

GENERAL TERMS & CONDITIONS
Research and Development (Cost-Reimbursement)
(RD OCTOBER 2018)

This is a cost-reimbursement, no-fee, standard subcontract for unclassified research and development work, not related to nuclear, chemical, biological, or radiological weapons of mass destruction or the production of special nuclear material.

ARTICLES	PAGE
1. Definitions	1
2. Publications	2
3. Report Preparation Requirements	2
4. Notification of Claims, Bankruptcy, and Other Matters	2
5. Assignments.....	2
6. Disputes	2
7. Responsibility for Technology Export Control.....	3
8. Cost Accounting Standards (CAS) Liability	3
9. Disclosure and Use Restrictions for Limited Rights Data.....	3
10. Order of Precedence.....	4
11. Security Requirements	4
12. Company-Furnished and Seller-Acquired Property	4
13. Travel Requirements.....	5
14. Performance of Work.....	5
15. Compliance with Laws	5
16. Liability for Fines and Penalties	5
17. Agreement for Benefit of DOE.....	6
18. Acceptance of Terms and Conditions	6
19. Confidentiality of Information	6
20. Seller's Legal Costs.....	6
21. Survival.....	6
22. Clauses Incorporated by Reference.....	7

1. DEFINITIONS [OCT 2018]

The following terms shall have the meanings below:

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

2. PUBLICATIONS [OCT 2017]

a) The Seller shall closely coordinate with the Subcontract Technical Representative regarding any proposed scientific, technical or professional publication of the results of the work performed or any data developed under this Agreement. The Seller shall provide the Company an opportunity to review any proposed manuscripts describing, in whole or in part, the results of the work performed or any data developed under this Agreement at least forty-five (45) days prior to their submission for publication. The Company will review the proposed publication and provide comments. A response shall be provided to the Seller within forty-five (45) days; otherwise, the Seller may assume that the Company has no comments. Prior to submission for publication, the Seller agrees to address any concerns or issues identified by the Company, including, but not limited to, those relating to information that might compromise inventions; proprietary information provided by the Company to the Seller; and information identified and protected from disclosure pursuant to Clause 11, Security Requirements.

b) Seller may acknowledge the Company and Government sponsorship of the work only with the prior written approval of the Subcontractor Administrator. The interest of the Company in this Agreement may not be used in advertising or publicity without advance written approval of the Company.

3. REPORT PREPARATION REQUIREMENTS [OCT 2017]

a) These requirements apply to all formal reports, including the final report, required by the Agreement. They do not apply to letter reports or reports specifically identified in this Agreement as informal reports.

b) The final report shall contain a comprehensive summary of all work results and conclusions. All reports shall fairly and completely describe the efforts applied to and the results obtained toward achievement of objectives of the Agreement work. If an objective is not accomplished, such failure shall be fully documented and explained in the report.

c) Reports shall include the following elements: (1) a brief abstract of the report which describes the overall objectives and results; (2) a full statement of each objective and description of the effort performed and the accomplishments achieved; (3) a list of any publication or information release made of material developed or maintained through the performance of the Agreement; and any other relevant information.

4. NOTIFICATION OF CLAIMS, BANKRUPTCY, AND OTHER MATTERS [OCT 2017]

a) The Seller shall immediately notify the Procurement Representative in writing of: (1) any action filed by or against the Seller, including any proceeding in bankruptcy or before an administrative agency, arising out of the performance of this Agreement; and (2) any claim against the Seller, the cost and expense of which is allowable under the terms of this Agreement. If, at any time during the performance of this Agreement, the Seller becomes aware of any circumstances which may jeopardize its performance of all or any portion of the Agreement, it shall immediately notify the Procurement Representative in writing of such circumstances, and the Seller shall take whatever action is necessary to cure such defect within the shortest possible time.

5. ASSIGNMENT [OCT 2017]

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

b) Seller may assign rights to be paid amounts due or to become due to a bank, trust company, or other financing institution, including a Federal lending agency, if the Procurement Representative is promptly furnished written notice and a signed copy of such assignment.

6. DISPUTES [OCT 2018]

A. Informal Resolution

1) The parties to a dispute shall attempt to resolve it in good faith, by direct, informal negotiations. All negotiations shall be confidential. Pending resolution of the dispute, the Seller shall proceed diligently with the performance of this Agreement, in accordance with its terms and conditions.

