

**BROOKHAVEN SCIENCE ASSOCIATES, LLC  
GENERAL TERMS AND CONDITIONS  
FOR NON-COMMERCIAL ITEMS  
AT  
BROOKHAVEN NATIONAL LABORATORY**

Article 1	Definitions	2
Article 2	Order of Precedence	2
Article 3	Acceptance of Agreement	2
Article 4	Complete Agreement	3
Article 5	Assignment	3
Article 6	Compliance with Laws and Regulations	3
Article 7	Independent Contractor; Hold Harmless	3
Article 8	Notice Regarding Late Delivery	4
Article 9	Inspection and Acceptance	4
Article 10	No Waiver	5
Article 11	New Materials	5
Article 12	Suspect/Counterfeit Items	5
Article 13	Hazardous Material Identification and Material Safety Data	6
Article 14	Title and Risk of Loss	6
Article 15	Warranty	6
Article 16	Payment	7
Article 17	Taxes	7
Article 18	Extras	7
Article 19	Changes	7
Article 20	Suspension of Work	8
Article 21	Disputes	8
Article 22	Applicable Law	9
Article 23	Termination for Default	9
Article 24	Termination for Convenience	10
Article 25	Bankruptcy	10
Article 26	Walsh-Healy Public Contracts Act	10
Article 27	Patent Indemnity – Subcontracts	11
Article 28	Indemnity for Defective Cost or Pricing Data	11
Article 29	Liability with Respect to Cost Accounting Standards	11
Article 30	Whistleblower Protection for Contractor Employees	11
Article 31	Identification of Employees	12
Article 32	Reporting Executive Compensation	12
Article 33	Clauses Incorporated by Reference	123

## **Article 1 Definitions**

The following terms shall have the meanings below:

- (a) "BSA" means Brookhaven Science Associates, LLC acting under Prime Contract No. DE-AC02-98CH10886 between BSA and the Government for the operation of Brookhaven National Laboratory, and includes the successor to, or any duly authorized representative of BSA.
- (b) "Contractor" means any person or organization that has entered into this Agreement with BSA.
- (c) "Government" means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative(s) thereof.
- (d) "Brookhaven", "BNL", and "the Laboratory" mean the Brookhaven National Laboratory site at Upton, New York.
- (e) "BSA's PPM Division" means the BSA Procurement and Property Management Division (PPM) person responsible for contractual matters.
- (f) "Agreement" means the contract, purchase order, Basic Ordering Agreement (BOA), Task Agreement, and any modifications thereto, including all contract documents. It includes without limitation the specifications, drawings, the General Terms and Conditions and any special or supplemental terms and conditions, when incorporated into this agreement by reference or otherwise.
- (g) "Contract Documents" means all documents that comprise this Agreement including without limitation, the specifications, drawings, the General Terms and Conditions and any special or supplemental terms and conditions, when incorporated into this Agreement by reference or otherwise.

## **Article 2 Order of Precedence**

In the event of an inconsistency among provisions of this Agreement, the inconsistency shall be resolved by giving precedence in the following order: (a) the text of the Agreement, (b) special terms and conditions attached thereto, (c) Supplemental Terms and Conditions, (d) General Terms and Conditions, (e) the Statement of Work, (f) Specifications and (g) the Drawings, if incorporated in this Agreement by reference or otherwise.

## **Article 3 Acceptance of Agreement**

By signing this Agreement, delivering the supplies, or performing the requirements indicated herein, the Contractor agrees to comply with all the terms and conditions and all specifications and other documents incorporated in this Agreement by reference or otherwise. Notwithstanding the above, this Agreement shall become a binding contractual commitment within 10 days after the Contractor receives it unless the Contractor furnishes written notice of objection to BSA within said 10 days. An attempted acknowledgment or acceptance which contains provisions conflicting with or additional to these Terms and Conditions or which varies any terms or conditions shall have no force or effect. BSA's failure to enforce any of the provisions of this Agreement shall not be construed as evidence to interpret the requirements of this Agreement, nor a waiver of any requirement, nor a waiver of BSA's right to enforce each and every provision. All rights and obligations of the parties shall survive final performance of this Agreement.

#### **Article 4 Complete Agreement**

This Agreement expresses the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any prior oral and written agreements between the parties. It may only be modified in writing executed by both BSA and the Contractor.

