

**BROOKHAVEN SCIENCE ASSOCIATES, LLC
SUPPLEMENTAL TERMS AND CONDITIONS
FOR PRICE-ANDERSON ACT
AT
BROOKHAVEN NATIONAL LABORATORY**

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Article 1 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (Oct. 2005)

- (a) *Authority.* This clause is incorporated into this contract pursuant to the authority contained in subsection 170d of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
- (b) *Definitions.* The definitions set out in the Act shall apply to this clause.
- (c) *Financial protection.* Except as hereafter permitted or required in writing by DOE, the contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(ii) below. DOE may, however, at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the contractor by DOE.
- (d) *Indemnification.*
 - (i) To the extent that the contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the contractor and other persons indemnified against
 1. claims for public liability as described in subparagraph (d)(ii) of this clause; and
 2. such legal costs of the contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170d. of the Act, as that amount may be increased in accordance with section 170t., in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.
 - (ii) The public liability referred to in subparagraph (d)(i) of this clause is public liability as defined in the Act which
 1. arises out of or in connection with the activities under this contract, including transportation; and
 2. arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.
- (e) *Waiver of Defenses.*
 - (i) In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
 - (ii) In the event of an extraordinary nuclear occurrence which:
 1. Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

2. Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
3. Arises out of or results from the possession, operation, or use by the contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or
4. Arises out of, results from, or occurs in the course of nuclear waste activities, the contractor, on behalf of itself and other persons indemnified, agrees to waive:
 - A. Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:
 - i. Negligence;
 - ii. Contributory negligence;
 - iii. Assumption of risk; or
 - iv. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
 - B. Any issue or defense as to charitable or governmental immunity; and
 - C. Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.
5. The term *extraordinary nuclear occurrence* means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.
6. For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the contractor is engaged in the performance of contractual activity under this contract.

(iii) The waivers set forth above:

1. Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
 2. Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
 3. Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
 4. Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
 5. Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefore are either payable or required to be provided under any workmen's compensation or occupational disease law;
 6. Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
 7. Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
 8. Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under
 - A. the limit of liability provisions under subsection 170e. of the Act, and
 - B. the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) *Notification and litigation of claims.* The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (d)(ii). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to
- (i) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and
 - (ii) appear through the Attorney General on behalf of the contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

- (g) *Continuity of DOE obligations.* The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this contract.
- (h) *Effect of other clauses.* The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) *Civil penalties.* The contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to section 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders. If the contractor is a not-for-profit contractor, as defined by section 234Ad.(2), the total amount of civil penalties paid shall not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under this contract.
- (j) *Criminal penalties.* Any individual director, officer, or employee of the contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to section 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) *Inclusion in subcontracts.* The contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(ii) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

Article 2 NOTIFICATION TO BROOKHAVEN

Whenever the contractor is required to provide DOE with notice and/or information under the Article titled, Nuclear Hazards Indemnity Agreement of these Supplemental Terms and Conditions, the contractor shall provide such notice and/or information to Brookhaven's contractual representative simultaneously with such submission to DOE.

Article 3 INDEMNIFICATION FOR NUCLEAR SAFETY VIOLATIONS

The contractor assumes full responsibility for and shall indemnify, hold harmless, and defend Brookhaven, its members, directors, officers and employees from any civil liability under Section 234A (42 USC 2282(a)) of the Atomic Energy Act of 1954, as

amended, arising out of the activities of the contractor, its subcontractors, suppliers, agents, employees, and their officers or directors. The contractor's obligation to indemnify and hold harmless shall expressly include attorney fees and other reasonable costs of defending any action or proceeding instituted under Section 234A or the implementing regulations of the Atomic Energy Act, as amended.

Article 4 RADIOLOGICAL PROTECTION PROGRAM COMPLIANCE

- (a) **Applicability.** The provisions of this article apply to any activity carried out pursuant to this contract by the contractor, its subcontractors, suppliers, agents, and employees that has the potential to result in the exposure of an individual to radiation or radioactive material.
- (b) The contractor shall:
 - (i) comply with all applicable requirements of Title 10, Code of Federal Regulations, Part 835, "Occupational Radiation Protection" (10 CFR Part 835) as indicated in the Specification and/or General Conditions of this contract, the contractor's Radiological Protection Program (RPP), Brookhaven's Radiological Control Manual, and
 - (ii) implement, document and maintain such programs (e.g., administrative controls, procedures and technical work documents) as necessary to ensure compliance with the contractor's RPP. The contractor's programs and associated documents are subject to review and approval by Brookhaven at all times.
- (c) Where reporting is required in accordance with 10 CFR 835 and/or the contractor's RPP, the contractor shall make such reports to Brookhaven's technical representative.
- (d) The contractor shall include the provisions of this clause in all subcontracts at any tier for any activity that has the potential to result in exposure of an individual to radiation or radioactive material.

Article 5 QUALITY ASSURANCE (QA) PROGRAM REQUIREMENTS

- (a) **Applicability.** The provisions of this clause apply to activities carried out pursuant to this contract by the contractor, its subcontractors, suppliers, agents, and employees at, or affecting the safe operation of, existing BNL nuclear facilities (as defined in 10 CFR 830.3).
- (b) The contractor shall:
 - (i) comply with all applicable requirements of Title 10, Code of Federal Regulations, Section 830.120, "Quality Assurance Requirements" (10 CFR Part 830.120), any applicable compliance orders then in effect, and the contractor's Quality Assurance Program (QAP), current edition as revised from time to time, and
 - (ii) implement, document and maintain such programs (e.g., administrative controls, procedures and technical work documents) as necessary to ensure compliance with the contractor's QAP. The contractor's programs and associated documents are subject to review by Brookhaven at all times.

- (c) Where reporting is required in accordance with 10 CFR 830.120 and/or the contractor's QAP, the contractor shall make such reports to Brookhaven's technical representative.
- (d) The contractor shall include the provisions of this clause in all subcontracts at any tier for any activity performed in a nuclear facility or that involves radioactive material in such form and quantity that a nuclear hazard to employees or the public potentially exists.

Article 6 OTHER NUCLEAR SAFETY REQUIREMENTS

From time to time the Department of Energy may adopt other Nuclear Safety Requirements under its Atomic Energy Act authority. The contractor shall comply with all applicable nuclear safety requirements promulgated by the Department of Energy and published in Title 10 of the Code of Federal Regulations.

All questions and comments concerning these web pages should be submitted to the Procurement and Property Management Helpdesk at dcp@bnl.gov.