2) The parties, upon mutual Agreement, may seek the assistance of a neutral third party at any time, but they must seek such assistance no later than 120 days after the date of the Company's receipt of a claim. The parties may request the assistance of an established Ombuds Program, where available, or hire a mutually agreeable mediator, or ask the DOE Office of Dispute Resolution to assist them in selecting a mutually agreeable mediator. The cost of mediation shall be shared equally by both parties. If requested by both parties, the neutral third party may offer a non-binding opinion as to a possible settlement. All discussions with the neutral third party shall be confidential.

3) In the event the parties are unable to resolve the dispute by using a neutral third party or Ombuds Program, the Seller shall submit to the Company's Director, Procurement Operations and Business Management a written claim for payment or other relief based on the disputed matter, citing this Clause 6, *Disputes*, and requesting a Final Decision (hereinafter a "Claim").

4) A Claim from Seller shall be deemed denied if the Director, Procurement Operations and Business Management does not issue a written Final Decision (i) by the date the Director, Procurement Operations and Business Management notified Seller that the decision would be issued, or (ii) within 60 calendar days after receipt of the Claim if the Director, Procurement Operations and Business Management did not notify Seller of a date by which the Final Decision would be issued. The Director, Procurement

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

5) The Director, Procurement Operations and Business Management's written Final Decision on any Seller Claim shall be final and conclusive between the parties with no right of judicial review; provided however, that the Final Decision shall not be final and binding against either party, and shall be given no evidentiary weight by an arbitrator or trier of fact, if, within 90 calendar days of Seller's receipt of the written Final Decision, the parties agree to submit the Claim to binding arbitration as provided for in section B below or the Seller files suit in the appropriate court as provided for in section C below.

6) Seller shall have no right to file suit prior to the date of the written Final Decision or 60 calendar days from the Director, Procurement Operations and Business Management's receipt of the Claim, whichever occurs earlier.

B. Formal Resolution

1) Unless prohibited by the state laws of either party, a dispute not resolved by informal resolution may be submitted to binding arbitration upon written Agreement of both parties. Any such arbitration shall be conducted by and in accordance with the Commercial Arbitration Rules of the American Arbitration Association. If arbitration is agreed to by both parties, such Agreement is irrevocable, except by written Agreement of the parties, and the outcome of the arbitration shall be binding on all parties.

2) Each party to the arbitration shall pay its pro rata share of the arbitration fees and costs, except that each party shall be responsible for counsel fees or witness fees or other expenses incurred by the party for its own benefit.

3) Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction.

C. Litigation

1) State Agency. Where Seller is a State agency, such as an educational institution, the applicable constitutional provisions or statutes that govern sovereign immunity shall dictate the appropriate forum and law governing substantive issues.

2) Seller not a State Agency. (a) Any litigation for an Agreement related to the Y-12 site shall be brought and prosecuted exclusively in Federal District Court, with venue in the United States Court for the Eastern District of Tennessee, Northern Division; any litigation for an Agreement related to the Pantex site shall be brought and prosecuted exclusively in the United States District Court for the Northern District of Texas, Amarillo Division. (b) In the event the requirements for jurisdiction in Federal District Court are not present, such litigation (if for an Agreement related to the Y-12 site) shall be brought in Anderson, Knox, or Roane County, Tennessee, in the Circuit or Chancery Court, as appropriate. In the event the requirements for jurisdiction in Federal District Court are not present for an Agreement related to the Pantex site, such litigation shall be brought in Carson County, Texas or, in the event that such court lacks jurisdiction, in the highest level trial court in the State of Texas having jurisdiction.

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

4) If a court awards prejudgment interest on a claim, the interest rate shall be the applicable rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563).

D. Applicable Law

1) The parties agree that, subject to C.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 (1) 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 (2) where the language of any clause, provision or term herein differs from the language of a federal procurement clause, provision or term, the differing language of this Agreement shall control. Where the common law of federal contracts does not apply, then subject to C.1, resolution for Agreements related to the Y-12 site shall be governed by the laws of the State of Tennessee and resolution for Agreements related to the Pantex site shall be governed by the laws of the State of Texas, without regard to the Conflict of Laws rules of either state.