#### **Article 5 Assignment**

Neither this Agreement nor any interest therein nor claim thereunder shall be assigned or transferred by the Contractor except as expressly authorized in writing by BSA, provided that the Contractor or its assignee's rights to be paid amounts due as a result of performance of this Agreement may be assigned to a bank, trust company, or other institution, including any Federal lending institution. This Agreement is assignable by BSA to the Government or to a successor contractor to operate Brookhaven National Laboratory. The Contractor agrees to look solely to the Government or to such successor contractor for payment of the part so assigned, and to execute a novation agreement so recognizing the successor contractor if requested to do so by BSA.

#### **Article 6 Compliance with Laws and Regulations**

- (a) The Contractor shall comply with all applicable federal, state, and local laws and ordinances and all pertinent lawful orders, rules and regulations, including those applicable by reason of the fact that this Agreement is issued under a prime contract with the Government. Such compliance is a material requirement of this Agreement. The Contractor is responsible for obtaining any necessary licenses and/or permits without additional expense to BSA. The Contractor warrants that each chemical substance constituting or contained in supplies furnished under this Agreement is on the list of substances published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act as amended.
- (b) The Contractor shall perform work under this Agreement in a manner that is safe, healthy and environmentally acceptable, and shall develop and manage a comprehensive program in support of these objectives.
- (c) The Contractor shall include this clause in all subcontracts, at any tier, involving performance of this Agreement.

#### **Article 7 Independent Contractor; Hold Harmless**

- (a) In conducting the work hereunder the Contractor is acting in the capacity of an independent contractor and is not an agent or employee of BSA and/or the Government. However, BSA shall have general direction of the work and the right to control its final result obtained, within the limits of the specifications. Nothing contained in this Agreement or any lower-tier subcontract shall create any contractual relationship between any such lower-tier subcontractor and BSA. The Contractor is solely responsible for its actions and those of its subcontractors, agents and/or employees.
- (b) The Contractor will defend, hold harmless and indemnify the Government and BSA and their respective officers, agents and employees from and against any and all liability, including all losses and damages and any expense connected therewith arising out of or connected with the work, excepting only liability arising from affirmative acts, done with

intent to cause loss, damage or injury, by the Government or BSA or the officers, agents or employees of either.

- (c) The Contractor's obligations under this clause shall not be limited by any legal limitation on the amount or type of damages, compensation or benefits payable under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### **Article 8 Notice Regarding Late Delivery**

If the Contractor encounters difficulty in meeting performance requirements, or anticipates difficulty in complying with the delivery schedule or date, the Contractor shall immediately notify BSA's Procurement and Property Management Division (PPM) in writing, giving pertinent details, including the date by which it expects to complete performance or make delivery. This data shall be informational only, and BSA's receipt of this notice shall not be construed as a waiver of any schedule or date, or any rights or remedies provided by law or under this Agreement.

#### **Article 9 Inspection and Acceptance**

- (a) BSA has the right to inspect and test all items and services (including, but not limited to, raw materials, components, intermediate assemblies and end products) to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance. BSA shall perform inspections and tests in a manner that will not unduly delay the work. If BSA performs tests or inspections on the contractor's premises or that of a subcontractor, the Contractor shall furnish, or cause to be furnished, all reasonable facilities and assistance for the safe and convenient performance of these duties at no additional cost to BSA. BSA assumes no contractual obligation to perform any test or inspection for the Contractor's benefit unless specifically set forth elsewhere in this Agreement. BSA's failure to inspect the items and services shall not relieve the Contractor from responsibility, nor impose liability on BSA, for nonconformity.
- (b) If BSA specifies an inspection system elsewhere in this Agreement, the Contractor shall provide and maintain such inspection system and deliver only those items and services that have been found to conform to the requirements of this Agreement. The Contractor shall maintain complete records of all inspections and make them available to BSA during performance and for as long as this Agreement requires.
- (c) If BSA finds the materials or work to be defective, the Contractor shall promptly repair or replace such materials or work as directed by BSA at no increase in the agreement price. The Contractor shall bear the transportation cost. If the Contractor fails to act as directed within 10 days from BSA's written notice, BSA may repair or replace such materials or work by contract or otherwise and assess the Contractor the excess cost it incurred as a result and/or terminate the Contractor for default. If the Contractor is not ready for inspection or if prior rejection makes reinspection or retest necessary, BSA may charge the Contractor the additional cost of test and/or inspection. The Contractor shall not tender for acceptance corrected or rejected items or services without disclosing the former rejection or requirement for correction, and shall disclose the corrective action taken.
- (d) BSA shall effect acceptance of all materials and services ordered hereunder within a reasonable time after delivery. Except as otherwise provided for in this Agreement,

acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

**Article 10 No Waiver**

BSA's acceptance of the goods or services delivered hereunder and its subsequent use thereof shall not constitute a waiver of any improper materials or workmanship, or BSA's rights and remedies with respect to them. BSA's acceptance and its subsequent use of goods or services delivered after the agreed upon delivery date shall not constitute a waiver by BSA of any rights arising from said late delivery.

**Article 11 New Materials**

Unless otherwise specified in this Agreement, all supplies delivered hereunder shall consist of new materials. "New" is defined as previously unused which may include residual inventory or unused former Government surplus property. This does not exclude use of recycled or recovered material as defined by the Environmental Protection Agency in 40 CFR 247.

**Article 12 Suspect/Counterfeit Items**

(a) "Suspect Items" are items, for which there is an indication by visual inspection, testing, or other information that it may not conform to established Government- or industry-accepted specifications or national consensus standards. "Counterfeit Items" are suspect items that are a copy or substitute without legal authority to do so or whose material, performance, or characteristics are knowingly misrepresented by the supplier, distributor, or manufacturer. Forms of misrepresentation include, but are not limited to, the following:

- falsified product sources (counterfeits);
- falsified or modified quality assurance records;
- false marking as to class, type, or grade;
- mixing of unmarked materials with marked materials;
- false labeling as to qualification or acceptance by testing/certifying organizations; and used and/or refurbished products, misrepresented as new products.

Types of materials, parts, and components, known to have been misrepresented include, but are not limited to:

- Lifting materials such as slings, hooks, cables, and shackles;
- Threaded fasteners fraudulently marked as high-strength bolts;
- Refurbished electrical circuit breakers sold under false certifications;
- Valves;
- Piping and piping components;
- Electrical devices;
- Channel members, plate, bar, and flanges;
- And other structural items.

See the BNL Suspect / Counterfeit Items,

[https://sbms.bnl.gov/sbmsearch/subjarea/72/72\\_sa.cfm?parentid=72](https://sbms.bnl.gov/sbmsearch/subjarea/72/72_sa.cfm?parentid=72). Subject Area

Exhibits for more information on identifying suspect/counterfeit items. S/CIs may pose immediate and potential threats to the safety of BSA and contractor workers, the public,

and the environment. Failure of a safety or mission critical system due to an S/CI could also have security implications at DOE facilities.

- (b) Items furnished to BSA under this Agreement shall not include suspect/counterfeit parts nor shall such parts be used in performing any work under this Agreement whether on or off the Laboratory site. If suspect/counterfeit parts are furnished under this Agreement and are found on the Laboratory site, such parts shall be impounded by BSA or they shall be removed by the Contractor as directed by BSA. The Contractor shall promptly replace such parts with supplies acceptable to BSA and the Contractor shall be liable for all costs relating to impoundment, removal, and replacement. BSA may turn such parts over to the U.S. Office of the Inspector General for investigation and reserves the right to withhold payment pending the outcome of any investigation.
- (c) The rights of BSA in this clause are in addition to any other rights provided by law or under this Agreement.

### **Article 13 Hazardous Material Identification and Material Safety Data**

With or before each delivery, the Contractor shall submit a Material Safety Data sheet, as prescribed in 29 CFR 1910.1200 and the latest version of Federal Standard No. 313, for all hazardous material delivered under this Agreement which will involve exposure to hazardous materials or items containing these materials, whether or not it is listed in Appendix A of the Standard. As used in this Article, "hazardous material" is as defined in the latest version of Federal Standard No. 313, including revisions adopted during the term of this Agreement.

### **Article 14 Title and Risk of Loss**

Unless specified elsewhere in this Agreement, title to items furnished under this Agreement shall pass to the Government upon acceptance, regardless of when or where BSA takes physical possession. Unless this Agreement specifically provides otherwise, risk of loss or damage to the items furnished hereunder shall remain with the Contractor until delivery of the items to the destination specified in the Agreement.

