

**BROOKHAVEN SCIENCE ASSOCIATES, LLC
SUPPLEMENTAL TERMS AND CONDITIONS
FOR WORK BY CONTRACTORS ON SITE
AT
BROOKHAVEN NATIONAL LABORATORY**

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Article 1 BADGING OF CONTRACTOR EMPLOYEES

- (a) All Contractor and Subcontractor employees who will perform work on the Brookhaven National Laboratory (BNL) site are required to attend the Contractor/Supplier Orientation Training Course their first day on site and be approved by Brookhaven Science Associates, LLC (BSA). Contractor and Subcontractor employees who have not attended the Safety Orientation will be directed to stop work until they have done so.
- (b) At no cost to the Contractor, BSA will issue Contractor employee photo identification badges which will be required to obtain access to the site.
- (c) U.S. citizens must bring proof of citizenship, photo ID and proof of Social Security number. Acceptable citizenship proof is a passport, birth certificate, naturalization papers, voting eligibility, or similar documentation. Drivers' license, military ID cards, union cards, and Social Security cards are insufficient by themselves as proof of citizenship. Proof of Social Security number includes Social Security card, pay stub, W-2 form or medical insurance card. Handwritten documents are not acceptable. Upon arrival at the BNL Main Gate, they will be sent to the Visitors Trailer to receive a temporary pass, which allows them access to the site to attend CVO training.
- (d) All non-U.S. citizen workers, including Legal Permanent Residents, requiring access to BNL shall complete a Guest Registration Form by entering all of the required information. This registration can be located from the BNL home page, <http://www.bnl.gov> by selecting the Guest Registration link. Each worker shall provide the requested personal information and information concerning their company and submitting the form. Note the designated BNL sponsor must be included on the form. Non-U.S. citizens shall provide documentation showing eligibility to be in the United States. This includes a valid passport and visa. Other documentation, to include but not limited to, a permanent resident card, passport entry "process form 1-551", INS documents 1-94, 1-20, DS-2019, or 1-539 part 3 and proof of Social Security, may be necessary to establish legal status and work on the BNL site. Failure to provide proper documentation will result in access being denied until the required documents are provided. Foreign National Contractor employees must submit all required documents 30 days in advance of the required access date as access approvals may take up to 30 days. All Foreign National Contractor employees are responsible to ensure they remain in legal INS status. BNL "ID Badges" will expire on the expiration date of their current legal status or one year after issuance, whichever comes first. At that point they must reapply with updated documentation to continue eligibility to work at BNL.
- (e) The Contractor shall assure that all Contractor and Subcontractor employees promptly obtain a current BNL ID Badge. Contractor/Vendor Orientation Training must be completed before a badge will be issued. Badges shall be obtained from the Badging Office, in the Brookhaven Research Support Building, Bldg. 400, Brookhaven Avenue, Monday through Thursday, between 8:30 am. through 4:00 pm. and Friday from 8:30 am through 1:00 pm. To keep badging time to a minimum, the Contractor should limit the number of workers sent at the same time to no more than ten (10).
- (f) All Contractor and Subcontractor employees shall wear their ID Badges visibly at

- all times while on site
- (g) Contractor ID Badges are valid for one year after issuance and require renewal at the Badging Office Bldg. 400. Immediately on release of employees or project completion, whichever comes sooner, the badge holder or the Contractor's authorized representative shall return badges to the Badging Office, in the Brookhaven Research Support Building, Bldg. 400.
 - (h) All badge holders shall report lost identification badges immediately to the Badging Office.

Article 2 CONTROLLED SUBSTANCES AND ALCOHOL

- (a) The consumption or unauthorized possession of alcoholic beverages, or the illegal use or possession of Controlled Substances, is prohibited in all areas of the BNL site. Personnel who consume alcohol off-site or are found in possession of alcoholic beverages shall be restricted from entering BNL.
- (b) BSA reserves the right to conduct drug and alcohol screening randomly, and after any accidents.

Article 3 CONTROLLED SUBSTANCE FREE AND ALCOHOL-FREE WORKPLACE

- (a) Definitions. As used in this clause--
 - "Alcohol-Free Workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from possession, consumption or working under the influence of alcohol.