7. RESPONSIBILITY FOR TECHNOLOGY EXPORT CONTROL [OCT 2017]

The parties understand that materials and information resulting from the performance of this Agreement may be subject to export control laws and that each party is responsible for its own compliance with such laws. Transfer of such materials and information may require some form of export control license or other authority from the Government, and failure to obtain such export control license may result in criminal liability under U.S. laws.

8. COST ACCOUNTING STANDARDS (CAS) LIABILITY [OCT 2018]

[Applicable to Agreements exceeding \$750,000]

Article 21 below incorporates into these GENERAL TERMS AND CONDITIONS clauses entitled, "COST ACCOUNTING STANDARDS" and "ADMINISTRATION OF COST ACCOUNTING STANDARDS." Notwithstanding the provisions of these clauses, or of any other provision of the Agreement, the Seller shall be liable to the Government for any increased costs, or interest thereon, resulting from any failure of the Seller, with respect to activities carried on at the site of the work, or of a subcontractor, to comply with applicable cost accounting standards or to follow any practices disclosed pursuant to the requirements of such clause.

9. DISCLOSURE AND USE RESTRICTIONS FOR LIMITED RIGHTS DATA [OCT 2017]

Generally, delivery of Limited Rights Data (or Restricted Computer Software) should not be necessary. However, only if Limited Rights Data will be used in meeting the delivery requirements of the Agreement, the following disclosure and use restrictions shall apply to, and shall be inserted in, any FAR 52.227-14, Rights in Data-General (MAY 2014) Limited Rights Notice on any Limited Rights Data furnished or delivered by the Seller or a lower-tier subcontractor:

- a) These "Limited Rights Data" may be disclosed for evaluation purposes under the restriction that the "Limited Rights Data" be retained in confidence and not be further disclosed;
- b) These "Limited Rights Data" may be disclosed to other contractors participating in the Government's program of which this Agreement is a part for information or use in connection with the work performed under their contracts and under the restriction that the "Limited Rights Data" be retained in confidence and not be further disclosed;
- c) These "Limited Rights Data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "Limited Rights Data" be retained in confidence and not be further disclosed; and
- d) These "Limited Rights Data" may be used (except for manufacture) by support service contractors participating in the Government's program of which this Agreement is a part for information or use in connection with work performed solely in connection with work under this Agreement and under the restriction that the "Limited Rights Data" be retained in confidence and not be further disclosed.

10. ORDER OF PRECEDENCE [OCT 2017]

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

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

11. SECURITY REQUIREMENTS [OCT 2017]

a) This Agreement is intended for unclassified, publicly releasable research or development work. The Company does not expect that results of the research project will involve classified information or Unclassified Controlled Nuclear Information (UCNI) (See 10 CFR part 1017). However, the Company or Government may review the research work generated under this Agreement at any time to determine if it requires classification or control as UCNI.

b) If, subsequent to the date of this Agreement, a review of the information by either party or the Government reveals that classified information, including potential classified inventions, or UCNI is being generated under this Agreement, then the Seller shall protect the information from disclosure unauthorized by law and the Company may direct a change in the security requirements of this Agreement. If such changes cause an increase or decrease in costs or otherwise affect any other term or condition of this Agreement, the Agreement shall be subject to an equitable adjustment as if the changes were directed under the Changes clause of this Agreement.

c) If the security requirements are changed, the Seller shall exert every reasonable effort compatible with its established policies to continue the performance of work under the Agreement in compliance with the change in the security requirements. If the Seller determines that continuation of the work under this Agreement is not practicable because of the change in security requirements, the Seller shall notify the Procurement Representative in writing. Until the Procurement Representative provides direction in response to the Seller's notice, the Seller shall protect the material as directed by the Company.

d) After receiving the written notification, the Procurement Representative shall explore the circumstances surrounding the proposed change in security requirements and shall endeavor to work out a mutually satisfactory method to allow the Seller to continue performance of work under this Agreement.

e) Within 15 days of receiving the written notification of the Seller's stated inability to proceed, the Procurement Representative must determine whether (1) these security requirements do not apply to this Agreement, (2) a mutually satisfactory method for continuing performance of work under this Agreement can be agreed upon, or (3) the Company will terminate the Agreement, in whole or in part, for convenience. If this determination is not made, the Seller may request the Procurement Representative to terminate the Agreement in whole or in part. The Procurement Representative shall terminate the Agreement in whole or in part, as may be appropriate, and the termination shall be deemed a termination under the terms of the *Termination for Convenience of the Government* clause.

