

**PART I**

**SECTION H**

**SPECIAL CONTRACT REQUIREMENTS**

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## SPECIAL CONTRACT REQUIREMENTS

### CLAUSE H.1 - LABORATORY FACILITIES

Laboratory Facilities. DOE agrees to continue to furnish and make available to the Contractor, for its possession and use in performing the work under this contract, the Laboratory facilities designated as follows:

- (a) The Government-owned or leased land, buildings, utilities, equipment and other facilities situated at the Brookhaven National Laboratory Site at Upton, Suffolk County, New York; and
- (b) Government-owned or leased facilities at such other locations as may be approved by DOE for use under this contract.

DOE reserves the right to make part of the above-mentioned land or facilities available to other Government agencies or other users on the basis that the responsibilities and undertakings of the Contractor will not be unreasonably interfered with. Before exercising its right to make any part of the land or facilities available to another agency or user, DOE will confer with the Contractor.

Subject to mutual agreement, other facilities may be used in the performance of the work under this contract.

### CLAUSE H.2 - LONG-RANGE PLANNING, PROGRAM DEVELOPMENT AND BUDGETARY ADMINISTRATION

- (a) Basic Considerations. Throughout the process of planning, and budget development and approval, the Parties recognize the desirability for close consultation, for advising each other of plans or developments on which subsequent action will be required, and for attempting to reach mutual understanding in advance of the time that action needs to be taken.
- (b) Long Range Planning. It is the intent of the Parties to develop annually a Brookhaven Strategic Plan covering a five-year period. Development of the Brookhaven Strategic Plan is the strategic planning process by which the Parties, through mutual consultation, reach agreement on the general types and levels of activity which will be conducted at the Laboratory for the period covered by the plan. The Brookhaven Strategic Plan approved by DOE provides guidance to the Laboratory for long-range planning of programs, site and facility development, and for budget preparation. It also serves as a baseline for placement of work at the Laboratory.

(c) Work Authorization and Financing

- (1) In accordance with the basic principles stated in paragraph (a) of this Clause, the Parties will utilize the procedures set forth in Part III, Attachment J.4, Appendix D, hereto attached and hereby made a part of this contract, for the development and presentation of work programs and budget estimates for the Laboratory and preliminary agreements thereon; such Appendix may be modified from time to time to the extent that the Parties so agree, in writing, without the execution of a formal supplement to this contract.
- (2) DOE approval of the program proposals and budget estimates will be reflected in work authorizations and financial plans developed, issued and revised in accordance with the procedures agreed upon under subparagraph (c)(1) above.

CLAUSE H.3 - DEAR 970.70 AGREEMENTS TO PERFORM NON-DOE ACTIVITIES

- (a) Subject to the prior written approval of the Contracting Officer, and in compliance with applicable requirements imposed by the Contracting Officer pursuant to clause I.79 - Laws, Regulations, and DOE Directives, the Contractor may, through the Laboratory, perform non-DOE activities which are consistent with and complementary to the DOE's mission and the Laboratory's mission under the contract, involving the use of Laboratory equipment, facilities, or personnel. Such proposed work may be for non-Federal entities or other Federal agencies. The request for such approval shall set forth, in detail, the nature of the outside work to be performed, the Laboratory equipment, facilities or personnel required, and the financial and contractual arrangements proposed to pay for the cost of such work. The Contracting Officer shall consider such a request, being guided, among other factors, by the current or future needs of DOE's programs for the equipment, facilities, or personnel to be utilized in the performance of such outside work. Primary considerations in approving such work are that the proposed work will not place the Laboratory in direct competition with domestic non-Federal entities, will not adversely impact execution of the Laboratory's assigned programs, and will not create a potentially detrimental future burden on commitment of DOE resources. If the Contracting Officer approves such a request, the Contractor and DOE shall agree upon the terms and conditions which would apply to such work. This agreement may provide for receipt by the Government of all or part of such sum as represents the payment to be received by the Contractor for such outside work; provided, however, that DOE may contribute the use of certain equipment, facilities, or personnel to the Laboratory for the performance of such outside work if it determines that it desires to foster the activity in some measure. Except as otherwise approved by DOE, all clauses of this contract shall be deemed to be

applicable to the performance of such work. This Clause shall not be construed as amending or superseding the requirements of clause C.4, Statement of Work, set forth in Part I, Section C.

- (b) The Contractor shall promptly advise the Contracting Officer of any advance notices of, or solicitations for, a major system acquisition requirement received from other Federal agencies pursuant to FAR 34.005 which would logically involve DOE facilities or resources operated or managed by the Contractor. The Contractor shall not respond to or otherwise propose to participate in response to the requirements of such solicitations unless the Contractor has obtained written approval of the Contracting Officer.

CLAUSE H.4 - ADVANCE UNDERSTANDINGS REGARDING ADDITIONAL ITEMS OF ALLOWABLE AND UNALLOWABLE COSTS AND OTHER MATTERS

I. ITEMS OF ALLOWABLE COSTS:

- (a) Subject to the approval or ratification, in writing, of the Contracting Officer, reasonable litigation and other legal expenses (including reasonable counsel fees and the premium for bail bond) if incurred in accordance with the clause of the contract entitled "Insurance--Litigation and Claims" and the DOE approved Contractor legal management procedures (including cost guidelines) as such procedures may be revised from time to time and if not otherwise made unallowable in this contract including FAR 31.205-47(f)(7):
- (1) necessary to defend adequately any member of the Contractor's internal guard force against whom a civil or criminal action is brought, where such action is based upon lawful act or acts of the guard undertaken by him in the general course of his duties for the purpose of accomplishing and fulfilling the official duties of his employment; or
  - (2) necessary for the legal defense of employees who are sued for errors, omission or actions, taken within the scope of their employment. Payment of judgments, or settlement of claims against employees, when the judgments or claims arise from errors, omissions or actions, taken within the scope of their employment are also allowable.

DOE and the Contractor have further agreed to the following in connection with the interpretation and administration of the foregoing provision:

Any request for approval/ratification must include a determination by the Contractor that (i) the guard's action giving rise to the civil or criminal action reasonably appear to have been performed within the scope of his/her

employment, and (ii) that it is in the best interests of the Laboratory to pay for the guard's litigation expenses. DOE and the Contractor further agree that in interpreting the term "lawful", due consideration shall be given to whether a member of the Contractor's internal guard force acted in good faith and reasonably believed such action to be in the general scope of his or her employment to accomplish official duties and, in addition, in criminal actions, had no reasonable cause to believe that his or her conduct was unlawful. In the event the Contractor is legally obligated to defend the guard, the termination of any civil action or proceeding by judgment or settlement shall not in itself create a presumption that any such guard did not act in good faith for a purpose which he or she reasonably believed to be within his or her scope of employment and official duties. Similarly, the termination of any criminal action or proceeding by conviction or upon a plea of nolo contendere, or its equivalent, shall create a rebuttable presumption that such guard did not have reasonable cause to believe that his or her conduct was lawful.

Finally, in connection with any federal criminal proceeding against a member of the Contractor's internal guard force, the Contractor recognizes that Contracting Officer approval of the allowability of litigation expenses will be further predicated on the Contracting Officer determining that such reimbursement is in the best interests of the United States.

- (b) Rentals and leases of land, buildings, and equipment owned by third parties, allowances in lieu of rental, charges associated therewith and costs of alteration, remodeling and restorations where such items are used in the performance of the contract, except that such rentals and leases directly chargeable to the contract shall be subject to such approval by the Contracting Officer as set forth in Part III, Attachment J.7, Appendix G.
- (c) Notwithstanding the provisions of FAR cost principle 31.205-44 (e), stipends and payments made to reimburse travel or other expenses of researchers and students who are not employed under this contract but are participating in research, educational or training activities under this contract to the extent such costs are incurred in connection with fellowship, international agreements, or other research, educational or training programs approved by the Contracting Officer.
- (d) Notwithstanding the provisions of FAR cost principle 31.205-44 (e), payments to educational institutions for tuition and fees, or institutional allowances, in connection with fellowship or other research, educational or training programs for researchers and students who are not employed under this contract.

- (e) Expenditures by the Contractor to reimburse other employers for payments (including, but not limited to, salaries) to or for the benefit of their employees loaned to the Contractor for and engaged in the performance of the Contractor's undertaking hereunder.
- (f) Costs incurred or expenditures made by the Contractor, as directed, approved or ratified by the Contracting Officer and not unallowable under any other provisions of this contract.
- (g) Subject to any other limitations on allowability contained in this contract, costs incurred and expenditures made by the Contractor's Board of Directors, its members, committees, panels and support personnel in connection with performance of work under this contract.
- (h) Pursuant to Clause I.11 - FAR 52.211-5 - Material Requirements (AUG 2000), the Contractor is authorized to obtain Government surplus property in accordance with its DOE approved Supply and Materiel Group Standard Operating Procedures manual and to obtain and use used, reconditioned, or remanufactured supplies when it determines it is in accordance with and benefits the work to be performed under the contract.
- (i) The Contractor may use space at Brookhaven National Laboratory, rent free, for the maintenance of a corporate office. The cost of normal support for the office, including, without limitation, furniture, equipment, supplies, maintenance, custodial services, utilities, accounting, procurement, fiscal, and other support services shall be deemed allowable costs under the contract. Nothing herein shall be construed as making a cost specifically unallowable under any other terms of this contract allowable. Furthermore, should it appear that there will be a substantial increase in the space required for the corporate office, or in the expense of the support functions as described above, the Contractor will bring such increase to the attention of DOE and the matter will be subject to reexamination by DOE and the Contractor. Also, the allocation of the cost of Contractor corporate staff for travel expenditures directly incurred for work performed under the contract shall be allowable costs under the contract.
- (j) Pursuant to Clause I.81 - DEAR 970.5208-1 - Printing (DEC 2000), the Contractor is authorized to certify, prior to the printing of individual jobs, that the use of more than one color of ink fulfills a specific functional need in accordance with the guidance provided in the Government Printing and Binding Regulations, Title 44 of the U.S. Code and DOE directives related thereto. This authorization is subject to the Contractor providing to the Contracting Officer, on an annual basis, a report on all multicolor printing activities supported with DOE funds.

