

GENERAL TERMS & CONDITIONS

Time and Materials (TM JUL 2025)

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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 these 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, or terminate Agreements and make related determinations and findings on behalf of Company.
- (g) “Subcontract Technical Representative” means the duly authorized Company representative who provides technical direction for performance of the work under this Agreement.
- (h) “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” mean 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. 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.

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. 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.

6. 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.

7. 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.

8. ETHICS AND EMPLOYEE CONCERNS *[Jun 2025]*

- (1) 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 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, 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 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.

9. 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.

10. 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.

11. 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.

12. 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 require 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.

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. DOE/NNSA directives require the termination of an employee security clearance within two business days of termination of employment or need for access to the Sites.

- (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 that have Limited Areas within them are known as "possessing facilities."
- (c) Sub-tier contractors to Seller — Seller shall include this requirement in its subcontracts with applicable lower tier subcontractors, and will require those subcontractors to include this requirement in their subcontracts, if the applicability standards listed in the "Applies to" section above are met. References to "Seller" include all lower tier subcontractors falling within the "Applies to" criteria listed in 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 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 — SUPPLIES [Jun 2025]

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

17. AUTHORIZATION AND CONSENT (Ref. FAR 52.227-1JUN 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 clause, if any, included in this Agreement or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

- (b) 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. ALLOWABLE MATERIALS COSTS [Jun 2025]

- (a) Definition. For the purposes of this Article—
 - (1) Direct materials are those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.
 - (2) Materials means—
 - (i) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of Seller under a common control;
 - (ii) Subcontracts for supplies and incidental services for which there is not a labor category specified in the subcontract;
 - (iii) Other direct costs (e.g., incidental services for which there is not a labor category specified in the subcontract, travel, computer usage charges, etc.); and
 - (iv) Applicable indirect costs.
- (b) Reimbursing costs. (1) For the purpose of reimbursing allowable costs of materials (except as provided in paragraph (b)(2) below with respect to pension-plan contributions), the term “costs” includes only—
 - (i) Those recorded costs that, at the time of the request for reimbursement, Seller have paid by cash, check, or other form of actual payment;
 - (ii) When Seller is not delinquent in paying costs of subcontract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—
 - (A) Materials purchased directly for the subcontract and associated financing payments to subcontractors, provided payments determined due will be made in accordance with the terms of a subcontract or invoice, ordinarily within 30 calendar days of the submission of Seller’s payment request to Company;
 - (B) Materials issued from Seller’s inventory and placed in the production process for use on the subcontract;
 - (C) Other direct costs; and
 - (D) Properly allocable and allowable indirect costs; and
 - (iii) Financing payments that have been paid by cash, check, or other forms of payment to subcontractors.
- (2) Accrued costs of Seller contributions under employee pension plans shall be excluded until actually paid unless Seller’s practice is to make contributions quarterly or more frequently, and the contribution does not remain unpaid 30 calendar days after the end of the applicable quarter or shorter payment period. (Any contribution remaining unpaid shall be excluded from Seller’s indirect costs for payment purposes).

- (c) Final indirect cost rates. (1) Final annual indirect cost rates shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.
- (2) (i) Seller shall submit an adequate final indirect cost rate proposal to Company (or cognizant Government representative) and auditor within six months after the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by Seller and granted in writing by Company or Government representative.
- (ii) The proposed rates shall be based on Seller's actual cost experience for that period. The appropriate Company or Government representative and Seller shall establish the final indirect cost rates as promptly as practical after receipt of Seller's proposal.
- (3) Seller and the appropriate Company or Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract or subcontract, identifying any with advance Agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, obligation, or specific cost allowance or disallowance provided for in this Agreement. The understanding is incorporated into this Agreement upon execution.
- (4) Within 120 calendar days (or longer period if approved in writing by the Procurement Representative) after settlement of the final annual indirect cost rates for all years of a physically complete Agreement, Seller shall submit a completion invoice reflecting the settled rates.
- (5) If Seller fails to submit a completion invoice within the time specified, the Procurement Representative may determine the amounts due Seller and record this determination in a unilateral modification to the Agreement.
- (d) Billing rates. Until final annual indirect cost rates are established for any period, Company shall reimburse Seller at billing rates established by Company or by an authorized Government representative, subject to adjustment when final rates are established. These billing rates shall be the anticipated final rates and may be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
- (e) Quick-closeout procedures. Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

20. 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.