12. COMPANY-FURNISHED AND SELLER-ACQUIRED PROPERTY [OCT 2017]

a) The Company shall furnish the Seller the materials, equipment, and supplies, if any, listed in Section C, Statement of Work.

b) Purchase of equipment or other tangible personal property, which is not identified in the Seller's cost proposal for this Agreement and for which the Seller may seek to be reimbursed as a direct item of cost under this Agreement, shall be approved in advance by the Procurement Representative.

c) Except as provided in paragraph e, below, all property furnished by the Company or property acquired by the Seller as a direct cost under the Agreement, title to which vests in the Government, shall be identified, controlled, and protected as required by FAR 52.245-1, which is incorporated by reference as a part of this Agreement. Disposition of such property upon completion of this Agreement shall be as directed by the Procurement Representative.

d) If the Company provides the Seller property that is identified as “high risk property” for use under this Agreement or if the Seller acquires high risk personal property as a direct cost under the Agreement, the Seller shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of this property in accordance with the policies, practices and procedures for property management contained in the DOE Property Management regulations (41 CFR Subpart 109-1.53). Notwithstanding FAR 52.245-1, Alternate II, title to all high risk personal property vests in the Government, and disposition of such property upon completion of the Agreement shall be as directed by the Procurement Representative.

e) Notwithstanding FAR 52.245-1, Alternate II, the Company shall determine at the conclusion of the Agreement whether the educational institution shall be allowed to retain Seller-acquired high risk personal property and/or sensitive items with an acquisition cost of less than \$5,000.

f) Definitions. “High risk personal property” means property that, because of its potential impact on public health and safety, the environment, national security interests, or proliferation concerns, must be controlled, and disposed of in other than the routine manner. 41 CFR 109–1.100–51. “Sensitive items” means those items of personal property provided by the Company or acquired by the Seller as a direct cost under the Agreement that are considered to be susceptible to being appropriated for personal use or which can be readily converted to cash, for example: firearms, portable photographic equipment, binoculars, portable tape recorders, portable calculators, portable power tools, portable computers, and portable communications equipment. 41 CFR 109–1.100–51.

13. TRAVEL REQUIREMENTS [OCT 2017]

a) All travel not included in the Seller’s cost proposal must be approved in advance by the Company.

b) All foreign travel must be specifically approved in advance by the Company and DOE, even if the cost is included in the Seller’s cost proposal for this Agreement. Requests for approval for travel to a sensitive country or involving a sensitive subject shall be submitted to the Company at least 40 days prior to the proposed departure date. Requests for approval for travel to a nonsensitive country and not involving a sensitive subject shall be submitted to the Company at least 30 days prior to the proposed departure date. Post-travel trip reports for all foreign travel must be submitted within 25 days after return. Foreign travel requests should be submitted on DOE F 551.1 dated (08-02).

c) Any travel costs will be reimbursable in accordance with the Seller’s institutional travel policy.

14. PERFORMANCE OF WORK [OCT 2017]

a) The Seller will perform the work at a location other than a DOE/NNSA Facility.

b) The Seller may attend meetings at the Y-12 National Security Complex or the Pantex facility provided such meetings do not involve any activities listed below:

- require a Job Hazard Analysis;
- involve unescorted access to Y-12 or Pantex limited areas;
- require Seller employees to have access to the Y-12 or Pantex site for 10 or more days during a 12 month period;
- require Seller employees to receive any Y-12 or Pantex training;
- involve access to Classified or Unclassified Controlled Information;
- require access to Y-12 or Pantex networks or systems requiring authentication and Security controls; and/or
- otherwise require work to be performed at Y-12 or Pantex or utilize Y-12 or Pantex networks.

c) In the event any activities associated with the Agreement, in whole or in part involve activities listed in subparagraph B, above, additional safety, security, and other site specific requirements will be required and the parties will negotiate, in good faith, such clauses to be included in the Agreement to address additional on-site requirements as the parties deem appropriate.

