenance, repair, protection and preservation of Government property consistent with good business practices and as may be prescribed by Company. Except as may be authorized in writing by Company, Government property shall be used only for the performance of this Agreement.
- (f) Upon completion of this Agreement, Seller shall follow the instructions of the Procurement Representative regarding the disposition of all Government property not consumed in the performance of this Agreement (including any scrap) or previously delivered to Company. Seller shall dismantle, prepare for shipment, and at the Procurement Representative's direction, store or deliver said property (at Company expense), or dispose of the property as directed by the Procurement Representative. The net proceeds of any such disposal shall be credited to the Agreement price or shall be paid as the Procurement Representative may direct.

**70. TERMINATION FOR CONVENIENCE [Jun 2025]**

- (a) Company may terminate performance of work under this Agreement in whole or from time to time in part by delivering to Seller a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, Seller shall immediately:
  - (1) Stop work as specified in the notice.
  - (2) Place no further subcontracts, except as necessary to complete the continued portion of the Agreement.
  - (3) Terminate all subcontracts to the extent they relate to the work terminated.
  - (4) Assign to Company, as directed by Company, all interest of Seller under the subcontracts terminated, in which case the Company may settle or to pay any termination settlement proposal arising out of those terminations.
  - (5) With approval of Company, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts.
  - (6) As directed by Company, transfer title and deliver to Company—
    - (i) Work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
    - (ii) Completed or partially completed plans, drawings, information, and other property that, if the Agreement had been completed, would be required to be furnished to the Company.
  - (7) Complete performance of the work not terminated.
  - (8) Take any action that may be necessary, or that Company may direct, for the protection and preservation of property in Seller's possession and in which Company has or may acquire an interest.
  - (9) Use its best efforts to sell, as directed or authorized by Company, any property of the types referred to in paragraph (b)(6); *provided*, however, that Seller (1) is not required to extend credit to any purchaser and (2) may acquire the property under conditions prescribed by, and at prices approved by, Company. The proceeds of any sale will be applied to reduce any payments to be made by Company under this Agreement.
- (c) Seller shall submit complete termination inventory schedules within 120 calendar days from the effective date of termination.
- (d) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, Seller may submit to Company a list, certified as to quantity and quality, of termination inventory not previously disposed of,

excluding items authorized for disposition by Company. Seller may request Company to remove those items or enter into an Agreement for their storage. Within 15 calendar days, Company will remove them or enter into a storage Agreement. Company may verify the list upon removal of the items, or if stored, within 45 calendar days from submission of the list, and shall correct the list, as necessary, before final settlement.

- (e) Seller shall submit a final termination settlement proposal in the form and with the certification prescribed by Company within six months from the effective date of termination. If Seller fails to submit the proposal within the time allowed, Company may determine the amount, if any, due Seller and pay that amount.
- (f) Seller and Company may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. However, the agreed amount, whether under this paragraph (f) or paragraph (g), exclusive of costs shown in paragraph (g)(2), may not exceed the total Agreement price as reduced by (1) the amount of payments previously made and (2) the Agreement price of work not terminated. The Agreement shall be modified, and Seller paid the agreed amount.
- (g) If Seller and Company fail to agree on the whole amount to be paid, Company shall pay Seller the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f):
  - (1) For Agreement work performed before the effective date of termination, the total (without duplication of any items) of—
    - (i) The cost of this work;
    - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Agreement; and
    - (iii) A sum, as profit on subdivision (g)(1)(i) of this Article, determined by Company under 49.202 of the Federal Acquisition Regulation in effect on the date of this Agreement, to be fair and reasonable; however, if it appears that Seller would have sustained a loss on the entire Agreement had it been completed, Company shall allow no profit and shall reduce the settlement to reflect the indicated rate of loss.
  - (2) The reasonable costs of settlement of the work terminated, including—
    - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
    - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
    - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (h) Except for normal spoilage, and except to the extent that Company expressly assumed the risk of loss, Company shall exclude from the amounts payable to Seller under paragraph (g) the fair value, as determined by Company, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Company or to a Procurement Representative.
- (i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this Agreement, shall govern all costs claimed, agreed to, or determined under this Article.
- (j) Seller shall separately track all proposal preparation costs relating to delay, schedule analysis, cumulative impacts, loss of productivity, or any time-related costs and shall exclude such named proposal preparation costs from its termination settlement proposal. In no event shall Company pay for any such named proposal preparation costs.
- (k) In arriving at the amount due the Seller under this clause, there shall be deducted—
  - (1) All unliquidated advance or other payments to Seller under the terminated portion of this Agreement;
  - (2) Any claim which Company has against Seller under this Agreement; and,
  - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Seller or sold under this Article and not recovered by or credited to Company.
- (l) If the termination is partial, Seller may request an equitable adjustment of the price(s) of the continued portion of the Agreement. Any such request shall be made within 90 calendar days from the effective date of termination. If Seller fails to submit such proposal within the time allowed, Company may determine the amount, if any, due Seller and pay that amount.
- (m) (1) Company may make partial payments and payments against costs incurred by Seller for the terminated portion of the Agreement, if Company believes the total of these payments will not exceed the amount to which Seller will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, Seller shall repay the excess to Company upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by Seller to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in Seller's termination settlement proposal because of retention or other disposition of termination inventory until 10 calendar