### **Article 15 Warranty**

Notwithstanding inspection and acceptance by BSA under any provision of this Agreement, the Contractor warrants that the material, supplies and/or equipment delivered (hereinafter called "the goods") and any services performed hereunder, shall be of first-class quality and shall accord in every respect with the description, specifications, drawings, and/or samples elsewhere identified in this Agreement. The Contractor also warrants that all goods delivered hereunder shall be free from defects in design (unless the design is furnished by the Buyer), material and workmanship. The warranty shall begin on acceptance and extend for a period of one year or the manufacturer's warranty period, whichever is longer. If any nonconformity appears within that time, BSA, in addition to any other rights and remedies provided by law, or under other provisions of this Agreement, may require the Contractor to (1) replace or repair the goods and/or reperform the services at no increase in price or (2) reduce the Agreement price to reflect the reduced value of the Contractor's performance. When supplies are returned, the Contractor shall bear the risk of loss and transportation cost. If the Contractor fails to replace or repair the goods or reperform the services within 10 days of BSA's written notice to do so, BSA shall have the right by contract or otherwise to replace or repair the goods or reperform the services, and

charge the Contractor the cost occasioned thereby. Furthermore, the warranties provided for in this paragraph shall be in addition to such other warranties as may be specifically provided for elsewhere in this Agreement.

#### **Article 16 Payment**

BSA shall make payment for accepted items that have been delivered to the destination(s) set forth in this Agreement. Unless otherwise provided, terms of payment shall be net 30 days from submission of the Contractor's proper invoice (unless BSA does not approve such invoice). Invoices submitted by the Contractor anywhere other than to Account Payable, Bldg. 400, unless otherwise specified in this Agreement, are not deemed to have been officially received for payment term purposes. Any offered discount shall be taken if payment is made within the discount period indicated by the Contractor. Payments may be made either by check or electronic funds transfer, at BSA's option. Payment shall be deemed to have been made as of the date of mailing or the date on which the electronic funds transfer was made. Unless otherwise specified in this Agreement, BSA may make payment on partial deliveries which it accepts.

#### **Article 17 Taxes**

The Agreement price includes all applicable Federal, State and local taxes and duties. In determining the applicability of any tax or duty, due consideration shall be given to the relationship of the subject matter of this Agreement to the Government, and the fact that BSA is exempt from New York State and local sales and use taxes under Exempt Organization Certificate No. EX-216880.

#### **Article 18 Extras**

Except as otherwise provided in this Agreement, BSA shall not pay for extras unless such extras and the price for them have been authorized in writing by BSA's Procurement and Property Management Division (PPM).

#### **Article 19 Changes**

- (a) At any time, BSA may, by written notice, make changes within the general scope of this Agreement, in any or all of the following: (1) description of the work to be performed, (2) method and manner of performance, or (3) the amount of work to be furnished. If any such change causes a difference in the cost or the time required for performance, BSA shall make an equitable adjustment in the price and/or delivery schedule and other affected provisions. Such adjustment shall be made by written amendment to this Agreement signed by both parties. The Contractor must assert any claim for adjustment within 30 days from the date it receives BSA's change notice; however, BSA may, in its sole discretion, receive and act on any claim for adjustment at any time before final payment. Failure to agree to any adjustment shall be settled in accordance with the *Disputes* article of these General Provisions. Nothing in this clause, including any disagreement with BSA about the equitable adjustment, shall excuse the Contractor from proceeding with work hereunder, as changed.
- (b) Only BSA's Procurement and Property Management Division (PPM) is authorized to issue changes, whether formal or informal, on BSA's behalf. If the Contractor considers that any direction or instruction by BSA's technical personnel constitutes a change, the

Contractor shall not rely on such direction or instruction without obtaining written confirmation from BSA's PPM Division.

- (c) When costs are a factor in any determination of a price adjustment pursuant to this clause or any provision of this Agreement, such cost shall be in accordance with the cost principles and procedures in FAR Subpart 31 and DEAR Subpart 931.

#### **Article 20 Suspension of Work**

- (a) At any time, BSA's Procurement and Property Management Division (PPM) may, by written notice to the Contractor, require the Contractor to suspend, delay or interrupt all or any portion of the work called for by this Agreement for a period of up to 90 days after the notice is delivered to the Contractor, or for any other period to which the parties may agree. On receipt of this notice, the Contractor shall immediately comply with its provisions and take all reasonable steps to minimize the incurrence of costs associated with such suspension as directed by BSA's PPM Division.
- (b) Prior the expiration of the suspension notice, BSA shall either: (1) cancel or extend the notice; or (2) terminate the work covered by the notice as provided in the Termination articles of these General Provisions. If the suspension is canceled or allowed to expire, the Contractor shall resume work. Any claim by the Contractor resulting from a Suspension of Work Notice shall be governed by the *Changes* article of these General Provisions.