15. COMPLIANCE WITH LAWS [OCT 2017]

a) In performing work under the Agreement, the Seller shall comply with the requirements of applicable Federal, State, and local laws and regulations, unless relief has been granted in writing by the appropriate regulatory agency.

b) Except as otherwise directed by the Company, the Seller shall procure all necessary permits or licenses required for the performance of work under the Agreement.

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

16. LIABILITY FOR FINES AND PENALTIES [OCT 2017]

The Seller shall be responsible, at no expense to the Company, for the payment of fines, penalties, and other assessments imposed as a result of the Seller’s performance. If the fine, penalty, or other assessment results in part from actions or failures to act of the

Company or its employees, the Company will be responsible for its pro rata share. If the Company is required to pay a fine, penalty, or other assessment for which the Seller is liable under this clause, the Seller shall reimburse the Company the amount of such fine, penalty, or other assessment.

17. AGREEMENT FOR BENEFIT OF DOE [OCT 2017]

a) Funding – The Company shall make all payments under the 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 the Seller are Government funds.

b) Administration – Administration of this Agreement may be transferred, in whole or in part, to DOE or its designee(s), and to the extent of such transfer and notice thereof to Seller, Company shall have no further responsibilities hereunder.

c) Company Right to Recovery – The Company, a Managing and Operating Contractor, acting under its Prime Contract with DOE, has entered into the Agreement with the Seller for the benefit of DOE. If the Company seeks recovery from the Seller, the Seller agrees it shall not plead, assert or raise in any manner a defense that the Company has no right to recover (1) because the Company itself, rather than DOE/NNSA, has suffered no damages on account of the cost-reimbursable nature of the Company’s Prime Contract with DOE, or (2) because DOE has accepted the project or task performed under the Agreement.

18. ACCEPTANCE OF TERMS AND CONDITIONS [OCT 2017]

Failure of Company to enforce any of the provisions of the Agreement shall not be construed as (1) evidence to interpret the requirements of the Agreement, (2) a waiver of any requirement, or (3) a waiver of the right of Company to enforce each and every provision. No waiver of any provision or part thereof of the 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.

19. CONFIDENTIALITY OF INFORMATION [OCT 2017]

To the extent that work under the Agreement requires that Seller be given access to confidential or proprietary business, technical, or financial information belonging to the Government, the Company, or other parties, the Seller shall after receipt thereof, treat such information as confidential and shall limit disclosure of such information to only its employees and students who have a need to know such information and who are obligated to treat such information as confidential. Seller agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by Company in writing. The foregoing obligations, however, shall not apply to (1) information which, at the time of receipt by the Seller is in public domain; (2) information which is published after receipt thereof by the Seller or otherwise becomes part of the public domain through no fault of the Seller; (3) information which the Seller can demonstrate was in its possession at time of receipt thereof and was not acquired directly or indirectly from the Government or Company; (4) information which the Seller can demonstrate was received by it from a third party who did not require the Seller to hold it in confidence; or (5) information required by law to be disclosed, provided Company has been given 60 days’ written notice prior to disclosure.

20. SELLER’S LEGAL COSTS [OCT 2017]

This Article applies only to cost reimbursement subcontracts with private universities or colleges.

For any Seller matter in litigation for which Seller is entitled to reimbursement of costs under this Agreement and for which Seller reasonably expects its legal costs of retained counsel to exceed \$100,000 over the life of the matter, Seller shall:

- (a) Promptly notify the Procurement Representative of the matter;
- (b) Comply with the requirements of 10 CFR Part 719.15 regarding content of a Staffing and Resource Plan (“Plan”) (substituting “Seller” for “contractor” and “Procurement Representative” for “Department Counsel”);
- (c) Submit the Plan to the Procurement Representative within 30 days of providing prompt notice unless the Procurement Representative extends the submission date;
- (d) Within 30 days (unless the Procurement Representative extends the date) of receiving an objection to the Plan by the Procurement Representative, either revise the Plan to satisfy the objection or file a letter with the Procurement Representative disputing the objection;
- (e) Notify the Procurement Representative before incurring retained legal counsel costs in excess of costs listed in the budget;
- (f) Update the Plan annually or more frequently if there are significant changes in the matter;
- (g) Request prior permission from the Procurement Representative to enter into a settlement Agreement with, or make any payments to (except payments ordered by a court or arbitrator), claimants or third-parties if the settlement or payment is likely to reach \$25,000 or more and provide with the request the documentation listed at 10 CFR 719.34; and
- (h) Submit to the Procurement Representative a copy of the executed settlement Agreement within seven days of execution.