days after the date of the retention or disposition, or a later date determined by Company because of the circumstances.

- (n) Unless otherwise provided in this Agreement or required by statute, Seller shall maintain all records and documents relating to the terminated portion of this Agreement for three years after final settlement. This includes all books and other evidence bearing on Seller's costs and expenses under this Agreement. Seller shall make these records and documents available to Company at Seller's office, at all reasonable times, without any direct charge. Photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.
- (o) (1) If Seller failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e), or (l), respectively, the Procurement Representative's determination under either said paragraph shall be final and conclusive without the right of judicial review.
- (2) If Seller submits the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e), or (l), the Procurement Representative's determination under paragraph (e), (g), or (l) shall be final and conclusive without the right of judicial review unless Seller submits a Claim requesting a final determination from the Company under the Resolution of Disputes clause within 60 calendar days after receipt of a determination under paragraph (e), (g), or (l).

## **71. TERMINATION FOR DEFAULT [Jun 2025]**

- (a) Company may by written notice to Seller terminate the right to proceed with the work (or a separable part of the work) if Seller: (1) refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this Agreement, (2) fails to complete the work within this time, (3) persistently disregards laws, safety or environmental regulations, ordinances or the instructions of Company, or (4) fails to comply with any substantive requirement of this Agreement.
- (b) In this event, Company may take over the work and complete it by contract or otherwise, and may take possession and use any materials, appliances, and plant on the work site necessary for completing the work. Seller and its sureties shall be liable for any damage to Company resulting from the termination, including any increased cost incurred by Company in completing the work.
- (c) Seller's right to proceed shall not be terminated nor Seller charged with damages under this Article if—
  - (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of Seller (Examples of such causes include acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a subcontract with Company, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both Seller and the subcontractors or suppliers); and
  - (2) Seller, within 10 calendar days from the beginning of any delay (unless extended by Company), notifies Company in writing of the causes of delay. Company shall ascertain the facts and the extent of delay. If the facts warrant, the Procurement Representative shall extend the time for completing the work.
- (d) If, after termination of Seller's right to proceed, it is determined that Seller was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.
- (e) The rights and remedies of Company in this Article are in addition to any other rights and remedies provided by law or under this Agreement.

## **72. SURVIVAL [Jun 2025]**

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

## **73. CLAUSES INCORPORATED BY REFERENCE [Jul 2025]**

- (a) The clauses listed in the table below are incorporated herein by reference. The texts of FAR and DEAR clauses are available at a variety of Internet Sites including URL: [www.acquisition.gov](http://www.acquisition.gov) and the texts of Company clauses are available on the "Procurement" link at: [Special Articles and Forms](#). Except as provided in (b) below, in the listed clauses "Contractor" means Seller, "Government" means Company, "Contract" means this subcontract, and "Contracting Officer" means Company's Procurement Representative.
- (b) "Government" retain its meaning in:
  - (1) The phrases "Government property" and "Government-furnished property;"
  - (2) Paragraph (a) of FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions;
  - (3) Exhibit 7 – Classified Inventions;

- (4) DEAR 970.5227-5, Notice and Assistance Regarding Patent and Copyright Infringement; and  
 (5) DEAR 970.5208-1, Printing.