(k) Pursuant to Clause I.107 - DEAR 970.5232-7 - Financial Management System (DEC 2000), the financial management system covered in Clause I.107 includes the Laboratory's current existing integrated accounting system which consists of the following subsystems: budget, payroll, labor cost distribution, accounts receivable, accounts payable, procurement, receiving, inventory, project costing, general ledger, and the financial aspects of the Asset Management System, as well as such other subsystems as may be agreed to by DOE and the Contractor. In accordance with the specified annual plan, only those subsystems and/or major enhancements and/or upgrades exceeding \$500,000.00 require approval by DOE.

(l) DOE and the Contractor have agreed on the following Brookhaven National Laboratory (BNL) Fiscal Office Cashier's policy regarding the cashing of personal checks:

Drafts for BNL payroll, travel advances, travel expense reimbursement, and honoraria/stipends drawn on the JP Morgan Chase Bank (or other contracted DOE Special Financial Institution), are honored by the Teacher's Federal Credit Union at the on site branch office for anyone presenting an employee or guest identification card. Therefore, the BNL Cashier will cash such drafts only during such hours that the Credit Union is not open for business. These instances will include, for example, but not necessarily be limited to, the cashing of drafts for BNL shift workers.

Visitors and guests of the Laboratory can cash personal checks at the BNL Cashier, if they are drawn on financial institutions other than Teachers Federal Credit Union, up to a single check maximum limit of \$200. In certain unusual circumstances, at the discretion and with the approval of the Laboratory Fiscal Officer or Acting Fiscal Officer, personal checks of employees as well as checks in excess of \$200, as required by the circumstances, may be cashed by the BNL Cashier.

Such instances of check cashing for employees, visitors and guests shall be performed at no cost to those persons, and the incidental operating costs related thereto shall be deemed allowable costs under the contract.

## II. ITEMS OF UNALLOWABLE COSTS:

- (a) Premium Pay for wearing radiation-measuring devices for Laboratory and all-tier cost-type subcontract employees.
- (b) Salaries or other compensation of the Contractor's Board members, or that of members of subcommittees of the Board who are employees of the Contractor, Battelle Memorial Institute, the Research Foundation of State

University of New York, State University of New York at Stony Brook and the six Core Universities.

CLAUSE H.5 - ADMINISTRATION OF SUBCONTRACTS

- (a) The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor unless assigned at the direction of DOE.
- (b) The DOE reserves the right to direct the Contractor to assign to the DOE, or another contractor, any subcontract awarded under this contract.
- (c) The DOE reserves the right to identify specific work activities in Section C "Description/Specifications" to be removed (de-scoped) from the contract in order to contract directly for the specific work activities. The Department will work with the Contractor to identify the areas of work that can be performed by small businesses in order to maximize direct federal contracts with small businesses. The contractor agrees to facilitate these actions. This facilitation will include identifying direct contracting opportunities valued at \$5 million or above for small businesses for work presently performed under subcontracts, as well as work performed by contractor employees. The Contractor shall notify the DOE one-year in advance of the expiration of any of its subcontracts valued at \$5 million or above, or if applicable, one-year prior to the exercise of an option and/or the option notification requirement, if any, contained in the subcontracts. The DOE will review this information and the requirements of the Contractor to determine the appropriateness for small business opportunities. This review may result in the DOE electing to enter in contracts directly with small businesses for these areas of work. The Contracting Officer will give notice to the Contractor not less than 120 calendar days prior to the date for exercising the option and/or the expiration of the subcontract and/or prior to entering into contract for work being performed by Contractor employees. Following award of these direct federal contracts, DOE may assign administration of these contracts to the Contractor. The Contractor agrees to accept assignments from the DOE for the administration of these contracts. The parameters of the Contractor's responsibilities for the small business contracts and/or changes, if any, to this contract will be incorporated via a modification to the contract. The Contractor will accept management and administration responsibilities, if so determined.
- (d) To the extent that DOE removes (de-scopes) work from this contract, any such removed or withdrawn work shall be treated as a change in accordance with the clause of this contract entitled, "Changes". A "material change" for the purpose of this clause is defined as cumulative changes during a fiscal year that result in a plus or minus 10% change to the Laboratory's budget. To the extent that DOE assigns the administration of a contract to the Contractor, or removes (de-scopes) work, the

Parties reserve the right to negotiate an equitable adjustment in the Contractor's annual available performance fee. The negotiation of fee will be in accordance with the contract clause entitled, "Total Available Fee: Base Fee Amount and Performance Fee Amount". The Parties will also negotiate appropriate adjustments to the Contractor's Subcontracting Plan or any other applicable contract terms and conditions impacted by such withdrawal or addition of work scope to recognize the changes to the Contractor's subcontracting base and goals.

#### CLAUSE H.6 - CARE OF LABORATORY ANIMALS

- (a) Before undertaking performance of any contract involving the use of laboratory animals, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with Section 6, Public Law 89-544, Laboratory Animal Welfare Act, August 24, 1966, as amended. The Contractor shall furnish evidence of such registration to the Contracting Officer.
- (b) The Contractor shall acquire animals used in research and development programs from a dealer licensed by the Secretary of Agriculture, or from exempted sources in accordance with the Public Laws enumerated in paragraph (a) above.
- (c) In the care of any animals used or intended for use in the performance of this contract, the Contractor shall comply with USDA regulations governing animal care and usage, as well as all other relevant local, State, and Federal regulations concerning animal care and usage. In addition, the Contractor will ensure that research will be conducted in a facility that either: (i) has a current National Institutes of Health (NIH) assurance number for animal care and usage, or (ii) is currently accredited for animal care and usage by an appropriate organization such as the Association for Assessment and Accreditation of Laboratory Animal Care (AAALAC) International, or (iii) has a DOE Assurance Plan Number.

#### CLAUSE H.7 - PRIVACY ACT RECORDS

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a (Public Law 93-579) and implementing DOE Regulations (10 CFR 1008), the Contractor shall maintain the following "Systems of Records" on individuals in order to accomplish the United States Department of Energy functions:

- (a) "Personnel Medical Records" (DOE-33).
- (b) "Personnel Radiation Exposure Records" (DOE-35) respecting Contractor employees, DOE employees, and visitors to the contract site.

- (c) "Firearms Qualifications Records" (DOE-31) respecting laboratory guards authorized by DOE to carry firearms.

The parenthetical Department of Energy number designations for each system of records refers to the official "System of Records" number published by the United States Department of Energy in the Federal Register pursuant to the Privacy Act.

If DOE requires the Contractor to design, develop, or maintain additional systems of Government-owned records on individuals to accomplish an agency function in accordance with the Privacy Act of 1974 and 10 CFR 1008, the Contracting Officer, or designee, shall so notify the Contractor, in writing, and such Privacy Act system shall be deemed added to the above list whether incorporated by formal contract modification or not. The Parties shall mutually agree to a schedule for implementation of the Privacy Act with respect to each such system.

#### CLAUSE H.8 - ADDITIONAL DEFINITIONS

- (a) "Contractor" means "Brookhaven Science Associates, LLC".
- (b) "Laboratory" means the Brookhaven National Laboratory (BNL) composed of Government-owned buildings and facilities together with the necessary utilities, now existing or hereafter to be acquired, constructed and equipped, most of which are or will be situated on a plot or plots of land (hereinafter referred to as the "Laboratory Site") at Upton, Suffolk County, New York.
- (c) The term "someone acting as the Laboratory Director" means the person appointed as Laboratory Director or a person specified, in writing, to have authority to act in the absence of the Laboratory Director; the Deputy Laboratory Director(s) acting in the absence of the Laboratory Director; or a person specified, in writing, to have authority to act in the absence of the Laboratory Director and Deputy Laboratory Director(s).
- (d) The term "DOE Directive" means DOE Orders and Notices, Modifications thereto, and other forms of directives, including for purposes of this contract those portions of DOE's Accounting and Procedures Handbook applicable to integrated Contractors, issued by DOE. The term does not include temporary written instructions by the Contracting Officer for the purpose of addressing short-term or urgent DOE concerns relating to health, safety, or the environment.
- (e) The term "DOE" means the Department of Energy, "FERC" means the Federal Energy Regulatory Commission and "NNSA" means the National Nuclear Security Administration.
- (f) "CH" means the DOE Office of Science, Chicago Office.