21. PAYMENT [Jun 2025]

Company will pay Seller as follows upon the submission of vouchers approved by the Procurement Representative or the Procurement Representative's authorized representative:

- (a) Hourly rate.
- (1) Hourly rate means the rate(s) prescribed in the Agreement for payment for labor that is—
 - (i) Performed by Seller;
 - (ii) Performed by Seller's subcontractors; or
 - (iii) Transferred between divisions, subsidiaries, or affiliates of Seller under a common control.
 - (2) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Agreement by the number of direct labor hours performed.
 - (3) The hourly rates shall be paid for all labor performed on the Agreement that meets the labor qualifications specified in the Agreement. Labor hours incurred to perform tasks for which labor qualifications were specified in the Agreement will not be paid to the extent the work is performed by employees that do not meet the qualifications specified in the Agreement, unless specifically authorized by the Procurement Representative.
 - (4) The hourly rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis.
 - (5) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Procurement Representative). Seller shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the subcontract) by evidence of actual payment and by—
 - (i) Individual daily job timekeeping records;
 - (ii) Records that verify the employees meet the qualifications for the labor categories specified in the Agreement; or
 - (iii) Other substantiation approved by the Procurement Representative.
 - (6) Promptly after receipt of each substantiated invoice, Company shall, except as otherwise provided in this Agreement, and subject to the terms of paragraph (e) of this Article, pay the invoice as approved by the Procurement Representative or authorized representative.
 - (7) Unless otherwise prescribed in the Agreement, the Procurement Representative may unilaterally issue a modification to the Agreement requiring Seller to withhold amounts from its billings until a reserve is set aside in an amount that the Procurement Representative considers necessary to protect Company's and the Government's interests. The Procurement Representative may require withholding of five percent of the amounts due under paragraph (a) of this Article, but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until Seller executes and delivers the release required by paragraph (h) of this Article.
 - (8) Unless the Agreement prescribes otherwise, the hourly rates in the Agreement shall not be varied by virtue of Seller having performed work on an overtime basis. If no overtime rates are provided in the Agreement and overtime work is approved in advance by the Procurement Representative, overtime rates shall be negotiated. If the Agreement provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Procurement Representative.
- (b) Materials. (1) For the purposes of this Article—

- (i) Direct materials are those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.
- (ii) Materials means—
 - (A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of Seller under a common control;
 - (B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the Agreement;
 - (C) Other direct costs (e.g., incidental services for which there is not a labor category specified in the Agreement, travel, computer usage charges, etc.); and,
 - (D) Applicable indirect costs.
- (2) If Seller furnishes its own materials that meet the definition of a commercial item at FAR 2.101, the price to be paid for such materials shall not exceed Seller's established catalog or market price, adjusted to reflect the—
 - (i) Quantities being acquired; and
 - (ii) Actual cost of any modifications necessary because of Agreement requirements.
- (3) Except as provided for in paragraph (b) (2) of this Article, Company will reimburse Seller for allowable cost of materials provided Seller—
 - (i) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or
 - (ii) Ordinarily makes these payments within 30 calendar days of the submission of Seller's payment request to Company and such payment are in accordance with the terms and conditions of the agreement or invoice.
- (4) Payment for materials is subject to the Allowable Materials Costs Article of this Agreement. The Procurement Representative will determine allowable costs of materials in accordance with FAR Subpart 31.2, as supplemented by DEAR Part 931, in effect on the date of this Agreement.
- (5) Seller may include allocable indirect costs and other direct costs to the extent they are—
 - (i) Comprised only of costs that are clearly excluded from the hourly rate;
 - (ii) Allocated in accordance with Seller's written or established accounting practices; and
 - (iii) Indirect costs are not applied to subcontracts that are paid at the hourly rates.
- (6) To the extent able, Seller shall—
 - (i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and,
 - (ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, Seller shall promptly notify the Procurement Representative and give the reasons. Seller shall give credit to Company for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of Seller, or would have accrued except for the fault or neglect of Seller. Seller shall not deduct from gross costs the benefits lost without fault or neglect on the part of Seller, or lost through fault of Company.
- (7) Except as provided for in FAR 31.205-26(e) and (f), Company will not pay profit or fee to Seller on materials.
- (c) Consent to lower-tier subcontracts. If Seller enters into any lower-tier subcontract that requires consent under the Subcontracts Article without obtaining such consent, Company is not required to reimburse Seller for any costs incurred under the lower-tier subcontract prior to the date Seller obtains the required consent. Any reimbursement of lower-tier subcontract costs incurred prior to the date the consent was obtained shall be at the sole discretion of Company.
- (d) Total cost. It is estimated that the total cost to Company for the performance of this Agreement shall not exceed the ceiling price set forth in the Agreement, and Seller agrees to use its best efforts to perform the work and all obligations under this Agreement within such ceiling price. If at any time Seller has reason to believe that the hourly rate payments and material costs that will accrue in performing this Agreement in the next succeeding 30 calendar days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price, Seller shall notify the Procurement Representative giving a revised estimate of the total price to Company for performing this Agreement with supporting reasons and documentation. If at any time Seller has reason to believe that the total price to Company for performing this Agreement will be substantially greater or less than the then stated ceiling price, Seller shall so notify the Procurement Representative, giving a revised estimate of the total price for performing this Agreement, with supporting reasons and documentation. If at any time Company has reason to believe that the work to be required in performing this Agreement will be substantially greater or less than the stated ceiling price, the Procurement Representative will so advise Seller, giving the then revised estimate of the total amount of effort to be required under the Agreement.
- (e) Ceiling price. Company will not be obligated to pay Seller any amount in excess of the ceiling price in the Agreement, and Seller shall not be obligated to continue performance if to do so would exceed the ceiling price, unless and until the Procurement Representative notifies Seller in writing that the ceiling price has been increased and specifies in the notice a

