

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE
PAGE OF PAGES
1 6

2. AMENDMENT/MODIFICATION NO. 0005	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
6. ISSUED BY U.S. Department of Energy Brookhaven Site Office 53 Bell Avenue, Building 464 Upton, New York 11973-5000	CODE 06005	7. ADMINISTERED BY (If other than Item 6) Code	06005
8. NAME AND ADDRESS OF CONTRACTOR (No. street, county, State and ZIP Code) Brookhaven Science Associates, LLC Brookhaven National Laboratory 40 Brookhaven Avenue, Building 460 Upton, New York 11973-5000		(<input checked="" type="checkbox"/>)	9. A. AMENDMENT OF SOLICITATION NO.
			9. B. DATED (SEE ITEM 11)
		X	10. A. MODIFICATION OF Contract/Order NO. DE-SC0012704
CODE N/A FACILITY CODE N/A			10. B. DATED (SEE ITEM 13) 12/22/2014

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning ___ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

N/A

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS,
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: Mutual agreement of the parties
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section heading, including solicitation/contract subject matter where feasible.)

This Modification is issued to revise Part I, Section B – Supplies or Services and Prices/Costs; Revise Part I, Section H – Special Contract Requirements, TOC; Revise Clauses H.21, H.26; Add Clauses H.27, H.42; Revise Part II, Section I – Contract Clauses, TOC; Update Clauses I.3, I.5, I.6, I.7, I.12, I.18, I.21, I.31, I.32, I.33, I.39, I.40, I.44, I.45, I.46, I.59, I.65, I.67, I.69, I.74, I.76, I.77, I.79, I.88; Add Clauses I.57a, I.57b; Delete Clauses I.16, I.35, I.53; Revise Clause I.152, Obligations of Funds; Revise Part III, Section J – List of Documents, Exhibits, and Other Attachments; TOC; Replace Appendix A – Advance Understanding on Human Resources; Revise Appendix B – Performance Evaluation and Measurement Plan, Add Appendix C – Special Financial Institution Account Agreement; Replace Appendix E – Key Personnel; Add Appendix H – FY15 Small Business Subcontracting Plan, Replace Appendix I – DOE Directives.

15A. NAME AND TITLE OF SIGNER (Type or print) Suzanne M. Davidson Chief Financial Officer	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Evelyn Landini Contracting Officer
15B. CONTRACTOR/OFFEROR	16B. UNITED STATES OF AMERICA
15C. DATE SIGNED 2/19/15	16C. DATE SIGNED 2/20/15
(Signature of person authorized to sign)	(Signature of Contracting Officer)

Block 14 continued:

1. **Part I, Section B – Supplies or Services and Prices/Costs:** Section B is revised to make editorial changes; replace the prior version with the updated attachment provided herein.
2. **Part I, Section H – Special Contract Requirements, Table of Contents (TOC):** Section H is revised to add Clauses H.27 and H.42.

3. **Part I, Section H – Special Contract Requirements:**

The following clauses have been revised; insert the attachments provided herein:

- a. Clause H.21 – Employee Compensation: Pay and Benefits: This clause has been updated to make administrative language changes.
- b. Clause H.26 – Labor Relations: This clause has been updated to make administrative language changes.

The following clauses have been added; insert the attachments provided herein:

- c. Clause H.27 – Non-Federal Agreements for Commercializing Technology (Pilot): This clause is hereby added to the Contract as Clause H.27 which was previously “RESERVED”.
 - d. Clause H.42 – Risk Management and Insurance Programs: This clause is hereby added to the Contract as Clause H.42 in accordance with Policy Flash 2015-05, Acquisition Letter 2015-02 – Revision of Department of Energy (DOE) Order 350.1 and Special H Clause.
4. **Part II, Section I – Contract Clauses, Table of Contents (TOC):** Section I is revised to reflect an update to Clauses I.3, I.5, I.6, I.7, I.12, I.18, I.21, I.31, I.32, I.33, I.39, I.40, I.44, I.45, I.46, I.59, I.65, I.67, I.69, I.74, I.76, I.77, I.79, I.88, E.1; Add Clauses I.57a, I.57b; Delete Clauses I.16, I.35, I.53.
- a. Clause E.1 - FAR 52.246-9, Inspection of Research and Development (Short Form) (APR 1984): The TOC has been updated to reflect the correct spelling of the month in the date of this clause.