- (g) "Head of Agency" means: (i) The Secretary; (ii) Deputy Secretary; (iii) Under Secretaries of the Department of Energy and (iv) the Chairman, Federal Energy Regulatory Commission.
- (h) The term "Senior Procurement Executive" means for:
- Department of Energy– Director, Office of Procurement and Assistance Management, (DOE);
- National Nuclear Security Administration– Administrator for Nuclear Security, (NNSA);
- Federal Energy Regulatory Commission – Chairman, FERC.
- (i) The term "non-profit organization" means:
- (1) a university or other institution of higher education,
  - (2) an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 as amended and exempt from taxation under section 501(a) and the Internal Revenue Code,
  - (3) any nonprofit scientific or educational organization qualified as a nonprofit by the laws of the State of its organization or incorporation, or
  - (4) a combination of qualifying entities organized for a nonprofit purpose (e.g., partnership, joint venture or limited liability company) each member of which meets the requirements of (1), (2), or (3) above.

#### CLAUSE H.9 - SERVICE CONTRACT ACT OF 1965 (41 U.S.C. 351)

The Service Contract Act of 1965 is not applicable to this contract. However, in accordance with Clause I.114 – DEAR 970.5244-1 – CONTRACTOR PURCHASING SYSTEM, subcontracts awarded by the Contractor are subject to the Act to the same extent and under the same conditions as contracts awarded by DOE. The Contractor and the Contracting Officer shall develop a procedure whereby DOE will determine if the Service Contract Act is applicable to particular subcontracts. In cases determined to be covered by the Service Contract Act, the Contractor shall prepare SF-98 and 98A "Notice of Intention to Make a Service Contract" and forward it to the Contracting Officer or his designee to obtain a wage determination.

#### CLAUSE H.10 - WALSH-HEALY PUBLIC CONTRACTS ACT

Except as otherwise may be approved, in writing, by the Contracting Officer, the Contractor agrees to insert the following provision in noncommercial Purchase Orders and

subcontracts under this contract. "If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000.00 and is otherwise subject to the Walsh-Healy Public Contracts Act, as amended (41 U.S. Code 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect."

#### CLAUSE H.11 - PROTECTION OF HUMAN SUBJECTS

Before undertaking the performance of any research involving the use of human subjects, the provisions of 10 CFR 745 and DOE Order 443.1, Protection of Human Subjects, must be complied with. This requirement applies to research undertaken with DOE support, work for others, and collaborations with other institutions.

#### CLAUSE H.12 - SOURCE AND SPECIAL NUCLEAR MATERIAL

The Contractor shall comply with all applicable regulations and instructions of DOE relative to the control of and accounting for source and special nuclear material (as these terms are defined in applicable regulations). The Contractor shall make such reports and permit such inspections as DOE may require with reference to source and special nuclear materials. The Contractor shall take all reasonable steps and precautions to protect such materials against theft and misappropriations and to minimize all losses of such materials.

#### CLAUSE H.13 – RESERVED

#### CLAUSE H.14 - STANDARDS OF CONTRACTOR PERFORMANCE EVALUATION

- (a) Use of objective standards of performance, self assessment and performance evaluation:
  - (1) The Parties agree that the Contractor will utilize a comprehensive performance-based management approach for overall Laboratory management. The performance-based management approach will include the use of objective performance goals and indicators, agreed to in advance of each performance evaluation period, as standards against which the Contractor's overall performance of the scientific and technical mission obligations under this Contract will be assessed. The performance criteria will be limited in number and focus on results to drive improved performance and increased effective and efficient management of the Laboratory.

- (2) The Parties agree to utilize the process described within Part III, Section J, Appendix B - "Performance Evaluation and Measurement Plan" (PEMP) to evaluate the performance of the Laboratory. The Parties further agree that the evaluation process described in Appendix B will be reviewed annually and modified, if necessary, by agreement of the Parties. If agreement of the Parties cannot be reached, the Contracting Officer has the unilateral right to establish the evaluation process.
- (3) The Parties agree that the Contractor will conduct an ongoing self-assessment process as the principal means of determining its compliance with the Contract Statement of Work and performance indicators identified within Part III, Section J, Appendix B. To assist the DOE in accomplishing the appropriate level of oversight, the Contractor shall work in partnership and cooperation with DOE and other external organization, as appropriate, in the self-assessment process. This work includes, but is not limited to, the development and execution of self-assessments and the utilization of the results for continuous improvement.
- (4) The Contractor shall provide periodic updates, as requested by the DOE, on the performance against the Appendix B. The Contractor shall provide a formal status briefing at mid-year and year-end, and a formal self-evaluation report to the DOE at year-end. Specific due dates and formats for the above-mentioned briefings and reports shall be agreed to by the Laboratory Director and the DOE Area Office/Site Manager. In addition, the year-end report must provide:
  - (i) an overall summary of performance for the performance period;
  - (ii) performance ratings for each PEMP element and the Laboratory overall; and
  - (iii) a summary of key strengths and opportunities for improvement.
- (5) DOE, as a part of its responsibility for oversight, evaluation, and information exchange, shall provide an annual programmatic appraisal and other appraisals, and reviews of the Contractor's performance of authorized work in accordance with the terms and conditions of this Contract. The Office of Science, through the CH Office Manager and/or the Brookhaven Site Manager, has the lead responsibility for oversight of the programs and activities conducted by the Contractor.
- (6) The Contracting Officer shall annually provide a written assessment of the Laboratory's performance to the Contractor, which shall be based upon the

process described in Appendix B. The Parties acknowledge that the performance levels achieved against the specific performance objectives and measures shall be the primary, but not sole, criteria for determining the Contractor's final performance evaluation and rating. The Contractor's self-assessment results, to include results of any third party reviews which may have been conducted during the evaluation period, will be considered at all levels to assess and evaluate the Contractor's performance. The Contracting Officer may also consider other relevant information not specifically measured by the objectives and measures established within Appendix B that is deemed to have an impact (either positive or negative) on the Contractor's performance. Other relevant information that may be used by the Contracting Officer may include, but is not limited to, information gained from peer reviews, operational awareness, outside agency reviews (i.e., OIG, GAO, DCAA, etc.) conducted throughout the year, annual reviews (if needed), and DOE "for cause" reviews. With exception of "for cause" reviews, the DOE will conduct no more than one management and operations review per year. The on-site portion of such reviews will normally last no more than two weeks. Contractor success in meeting or exceeding performance expectations in a particular management or operations functional area may be rewarded with less frequent – or no – review of the functional area. Conversely, marginal performance or "for cause" situations may result in more frequent reviews.

(b) Standards of performance measure review:

- (1) The Parties agree to review the PEMP elements (goals, objectives, performance indicators, and expected levels of performance) contained in Appendix B annually and to modify them upon the agreement of the Parties; provided, however, that if the Parties cannot reach agreement on all the goals, objectives, performance indicators, and expected levels of performance for the next period, the Contracting Officer shall have the unilateral right to establish reasonable new goals, objectives, performance indicators and expected levels of performance and/or to modify and/or delete existing goals, objectives, performance indicators, and expected levels of performance. It is expected that the goals, objectives, performance indicators, and expected levels of performance will be modified by the Contractor and the DOE as new areas of emphasis or priorities emerge which the Parties may agree warrant recognition in the performance-based integrated management approach.
- (2) Failure to include an objective or performance indicator in the contract Appendix B does not eliminate the Contractor's obligation to comply with all applicable terms and conditions as set forth elsewhere within the contract.

- (3) In the event the Contracting Officer decides to exercise the rights set forth in paragraphs (a)(6) or (b)(1) above, he/she will notify the Contractor, in writing, of the intended decision ten days prior to issuance.

#### CLAUSE H.15 - CAP ON LIABILITY

- (a) The Parties have agreed that the Contractor's liability, for certain obligations it has assumed under this contract, shall be limited as set forth in paragraph (b) below. These limitations or caps shall only apply to obligations the Contractor has assumed pursuant to the following clauses:
  - (1) The clause titled "Property", paragraph (f)(1)(i)(C);
  - (2) The clause titled "Insurance--Litigation and Claims", (h), with respect to prudent business judgment only; and
  - (3) The clause titled "Insurance--Litigation and Claims", (j)(2), except for punitive damages resulting from the willful misconduct or lack of good faith on the part of the Contractor's managerial personnel as defined in the clause titled, Property.
- (b) The Contractor shall be liable each fiscal year for an amount not-to-exceed 1.25 times the maximum performance fee available for that fiscal year. The annual cap which will apply shall be based on the fiscal year in which the Contractor's act or failure to act was the proximate cause of the liability assumed by the Contractor. In the event the Contractor's act or failure to act overlaps more than one fiscal year, the limitation will be the annual limitation for the last fiscal year in which the Contractor's act or failure to act occurred. If the Contractor's cumulative obligations for a fiscal year equal the amount of the annual limitation of liability, the Contractor shall have no further responsibility for the costs of the liabilities it has assumed for that fiscal year pursuant to (a)(1) through (3) above.