revised ceiling that shall constitute the ceiling price for performance under this Agreement. When and to the extent that the ceiling price has been increased, any hours expended and material costs incurred by Seller in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase.

- (f) Audit. At any time before final payment under this Agreement, the Procurement Representative may request audit of invoices and supporting documentation. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Procurement Representative not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments.
- (g) Final payment. (1) Upon receipt and approval of the invoice designated by Seller as the “completion invoice” and supporting documentation, and upon compliance by Seller with all terms of this Agreement (including, without limitation, terms relating to patents and the terms of paragraph (h) of this Article), Company shall promptly pay any balance due Seller. A final invoice shall be submitted for payment no more than 90 calendar days following the expiration or termination of the Agreement, unless a later or alternate date is agreed to in writing by the Procurement Representative. Said invoices shall be clearly marked “Final Invoice”, thus indicating that all payment obligations of Company under this Agreement have ceased and that no further payments are due or outstanding. If Seller fails to submit a final invoice within the time allowed, the Procurement Representative shall determine the final amount owed to Seller, if any, or the final amount owed by Seller to Company. Such determination shall be final and conclusive between the parties without the right of judicial review unless Seller submits a Claim requesting a 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.
 - (2) Seller shall pay to Company any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by Seller or any assignee under this Agreement, to the extent that those amounts are properly allocable to costs for which Seller has been reimbursed by Company. Reasonable expenses incurred by Seller for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Procurement Representative.
- (h) Assignment and release of claims. Before final payment under this Agreement, Seller and each assignee whose assignment is in effect at the time of final payment, shall execute and deliver—
 - (1) An assignment to Company, in form and substance satisfactory to the Procurement Representative, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which Seller has been reimbursed by Company under this Agreement; and
 - (2) A release discharging Company, the Government, their officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this Agreement, subject only to the following exceptions:
 - (i) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by Seller.
 - (ii) Claims, together with reasonable incidental expenses, based upon the liabilities of Seller to third parties arising out of performing this Agreement, that are not known to Seller on the date of the execution of the release, and of which Seller gives notice in writing to the Procurement Representative not more than six years after the date of the release or the date of any notice to Seller that Company is prepared to make final payment, whichever is earlier.
 - (iii) Claims for reimbursement of costs (other than expenses of Seller by reason of its indemnification of Company against patent liability), including reasonable incidental expenses, incurred by Seller under the terms of this Agreement relating to patents.

22. INTEREST [Jun 2025]

(This Article does not apply if Seller is a nonprofit organization or a state or local government or instrumentality.)

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

23. 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.

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

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. SPECIFICATIONS, DRAWINGS AND OTHER TECHNICAL DATA [Jun 2025]

- (a) Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Procurement Representative, who shall promptly make a determination in writing. Any adjustment by Seller without such a determination shall be at its own risk and expense.
- (b) "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. The term includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance, test data, other technical 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.
- (c) 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 or other technical data, nor from responsibility for complying with the requirements of this Agreement, except with respect to variations described and approved in accordance with paragraph (d) of this clause.
- (d) If shop drawings show variations from the requirements of this Agreement, 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.

31. 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.