#### **Article 21 Disputes**

- (a) Good Faith Negotiation. The parties agree that they will attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of or relating to this Agreement. Either party may initiate negotiations by providing written notice in letter form to the other party, setting forth the subject of the dispute and the relief requested. The recipient of such notice agrees to respond in writing within five days with a statement of its position on and recommended solution to the dispute. If the dispute is not resolved by this exchange of correspondence, then representatives of each party with full settlement authority will meet at a mutually agreeable time and place within fifteen days of the date of the initial notice in order to exchange relevant information and perspectives, and to attempt to resolve the dispute. If the dispute is not resolved by these negotiations, the matter will be submitted to Judicial Arbitration and Mediation Services (JAMS), or its successor, for mediation, following the procedure described in subparagraph B, below. Pending settlement or a final judgment, the Contractor will proceed diligently with performance of this Agreement according to the instructions of BSA's contractual representative.
- (b) Mediation. Except as provided in this Agreement, the parties agree that neither will commence any civil action with respect to any dispute, claim or controversy arising out of or relating to this Agreement until the matter has been submitted to JAMS (45 Broadway, 28th Floor, New York, NY 10006, 212-751-2700), its successor, for mediation and that process has been completed. Either party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties agree to cooperate with JAMS and with one another in selecting a mediator from JAMS panel of neutrals, and in



scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. The parties further agree that they will treat as confidential all offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees. The parties also agree that they will treat any such communications as privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or 45 days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire. The provisions of this Article may be enforced by any Court of competent jurisdiction, and the party seeking enforcement will be entitled to an award of all costs, fees and expenses, including attorneys fees, to be paid by the party against whom enforcement is ordered.

- (c) **Waiver of Right to Litigate in Court Before Completing Negotiation and Mediation and Waiver of Right to Jury Trial and Designation of Court Sitting in the State of New York.** The Contractor agrees to submit all disputes, claims or controversies arising out of or relating to this Agreement to negotiation and then mediation as described above before bringing any action in court. The Contractor further acknowledges that, in the event it brings any such action in court, it will bring that action in a court sitting in the State of New York, and it further acknowledges that it is hereby waiving any right that it might possess to demand a jury trial for the litigation of that action. The contractor further acknowledges that it is giving up any rights to judicial remedies and procedures to the extent that this agreement does not specifically provide for them. The contractor further acknowledges that its agreement to the provision for this Agreement is voluntary.

## **Article 22     Applicable Law**

The parties agree that the Federal common law of government contracts will govern the construction and interpretation of this Agreement and all claims arising under or related to this Agreement or work performed under this Agreement or claims of breach of this Agreement, regardless of the forum in which any party to this Agreement brings action. For purposes of this Agreement, the Federal common law of government contracts will consist of the interpretation of contract clauses and the law enunciated and applied to government contracts by the Boards of Contract Appeals, the Comptroller General (CG), and Federal Courts having jurisdiction over the Boards or the CG. The term "Board of Contract Appeals" means those established under the Contract Disputes Act of 1978, 41 U.S.C. 607(a)(1), and their successor bodies.

## **Article 23     Termination for Default**

- (a) Ten days after giving the Contractor written notice of its intent, BSA may terminate this Agreement for default, in whole or in part, if the Contractor fails to comply with any of

- the terms of this Agreement, fails to make progress so as to endanger performance of this Agreement or fails to provide adequate assurance of future performance. In this event, BSA shall not be liable for any services or supplies not accepted.
- (b) If this Agreement is terminated for default, BSA may require the Contractor to deliver any supplies and materials, manufacturing materials, and manufacturing drawings that the Contractor has specifically produced or acquired for the terminated portion of this Agreement. BSA shall pay the agreed-upon price for services performed and accepted in addition to completed supplies delivered and accepted. BSA and the Contractor shall agree on the amount of payment for all other deliverables.
  - (c) The Contractor shall not be liable to BSA for delays in performance occasioned by causes beyond the Contractor's reasonable control and without its fault or negligence. The Contractor shall notify BSA in writing as soon as reasonably possible after the commencement of any such delay, providing the full particulars therewith. The Contractor shall also remedy such occurrence with all reasonable dispatch and shall promptly provide written notice to BSA when the occurrence ceases. The delays of the Contractor's suppliers at any tier must be proved to be beyond the control of both the Contractor and its suppliers and without the fault or negligence of either.
  - (d) BSA's rights and remedies under this Article are in addition to any other rights and remedies provided by law or under this Agreement.