21. SURVIVAL [OCT 2018]

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

22. CLAUSES INCORPORATED BY REFERENCE [OCT 2018]

a) The FEDERAL ACQUISITION REGULATION (FAR) and the U.S. DEPARTMENT OF ENERGY ACQUISITION REGULATION (DEAR) clauses listed below, which are located in Chapters 1 and 9, respectively, of Title 48 of the Code of Federal Regulations, and the Company clauses listed below are incorporated by this reference as a part of these GENERAL TERMS AND CONDITIONS with the same force and effect as if they were given in full text, as prescribed below.

b) The texts of FAR clauses and the DEAR clauses are available at a variety of Internet Sites including URL: <http://farsite.hill.af.mil/>.

c) The texts of Company clauses are available on the "Procurement" link at <http://www.y12.doe.gov>.

d) As used in the clauses, the term "contract" shall mean this Agreement; the term "Contractor" shall mean the Seller; the term "subcontractor" shall mean the Seller's subcontractor, and the terms "Government" and "Contracting Officer" shall mean the Company and Procurement Representative, except in FAR clause 52.216-15, and DEAR clauses 952.227-11, 970.5227-5, 970.5208-1, and 970.5232-3, in which clauses "Government" shall mean the United States Government and "Contracting Officer" shall mean the DOE/NNSA Contracting Officer for Prime Contract DE-NA0001942 with the Company. As additional exceptions, as used in DEAR clause 970.5227-4 and in FAR clause 52.227-14, FAR clause 52.227-23, and, with respect to title, in FAR clause 52.245-1 and its Alternate II, the term "Government" shall remain unchanged. As used in DEAR clause 952.227-9, the term "DOE" shall mean DOE/NNSA or the Company.

e) The modifications of these clause terms are intended to appropriately identify the parties and establish their contractual and administrative reporting relationship and shall not apply to the extent they would affect the U.S. Government's rights; nor do they apply to the extent they are inconsistent with the text that accompanies the individual clause citations below. The Seller shall include the listed clauses in its subcontracts at any tier, to the extent applicable.

APPLICABLE TO THIS AGREEMENT UNLESS OTHERWISE INDICATED BELOW OR IN THE BODY OF THE CLAUSE:

- DEAR 952.204-71, Sensitive Foreign Nations Controls (MAR 2011). (Applies if the Agreement is for unclassified research involving nuclear technology.)
- DEAR 952-204-77, Computer Security (AUG 2006), (applies if the Seller may have access to computers owned, leased or operated on behalf of the Department of Energy.)
- FAR 52.215-15, Pension Adjustments and Asset Reversions (OCT 2010) (applicable when cost and pricing data required)
- FAR 52.216-7, Allowable Cost and Payment (DEC 2002), (substitute 31.3 in Agreements with educational institutions and 31.7 in Agreements with nonprofit organizations for 31.2 in paragraph (a)).
- FAR 52.216-15, Predetermined Indirect Costs Rates (APR 1998)
- FAR 52.222-50, Combating Trafficking in Persons (FEB 2009)
- FAR 52.223-3, Hazardous Material Identification and Material Safety Data Sheets (JAN 1997) and Alternate I (JUL 1995), (applies only if Agreement involves delivery of hazardous materials.)
- FAR 52.223-7, Notice of Radioactive Materials (JAN 1997) (paragraph (a) shall read 45 days prior)
- FAR 52.225-13, Restrictions on Certain Foreign Purchases (JUN 2008)
- DEAR 970.5227-4, Authorization and Consent (AUG 2002), Paragraphs (a), (c)(2), (c)(3)
- DEAR 952.227-9, Refund of Royalties (MAR 1995), applies if "royalties" of more than \$250 are paid by a subcontractor at any tier.
- DEAR 952.227-11, Patent Rights – Retention by the Contractor (Short Form) (MAR 1995), [applies only if Seller is a nonprofit organization as set forth in 48 CFR 27.301. If Seller does not qualify in accordance with 48 CFR 27.301, it may request a patent waiver pursuant to 10 CFR 784. Add "and Procurement Representative" after "Contracting Officer" in subparagraph (l) (1)].
- FAR 52.227-14, (Check provision below that applies OR include only applicable provision). _____ Rights in Data-General (MAY 2014) with Alternate V (DEC 2007) including new paragraph (j) and DEAR 927.409 revised paragraphs (a) Definitions and (d) (3) [so identified in DEAR 927.409 but to be included as (d) (4)]. Applies if the Agreement is for development work, or for basic and applied research where computer software is specified as a Deliverable in the Statement of Work or other special circumstances apply as specified in the Agreement. For purposes of its performance of work under Prime Contract No. DE-NA0001942, Company shall be entitled to the same rights and notices and subject to the same restrictions under this clause as the Government.
_____ Rights in Data-General (MAY 2014) with Alternate IV (DEC 2007), revised paragraph (c) (1) and DEAR 927.409, revised paragraph (a) Definitions. Applies if the Agreement is for basic or applied research and computer software is not specified as a Deliverable in the Statement of Work, and no other special circumstances apply per DEAR