#### CLAUSE H.16 - CLOSEOUT ASSISTANCE

The Contractor shall continue to provide assistance in closing out the Associated Universities, Inc. (AUI) contract for the management and operation of the Laboratory, including but not limited to the following items and services upon request and approval of the Contracting Officer:

- (a) Office space on the site suitable to accommodate three people, and necessary Government-owned property including, but not limited to office furniture, computers, photocopiers, telecommunications including facsimile service, office supplies and similar items.
- (b) Clerical and secretarial support to support close-out activities.
- (c) Subject to any DOE restrictions, for purposes of all close-out activities including litigation, claims and administrative hearings arising under the AUI contract as of 12:01 a.m. on March 1, 1998 or thereafter, Contractor shall provide reasonable access to data, documents and records transferred in the Transfer Agreement between DOE, Contractor, and AUI effective February 28, 1998, that are necessary to close-out activities, and reasonable access to Laboratory employees. Access shall be on a non-interference basis and Contractor agrees to use its best efforts to accommodate any request of AUI made with the advance notice described in the Transfer Agreement.
- (d) Subject to all security and safety laws, rules and regulations and internal DOE Orders or Directives applicable to the site, Contractor shall provide access to the site as is reasonable and necessary for close-out activities, including prosecution and defense of any litigation, claim, or hearings. Contractor shall immediately notify the Contracting Officer in the event requested access is to be denied, and shall comply with the final decision of the Contracting Officer respecting access.

**CLAUSE H.17 - NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS - SENSE OF CONGRESS**

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

**CLAUSE H.18 - APPLICATION OF DOE CONTRACTOR REQUIREMENTS DOCUMENTS**

- (a) Performance. The Contractor will perform the work of this Contract in accordance with each of the Contractor Requirements Documents (CRDs) appended to this contract as "Appendix I," until such time as the Contracting Officer approves the substitution of an alternative procedure, standard, system of oversight, or assessment mechanism resulting from the process described below.
- (b) Laws and Regulations Excepted. The process described in this clause shall not affect the application of otherwise applicable laws and regulations of the United States, including regulations of the Department of Energy.

- (c) Deviation Processes in Existing Orders. This clause does not preclude the use of deviation processes provided for in existing DOE directives.
- (d) Proposal of Alternative. The Laboratory Director may, at any time during performance of this contract, propose an alternative procedure, standard, system of oversight, or assessment mechanism to the requirements in a listed CRD by submitting to the Contracting Officer a signed proposal describing the nature and scope of the alternative procedure, standard, system of oversight, or assessment mechanism (alternative), the anticipated benefits, including any cost benefits, to be realized by the Contractor in performance under the contract, and a schedule for implementation of the alternate. In addition, the Contractor shall include an assurance signed by the Laboratory Director that the revised alternative is an adequate and efficient means to meet the objectives underlying the CRD. Upon request, the Contractor shall promptly provide the Contracting Officer any additional information that will aid in evaluating the Contractor's proposal.
- (e) Action of the Contracting Officer. The Contracting Officer shall within sixty (60) days:
  - (1) deny application of the proposed alternative;
  - (2) approve the proposed alternative, with conditions or revisions;
  - (3) approve the proposed alternative; or
  - (4) provide a date by which a decision will be made (not to exceed an additional 60 days).
- (f) Implementation and Evaluation of Performance. Upon approval in accordance with (e)(2) or (e)(3) above, the Contractor shall implement the alternative. In the case of a conditional approval under (e)(2) above, the Contractor shall provide the Contracting Officer with an assurance statement, signed by the Laboratory Director, that the revised alternative is an adequate and efficient means to meet the objectives underlying the CRD. Additionally, the statement shall describe any changes to the schedule for implementation. The Contractor shall then implement the revised alternative. DOE will evaluate performance of the approved alternative from the date scheduled by the Contractor for implementation.
- (g) Application of Additional or Modified CRDs. During performance of the contract, the Contracting Officer may notify the Contractor that he or she intends to unilaterally add CRDs not then listed in Appendix I or modifications to listed CRDs. Upon receipt of that notice, the Contractor, within thirty (30) calendar days, may, in accordance with paragraph (d) of this clause, propose an alternative procedure, standard, system of oversight, or assessment mechanism. The resolution of such a proposal shall be in

accordance with the process set out in paragraphs (e) and (f) of this clause. If an alternative proposal is not submitted by the Contractor within the thirty (30) calendar day period, or, if made, is denied by the Contracting Officer under paragraph (e), the Contracting Officer may unilaterally add the CRD or modification to Appendix I. The Contractor and the Contractor Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, resulting from the addition of the CRD or modification.

- (h) Deficiency and Remedial Action. If, during performance of this contract, the Contracting Officer determines that an alternative procedure, standard, system of oversight, or assessment mechanism adopted through the operation of this clause is not satisfactory, the Contracting Officer may, in his or her sole discretion, determine that corrective action is necessary and require the Contractor to prepare a corrective action plan for the Contracting Officer's approval. If the Contracting Officer is not satisfied with the corrective action taken, the Contracting Officer may direct corrective action to remedy the deficiency, including, if appropriate, the reinstatement of the CRD.

#### CLAUSE H.19 - EXTERNAL REGULATION

The Parties commit to full cooperation with regard to complying with any statutory mandate regarding external regulation of Laboratory facilities, whether by the Nuclear Regulatory Commission, the Occupational Safety and Health Administration, and/or State and local entities with regulatory oversight authority, and including but not limited to the conduct of pilot programs simulating external regulation, and the application for materials, facilities, or other licenses by or on behalf of the DOE.

#### CLAUSE H.20 - GUARANTEE OF PERFORMANCE

In view of the fact that the Contractor has been organized by Battelle Memorial Institute and The Research Foundation of State University of New York (BMI and RFSUNY) for the sole purpose of performing the work hereunder, and in view of the fact that BMI and RFSUNY are the sole members of the Contractor, this contract extension is subject to the guarantees of performance previously executed by both BMI and RFSUNY.

The Government may contact, as necessary, Carl Kohrt, serving as Chair of Brookhaven Science Associates Board, the responsible corporate official who is accountable for the Contractor regarding Contractor performance issues.  
ractor regarding Contractor performance issues.

#### CLAUSE H.21 - CONTRACTOR COMPENSATION, BENEFITS AND PENSION

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system including a compensation system self-assessment plan consistent with 48 CFR 31.205-6, "Compensation for personal services." The Contractor's compensation system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR 31.205-6 and DEAR 970.3102-05-6, Compensation for Personal Services.

Until DOE has approved the Contractor's compensation system, the Contractor shall submit the following to the Contracting Officer for a determination of cost reimbursement under the contract:

- (a) Any additional Compensation System self-assessment data that may be needed to validate and approve the Compensation System.
- (b) Any proposed major compensation program design changes prior to implementation.
- (c) Annual Compensation Increase Plan (CIP).
- (d) Individual compensation actions, as required in the contract including initial and proposed changes to base salary and or payments under an Executive Incentive Compensation Plan submitted on the Application for Contractor Compensation Approval, DOE F 3220.5.
- (e) Any proposed establishment of an incentive compensation plan.

The Contractor shall provide the Contracting Officer with the following reports:

- (a) Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.
- (b) At the time of contract award and upon any change thereafter, a list of the top five most highly compensated executives and their salaries.
- (c) Annual Report of Contractor Expenditures for Employee Supplemental Compensation through the Department Workforce Information System (WFIS), compensation and benefits module.
- (d) A Self-Assessment of the total compensation program using mutually agreed to compensation system performance measures that include performance targets in the following areas: customer, financial, internal business, and learning and growth.

DOE will conduct periodic appraisals of Contractor performance with respect to compensation system implementation. Such appraisals when approved by the Contracting Officer, will be conducted by either DOE validation of contractor self assessments of compensation system performance, or third party expert review.

(a) Benefit Programs

The Contractor shall implement an employee benefits program that supports at a reasonable cost the effective recruitment and retention of highly skilled workforce at the Department facility. No presumption of allowability will exist when the Contractor implements changes to its existing employee benefits program until the Contracting Officer makes a determination of cost reimbursement for reasonable changes to the program.

- (1) Submit to the Contracting Officer for a determination of cost reimbursement a periodic evaluation of the Contractor's Employee Benefits Program based on two professionally recognized performance measure:
  - (i) An Employee Benefits Value Study (ben-val) Measure every two years which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value study does not address post-retirement benefits (PRB) other than pension, the Contractor shall provide separate PRB cost and plan design data comparison with external benchmarks for nationally recognized and Contracting Officer approved survey sources.
  - (ii) An Employee Benefits Cost Survey Comparison (cost survey) Method every year that analyzes the Contractor's employee benefits cost on a per capita basis per full time equivalent employee and as a percent of payroll and compares it with the cost reported by the U.S. Chamber of Commerce (CoC) Annual Employee Benefits Cost Survey or other Contracting Officer approved broad based national survey.
- (2) When net benefit value and/or per capita cost exceed the comparator group by more than 5 percent, submit corrective action plans to achieve a net benefit value and per capita cost not to exceed the comparator group by more than 5 percent.
- (3) When required by the Contracting Officer, submit an analysis of the specific plan costs that are above the per capita cost range and a corrective action

plan to achieve conformance with a Contracting Officer directed per capita cost range.

- (4) Implement corrective action plans determined to be reimbursable by the Contracting Officer to align employee benefit programs with the target in paragraph (a).
- (5) Annually submit the Report of Contractor Expenditures for Employee Supplemental Compensation.