#### **Article 24 Termination for Convenience**

BSA reserves the right to terminate this Agreement, or any part hereof, for its convenience or that of the Government. In the event of such termination, BSA's Procurement and Property Management Division (PPM) shall deliver a notice specifying the extent of the termination and its effective date. The Contractor shall immediately stop all work so terminated and shall immediately cause any and all of its affected suppliers and subcontractors to cease work. Subject to the terms of this Agreement, the Contractor shall be paid a percentage of the price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to BSA's satisfaction using its standard record keeping system, have resulted from the termination. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided. In no event shall the agreed amount exceed the total price of the Agreement.

#### **Article 25 Bankruptcy**

If the Contractor enters into any proceeding relating to bankruptcy, it shall give written notice to BSA's Procurement and Property Management Division (PPM) via certified mail with 5 days of initiating the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing, by BSA agreement number, of all BSA agreements for which final payment has not been made.

#### **Article 26 Walsh-Healy Public Contracts Act**

If this agreement is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh-Healy Public Contracts Act, as amended (41 USC 35-45), there are hereby incorporated by reference all 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.

#### **Article 27 Patent Indemnity – Subcontracts**

The Contractor shall indemnify BSA and the Government and their officers, agents, and employees against liability, including costs, for infringement of U.S. Letters Patent (except Letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) for any work the Contractor performs under this Agreement.

#### **Article 28 Indemnity for Defective Cost or Pricing Data**

The Contractor hereby indemnifies and agrees to hold BSA harmless from any and all price or cost reductions made pursuant to the FAR 52.215-10 “Price Reduction for Defective Cost or Pricing Data” clause or the FAR 52.215-11 “Price Reduction for Defective Cost or Pricing Data - Modifications” clause, or any other provisions of the prime contract under which this Agreement is issued, and from and against any and all cost disallowances or non-recognitions of costs under such prime contract, if such price or cost reduction, cost disallowance or non-recognition of costs arises or results directly or indirectly because:

- (a) Contractor, or any of Contractor’s subcontractor or prospective subcontractor at any tier hereunder, furnished cost or pricing data that were not complete, accurate and current as certified in Contractor’s Certificate of Current Cost or Pricing Data; or
- (b) Contractor, or any of Contractor’s subcontractor or prospective subcontractor at any tier hereunder, furnished data of any description that were not accurate.

Accordingly, without limitation of the foregoing, the price of this Agreement shall be reduced and the Agreement shall be modified in writing as necessary to reflect the full amount of any and all such price or cost reductions and any and all such cost disallowances or non-recognitions of costs. The rights and remedies of BSA under or pursuant to this indemnity shall be cumulative and additional to any other or further rights and remedies provided under this Agreement or at law or in equity.

#### **Article 29 Liability with Respect to Cost Accounting Standards**

The Contractor shall be liable to the Government for increased costs or interest resulting from the Contractor’s failure to comply with the Cost Accounting Standards and related clauses, if these clauses are incorporated in this Agreement.

#### **Article 30 Whistleblower Protection for Contractor Employees**

- (a) The Contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR Part 708 for work performed on behalf of DOE directly related to activities at DOE owned or leased sites.
- (b) The Contractor shall insert or have inserted the substance of this clause, including this paragraph (b) in subcontracts, at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE owned or leased sites.

**Article 31 Identification of Employees**

FAR 52.222-54 Employment Eligibility Verification, which is included in this Agreement, requires the Contractor to use an electronic Employment Eligibility Verification (E-Verify) system designated by the Secretary of Homeland Security to verify the eligibility of:

- (a) all persons hired during the Agreement term by the Contractor to perform duties within the United States; and
- (b) all persons assigned by the Contractor to perform work within the United States on the Federal Contract.

The Contractor agrees to incorporate FAR 52.222-54 and the substance of this clause Article 31, in all subcontracts issued under this Agreement.