"Controlled Substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

- "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.
- "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.
- "Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.
- "Employee" means an employee of a Contractor directly engaged in the performance of work under this Agreement.
- "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance
- "Individual" means a Contractor that has no more than one employee including the Contractor.

- "Substance" means a Controlled Substance, as defined above, or alcohol.
- (b) Within 30 days after award (unless a longer period is agreed to in writing by BSA's PPM Division, or as soon as possible for Agreements of less than 30 days performance duration) the Contractor shall
- (i) Establish and submit a copy of a written drug and alcohol policy.
 - (ii) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited on the Brookhaven site and specifying the actions that will be taken against employees for violations of such prohibition;
 - (iii) Establish an ongoing drug-free and alcohol-free awareness program to inform such employees about
 1. the dangers of substance abuse in the workplace;
 2. the Contractor's policy of maintaining a drug-free and alcohol-free workplace;
 3. any available substance abuse counseling, rehabilitation, and employee assistance programs; and
 4. the penalties that may be imposed upon employees for substance abuse violations occurring in the workplace;
 - (iv) Establish a written substance abuse procedure describing the program and criteria for substance abuse screening, counseling, and follow-up, including identification of the Medical Review Officer responsible for reviewing the results of the substance abuse tests;
 - (v) Provide all employees engaged in performance of the agreement with a copy of the statement required by subparagraph (b)(ii) of this clause;
 - (vi) Notify such employees in writing in the statement required by subparagraph (b)(ii) of this clause that, as a condition of continued employment on this Agreement, the employee will
 1. abide by the terms of the statement; and
 2. notify the employer in writing of the employee's conviction under a criminal Controlled Substance or alcohol statute no later than 5 days after such conviction;
 - (vii) Notify the BSA Contractual Representative in writing within 10 days after receiving notice under subdivision (b)(vi)(2) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
 - (viii) Within 30 days after receiving notice under subdivision (b)(vi)(2) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a Controlled Substance or alcohol abuse violation:
 1. taking appropriate personnel action against such employee, up to and including termination; or
 2. require such employee to satisfactorily participate in a substance abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

- (ix) Contractually impose the requirements of this Article on lower tier subcontractors, ensure the requirements are fulfilled, and have documentation available upon request demonstrating such compliance; and
- (x) Make a good faith effort to maintain a Controlled Substance free and alcohol-free workplace through implementation of subparagraphs (b)(ii) through (b)(viii) of this clause.
- (c) In addition to other remedies available to BSA, the Contractor's failure to comply with the requirements of paragraph (b) of this clause may render the Contractor subject to suspension of agreement payments, termination of the agreement for default, and suspension from award of further BSA agreements.
- (d) **SUBSTANCE ABUSE PROGRAM**
 - (i) Program Implementation. The Contractor shall, consistent with BSA's Alcohol and Substance Abuse Program, as defined in the BSA Model ES&H plan, maintain a compliant workplace drug and alcohol testing program.
 - 1. All Contractor employees coming into a construction area are subject to testing.
 - (ii) Where BSA has Identified Testing Designated Positions, the Contractor's Workplace Substance Abuse Program shall comply with requirements set forth in 10 CFR part 707.
 - (iii) Remedies. In addition to any other remedies available to BSA, the Contractor's failure to comply with the requirements of this Article and perform in a manner consistent with this Article may render the Contractor subject to: the suspension of contract payments and/or termination for default; and suspension or debarment
 - (iv) Subcontracts
 - 1. The Contractor agrees to notify BSA reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the Contractor believes may be subject to the requirements of the BSA Program.
 - 2. The Contractor shall require all subcontractors to implement a Workplace Substance Abuse Program that complies with the requirements of the BSA Program as condition for award of the subcontract.
 - 3. The Contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier.
 - (v) Compliance. BSA shall monitor the Contractor's implementation of the program for effectiveness and compliance with this Article.
 - (vi) The Contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the BSA Alcohol and Substance Abuse Program.

Article 4 REPORTING OF ACCIDENTS/EVENTS

All incidents involving illness/injury, property damage or “off-normal occurrences” shall be immediately reported to the Contractor’s BSA point of contact and ensure that the

accident/event scene and relevant evidence found therein is adequately protected from alteration. The Contractor must support BSA's investigation.