(b) Retirement Plans

- (1) Employees of the Brookhaven National Laboratory (BNL) may participate in the defined contribution retirement plans as described in items (i) and (ii) below. With respect to the plans, the Contractor and the Department of Energy (DOE) agree as follows:

The DOE will reimburse the Contractor for necessary and reasonable costs involved in implementing, administering, by the Contractor and Service providers and funding these approved retirement plans. Any change in plan benefits and/or costs not required to maintain qualification under Section 401 of the Internal Revenue Code will require Contracting Officer approval. The Contractor will notify the DOE of any change required solely to maintain qualification under Section 401 of the Internal Revenue Code.

Provisions of this section are subject to successful negotiations with the Program's service providers including, but not limited to investment organizations, insurance companies, etc. Further, these provisions will be subject to and superseded by any law or regulation with which they might conflict.

While it is expected that this Plan will continue indefinitely, the BSA Board of Directors reserves the right to modify or discontinue them at any time, provided, however, that such modification or discontinuance shall not be applicable to this contract unless approved by the Department of Energy. Any discontinuance or modification of the Plan shall not affect the benefits accrued by participants prior to the date of discontinuance or modification.

- (i) "Regular Retirement Plan." BSA will provide its eligible employees with a defined contribution type retirement plan, with BSA contributions being made at the participants' election to one or more of the following investment organizations: Teachers Insurance and Annuity Association (TIAA) and the College Retirement Equities Fund

(CREF), Fidelity Investment Service Company, and the Vanguard Group.

Effective 1-1-07, employees who were not participating in the plan on December 31, 2006 will be enrolled upon the earlier of (a) attainment of age 21 and the completion of one year of continuous service or (b) the attainment of age 30 and the completion of 6 months of continuous service, and is not a part-time or temporary employee. Employees who work on a part-time, temporary or irregular basis must complete 1000 hours of service each year to be credited with a year of service. Prior service credit for participation shall be given for comparable eligible service with Associated Universities Incorporated (AUI) and for employees who transfer directly to BSA from Research Foundation of State University of New York (RFSUNY), the University of Stony Brook (USB), and Battelle Memorial Institute (BMI).

BSA shall contribute for each participant an amount equal to 10 percent of base pay.

BSA shall make its contributions to TIAA and/or CREF, Fidelity Investments, or Vanguard in such percentages as the participant may elect. The percentages of the combined sum may be changed by the participant on a monthly basis.

Contracts issued by the investment organizations as part of the Retirement Plan shall be issued to the participant. The rights and benefits of each participant shall be those set forth in the contracts.

The contracts of each employee whose employment by BSA is terminated (other than by death) shall remain in force. Participants who terminate employment from BSA are entitled to have the investment organization repurchase their contracts in accordance with the rules and regulations in effect at the time of termination.

Upon retirement, a number of annuity settlements are available to the employee, as described in the various investment organizations' booklets. In addition, a retirement option of a lump-sum settlement up to the maximum provided by the contract provisions of the various investment organizations is permitted.

- (ii) "Voluntary 401(k) Retirement Plan." Employees may elect to make voluntary contributions to one or more of the 401(k) program options, to the extent permitted by law, in order to supplement the retirement income available to them from Social Security and from the BSA

Regular Retirement Plan. Options include: a 401(k) individual accounts with Teachers Insurance Annuity Association (TIAA) and/or the College Retirement Equities Fund (CREF); and/or a 401(k) accounts invested in regulated investment companies (mutual funds). These voluntary retirement income programs, and the manner in which employee funds may be automatically transmitted to them by the Payroll Office, are described below.

Contributions by Salary Reduction. The 409(a) plan allow employees to elect a deferred income tax option rather than, or in addition to, the salary deduction provision. The option allows for the deferral of income tax payments on the employee's contributions until after the elected deferral period. Under this option, each employee may elect to have base salary reduced by an amount that is not more than the maximum permitted by the Internal Revenue Code. At the election of the participant, the amount of the reduction shall be transmitted by BSA, on behalf of the employee, either to a TIAA and/or CREF retirement annuity, and/or to an eligible investment account, in such proportion as the participant may designate.

TIAA and/or CREF retirement annuities may be purchased through the deferred income tax option as well as through the salary deduction program. The 401(k) plan allows employees who elect to make voluntary contributions through payroll deduction to invest such funds in TIAA and/or CREF retirement annuities, in such percentages as the participant may elect, to the maximum percent permitted by the Internal Revenue Code. These 401(k) percentages may be changed by the participant on a monthly basis. Contributions to TIAA/CREF retirement annuities purchased through payroll deduction will be in separate accounts from annuities purchased under the BSA Retirement Plan.

- (2) The Contractor shall submit to the DOE copies of each IRS Form 5500 and accompanying schedules, an annual accounting report and other information concerning the defined contribution plans which the Contracting Officer may require. The annual accounting report shall include a development of aggregate forfeitures and all plan data for individuals generating those forfeitures.

Prior to the adoption of any changes to a pension plan, the Contractor shall submit the information required below, as applicable, to the Contracting Officer for approval or disapproval and a determination as to whether the costs to be incurred are consistent with the Contractor's documented Human Resources total compensation and benefits program and are deemed

allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

- (A) For proposed changes to pension plans and pension plan funding, an analysis of the impact of any proposed changes on actuarial accrued liabilities and an analysis of relative benefit value; and,
- (B) The Contractor shall obtain the advance written approval of the Contracting Officer for any non-statutory pension plan changes that may increase costs or liabilities, and any proposed special programs (including, but not limited to, plan-loan features, employee contribution refunds, or ancillary benefits) and shall provide DOE with an analysis of the impact of special programs on the actuarial accrued liabilities of the pension plan, and on relative benefit value, if applicable.

The Contractor shall not terminate any DOE reimbursed benefit plan without the DOE's approval. It is the intention of the DOE not to entertain any enhancements in these programs after the Contractor announces the intention not to renew the Contract.

Cost reimbursement for PRBs is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service, **not less than 5 years**, under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.

(c) Post-Contract Responsibilities for Pension and Benefit Plans

- (1) Upon contract termination, the individual employee accounts in the defined contribution plans shall be handled in accordance with the provisions of the Employee Retirement Income Security Act of 1974 (ERISA) as amended, and the accounts will vest in accordance with the applicable vesting schedule. The Contractor shall inform the plan participants of (a) their right to roll these accounts over into a successor contractor's qualified deferred compensation plan, if such a plan exists, and (b) the consequences of failing to do so, and (c) other applicable rights based on regulatory requirements.
- (2) If this contract expires or terminates without a follow-on contract, notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this contract, the following actions shall occur:
  - (i) The Contractor shall continue as plan sponsor of all existing and follow-on pension and welfare benefit plans covering site personnel

with responsibility for management and administration of the plans, as directed by DOE, at DOE's sole discretion.

- (ii) In accordance with DOE-approved Contractor welfare benefit plans, the Contractor shall provide benefit continuation on a funding basis acceptable to DOE.
  - (iii) The DOE, subject to the availability of appropriated funds, will make available to the Contractor in a timely manner sufficient funds so that the Contractor has no out-of-pocket expenditures from corporate funds to cover all liabilities incurred under this Contract, relating to Contracting Officer-approved Retirement Plans.
  - (iv) During the final 12 months of this contract, the Contracting Officer shall provide written direction regarding post-contract responsibilities for pension and welfare benefit plans.
  - (v) Notwithstanding termination for convenience or default, the contract may be extended as appropriate for purposes deemed necessary by the Contracting Officer, including, but not limited to, obligating funds to pay the Contractor for costs incurred for the Contractor's existing and, if applicable, follow-on, site pension and welfare benefit plans. Such costs shall continue to be allowable in accordance with applicable laws and regulations.
  - (vi) Pension plan contributions, plan asset management costs, and plan administration costs will continue to be allowable and fully reimbursed under this contract, on a funding basis acceptable to DOE, unless other arrangements have been approved by the Contracting Officer.
- (d) Severance pay benefits are not payable to an employee under this contract if the employee:
- i. Resigns (unless approved for voluntary layoff),
  - ii. Is offered employment with a successor/replacement Contractor,
  - iii. Is offered employment with a parent or affiliated company, or
  - iv. Is discharged for cause.

**CLAUSE H.22 - CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATIONS OR ALLEGED VIOLATIONS, FINES, AND PENALTIES**

- (a) The Contractor shall accept, in its own name, service of notices of violations or alleged violations (NOVs/NOAVs) issued by Federal or State regulators to the Contractor resulting from the Contractor's performance of work under this contract, without regard to liability. The allowability of the costs associated with fines and penalties shall be subject to the other provisions of this contract.
- (b) The Contractor shall notify DOE promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties.

**CLAUSE H.23 - ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR  
ENVIRONMENTAL COMPLIANCE ACTIVITIES**

- (a) The Parties commit to full cooperation with regard to acquiring any necessary permits or licenses required by environmental, safety and health (ES&H) laws, codes, ordinances, and regulations of the United States, states or territories, municipalities or other political subdivisions, and which are applicable to the performance of work under this contract. It is recognized that certain ES&H permits will be obtained jointly as co-permittees, and other permits will be obtained by either party as the sole permittee. The Contractor, unless otherwise directed by the Contracting Officer, shall procure all necessary non-ES&H permits or licenses.
- (b) This clause allocates the responsibilities of DOE and the Contractor, referred to collectively as the "Parties", for implementing the environmental requirements at facilities within the scope of the contract. In this Clause, the term "environmental requirements" means requirements imposed by applicable Federal, State, and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders, or compliance agreements, including the Interagency Agreement (Administrative Docket No.: II-CERCLA-FFA-00202, Spring 1992), consent orders, permits, and licenses.
- (c) (i) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party causing the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both Parties without regard to the allocation of responsibility or liability under this contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports, or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty. The allowability of the costs associated with fines and penalties assessed against the Contractor shall be subject to the other provisions of this contract.