**Article 32 Reporting Executive Compensation** (Agreements valued at \$25,000 or more)

In accordance with FAR 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards, and as a condition of award of this Agreement, the Contractor will be required to provide to BSA's PPM Division information relative to executive total compensation as directed below. This requirement does not apply to Agreements with individuals.

For purposes of this Article, "executive" means officers, managing partners, or any other employees in management positions. "Total Compensation" means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- (1) Salary and bonus.
- (2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- (3) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- (4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- (5) Above-market earnings on deferred compensation which is not tax-qualified.
- (6) Other compensation, if the aggregate value of all such other compensation (*e.g.*, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

The Contractor agrees to report, by the end of the month following award of the Agreement, and annually thereafter, the names and total compensation of each of the five most highly compensated executives for the Contractor's preceding completed fiscal year, **if**—

- (1) In the Contractor's preceding fiscal year, the Contractor received—

- (A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
  - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
- (2) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

**Article 33 Clauses Incorporated by Reference**

This Agreement incorporates the following Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses by reference, as they exist on the effective date of this Agreement, with the same force and effect as if they were in full text. The FAR clauses are available through the General Services Administration (GSA) at <http://www.arnet.gov/far/>, and the DEAR clauses are available at <http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/Procurement/Acquisition+Regulation>, or they may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. Whenever necessary to make the context of the clauses applicable to this Agreement, the term “Contractor” shall mean the Contractor, the term “Contract” shall mean this Agreement, and where noted or where necessary to derive proper meaning in a subcontract situation the terms “DOE”, “Government” and “Contracting Officer” shall mean BSA, except the terms “DOE”, “Government” and “Contracting Officer” do not change: (1) in the phrases “Government Property”, “Government-Furnished Property”, “Government Equipment” and “Government-Owned Equipment”, or, where otherwise intended that title, ownership or rights are to remain with the Government; or (2) where statute or regulation vests authority exclusively in specific agencies or officials; or (3) where otherwise specifically modified in this Agreement. However, except in clauses FAR 52.227-1, “Authorization and Consent”, FAR 52.227-14, “Rights in Data-General”, FAR 52.227-16, “Additional Data Requirements”, FAR 52.227-23, “Rights to Proposal Data (Technical)”, DEAR 952.227-11, “Patent Rights by the Contractor (Short Form)”, DEAR 952.227-13, “Patent Rights Acquisition by the Government”, DEAR 970.5227-1, “Rights in Data-Facilities”, DEAR 970.5227-4, “Authorization and Consent” and DEAR 970.5227-5, “Notice and Assistance Regarding Patent and Copyright Infringement”, in which clauses “Government” shall mean the U. S. Government and “Contracting Officer” shall mean the DOE Contracting Officer for Prime Contract DE-AC02-98CH10886 with Brookhaven Science Associates, LLC., (BSA).

<b>Article</b>	<b>Title of Clause</b>	<b>FAR Ref.</b>
Article 34	Gratuities	52.203-3
Article 35	Covenant against Contingent Fees	52.203-5
Article 36	Required Sources for Helium and Helium Usage Data (agreements involving a major helium requirement)	52.208-8
Article 37	Utilization of Small Business Concerns	52.219-8

Article 38	Contract Work Hours and Safety Standards Act – Overtime Compensation	52.222-4
Article 39	Prohibition of Segregated Facilities	52.222-21
Article 40	Equal Opportunity	52.222-26
Article 41	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans (agreements of \$100,000 or more)	52.222-35
Article 42	Affirmative Action for Workers with Disabilities (agreements greater than \$10,000)	52.222-36
Article 43	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans (agreements of \$100,000 or more)	52.222-37
Article 44	Combating Trafficking in Persons	52.222-50
Article 45	Employment Eligibility Verification	52.222-54
Article 46	Hazardous Material Identification and Material Safety Data	52.223-3
Article 47	Energy Efficiency in Energy Consuming Products	52.223-15
Article 48	Buy American Act - Supplies	52.225-1
Article 49	Restrictions on Certain Foreign Purchases	52.225-13
Article 50	Rights in Data-General with Alternate V and DEAR 927.409(a) and (d)(3). (Alternate II is applicable if limited rights in data is required. Alternate III is applicable if delivery is for restricted computer software).	52.227-14
Article 51	Additional Data Requirements	52.227-16
Article 52	Rights to Proposal Data (Technical)	52.227-23
Article 53	Interest	52.232-17
Article 54	Subcontracts for Commercial Items	52.244-6
Article 55	Government Property	52.245-1
Article 56	Preference for U.S. Flag Air Carriers	52.247-63
Article 57	Preference for Privately-Owned U.S. Flag Commercial Vessels	52.247-64
		<b>DEAR Ref.</b>
Article 58	Whistleblower Protection for Contractor Employees	952.203-70
Article 59	Security Requirements (agreements involving or are likely to involve classified information or special nuclear material)	952.204-2
Article 60	Classification/Declassification (agreements involving or are likely to involve access to classified information)	952.204-70
Article 61	Computer Security (agreements that may provide access to computers owned, leased or operated on behalf of the DOE)	952.204-77
Article 62	Patent Rights-Retention by the Contractor (Short Form) (agreements to small business for experimental, research & development, demonstration or design work)	952.227-11
Article 63	Patent Rights-Acquisition by the Government (agreements to other than small business for experimental, research & development, demonstration or design work)	952.227-13