927.409. For purposes of its performance of work under Prime Contract No. DE-NA0001942, Company shall be entitled to the same rights and notices subject to the same restrictions under this clause as the Government.

- FAR 52.227-16, Additional Data Requirements (JUN 1987), does not apply if Agreement is with a university or college for an amount of \$500,000 or less.
- FAR 52.227-23, Rights to Proposal Data (Technical) (JUN 1987), applies if the Agreement is based upon a technical proposal.
- FAR 52.229-10, State of New Mexico Gross Receipts and Compensating Tax (APR 2003), (applies if any part of this Agreement is to be performed in the state of New Mexico.)
- FAR 52.232-20, Limitation of Cost (APR 1984), applies if the Agreement is fully funded.
- FAR 52.232-22, Limitation of Funds (APR 1984), applies if the Agreement is incrementally funded.
- FAR 52.232-39, Unenforceability of Unauthorized Obligations (JUN 2013)
- DEAR 952.235-71, Research Misconduct (JUL 2005)
- FAR 52.242-15, Stop-Work Order (AUG 1989) with Alternate I (APR 1984)
- FAR 52.243-2, Changes – Cost-Reimbursement (AUG 1987), with Alternate V (APR 1984)
- FAR 52.244-2, Subcontracts (OCT 2010) with Alternate I (JUN 2007), insert in Paragraph (d): “Any subcontract or purchase order for other than “commercial items” exceeding the simplified acquisition threshold. (“Commercial item” has the meaning contained in FAR 52.202-1, Definitions.)”
- FAR 52.244-6, Subcontracts for Commercial Items (DEC 2013)
- FAR 52.245-1, Government Property (APR 2012) with Alternate II (JUN 2007)
- FAR 52.246-9, Inspection of Research and Development (Short Form) (APR 1984)
- FAR 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)
- DEAR 952.247-70, Foreign Travel (JUN 2010)
- FAR 52.249-5, Termination for Convenience of the Government (Educational and Other Nonprofit Institutions) (SEP 1996)
- DEAR 952.217-70, Acquisition of Real Property (MAR 2011), applies if the Agreement involves leased space that is reimbursed.
- DEAR 952.250-70, Nuclear Hazards Indemnity Agreement (OCT 2005) (JUN 1996), paragraphs (a) through (k), applies to the 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, and by paragraph (2) of 48 CFR 952.250-70 (“public liability”). Seller shall flowdown this provision to all lower-tier subcontractors to the extent those subcontracts involve a risk of public liability.
- DEAR 970.5232-3, Accounts, Records, and Inspection (DEC 2010)

APPLICABLE IF THE AGREEMENT IS FOR \$2,500 OR MORE:

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

APPLICABLE IF THE AGREEMENT IS FOR \$3,500 OR MORE:

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

APPLICABLE IF THE AGREEMENT IS FOR \$10,000 OR MORE:

- FAR 52.222-21, Prohibition of Segregated Facilities (FEB 1999)
- FAR 52.222.26, Equal Opportunity (MAR 2007) (The required poster is available at: <http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm>)
- FAR 52.222-29, Notification of Visa Denial (JUN 2003)
- FAR 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010)
- FAR 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011)

APPLICABLE IF THE AGREEMENT IS FOR \$15,000 OR MORE:

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

APPLICABLE IF THE AGREEMENT IS FOR \$30,000 OR MORE:

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

APPLICABLE IF THE AGREEMENT IS FOR \$35,000 OR MORE:

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

APPLICABLE IF THE AGREEMENT EXCEEDS \$100,000:

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

APPLICABLE IF THE AGREEMENT EXCEEDS \$150,000:

- FAR 52.203-7, Anti-Kickback Procedures (OCT 2010), except paragraph (c) (1)
- FAR 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997)
- FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions (OCT 2010)
- FAR 52.215-23, Limitations on Pass-Through Charges (OCT 2009)
- FAR 52.222-35, Equal Opportunity for Veterans (OCT 2015)
- FAR 52.222-37, Employment Reports on Veterans (FEB 2016)

APPLICABLE IF THE AGREEMENT EXCEEDS \$250,000:

- FAR 52.203-5, Covenant Against Contingent Fees (APR 1984)
- FAR 52.203-6, Restrictions on Subcontractor Sales to the Government (SEP 2006)
- FAR 52.203-17 Contractor Employee Whistleblower Rights and Requirements to Inform Employees of Whistleblower Rights (APR 2014)
- FAR 52.219-8, Utilization of Small Business Concerns (JUL 2013)
- FAR 52.242-13 Bankruptcy (JUL 1995)
- FAR 52.247-63, Preference for U.S. Flag Air Carriers (JUN 2003), applies if the Agreement involves international air transportation.

APPLICABLE IF THE AGREEMENT EXCEEDS \$700,000:

- FAR 52.219-9, Small Business Subcontracting Plan (JAN 2017) (Alternate II) (NOV 2016) applies unless there are no subcontracting possibilities).

APPLICABLE IF THE AGREEMENT EXCEEDS \$750,000:

- FAR 52.215-10, Price Reduction for Defective Cost or Pricing Data (AUG 2011)
- FAR 52.215-11, Price Reduction for Defective Cost or Pricing Data-Modifications (AUG 2011), not used when 52.215-10 is applicable.
- FAR 52.215-12, Subcontractor Certified Cost or Pricing Data (OCT 2010), applies if 52.215-10 is applicable.
- FAR 52.215-13, Subcontractor Cost or Pricing Data-Modifications (OCT 2010), applies if 52.215-11 is applicable.
- FAR 52.230-2, Cost Accounting Standards (OCT 2015), excluding paragraph (b), applies to nonprofit organizations if they are subject to full CAS coverage as set forth in 48 CFR Chapter 99, Subpart 9903.201-2 (FAR Appendix B).
- FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices (MAY 2012), excluding paragraph (b), applies to nonprofit organizations if they are subject to modified CAS coverage as set forth in 48 CFR Chapter 99, Subpart 9903.210-2 (FAR Appendix B).
- FAR 52.230-5, Cost Accounting Standards – Educational Institution (MAY 2012), excluding paragraph (b).
- FAR 52.230-6, Administration of Cost Accounting Standards (JUN 2010)

APPLICABLE IF THE AGREEMENT EXCEEDS \$2,000,000:

- DEAR 970.5204-3, Access to and Ownership of Records (JUL 2005)

APPLICABLE IF THE AGREEMENT EXCEEDS \$5,500,000:

- 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) (OCT 2015). The poster identified in paragraph (b) (3) of this clause is the Department of Energy Office of Inspector General Hotline poster. This poster may be obtained from: http://www.doe.gov/sites/prod/files/igprod/documents/Hotline_poster.pdf.

RD (OCTOBER 2018)

APPLICABLE IF THE AGREEMENT REQUIRES PRINTING (as defined in Title I, Definitions of the U.S. Government Printing and Binding Regulations):

- DEAR 970.5208-1, Printing (DEC 2000)