- (ii) In the event that the Contractor is deemed to be the primary party causing the violation, and the costs of fines and penalties proposed by the regulatory agency to be assessed against the Government (or the Government and Contractor jointly) are determined by the Government to be presumptively unallowable if allocated against the Contractor, then the Contractor shall be afforded the opportunity to participate in negotiations to settle or mitigate the penalties with the regulatory authority. If the Contractor is the sole party of the enforcement action, the Contractor shall take the lead role in the negotiations and the Government shall participate and have final authority to approve or reject any settlement involving costs charged to the contract.
  
- (d) DOE agrees that if bonds, insurance, or administrative fees are required as a condition for permits obtained by the Contractor under this contract, and the Contractor has been directed by the Contracting Officer to obtain such permits after the Contractor has notified the Contracting Officer of the costs of complying with such conditions, such costs shall be allowable. In the event such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with the acceptable form of financial responsibility. Under no circumstances shall the Contractor be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.

#### CLAUSE H.24 - WORKERS' COMPENSATION

The Laboratory will maintain workers compensation insurance coverage pursuant to the requirements of FAR 28.307-2, FAR 28.308 and DEAR 970.2803-1. The insurance program must be approved by the Contracting Officer and cover all eligible employees of the Laboratory and comply with applicable Federal and State workers' compensation and occupational disease statutes.

The Laboratory will obtain approval from the Contracting Officer before making any significant change to its workers compensation coverage and will furnish reports as may be required from time to time by the Contracting Officer.

#### CLAUSE H.25 - LABOR RELATIONS

The Laboratory will seek to obtain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR, Subpart 22.1 and DEAR, Subpart 970.2201 and all applicable Federal and State Labor Relations Statutes.

The Laboratory is authorized to enter into and administer its labor agreements in accordance with their negotiated terms.

The Laboratory will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, unfair labor practice, work stoppages, picketing and labor arbitrations and settlement agreements and will discuss economic parameters before the start of any labor negotiations.

The Laboratory will furnish reports as may be required from time to time by the Contracting Officer.

#### CLAUSE H.26 - ADDITIONAL LABOR REQUIREMENTS

The Contractor shall conduct payroll and job-site audits and conduct investigations of complaints as authorized by DOE on all Davis Bacon activity, including any subcontracts, as may be necessary to determine compliance with the Davis-Bacon Act. Where violations are found, the Laboratory shall report them to DOE Contracting Officer. The Contracting Officer may require that the Contractor assist in the determination of the amount of restitution and withholding of funds from a subcontractor so that sufficient funds are withheld to provide restitution for back wages due for workers inappropriately classified and paid, fringe benefits owed, overtime payments due, and liquidated damages assessed.

The Contractor shall notify the Contracting Officer of any complaints and significant labor standards violations whether caused by the Contractor or subcontractors. The Laboratory shall assist DOE and or/the Department of Labor in the investigation of any alleged violations or disputes involving labor standards. The Contractor shall furnish a Davis-Bacon Semi-Annual Enforcement Report to DOE by April 21 and October 21 each year.

#### CLAUSE H.27- DOE MENTOR-PROTÉGÉ PROGRAM

The Department of Energy has established a Mentor-Protégé Program to encourage its prime contractors to assist small businesses, firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. Consistent with the provisions set forth in DEAR 919.70, the Contractor shall Mentor at least one active Protégé company at all times during the performance of this contract. Mentor and Protégé firms will develop and submit "lessons learned" evaluations to DOE at the conclusion of the contract.

#### CLAUSE H.28 - OTHER PATENT RELATED MATTERS

(a) Transfer of Patent Rights to a Successor Contractor

As consideration for the Contractor's commitment to expend private monies in its privately-funded technology transfer (PFTT) effort under this Contract, including expenses related to patenting, marketing, licensing and developing Subject Inventions, the Parties agree that at the termination or expiration of this Contract, the following terms and conditions shall apply to Subject Inventions that were elected to be pursued under the Contractor's privately-funded technology transfer program, and to the licenses and royalties generated therefrom:

- (1) In the event Contractor has in place an executed license, assignment or other commercialization agreement to a Subject Invention (hereinafter "agreement") at the time it receives notice from DOE that the Department expects to terminate or allow this Contract to expire, the distribution of gross income from royalties, equity, or any other consideration received or to be received under such agreement shall remain as prior to such notice of Contract termination or expiration and shall continue for the duration of such agreement. Administration of agreements related to such Subject Inventions shall remain with the Contractor. If the Contractor has not substantially complied with each of the commitments under this Contract relating to such Subject Inventions at the time of such notice, upon request, title to such Subject Inventions shall be transferred to the Successor Contractor, or such other entity designated by the Government, at no cost to the Government.
- (2) In the event Contractor has not executed an agreement (as defined in paragraph (1) above) to a Subject Invention, upon request, title to such Subject Invention shall be transferred to the Successor Contractor, or to such other entity designated by the Government, unless Contractor can demonstrate that it has expended at least thirty-five thousand dollars (\$35,000) of private monies in its privately-funded technology transfer program toward commercialization of such Subject Invention, including patenting costs, and the Contractor has fulfilled all of the commitments under the intellectual property provisions of this Contract relating to such Subject Inventions. In the event Contractor retains title to a Subject Invention under this paragraph, the distribution of royalties, fees, equity or other consideration from an agreement shall be as set forth in paragraph (d) below.
- (3) In the event Contractor retains title to Subject Inventions under paragraphs (1) or (2) above, and executes an agreement (as defined in paragraph (1) above) to such Subject Inventions after the termination or expiration of this Contract, the distribution of royalties, fees, equity or other consideration from such agreement shall be as set forth in paragraph (d) below.
- (4) The Contractor and the Government shall enter into negotiations prior to such termination or expiration with respect to retention of the title to Subject

Inventions. Such negotiations shall consider the equities of the Parties with respect to each Subject Invention and shall take into consideration the presence of private investment, DOE's need for continued operation of the Facility, potential commercial use, assumption of patent related liabilities, effective technology transfer, and the need to market the technology.

- (5) For any Subject Invention to which the Contractor maintains title or administration of an agreement under paragraphs (a)(1)-(2) above, the Contractor agrees that, to the extent it is able to do so in view of prior licenses or assignments, it will negotiate in good faith to enable the Successor Contractor's technology transfer partners to practice such subject invention under any CRADAs, Work For Others agreements, licenses or other appropriate agreements, in order to fulfill the missions and programs of the Facility, including the technology transfer mission. It is the intention of the Contractor to enable the Successor Contractor to continue operation of the Facility and fulfill the missions of the Laboratory. In any event, the Successor Contractor retains the nonexclusive royalty-free right to practice the Subject Invention on behalf of the U.S. Government.
  - (6) The provisions of paragraphs (a)(1), (2), (3), (4), and (5) above survive expiration or termination of the Contract.
- (b) Costs
- (1) Except as otherwise specified in the clause of this Contract entitled, "Technology Transfer Mission," as allowable costs for conducting activities pursuant to provisions of that clause, no costs are allowable as direct or indirect costs for the preparation, filing, or prosecution of patent applications or the payment of maintenance fees or licensing and marketing costs after the Contractor elects to pursue commercialization of a Subject Invention under its privately-funded technology transfer program pursuant to paragraph (g) below.
  - (2) If an extension of time for election of a Subject Invention for privately-funded technology transfer is approved in accordance with paragraph (g) below, Contractor shall reimburse the Laboratory and the Department of Energy for costs in an amount equal to their costs incurred with respect to such Subject Invention during the time period of the extension as reasonable reimbursement for such costs under the circumstances. Such allowable costs specifically include, among other things, all patent costs which are incurred under the Contract for all Subject Inventions elected to be treated under privately-funded technology transfer, regardless of when such costs are incurred.

(c) Liability of the Government

- (1) All costs, including litigation costs, associated with and attributed to Contractor's privately-funded technology transfer program are unallowable regardless of the stage of technology development or background intellectual property existing at the time the Subject Invention is chosen for management with the privately-funded technology transfer program, and notwithstanding the inclusion of publicly funded intellectual property in the Contractor's privately-funded technology transfer program activities.
- (2) The Contractor shall not include in any license agreement or assignment with respect to any Subject Invention under this clause any guarantee or requirement that would obligate the Government to pay any costs or create any liability on behalf of the Government.
- (3) The Contractor shall include in all licensing agreements or any assignment of title with respect to any Subject Invention under this clause the following clauses unless otherwise approved or directed by the Contracting Officer following consultation with DOE Patent Counsel:
  - (i) "This agreement is entered into by Brookhaven Science Associates, LLC (BSA) in its private capacity. It is understood and agreed that the U.S. Government is not a party to this agreement and in no manner whatsoever shall be liable for nor assume any responsibility or obligation for any claim, cost or damages arising out of or resulting from the agreement or the subject matter licensed/assigned."
  - (ii) "Nothing in this Agreement shall be deemed to be a representation or warranty by BSA or the U.S. Government of the validity of the patents or the accuracy, safety, or usefulness for any purpose, of any TECHNICAL INFORMATION, techniques, or practices at any time made available by BSA. Neither the U.S. Government nor BSA nor any member company of BSA shall have any liability whatsoever to LICENSEE or any other person for or on account of any injury, loss, or damage of any kind or nature sustained by, or any damage assessed or asserted against, or any other liability incurred by or imposed upon LICENSEE or any other person, arising out of or in connection with or resulting from:
    - (A) The production, use, or sale of any apparatus or product, or the practice of the INVENTIONS;
    - (B) The use of any TECHNICAL INFORMATION, techniques, or practices disclosed by BSA; or

- (C) Any advertising or other promotion activities with respect to any of the foregoing, and LICENSEE shall hold the U.S. Government, BSA, and any member company of BSA harmless in the event the U.S. Government, BSA, or any member company of BSA is held liable.