"off-normal occurrence" is any unplanned or unexpected event, including near misses, or the discovery of a deficiency in a procedure, plan, or system that has real or potentially undesirable consequences to personnel, equipment, facilities, the environment, and/or programs.

Investigations shall be conducted for all events that result in either an OSHA reportable, or OSHA recordable event, or result in a Days Away Restricted or Transferred (DART) case. BSA must be granted access to the injured party, and to individuals with direct knowledge of the accident or incident to conduct interviews. The USDOE also reserves the right to conduct an independent investigation of any incident.

All accident reports filed with the Contractor's Worker's Compensation carrier (Forms C2.5 and C11) and the total man-hours lost as a result of an accident under this Agreement shall be submitted monthly to BSA's PPM Division.

Article 5 INSPECTION OF VEHICLES AND MATERIALS

- (a) All vehicles removing materials from anywhere on the Brookhaven site must pass through the unmanned Vehicle Radiation Monitoring System (VRMS) before and after the materials are loaded. If radioactive materials are detected, the driver shall immediately notify BSA by calling the number indicated on the VRMS telephone. The VRMS is located on the north side of Princeton Avenue between Upton Road and Weaver Drive.
- (b) A vehicle found to contain radioactive material may not leave the Brookhaven site until the material is identified and removed. Only vehicles carrying radioactive materials that are properly packaged and labeled in accordance with U.S. Department of Transportation regulations are exempt from this procedure. Materials removed from known radiological areas must be monitored in accordance with the applicable provisions of the procedure FS-SOP-1005, Radiological Surveys required for the Release of Material from Areas Controlled for Radiological Purposes a copy of which is available for review at BSA's PPM Division.
- (c) BSA reserves the right to inspect and search vehicles entering or leaving the site.

Article 6 INSURANCE

- (a) The Contractor shall, at no cost to BSA, maintain policies providing the following insurance protection, which insurance shall apply to all operations of the Contractor hereunder and employees of the Contractor engaged therein. Unless waived in writing by BSA's PPM Division, the Contractor shall also provide an endorsement to its liability policies either
 - (i) naming Brookhaven Science Associates, LLC and the U.S. Government as additional insureds or
 - (ii) insuring the Contractor's obligations under the paragraph hereof entitled "Independent Contractor; Hold Harmless."

- (b) *Worker's Compensation* – Coverage as provided in the Worker's Compensation Law of the State of New York having jurisdiction, including occupational disease coverage for limits of \$1,000,000 per person in any one case and additional Employees Liability of \$1,000,000 per occurrence.
- (c) *General Liability* – Insurance with limits of \$1,000,000/\$2,000,000 for bodily injury liability and \$100,000 for property damage liability in the comprehensive liability form.
- (d) *Automobile Liability* – Insurance with limits of \$250,000/500,000 for bodily injury liability and \$50,000 for property damage liability in the comprehensive policy form.
- (e) The Contractor may purchase such additional or other insurance protection, as it may deem necessary, at its own expense.
- (f) The Contractor shall furnish BSA's PPM Division a certificate of insurance to show compliance with paragraph (a) above. The insurance certificate shall be submitted within fourteen (14) days of award and prior to issuance of a Notice to Proceed. The Contractor shall also ensure that such certificate states that the insurance carrier(s) will give BSA 30 days, prior written notice if there is any cancellation or material change in such policies. The Contractor shall also ensure that such certificates are kept up to date during the period of Contract performance. All insurance certificates should be forwarded to the designated BSA's Contract Representative at:

Brookhaven Science Associates
Brookhaven National Laboratory
Procurement and Property Management Division
Bldg 902B
Upton, NY 11973-5000

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.

- (d) The Contractor's liability insurance shall provide coverage for the Contractor's obligations under this clause in accordance with the Article on Insurance.