<b>THE FOLLOWING CLAUSES ARE INCORPORATED INTO THIS AGREEMENT:</b>		
<b>Clause Number</b>	<b>Title and Date</b>	<b>Instructions</b>
FAR 52.203-18	Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements-Representation (JAN 2017)	Applies unless this agreement is a personal services contract with individuals. By submission of offer, Offeror certifies compliance with requirement.
FAR 52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017)	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 NOV 2021)	None.
FAR 52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (NOV 2021)	None.
FAR 52.204-27	Prohibition on a ByteDance Covered Application (JUN 2023)	None.
FAR 52.211-5	Material Requirements (AUG 2000)	None.
FAR 52.215-15	Pension Adjustments and Asset Reversion (OCT 2010)	Applicable when cost and pricing data required.
FAR 52.219-28	Post-Award Small Business Program Representation (MAR 2023)	None.
FAR 52.222-1	Notice to the Government of Labor Disputes (FEB 1997)	None.
FAR 52.222-34	Project Labor Agreement (MAY 2010)	None.
FAR 52.222-50	Combating Trafficking in Persons (NOV 2021))	The substance of this clause to be included in all subcontracts.
FAR 52.223-2	Affirmative Procurement of Bio-Based Products Under Service and Construction Contracts (SEP 2013)	None.
FAR 52.223-15	Energy Efficiency and Energy Consuming Products (MAY 2020)	None.
FAR 52.223-16	IEEE 1680 Standard for Environmental Assessment of Personal Computer Products Alt I (OCT 2015)	None.
FAR 52.223-17	Affirmative Procurement of EPA Designated Items in Service and Construction Contracts (AUG 2018)	None.
FAR 52.224-2	Privacy Act (APR 1984)	Applies to scope of work for system of records on individuals.
FAR 52.225-8	Duty-Free Entry (OCT 2010)	The Contractor shall include the substance of this clause in any subcontract if— (1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or 2) Other foreign supplies in excess of \$15,000 may be imported into the customs territory of the United States.

FAR 52.225-9	Buy American Act - Construction Materials (OCT 2022)	For Agreements valued at less than \$6,708,000.
FAR 52.225-10	Notice of Buy American Requirement-Construction Materials (MAY 2014)	For Agreements valued at less than \$6,708,000
FAR 52.225-13	Restrictions on Certain Foreign Purchases (FEB 2021)	None.
FAR 52.225-25	Prohibition on Contracting With Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications (JUN 2020)	By submission of offer, Offeror certifies compliance with requirement.
FAR 52.232-39	Unenforceability of Unauthorized Obligations (JUN 2013)	None.
FAR 52.236-7	Permits and Responsibilities (NOV 1991)	None.
FAR 52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements (APR 1984)	None.
FAR 52.236-10	Operations and Storage Areas (APR 1984)	None.
FAR 52.236-11	Use and Possession Prior to Completion (APR 1984)	None.
FAR 52.236-12	Cleaning Up (APR 1984)	None.
FAR 52.236-14	Availability and Use of Utility Services (APR 1984)	None.
FAR 52.244-6	Subcontracts for Commercial Products and Commercial Services (JAN 2025)	Includes full text except references to 52.222-21, Prohibition of Segregated Facilities (APR 2015) & 52.222-26, Equal Opportunity (SEPT 2016) (E.O. 11246).
FAR 52.246-12	Inspection of Construction (AUG 1996)	None.
FAR 52.247-64	Preference for Privately Owned U.S.- Flag Commercial Vessels (NOV 2021)	None.
DEAR 952.204-77	Computer Security (AUG 2006)	Applies if Seller may have access to computers owned, leased or operated on behalf of the Department of Energy.
DEAR 970.5204-3	Access to and ownership of records (OCT 2014)	Applicability instruction modeled after subsection (g).
DEAR 970.5222-1	Collective Bargaining Agreements Management and Operating Contracts (DEC 2000)	None.
DEAR 970.5225-1	Compliance with Export Control Laws and Regulations (Export Clause) (NOV 2015)	None.
DOE O 551.1D	Official Foreign Travel (AUG 2016)	Applies if the Agreement requires foreign travel as prescribed in DEAR 952.247-70.
UCN-22427	Travel Reimbursement Policy (SEP 2022) (Company)	Applies to all cost-reimbursement, time-and materials, and labor-hour agreements. It also applies to those fixed-price agreements that have travel as a separate pay line item, but its applicability in such cases is only to that line item.
UCN-22433	Nuclear Hazards Indemnity and Price-Anderson Amendments Act (JUL 2017) (Company)	The provisions of paragraphs (a) through (k) of 48 CFR 952.250-70 (AUG 2016), Nuclear Hazards Indemnity Agreement are incorporated by reference into this Agreement to the extent the Agreement involves a risk of public liability as that term is defined by the Atomic Energy Act of 1954, as amended.
UCN-22480	Hazardous Material Identification and Material Safety Data (JUL 2014) (Company)	None.