5. **Part II, Section I – Contract Clauses:**

The following clauses have been revised; replace the prior versions with the updated attachments provided herein:

- a. Clause I.3 - FAR 52.203-5, Covenant Against Contingent Fees (MAY 2014): This clause has been updated to reflect the most current version.
- b. Clause I.5 - FAR 52.203-7, Anti-Kickback Procedures (MAY 2014): This clause has been updated to reflect the most current version.
- c. Clause I.6 - FAR 52.203-8, Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (MAY 2014): This clause has been updated to reflect the most current version.

- d. Clause I.7 - FAR 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity (MAY 2014): This clause has been updated to reflect the most current version.
- e. Clause I.12 - FAR 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (APR 2014): This clause has been updated to reflect the most current version.
- f. Clause I.18 - FAR 52.208-8, Required Sources for Helium and Helium Usage Data (APR 2014): This clause has been updated to reflect the most current version.
- g. Clause I.21 - FAR 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (DEC 2014): This clause has been updated to reflect the most current version.
- h. Clause I.31 - FAR 52.219-4, Notice of Price Evaluation for HUBZone Small Business Concerns (OCT 2014): This clause has been updated to reflect the most current version.
- i. Clause I.32 - FAR 52.219-8, Utilization of Small Business Concerns (OCT 2014): This clause has been updated to reflect the most current version.
- j. Clause I.33 - FAR 52.219-9, Small Business Subcontracting Plan (OCT 2014): This clause has been updated to reflect the most current version.
- k. Clause I.39 - FAR 52.222-4, Contract Work Hours and Safety Standards -- Overtime Compensation (MAY 2014): This clause has been updated to reflect the most current version.
- l. Clause I.40 - FAR 52.222-11, Subcontracts (Labor Standards) (MAY 2014): This clause has been updated to reflect the most current version.
- m. Clause I.44 - FAR 52.222-35, Equal Opportunity for Veterans (JUL 2014): This clause has been updated to reflect the most current version.
- n. Clause I.45 - FAR 52.222-36, Equal Opportunity for Workers with Disabilities (JUL 2014): This clause has been updated to reflect the most current version.
- o. Clause I.46 - FAR 52.222-37, Employment Reports on Veterans (JUL 2014): This clause has been updated to reflect the most current version.
- p. Clause I.59 - FAR 52.223-16, Acquisition of EPEAT® - Registered Personal Computer Products (JUN 2014) (ALTERNATE I) (JUN 2014): This clause has been updated to reflect the change of the clause title and most current version.
- q. Clause I.65 - FAR 52.225-1, Buy American Act -- Supplies (MAY 2014) Modified by DEAR 970.2570 (NOV 2010): This clause has been updated to reflect the most current version.
- r. Clause I.67 - FAR 52.225-9, Buy American -- Construction Materials (MAY 2014): This clause has been updated to reflect the most current version.
- s. Clause I.69 - FAR 52.225-21, Required Use of American Iron, Steel, and Manufactured Goods -- Buy American Statute -- Construction Materials (MAY 2014): This clause has been updated to reflect the most current version.

- t. Clause I.74 - FAR 52.230-2, Cost Accounting Standards (MAY 2014): This clause has been updated to reflect the most current version.
- u. Clause I.76 - FAR 52.232-17, Interest (MAY 2014): This clause has been updated to reflect the most current version.
- v. Clause I.77 - FAR 52.232-24, Prohibition of Assignment of Claims (MAY 2014): This clause has been updated to reflect the most current version.
- w. Clause I.79 - FAR 52.233-1, Disputes (MAY 2014) (ALTERNATE I) (DEC 1991): This clause has been updated to reflect the most current version.
- x. Clause I.88 - FAR 52.244-6, Subcontracts for Commercial Items (OCT 2014): This clause has been updated to reflect the most current version.

The following clauses have been added; insert the attachments provided herein:

- y. Clause I.57a - FAR 52.223-13, Acquisition of EPEAT® - Registered Imaging Equipment (JUN 2014) (ALTERNATE I) (JUN 2014): This clause is hereby added to the Contract. The specific language is provided herein as an attachment.
- z. Clause I.57b - FAR 52.223-14, Acquisition of EPEAT® - Registered Televisions (JUN 2014) (ALTERNATE I) (JUN 2014): This clause is hereby added to the Contract. The specific language is provided herein as an attachment.