Article 8 COMPLIANCE WITH 10 CFR 851 AND BSA'S WORKER SAFETY AND HEALTH PROGRAM

- (a) In performing work under this Contract, the Contractor and all of its lower-tier subcontractors, shall comply with all applicable federal, state and local environment, safety and health laws and regulations, these include:
 - (i) 10 CFR 851 Worker Safety and Health Program, to include Appendix A, Worker Safety and Health Functional Areas;
 - (ii) BSA's Worker Safety and Health Program;
 - (iii) BSA's Standards Based Management System (SBMS) (<http://public.bnl.gov/docs/sbms/default.aspx>) (contact the BSA Contractual Representative for access to or copies of SBMS documents not on this site); and
 - (iv) DEAR 970.5223-1, Integration of ES&H into Work Planning and Execution (Dec. 2000).
- (b) Effective date and revision number of the pertinent SBMS areas in effect on the day of Contract award shall be applicable to this Contract.
- (c) BSA will not tolerate non-adherence to safety requirements under this Contract. Failure to comply will result in BSA's stopping work in accordance with (h) set forth below. Non-compliance could also mean the barring of the violating individuals from the BNL Site. Repeated safety violations may also result in termination as listed under the article titled Termination for Default of these Terms and Conditions.
- (d) Compliance with 10 CFR 851 and DEAR 970.5223-1 is to be guided by the following paragraphs (e) through (i) set forth below.
- (e) The Contractor shall perform work safely, in a manner ensuring adequate protection for employees, BNL populous/public, and the environment and will be held accountable for the safe performance of work. The Contractor will exercise a degree of care commensurate with the work and the associated hazards. The Contractor will ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral and visible part of the Contractor's work planning and execution process. The Contractor will, in the performance of work, ensure that:
 - (i) Personnel, including lower tier subcontractors, possess the experience, knowledge, training, certifications, skills, and abilities that are necessary to discharge their responsibilities, and will retain records reflecting such competency and qualifications, making them available upon request.
 - (ii) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. The protection of employees, BNL populous/public and the environment is a priority whenever work is planned and performed.
 - (iii) Prior to work performance, the associated hazards are identified,

evaluated and controlled to provide assurance that employees, BNL populous/public, and the environment are protected and ensure:

1. Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and its associated hazards.
2. Emphasis will be on planning the work and/or controls to eliminate or reduce the hazards and to prevent accidents and unplanned releases and exposures.
3. Use of personal protective equipment must be limited to situations where engineering and administrative controls are not feasible.

- (f) The Contractor shall demonstrate the following through documentation and work practices:
- (i) identifying and analyzing specific, task-level hazards associated with the work;
 - (ii) identifying required training associated with the work;
 - (iii) developing and implementing hazard controls;
 - (iv) ensuring the performance of work within the controls; and
 - (v) soliciting and using worker feedback on the adequacy of controls and safety management to be used in continuous improvement.
- (g) Prior to commencement of work on any separately definable activity, the Contractor must:
- (i) Submit to the BSA point of contact for acceptance a Phase Hazard Analysis (PHA), Job Safety Analysis (JSA), Safe Work Plan (SWP), or equivalent, hereafter referred to as PHA, **of the affected work**. The analysis must:
 1. provide BSA with a defined plan of action for identified hazards and comprehensive prevention methods for exposures to workers, the BNL populous/public, and property;
 2. identify the specific tasks to be completed, including access, egress, set-up and breakdown, under all expected or created environmental conditions;
 3. identify required training and processes (e.g., Lockout/Tagout, confined space, penetrations, etc.) for the specific tasks;
 4. include the method of work (e.g., tools, chemicals, etc.) for completing these tasks, associated work hazards, and the corresponding equipment and methods that will be used to prevent loss to persons or property for all contracted work; and
 5. address further hazards revealed by supplemental site information (e.g., site characterization data, as-built drawings, Statement of Work, or as provided by BSA Contractual Representative).
 - (ii) Prior to the start of work, the Contractor shall submit a Material Safety Data Sheet/Safety Data Sheet to the BSA point of contact for all hazardous material.