Article 64	Research Misconduct (agreements involving research)	952.235-71
Article 65	Laws, Regulations, and DOE Directives	970.5204-2
Article 66	Access to and Ownership of Records (Cost Reimbursable agreements greater than \$2,000,000 and/or agreement is for or involves a critical task)	970.5204-3
Article 67	Rights in Data-Facilities (agreements for design or operation of plants or facilities or specially designed equipment for plants or facilities)	970.5227-1
Article 68	Refund of Royalties	970.5227-8
Article 69	Accounts, Records, and Inspection	970.5232-3

**The following clauses are applicable to agreements over \$100,000:**

<b>Article</b>	<b>Title of Clause</b>	<b>FAR Ref.</b>
Article 70	Restrictions on Subcontractor Sales to the Government	52.203-6
Article 71	Anti-Kickback Procedures (except subparagraph c(1))	52.203-7
Article 72	Limitation on Payments to Influence Certain Federal Transactions	52.203-12
Article 73	Audit and Records – Negotiation (Cost Reimbursable, Incentive, Time and Material, Labor-Hour or price redeterminable agreements)	52.215-2
Article 74	Integrity of Unit Prices (except paragraph (b))	52.215-14
Article 75	Limitations on Pass-Through Charges (Cost Reimbursable agreements)	52.215-23
Article 76	Toxic Chemical Release Reporting (except paragraph (e))	52.223-14
Article 77	Authorization and Consent	52.227-1
		<b>DEAR Ref.</b>
Article 78	Organizational Conflicts of Interest and Alternate I	952.209-72
Article 79	Authorization and Consent (paragraph (a) only; agreements for research and development)	970.5227-4
Article 80	Notice and Assistance Regarding Patent and Copyright Infringement	970.5227-5

**The following clauses are applicable to agreements over \$500,000:**

<b>Article</b>	<b>Title of Clause</b>	<b>DEAR Ref.</b>
Article 81	Displaced Employee Hiring Preference	952.226-74
Article 82	Workforce Restructuring under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993	970.5226-2

**The following clauses are applicable to agreements over \$650,000:**

<b>Article</b>	<b>Title of Clause</b>	<b>FAR Ref.</b>
Article 83	Contractor Code of Business Ethics and Conduct (agreements greater than \$5,000,000)	52.203-13
Article 84	Display of Hotline Poster(s) (agreements greater than \$5,000,000)	52.203-14

Article 85	Price Reduction for Defective Cost or Pricing Data (agreements greater than \$700,000)	52.215-10
Article 86	Price Reduction for Defective Cost or Pricing Data – Modifications (agreements greater than \$700,000)	52.215-11
Article 87	Subcontractor Cost or Pricing Data (agreements greater than \$700,000)	52.215-12
Article 88	Subcontractor Cost or Pricing Data – Modifications (agreements greater than \$700,000)	52.215-13
Article 89	Small Business Subcontracting Plan (agreements to large business)	52.219-9
Article 90	Liquidated Damages – Subcontracting Plan (agreements to large business)	52.219-16
Article 91	Cost Accounting Standards (except Paragraph (b); negotiated agreements to large business)	52.230-2
Article 92	Disclosure and Consistency of Cost Accounting Practices (negotiated agreements to large business)	52.230-3
Article 93	Administration of Cost Accounting Standards (negotiated agreements to large business)	52.230-6