Consolidated Appropriation Act, 2014, Title III, Section 318 (the Act) (Pub.L. 113-76 § 318, 15 U.S.C. § 644)	General Provisions—Department of Energy (JAN 2014)	Seller is responsible for updating its record in the System for Award Management (SAM) on an annual basis during the period of performance of this subcontract. ( <a href="https://sam.gov">SAM.gov</a>   <a href="#">Home</a> )
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**THE FOLLOWING CLAUSES ARE INCORPORATED IF THE WORK INVOLVES ACCESS TO CLASSIFIED INFORMATION OR SPECIAL NUCLEAR MATERIAL OR THE WORK REASONABLY MIGHT RESULT IN A PATENT APPLICATION THAT CONTAINS CLASSIFIED SUBJECT MATTER:**

Clause Number	Title and Date	Instructions
DEAR 952.204-2	Security (AUG 2016)	None.
DEAR 952.204-70	Classification/Declassification (SEP 1997)	None.
DEAR 970.5204-1	Counterintelligence (DEC 2010)	None.
UCN-22381	Civil Penalties for Classified Information Security Violations (JUL 2014) (Company)	None.
UCN-22508	Exhibit 7 Classified Inventions (MAY 2017) (Company)	“Government” retains its meaning.

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

Clause Number	Title and Date	Instructions
FAR 52.222-6	Construction Wage Rate Requirements (AUG 2018)	The required poster is available at: <a href="https://www.dol.gov/whd/programs/dbra/wh1321.htm">https://www.dol.gov/whd/programs/dbra/wh1321.htm</a>
FAR 52.222-7	Withholding of Funds (MAY 2014)	None.
FAR 52.222-8	Payrolls and Basic Records (JUL 2021)	None.
FAR 52.222-9	Apprentices and Trainees (JUL 2005)	None.
FAR 52.222-10	Compliance with Copeland Act Requirements (FEB 1988)	None.
FAR 52.222-11	Subcontracts (Labor Standards) (MAY 2014)	None.
FAR 52.222-12	Contract Termination - Debarment (MAY 2014)	None.
FAR 52.222-13	Compliance with Construction Wage Rate Requirements and Related Regulations (MAY 2014)	None.
FAR 52.222-14	Disputes Concerning Labor Standards (FEB 1988)	None.
FAR 52.222-15	Certification of Eligibility (MAY 2014)	None.
FAR 52.222-16	Approval of Wage Rates (MAY 2014)	None.
FAR 52.222-55	Minimum Wages Under Executive Order 13658 (DEC 2015)	Applies if this Agreement exceeds \$2,000 or a portion of the work identified is covered by the Davis-Bacon Act.
FAR 52.222-62	Paid Sick Leave Under Executive Order 13706 (JAN 2022)	None.

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

Clause Number	Title and Date	Instructions
FAR 52.222-54	Employment Eligibility Verification (OCT 2015)	Not applicable to COTS (as COTS is defined by the FAR).

**THE FOLLOWING CLAUSES ARE INCORPORATED IF THIS AGREEMENT EXCEEDS \$10,000:**

Clause Number	Title and Date	Instructions
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FAR 52.222-3	Convict Labor (JUN 2003)	None.
FAR 52.222-40	Notification of Employee Rights Under the National Labor Relations Act (DEC 2010)	Applies if Agreement will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009.
FAR 52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving (JUN 2020)	None.

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

Clause Number	Title and Date	Instructions
FAR 52.222-20	Contracts for Materials, Supplies, Articles, and Equipment (JUN 2020)	None.
FAR 52.222-36	Equal Opportunity for Workers with Disabilities (JUN 2020)	

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

Clause Number	Title and Date	Additional Conditions of Applicability
FAR 52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020)	None.

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

Clause Number	Title and Date	Instructions
FAR 52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (NOV 2021)	None.

**THE FOLLOWING CLAUSE IS INCORPORATED IF THIS AGREEMENT EXCEEDS \$50,000:**

Clause Number	Title and Date	Instructions
FAR 52.225-3	Buy American – Free Trade Agreement – Israeli Trade Act (DEC 2022)	For acquisition of supplies, or services that furnish supplies, for use within the United States, and the acquisition value is \$50,000; or more, but is less than \$174,000. Does not include information technology that is a commercial product.

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

Clause Number	Title and Date	Instructions
DEAR 970.5227-5	Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)	"Government" shall mean the "United States Government" and "Contracting Officer" shall mean the "DOE/NNSA Contracting Officer for Prime Contract 89233224CNA000004" with Company. With respect to each notice or claim of, or suit against Company on account of, any alleged patent or copyright infringement based on the performance of the Agreement, Company shall be entitled to the same notices, cooperation, and assistance as is afforded the Government under this clause.