32. 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 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.
- (g) Company may recover from Seller costs incurred by Company that result from actions or omissions of Seller or its subcontractors and that are determined by DOE to be unallowable.

33. SUBCONTRACTS [Jun 2025]

No subcontract or modification thereof placed under this Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

34. 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.

35. ASSIGNMENT OF CLAIMS [Jun 2025]

- (a) Seller may assign its rights to be paid amounts due or to become due as a result of the performance of this Agreement to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence. Unless otherwise stated in this Agreement, payments to an assignee of any amounts due or to become due under this Agreement shall not be subject to reduction or setoff.
- (b) Any assignment or reassignment authorized under this 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.
- (c) 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.

36. 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 claim 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.

37. STOP-WORK ORDER [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.

38. 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.

39. 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 when the supplies to be furnished are to be specially manufactured for Company in accordance with the drawings, designs, or specifications.
 - (2) Method of shipment or packing.
 - (3) Place of delivery of supplies.
 - (4) Description of services to be performed.
 - (5) Time of performance of the services (*i.e.*, hours of the day, days of the week, etc.).

- (6) Place of performance of the services.
- (7) 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 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.

40. 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

41. 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.

42. 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 of 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.

43. EXCUSABLE DELAYS [Jun 2025]

- (a) Neither Company nor Seller shall be liable to the other party for default to the extent its nonperformance is caused by an occurrence beyond its reasonable control and without its fault or negligence (an “Excusable Delay”), such as Acts of God or the public enemy, fires, floods, epidemics, pandemics, quarantine restrictions, strikes, (subject to (b)), unusually severe weather, delays of common carriers, and in the case of Seller’s nonperformance, acts of the Government in either its sovereign or contractual capacity.
- (b) Seller agrees that any strike, work stoppage, or labor dispute specifically related to work under this Agreement among Seller’s employees or its subcontractors’ employees are not Excusable Delays.
- (c) If Company’s or Seller’s nonperformance is caused by the default of its subcontractor at any tier, and if the cause of the default is beyond the reasonable control of both the nonperforming party and its subcontractor, and without the fault or negligence of either, the nonperforming party shall be entitled to an Excusable Delay under this Article, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the nonperforming party to meet the required delivery schedule.

The party whose performance is affected by an Excusable Delay shall be granted schedule relief only to the extent it justifies and accounts for the claimed period of delay.

44. 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) 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.

45. 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 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) 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) 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.

46. 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.
- (g) If this Agreement is to be performed outside the United States and its outlying areas, the words "Government" and "Government Property (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government Property" respectively.

47. TERMINATION [Jun 2025]

- (a) Company may terminate performance of work under this Agreement in whole or, from time to time, in part,
 - (1) For the convenience of Company or and,
 - (2) If Seller defaults in performing this Agreement and fails to cure the default within 10 calendar days (unless extended by the Procurement Representative) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) Company shall terminate by delivering to Seller a Notice of Termination specifying whether termination is for default or for convenience of Company, the extent of termination, and the effective date. If, after termination for default, it is determined that Seller was not in default or that Seller's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of Seller as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of Company.
- (c) After receipt of a Notice of Termination, and except as directed by the Procurement Representative, Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:
 - (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of this Agreement.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.
 - (4) Assign to Company, as directed by the Procurement Representative, all right, title, and interest of Seller under the subcontracts terminated, in which case Company shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by the Procurement Representative, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this Agreement; approval or ratification will be final for purposes of this Article.
 - (6) Transfer title (if not already transferred) and, as directed by the Procurement Representative, deliver to Company—
 - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
 - (ii) The completed or partially completed plans, drawings, information, and other property that, if the Agreement had been completed, would be required to be furnished to Company; and
 - (iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this Agreement, the cost of which Seller has been or will be reimbursed under this Agreement.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary, or that the Procurement Representative may direct, for the protection and preservation of the property related to this Agreement that is in the possession of Seller and in which Company has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by the Procurement Representative, any property of the types referred to in paragraph (c) (6) of this Article; *provided, however*, that Seller (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Procurement Representative. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Company under this Agreement, credited to the price or cost of the work, or paid in any other manner directed by the Procurement Representative.
- (d) Seller shall submit complete termination inventory schedules no later than 60 calendar days from the effective date of termination, unless extended in writing by the Procurement Representative upon written request of Seller within this 60-day period.