BSA represents that it has the right to grant all of the rights granted herein, except as to such rights as the Government of the United States of America may have or may assert.”

(d) Privately-Funded Technology Transfer - Distribution of Gross Income

In the event the Contractor engages in a privately-funded technology transfer program under the clause of this Contract entitled “Patent Rights - Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor” such that private funds are utilized for technology transfer after the Contractor elects to pursue privately-funded commercialization of the Subject Invention or private funds are utilized for technology transfer of copyrighted material where DOE has approved assertion of copyright by the Contractor and has approved the pursuing of commercialization under the privately funded technology transfer program, gross income from such privately-funded technology transfer program shall be distributed as follows:

(1) Basic Distribution

Forty percent (40%) of gross income shall be returned and used at the Facility for scientific research, development and education consistent with the research and development objectives of the Facility. The remainder of such gross income may be used as the Contractor deems appropriate consistent with 35 USC 200 *et seq.* The amount of gross income to be returned and used at the Facility shall be calculated on an annual basis consistent with the Contractor’s accepted accounting practices.

(2) Adjustment of Distribution

In the event the annual gross income under the Contractor’s privately-funded technology transfer program is in excess of three million dollars (\$3 million) during any one year, the percentage of gross income to be returned and used at the Facility for that year shall be as follows:

In excess of \$3 million, up to \$5 million	40% of up to \$3 million of gross income; plus 35% of gross income in excess of \$3 million, up to \$5
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	million
In excess of \$5 million, up to \$7 million	40% of up to \$3 million of gross income; plus 35% of gross income in excess of \$3 million, up to \$5 million; plus 30% of gross income in excess of \$5 million, up to \$7 million
In excess of \$7 million	40% of up to \$3 million of gross income; plus 35% of gross income in excess of \$3 million, up to \$5 million; plus 30% of gross income in excess of \$5 million, up to \$7 million; plus 25% of gross income in excess of \$7 million

- (3) The foregoing distribution shall also apply to equity interests received from third parties pursuant to paragraph (e).
- (4) If this distribution of income structure is determined by the Parties to be detrimental to attracting investors and growing the laboratory's technology commercialization program, the parties agree to negotiate a new structure more favorable to the investment community at the time such determination is made.

(e) Equity Plan

It is the intent of the Government and the Contractor that the Contractor shall, in its discretion, take reasonable and prudent actions from both a commercial and stewardship of the Facility's technology transfer perspective related to the ownership of equity received from third parties under this Contract. The Contractor shall submit to the Contracting Officer a plan which shall set forth principles for the contractor's acquisition, retention and disposition of equity received from third parties as consideration for licenses or assignments granted to such third party. Such plan shall consider, at a minimum,

- (1) With respect to PFTT, the manner in which the Contractor shall acquire such equity in a third party and a description of how the Contractor shall apportion capital contributions to such third party between the related value of Contractor contributions and the value of contributions representing a license under a Subject Invention;
- (2) in the case of the Contractor's publicly-funded technology transfer program, how the Contractor shall recoup licensing, marketing and development costs (up-front or close out);

- (3) the manner in which the Contractor shall hold such equity, given that the Government has an undivided interest in that portion of such equity representing the value of contributions resulting from a license to such Subject Invention;
  - (4) the manner in which the Contractor shall dispose of such equity, giving due consideration to the potential for a conflict of interest between the interests of the Government and the Contractor, and
  - (5) the manner in which Contractor's inventors are compensated.
- (f) The Contractor shall indicate whether a Subject Invention will be pursued under its government-funded technology transfer program or its privately-funded technology transfer program within nine months after the Subject Invention is reported to the Contractor, unless an extension is otherwise agreed to in writing by the DOE Patent Counsel. Subject to the Contracting Officer approving the implementing procedures contemplated by paragraph (i), only Subject Inventions reported to the contractor on or after the effective date of the contract modification that incorporates this clause into Prime Contract No. DE-AC02-98CH10886 will be eligible for commercialization pursuant to the privately-funded technology transfer program, except as otherwise approved in writing on a case-by-case basis by DOE Patent Counsel.
- (g) In its privately-funded technology transfer program, the Contractor shall be bound by the U.S. Competitiveness and Fairness of Opportunity as set forth herein.
- (h) Contractor's privately-funded technology transfer program shall be conducted so as to avoid interference with or adverse effects on Contractor's performance of other activities authorized by the Contract, including its government-funded technology transfer program which shall have the right of first refusal for the exclusive inclusion of Subject Inventions in the government-funded technology transfer program.
- (i) (1) The Contractor shall establish procedures implementing its privately-funded technology transfer program including the Contractor's criteria for selecting technologies for the privately-funded technology transfer program. Such implementing procedures shall be provided to the Contracting Office for review and approval within ninety (90) days after execution of the contract modification authorizing privately-funded technology transfer. The Contracting Officer shall have ninety (90) days thereafter to approve or require specific changes to such procedures. The Contractor shall not implement its privately-funded technology transfer program until such approval is granted, and

- (2) In the case of the Contractor's privately-funded technology transfer program, the Contractor shall certify that all licensing, marketing and development costs incurred after the Contractor elects to treat a subject invention as PFTT have been and will be paid solely from the Contractor's privately-funded technology transfer program.
- (j) To the extent the Department determines that the Laboratory's mission or function is being negatively impacted, DOE retains the right to require the Contractor's privately-funded technology transfer program to be administered solely by a non-laboratory employee(s) who shall not utilize any laboratory facilities without the written approval of the Contracting Officer which may be revoked by DOE at any time, with or without cause, at no cost to the Government.

#### CLAUSE H.29 - PERFORMANCE BASED MANAGEMENT AND OVERSIGHT

- (a) Performance-based management shall be the key enabling mechanism for establishing the DOE-Contractor expectations on oversight and accountability. DOE expectations (outside of individual program performance and requirements of laws and regulations) and performance targets shall be established through the Performance Evaluation and Measurement Plan (PEMP) pursuant to the clause entitled "Standards of Contractor Performance Evaluation". This PEMP shall establish the expected strategic results in the areas of mission accomplishment, stewardship and operational excellence. Mission performance goals shall be established by agreement with each major customer of the Laboratory, and customer evaluation will be the primary means of evaluating mission performance. Stewardship and operational goals shall be established by agreement with DOE. Contractor self-assessment, third party certification, and Contractor and DOE independent oversight, as appropriate, shall be the primary means for assessing stewardship and operational performance. Routine DOE oversight of Contractor performance will be conducted at the systems level.
- (b) The performance-based management system shall be the primary vehicle for addressing issues associated with performance expectations. In the event of a substantive performance shortfall in any area, the appropriate improvement expectations and targets will be incorporated into the PEMP and tracked through self-assessment and independent oversight, as appropriate.
- (c) Compliance with applicable Federal, State and local laws and regulations, and permits and licenses, shall be primarily determined by the cognizant regulatory agency and DOE will primarily rely upon the determination of the external regulators in assessing Contract compliance. DOE oversight will be achieved through periodic assessments at the management system level, including review of Contractor self-assessments and assessments by independent third parties.

CLAUSE H.30 - LOBBYING RESTRICTION (ENERGY AND WATER ACT 2004)

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

CLAUSE H.31 - LOBBYING RESTRICTION (INTERIOR ACT 2004)

The Contractor agrees that none of the funds obligated on this award shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

CLAUSE H.32 - LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2003)

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

CLAUSE H.33 - LOBBYING RESTRICTION (DEPARTMENT OF INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 2003)

The Contractor agrees that none of the funds obligated on this award shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

CLAUSE H.34 - INTELLECTUAL AND SCIENTIFIC FREEDOM

- (a) The Parties recognize the importance of fostering an atmosphere at the Laboratory conducive to scientific inquiry and the development of new knowledge and creative and innovative ideas related to national interests.
- (b) The Parties further recognize that the free exchange of ideas among scientists and engineers at the Laboratory and colleagues at universities, colleges, and other laboratories or scientific facilities is vital to the success of scientific, engineering, and technical work performed by Laboratory personnel.
- (c) The Parties also recognize that protecting proprietary and national security interest, information and assets is a paramount concern and duty of the Laboratory and its personnel.
- (d) In order to further the goals of the Laboratory and the national interest, as well as protect proprietary information and national security, it is agreed by the Parties that the scientific and engineering personnel at the Laboratory shall be accorded the rights of publication or other dissemination of research, and participation in open public debate and in scientific, educational, or professional meetings and conferences, subject to limitations included in technology transfer agreements, work for other agreements, and such other limitations as may be required by the terms of this contract. Nothing in this clause is intended to interfere with the obligations of the Parties, including all Laboratory personnel, to protect proprietary, classified, Privacy Act, or other sensitive information as provided for or required by law, regulation, Department of Energy Directive or as reflected in Clause I.63 - DEAR 952.204-70 - CLASSIFICATION/ DECLASSIFICATION, or elsewhere in this contract.