**THE FOLLOWING CLAUSES ARE INCORPORATED IF THIS AGREEMENT EXCEEDS \$150,000:**

Clause Number	Title and Date	Instructions
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FAR 52.203-7	Anti-Kickback Procedures (JUN 2020), except paragraph (c)(1)	Paragraph (c)(1) does not apply.
FAR 52.203-12	Limitation on Payments to Influence Certain Federal Transactions (JUN 2020)	“Government” retains its meaning.
FAR 52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation (MAY 2018)	None.
FAR 52.222-35	Equal Opportunity for Veterans (JUN 2020)	Applies if Agreement equals or exceeds \$150,000.
FAR 52.222-37	Employment Reports on Veterans (JUN 2020)	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 (JUN 2020)	None.
FAR 52.203-17	Contractor Employee Whistleblower Rights and Requirements to Inform Employees of Whistleblower Rights (JUN 2020)	None.
FAR 52.215-2	Audit and Records - Negotiation (JUN 2020)	None.
FAR 52.219-8	Utilization of Small Business Concerns (OCT 2022)	Applies if Agreement amount is expected to exceed \$250,000 unless performed entirely outside of the United States and its outlying areas.
FAR 52.236-6	Superintendence by the Contractor (APR 1984)	None.
FAR 52.236-13	Accident Prevention (NOV 1991)	Include Alternate I (NOV 1991)
FAR 52.242-13	Bankruptcy (JUL 1995)	None.
FAR 52.247-63	Preference for U.S. Flag Air Carriers (JUN 2003)	Applies if the Agreement involves international air transportation.
FAR 52.248-3	Value Engineering – Construction (OCT 2020)	None
UCN-22646	Sustainable Acquisition Program (APR 2024) (Company)	Applies to first tier agreements that exceed \$250,000 and offer significant opportunities for energy efficient or environmentally sustainable products or services.

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

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

**THE FOLLOWING CLAUSE IS INCORPORATED IF THIS AGREEMENT EXCEEDS \$1,000,000:**

Clause Number	Title and Date	Instructions
UCN-22526	Bid Escrow Documents (JUL 2018) (Company)	Applies to all fixed priced agreements (except COTS) exceeding \$1,000,000, including any task release that exceeds \$1,000,000 under a Basic Ordering Agreement. The total value of the base award plus all

		option periods shall be used to determine whether the \$1,000,000 threshold is met.
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**THE FOLLOWING CLAUSE IS INCORPORATED IF THIS AGREEMENT EXCEEDS \$1,500,000:**

Clause Number	Title and Date	Instructions
FAR 52.219-9	Small Business Subcontracting Plan (JAN 2017) (Alternate II) (OCT 2022)	Applicability in subcontracts other than small business concerns that offer subcontracting possibilities.
FAR 52.242-5	Payments to Small Business Subcontractors (JAN 2017)	None.

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

Clause Number	Title and Date	Instructions
FAR 52.215-10	Price Reduction for Defective Cost or Pricing Data (AUG 2011)	As prescribed in DEAR 970.1504-3-1.
FAR 52.215-11	Price Reduction for Defective Certified Cost or Pricing Data-Modifications (JUN 2020)	As prescribed in DEAR 970.1504-3-1.
FAR 52.215-12	Subcontractor Certified Cost or Pricing Data (JUN 2020)	As prescribed in DEAR 970.1504-3-1.
FAR 52.215-13	Subcontractor Certified Cost or Pricing Data-Modification (JUN 2020)	As prescribed in DEAR 970.1504-3-1.
FAR 52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (JUL 2005)	None.
FAR 52.215-19	Notification of Ownership Changes (OCT 1997)	None.
UCN-22380	Cost Accounting Standards-Clauses (FEB 2019) (Company)	Ref. FAR 52.230-2.

**THE FOLLOWING CLAUSES ARE INCORPORATED IF THIS AGREEMENT EXCEEDS \$6,000,000:**

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

**THE FOLLOWING CLAUSE IS INCORPORATED IF THIS AGREEMENT EQUALS OR EXCEEDS \$6,708,000:**

Clause Number	Title and Date	Instructions
FAR 52.225-11	Buy American Act – Construction Materials under Trade Agreements (NOV 2023)	Include ALT I (MAY 2014) in Agreements valued at less than \$13,296,489.
FAR 52.225-12	Notice of Buy American Requirement-Construction Materials Under Trade Agreements (MAY 2014)	Include ALT I (MAY 2014) in Agreements valued at less than \$ 13,296,489.

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

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