- (e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, Seller may submit to the Procurement Representative a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Procurement Representative. Seller may request Company to remove those items or enter into an Agreement for their storage. Within 15 calendar days, Company will accept the items and remove them or enter into a storage Agreement. The Procurement Representative 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.
- (f) After termination, Seller shall submit a final termination settlement proposal to the Procurement Representative in the form and with the certification prescribed by the Procurement Representative. Seller shall submit the proposal promptly, but no later than six months from the effective date of termination, unless extended in writing by the Procurement Representative upon written request of Seller within this six-month period. However, if the Procurement Representative determines that the facts justify it, a termination settlement proposal may be received and acted on after six months or any extension. If Seller fails to submit the proposal within the time allowed, the Procurement Representative may determine, on the basis of information available, the amount, if any, due Seller because of the termination and shall pay the amount determined.
- (g) Subject to paragraph (f) of this Article, Seller and the Procurement Representative may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The Agreement shall be amended, and Seller paid the agreed amount.
- (h) If Seller and the Procurement Representative fail to agree in whole or in part on the amount to be paid because of the termination of work, the Procurement Representative shall determine, on the basis of information available, the amount, if any, due Seller and shall pay the amount determined as follows:
 - (1) If the termination is for the convenience of Company, include—
 - (i) An amount for direct labor hours (as defined in the Agreement) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Agreement, less any hourly rate payments already made to Seller;
 - (ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to Seller;
 - (iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination, if they are reasonably incurred after the effective date, with the approval of or as directed by the Procurement Representative; however, Seller shall discontinue these expenses as rapidly as practicable;
 - (iv) If not included in subdivision (h)(1)(i), (ii), or (iii) of this Article, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of this Agreement; and,
 - (v) The reasonable costs of settlement of the work terminated, including—
 - (A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (C) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.
 - (2) If the termination is for default, include the amounts computed under paragraph (h)(1) of this Article but omit—
 - (i) Any amount for preparation of Seller's termination settlement proposal; and
 - (ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by Company.
- (i) If the termination is partial, Seller may propose an equitable adjustment of price(s) for the continued portion of the Agreement. The Procurement Representative shall make any equitable adjustment agreed upon. Any proposal by Seller for an equitable adjustment shall be requested within 90 calendar days from the effective date of termination, unless extended in writing by the Procurement Representative. If Seller fails to submit such proposal within the time allowed, Company may determine the amount, if any, due Seller and pay that amount.
- (j) In arriving at the amount due Seller under this Article, 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 Seller or sold under this Article and not recovered by or credited to Company.
- (k) (1) Company may, under the terms and conditions it prescribes, make partial payments and payments against costs

incurred by Seller for the terminated portion of the agreement, if the Procurement Representative 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 the Procurement Representative because of the circumstances.
- (l) (1) If Seller failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (f), or (i), 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 (f), or (i), the Procurement Representative's determination under paragraph (f), (h), or (i) shall be final and conclusive without the right of judicial review unless Seller submits a Claim requesting a final determination from Company under the Resolution of Disputes clause within 60 calendar days after receipt of a determination under paragraph (f), (h), or (k).

48. 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.

49. 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 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 Agreement, and "Contracting Officer" means Company's Procurement Representative.
- (b) "Government" retains its meaning in:
- (1) The phrases "Government property" and "Government-furnished property;"
 - (2) Paragraph (a) of FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions;
 - (3) Exhibit 7 – Classified Inventions; and
 - (4) DEAR 970.5208-1, Printing.

THE FOLLOWING CLAUSES ARE INCORPORATED INTO THIS AGREEMENT:		
Clause Number	Title and Date	Additional Conditions of Applicability
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. Submission of offer indicates compliance with this clause.
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 52.216-26	Payments of Allowable Costs before Definitization (DEC 2002)	None.
FAR 52.219-28	Post-Award Small Business Program Representation (MAR 2023)	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 52.223-7	Notice of Radioactive Materials (JAN 1997)	Paragraph (a) shall read 45 days prior.
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 52.225-13	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)	Submission of offer indicates compliance with this clause.
FAR-52.232-39	Unenforceability of Unauthorized Obligations (JUN 2013)	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 52.246-6	Inspection - Time and Material and Labor-Hour (MAY 2001)	None.
FAR 52.247-64	Preference for Privately Owned U.S.- Flag Commercial Vessels (NOV 2021)	None.
DEAR 952.204-71	Sensitive Foreign Nations Controls (MAR 2011)	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 970.5225-1	Compliance with Export Control Laws and Regulations (Export Clause) (NOV 2015)	None.
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.
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 (JUL 2024) (Company)	Applies to all cost-reimbursement, time-and materials, and labor-hour Agreements. It also applies to 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. (SAM.gov Home)

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	Additional Conditions of Applicability
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 WHEN THE AGREEMENT EXCEEDS \$2,000:

Clause Number	Title and Date	Additional Conditions of Applicability
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.