- (iii) Ensure workers are aware of and acknowledge (by signature) the hazards and the protective measures described within the PHA prior to beginning work on the activity.
 - (iv) Those workers failing to utilize appropriate protective measures may be subject to debarment by BSA.
 - (v) Abide by BSA's "Stop Work" policy.
 - (vi) Informed of their Worker's Rights and Responsibilities set out in 10 CFR 851.20(b).
- (h) Workers must be instructed to report hazards not previously identified or evaluated to their supervisor/BSA point of contact. The Contractor or designated representative must stop work in the affected area until appropriate protective measures are established.
- (i) Exposure Monitoring. The Contractor will perform the following additional hazard evaluations prior to commencing work:
- (i) Contractor is responsible for identifying all potential exposures (e.g., chemical, biological, radiological, physical, etc.) to which its employees will be exposed while performing work under this Agreement;
 - (ii) Contractor is responsible to provide qualified monitoring and assessment personnel and is responsible for providing the required exposure monitoring and providing employees appropriate personal protective equipment to minimize exposures; and
 - (iii) Contractor is responsible to provide monitoring and assessment reports to BSA point of contact.
- (j) Occupational Medicine.
- (i) For any worker working on the BNL site for more than 30 days in any 12 month period, the Contractor shall have an occupational medicine program that is compliant with the applicable requirements of 10 CFR 851, Appendix A.
 - (ii) Contractor shall ensure that its employees are medically qualified to perform work associated with any potential exposures, hazards, and/or control measures (e.g., PPE, respirators) that have been identified. Medical qualification and medical surveillance programs are the sole responsibility of the Contractor. In addition, the Contractor is responsible for maintaining all records associated with the administration of these programs. In the event that the Contractor employee requires a medical qualification examination or medical surveillance program, it is the Contractor's sole responsibility to obtain these services. Contractor must provide documented evidence that they have an occupational medical provider with a licensed medical physician.
 - (iii) Following any exposure above OSHA action levels and/or OSHA or ACGIH occupational exposure limits, (e.g., PEL, TLV) the Contractor must provide the worker with a medical evaluation/surveillance.
- (k) The Contractor's on-site activities, including safety, shall be subject to review

by BSA. All safety violations brought to the attention of Contractor by BSA shall be immediately corrected by the Contractor. If the Contractor fails or refuses to correct the safety non-compliance, BSA may perform, or cause to be performed, the necessary corrective work and unilaterally charge the Contractor for the cost thereof. Such charges will be deducted from payments otherwise due the Contractor under this Agreement. Repeated or willful non-compliances with applicable ES&H requirements by the Contractor shall constitute a default under other provisions of this Agreement and BSA may terminate the agreement in accordance with those provisions.

- (l) The Contractor shall promptly evaluate and resolve any non-compliance with applicable ES&H requirements. If the Contractor fails to provide resolution or if, at any time, the Contractor's acts or failure to act causes substantial harm or an imminent danger to the environment, or health and safety of employees or BNL populous/public, the BSA Contractual Representative may issue an order stopping work in whole or in part and the Contractor shall be liable for the delay and any costs thereby incurred. Any stop-work order issued by BSA under this clause shall be without prejudice to any other legal or contractual rights of BSA. In the event that the BSA Contractual Representative issues a stop-work order, an order authorizing the resumption of the work may be issued at the discretion of the BSA Contractual Representative. The Contractor shall not be entitled to an extension of time, or additional cost or fee, or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- (m) BSA reserves the right to charge back to the Contractor actual costs incurred by BSA directly or indirectly to perform safety inspections, complete paperwork, investigate and prepare occurrence reports as a result of the Contractor's failure to comply with said regulation or requirement. A non-negotiable unilateral deduct change order will be issued to the Contractor, and punitive penalties may be assessed to individuals by dismissing them from the Brookhaven site based on the extent of the noncompliance. BSA will evaluate the Contractor on its safety performances. The number and severity of safety and security violations, including traffic violations, will be considered in this evaluation. Repeated and/or willful violations are cause for termination for default and may affect the Contractor's opportunity to bid on future work at BNL.
- (n) Civil Penalties and Indemnification
 - (i) The 2002 Bob Stump National Defense Authorization Act amended the Atomic Energy Act by adding section 234C "Worker Health and Safety Rules for Department of Energy Nuclear Facilities." It required DOE to promulgate a worker safety and health rule (the Rule). DOE published the Rule in the Federal Register on February 9, 2006. The Rule is codified at 10 CFR 851. It establishes worker safety and health requirements that govern the conduct of contractor activities at both nuclear and non-nuclear sites. Contractors that fail to comply with the Rule are subject to civil penalties issued by DOE up to \$70,000.00 per violation, with each day of violation constituting a separate violation, or contractual penalties.
 - (ii) The Contractor assumes full responsibility and shall indemnify, hold

harmless, and defend BSA, its directors, officers, and employees from any civil liability under §234C of the Atomic Energy Act of 1954, as amended, or DOE's implementing regulations, arising out of the activities or performance of the Contractor, 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 §234C or DOE's implementing regulations.