**CLAUSE H.35 - USE OF LABORATORY EMPLOYEES TO PERFORM DAVIS-BACON ACT WORK**

The Laboratory is authorized to develop and implement a one-year pilot program that utilizes Laboratory employees to perform small amounts of Davis-Bacon Act work. The program will be limited in size and scope. Individual projects will not exceed \$50,000 each and the maximum amount authorized during the 12-month pilot period cannot exceed \$1,000,000 total. The program is to be limited to a 12-month period following the date of program implementation. The individual projects under this pilot are envisioned to be small quick response actions. The Laboratory will provide a mid-term and a final report to the Contracting Officer. Modifications to this program including extensions beyond the 12-month pilot, will require Contracting Officer approval.

**CLAUSE H.36 - LOBBYING RESTRICTION (ENERGY AND WATER ACT 2005)**

The contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

**CLAUSE H.37 - LOBBYING RESTRICTION (INTERIOR ACT 2005)**

The contractor agrees that none of the funds obligated on this award shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

**CLAUSE H.38 - ELECTRONIC SUBCONTRACTING REPORTING SYSTEM  
(AL 2006-01)**

The requirement for the submittal of paper versions of the Standard Form (SF) 294, Subcontracting Reports for Individual Contracts, and SF 295, Summary Subcontract Reports, as provided in FAR 52.219-9(j) is hereby deleted and is replaced with the electronic submittal of data under the Electronic Subcontract Reporting System (eSRS).

The offeror's subcontracting plan shall include assurances that the offeror will (1) submit the Individual Subcontracting Reports and Summary Subcontracting Reports under the eSRS and (2) ensure that its subcontractors agree to submit Individual Subcontracting Reports and Summary Subcontracting Reports at all tiers, in eSRS.

The contractor or subcontractor shall provide such information that will allow applicable lower tier subcontractors to fully comply with the statutory requirements of FAR 19.702.

**CLAUSE H.39 – INFORMATION TECHNOLOGY ACQUISITIONS**

All information technology acquisitions shall include the appropriate information technology security policies and requirements, including use of common security configurations available from the National Institute of Standards and Technology's website at <http://checklists.nist.gov> commensurate with the mission of the contract and conducive to the research and development efforts of the laboratory. This requirement shall be included in all subcontracts which are for information technology acquisitions; and the Laboratory

CIO shall annually certify to the DOE Site Office Contracting Officer that this requirement is being incorporated into information technology acquisitions.”

#### CLAUSE H.40 - OPTION TO EXTEND THE TERM OF THE CONTRACT

The Department of Energy, at its sole discretion, has the option to unilaterally extend the term of this contract for up to an additional twelve (12) months. Said option may be exercised in any combination of increments of at least one month in duration and said option may be exercised more than once; however, the sum total of all option exercise(s) shall not exceed twelve (12) months. The initial option exercise shall be made, if at all, not later than January 4, 2009. Any subsequent option exercise(s) shall be made, if at all, not later than the last day of that current contract performance period.

#### CLAUSE H.41 – LOBBYING RESTRICTION (ENERGY AND WATER ACT, 2006)

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

#### CLAUSE H.42 - WORK AUTHORIZATION

- (a) Work programs shall be developed by the Contractor and approved by DOE in accordance with applicable DOE directives, and shall constitute work to be performed under this Contract during the pertinent periods involved. Such work programs may include program and project performance objectives and milestones. The Contractor shall consult with DOE, as necessary, during the process of developing work programs. Subject to the other provisions of this contract, changes in the agreed work program, not constituting major changes, may be made by the Contractor when it appears to the Contractor, to be in the best interest of the scientific and technical objectives of the agreed work program to do so. It is understood that the nature of the research and development work under this Contract is of a specialized character not readily reducible to production schedules. In view of these circumstances, it is agreed that the research and development work is performed on a best effort basis.
- (b) Due to the critical character of the work from the standpoint of national significance, it is understood by the Parties hereto that very close collaboration will be required between the Contractor and DOE with respect to direction, emphasis, trends and

adequacy of the total program.

- (c)
  - (1) The annual work program and budget are principal devices used by DOE in program development, integration, execution, and cost estimating. To make the work program and budget most effective in assuring comprehensive coverage of DOE missions, it is the responsibility of DOE to keep the operators of DOE's laboratories continually advised of DOE's overall program goals, scientific and technological problems, and its current long range objectives. In light of such information, the Contractor will propose possible new objectives and present preliminary work programs in the area of its competence which, from its point of view, will either strengthen the overall DOE program or provide additional support in areas which, in the Contractor's judgment, are being inadequately exploited, or initiate new areas of investigation which appear of potential importance.
  - (2) It is the responsibility of DOE to formulate overall program budgets, taking into consideration the proposals submitted by the Contractor, consistent with funds appropriated by the Congress and all its other program needs.
  - (3) The Contractor shall prepare a final work program and budget consistent with DOE's overall program budget. Upon DOE approval, it is the Contractor's responsibility to conduct its work program within limits established by these approvals unless and until they are modified by DOE.
- (d) In accordance with the basic considerations stated in paragraph (c) above, the Contractor and DOE will utilize the Program Budget procedures on a Government fiscal year basis for the establishment of the Laboratory Program Budget. Procedures for the presentation of work programs and cost estimates shall be jointly developed. In order to meet the requirements of Government budgetary practice, the Parties agree:
  - (1) As early as possible in each calendar year, DOE shall supply the Contractor with the dollar amounts for the Laboratory contained in the President's Budget, with Program assumptions and guidance which the Contractor will be expected to consider in the development of its program and budget, and with all changes to existing budget and accounting policies and procedures to be used in the current budget preparation.
  - (2) Prior to April 1 (or such other date as may be agreed upon) the Contractor shall submit to DOE for approval a comprehensive work program for the next two fiscal years, together with a description of the current work program, and the Contractor shall submit a budget estimate for the next two fiscal years, together with a revised budget estimate for the current fiscal year.

- (3) As soon as possible after October 1 of each year, DOE shall issue Work Authorizations and an Approved Funding Program to the Contractor for the current fiscal year.
- (e)
- (1) DOE approved work programs, program performance expectations and milestones as appropriate, and budget estimates shall be reflected in Work Authorizations/Annual Program Letters/Activity Data Sheets/Program Baseline Summaries and Approved Funding Programs. These documents will be issued to the Contractor as soon as possible after funds become available. If, in preparing Work Authorizations/Annual Program Letters/Activity Data Sheets/Program Baseline Summaries and Approved Funding Programs, it is determined that changes are needed in the work program and budget estimates submitted by the Contractor, DOE and the Contractor shall agree upon the changes in the work before final issuance of these documents, provided, however, that nothing herein shall preclude DOE from directing a change in the work pursuant to the clause of the Contract entitled "Changes".
  - (2) The Work Authorizations/Annual Program Letters, and with respect to any work that may be funded by the Office of Environmental Management, Program Baseline Summaries and Approved Funding Programs, specify the funds available for work under the Contract for the fiscal year and, in addition, may establish limitations on costs to be incurred for individual portions of the work. The Contractor shall comply with such limitations and shall promptly notify the Contracting Officer, in writing, whenever it becomes apparent that there is likely to be an overrun with respect to any specific limitation in the Work Authorization/Annual Program Letters, and with respect to any work that may be funded by the Office of Environmental Management, Program Baseline Summaries, and Approved Funding Programs. Funds made available for work under the contract, and set forth in Approved Funding Programs or other funding documents, shall not be reduced except by written agreement of the Parties.
  - (3) Additional programs and projects to be conducted at the Laboratory within the scope of the Contract may be established by agreement between the DOE and the Contractor.
- (f) A Contract modification shall be issued to the Contractor on or before September 30 of each year (or such other date as may be agreed upon) to provide additional funds, and further Contract modifications may be issued or entered into from time to time to provide appropriate modifications in the total amount of funds made available under the Contract. DOE agrees to use its best efforts to provide stable

funding in support of the Contract work and it is DOE's intention that there shall be so provided at all times sufficient funds to support the work program at the level authorized by DOE.

- (g) During the course of the work, DOE shall review the work program and its costs based upon information submitted by the Contractor and may, after consultation with the Contractor, revise the Work Authorizations and Approved Funding Programs established by DOE under paragraph (e) above. The Contractor shall make any necessary revisions to the documents cited in this clause consistent with DOE direction.
- (h) It is the intent of the Contractor and DOE to agree from time to time upon long-term work programs covering certain portions of the work to be performed under this contract.
- (i) The Contractor shall maintain current cost information adequate to reflect the cost of performing the work under this Contract at all times while the work is in progress, and shall prepare and furnish to the Government such written estimates of cost and information in support thereof as the Contracting Officer may request.