THE FOLLOWING CLAUSES ARE INCORPORATED WHEN THE AGREEMENT EXCEEDS \$2,500:

Clause Number	Title and Date	Additional Conditions of Applicability
FAR 52.222-41	Service Contract Labor Standards (AUG 2018)	None.
FAR 52.222-42	Statement of Equivalent Rates for Federal Hires (MAY 2014)	None.
FAR 52.222-43	Fair Labor Standards Act & Service Contract Labor Standards-Price Adjustment (Multi-Year & Option Contracts) (AUG 2018)	None.
FAR 52.222-44	Fair Labor Standards Act and Service Contract Labor Standards – Price Adjustment (MAY 2014)	None.
FAR 52.222-62	Paid Sick Leave Under Executive Order 13706 (JAN 2022)	Applies if this Agreement will be performed wholly or partially in the United States, exceeds \$2,500, and a

		portion of the work identified is covered by the Service Contract Labor Standards.
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THE FOLLOWING CLAUSE IS INCORPORATED IF THIS AGREEMENT EXCEEDS \$3,500:

Clause Number	Title and Date	Additional Conditions of Applicability
FAR 52.222-54	Employment Eligibility Verification (MAY 2022)	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	Additional Conditions of Applicability
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.
FAR 52.225-1	Buy American Act - Supplies (OCT 2022)	See exceptions at FAR 25.1101(a)(1), e.g., information technology that is a commercial item.

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

Clause Number	Title and Date	Additional Conditions of Applicability
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)	None.

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	Additional Conditions of Applicability
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	Additional Conditions of Applicability
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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.
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THE FOLLOWING CLAUSES ARE INCORPORATED IF THIS AGREEMENT EXCEEDS \$150,000:

Clause Number	Title and Date	Additional Conditions of Applicability
FAR 52.203-7	Anti-Kickback Procedures (JUN 2020), except paragraph (c)(1)	None.
FAR 52.203-12	Limitation on Payments to Influence Certain Federal Transactions (JUN 2020)	"Government" retains its meaning in paragraph (a).
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 <i>equals</i> 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	Additional Conditions of Applicability
FAR 52.203-6	Restrictions on Subcontractor Sales to the Government (JUN 2020)	None.
FAR 52.203-17	Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights (JUN 2020)	PXD will include the clause in subcontracts over the simplified acquisition threshold.
FAR 52.204-14	Service Contract Reporting Requirements (OCT 2016)	Applies if this Agreement has an estimated total value above the simplified acquisition threshold, 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 above the simplified acquisition threshold.
FAR 52.215-2	Audit and Records - Negotiation (JUN 2020)	None.
FAR 52.215-22	Limitations on Pass-Through Charges- Identification of Subcontract Effort	None.
FAR 52.215-23	Limitations on Pass-Through Charges (OCT 2009) (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 52.242-13	Bankruptcy (JUL 1995)	None.
FAR 52.247-63	Preference for U.S. Flag Air Carriers (JUN 2003)	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	Additional Conditions of Applicability
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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 FY1993 (DEC 2000)	None.

THE FOLLOWING CLAUSE IS INCORPORATED IF THIS AGREEMENT EXCEEDS \$750,000:

Clause Number	Title and Date	Additional Conditions of Applicability
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	Additional Conditions of Applicability
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)	Not used when 52.215-10 is applicable. As prescribed in DEAR 970.1504-3-1
FAR 52.215-12	Subcontractor Certified Cost or Pricing Data (JUN 2020)	Applies if 52.215-10 is applicable. As prescribed in DEAR 970.1504-3-1
FAR 52.215-13	Subcontractor Certified Cost or Pricing Data-Modification (JUN 2020)	Applies if 52.215-11 is applicable. 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	Additional Conditions of Applicability
FAR 52.203-13	Contractor Code of Business Ethics and Conduct (NOV 2021)	With a performance period of more than 120 days.
FAR 52.203-14	Display of Hotline Poster(s) (b)(3) (NOV 2021)	Required poster is: ‘DOE Hotline Poster’

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	Additional Conditions of Applicability
DEAR 970.5208-1	Printing (DEC 2000)	“Government” retains its meaning.