The following clauses have been deleted:

- aa. Clause I.16 - FAR 52.204-11, American Recovery and Reinvestment Act – Reporting Requirements (JUL 2010): This clause is hereby deleted from the Contract in accordance with Federal Acquisition Circular 2005-74 and Federal Acquisition Regulation. Clause I.16 is now titled “RESERVED”.
 - bb. Clause I.35 - FAR 52.219-25, Small Disadvantaged Business Participation Program – Disadvantaged Status and Reporting (JUL 2013): This clause is hereby deleted from the Contract. Clause I.35 is now titled “RESERVED”.
 - cc. Clause I.53 - FAR 52.223-7, Notice of Radioactive Materials (JAN 1997): This clause is hereby deleted from the Contract. Clause I.53 is now titled “RESERVED”.
6. **Part II, Section I – Contract Clauses**, Clause I.152 - DEAR 970.5232-4, Obligation of Funds: The first sentence of paragraph (a) is revised to read as follows:

The amount presently obligated by the Government with respect to this Contract is \$398,883,820.20.

The revised total reflects an increase of \$363,883,820.20 as a result of Modification 0001 through 0005 from \$35,000,000.00 to \$398,883,820.20.

7. **Part III, Section J – List of Documents, Exhibits and Other Attachments:** Section J is revised to reflect the following: Replace Appendix A – Advance Understanding on Human Resources; Revise Appendix B – Performance Evaluation and Measurement Plan, Section I; Add Appendix C – Special Financial Institution Account Agreement; Replace Appendix E – Key Personnel; Add Appendix H – FY2015 Small Business Subcontracting Plan; Replace Appendix I – DOE Directives/List B.

- a. **Appendix A – Advance Understanding on Human Resources** has been revised; replace the prior version with the updated attachment provided herein.
- b. **Appendix B – Performance Evaluation and Measurement Plan** has been amended to add the paragraph entitled, "Determining Award Term Eligibility" as follows:

Determining Award Term Eligibility:

Pursuant to Section F.2 "Award Term Incentive," the Contractor may also earn additional award term of 12 months during this evaluation period by meeting or exceeding performance expectations. Contractor eligibility for award term extensions is delineated in Section F.2(b) of the Contract. With respect to this first evaluation period (January 5, 2015 through September 30, 2015), the Contractor must be assessed by the DOE to have achieved a score of 3.1 for both Science and Technology and for Management and Operations, and meet the Contract performance goals, objectives, standards, or other criteria and other Contract requirements applicable to earning additional award term, as may be defined in this PEMP, as determined by the Award Term Determination Official. (See Contract Section F.2(b)(1) and F.2(c)).

- c. **Appendix C – Special Financial Institution Account Agreement** is hereby added to the Contract. See the attachment provided herein.
- d. **Appendix E – Key Personnel** has been revised to reflect a new format. There was no change in personnel; replace the prior version with the updated attachment provided herein.
- e. **Appendix H – FY2015 Small Business Subcontracting Plan** is hereby added to the contract. See the attachment provided herein.
- f. **Appendix I – DOE Directives List** identified as Modification No. 0001 has been revised; replace the prior version with the attached Appendix I identified as Modification No. 0005. The revisions are as follows:

SUMMARY OF DIRECTIVE CHANGES			
ADDITIONS	TITLE	CHANGE	NOTES
O 350.1, Chg. 5	Contractor Human Resource Management Programs 9/30/2014	Updated to latest revision	Cancels 350.1 Chg. 4
O 350.3	Labor Standards Compliance, Contractor Labor Relations, and Contractor Workforce Restructuring Programs 9/29/2014	Newly required order	Chapters I-III of DOE O 350.1 Chg. 4
O 456.1, Admin Chg. 1	The Safe Handling of Unbound Engineered Nanoparticles 2/14/2013	Updated to latest revision	Cancels DOE O 456.1

Attachments:

- Section B – Supplies or Services and Prices/Costs
- Section H – Special Contract Requirements
 - ❖ H.21, H.26, H.27, H.42
- Section I – Contract Clauses
 - ❖ I.3, I.5, I.6, I.7, I.12, I.18, I.21, I.31, I.32, I.33, I.39, I.40, I.44, I.45, I.46, I.57a, I.57b, I.59, I.65, I.67, I.69, I.74, I.76, I.77, I.79, I.88
- Part III, Section J – List of Documents, Exhibits and Other Attachments
 - ❖ Appendix A – Advance Understanding on Human Resources
 - ❖ Appendix C – Special Financial Institution Account Agreement
 - ❖ Appendix E – Key Personnel
 - ❖ Appendix H – FY2015 Small Business Subcontracting Plan
 - ❖ Appendix I – DOE Directives/List B

SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

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B.2 OBLIGATION OF FUNDS AND FINANCIAL LIMITATIONS.....1

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B.5 PROVISIONAL PAYMENT OF PERFORMANCE FEE.....3

B.1 SERVICE BEING ACQUIRED

The Contractor shall provide the personnel, facilities, equipment, materials, supplies, and services (except such facilities, equipment, materials, supplies and services as are furnished by the Government) necessary to perform the requirements and work set forth in this contract, and shall perform such requirements and work in a quality, timely, and cost-effective manner.

B.2 OBLIGATION OF FUNDS AND FINANCIAL LIMITATIONS

The amount presently obligated by the Government with respect to this contract is specified in the Section I Clause entitled "DEAR 970.5232-4 – Obligation of Funds". Other financial limitations are also specified in the Section I Clause entitled "DEAR 970.5232-4 – Obligation of Funds."

B.3 PERFORMANCE FEE

- (a) The transition activities shall be performed on a cost-reimbursement basis up to the amount specified in the Section H Clause entitled "Activities During Contract Transition", and no fee shall be paid for these activities.
- (b) In implementation of the Section I Clause entitled "DEAR 970.5215-1 – Total Available Fee: Base Fee Amount and Performance Fee Amount", the Parties have agreed that the maximum available performance fees that may be earned by the Contractor in accordance with the provisions of Section J, Appendix B entitled "Performance Evaluation and Measurement Plan", for the performance of the work under this contract commencing January 5, 2015 are as follows:

Base Contract Period:

Performance Period	Performance Fee
01/05/15 – 09/30/15	\$5,175,000.00
10/01/15 – 09/30/16	\$6,900,000.00
10/01/16 – 09/30/17	\$6,900,000.00
10/01/17 – 09/30/18	\$6,900,000.00
10/01/18 – 09/30/19	\$6,900,000.00
10/01/19 – 01/04/20	\$1,725,000.00

Base fee under this contract is \$0. All fee dollars shall be in performance fee and at risk.

- (c) If DOE determines that the Contractor has earned any Award Term beyond January 4, 2020, in accordance with Section F.2 entitled "Award Term Incentive", the Parties have agreed that the maximum available annual performance fee that may be earned by the Contractor shall be:

Award Term Period:

Performance Period	Performance Fee
01/05/20 – 09/30/20	\$5,175,000.00
10/01/20 – 09/30/21	\$6,900,000.00
10/01/21 – 09/30/22	\$6,900,000.00
10/01/22 – 09/30/23	\$6,900,000.00
10/01/23 – 09/30/24	\$6,900,000.00
10/01/24 – 01/04/25	\$1,725,000.00

Base fee under this contract is \$0. All fee dollars shall be in performance fee and at risk.

- (d) The maximum available annual performance fee that may be earned by the Contractor for any additional extensions of the period of performance beyond the ten (10) years listed in the tables above shall be subject to negotiation between the Parties consistent with the Department of Energy Acquisition Regulation (DEAR) in effect at the time the fee is negotiated.
- (e) At the end of each fiscal year, there shall be no adjustment in the amount of the maximum available performance fee based on differences between any estimate of cost for performance of the work and the actual cost for performance of the work. Fee is subject to adjustment only –
 - 1) Under the provisions of Section I Clause entitled "DEAR 970.5243-1 – Changes", or other contract provisions; or
 - 2) For a +/- 10 percent change in the estimated fee base of \$596,900,000.
- (f) Any adjustment in the amount of the fee under the provisions of paragraph (e) for the fees specified in paragraph (b) and (c) above, or negotiation of fee under paragraph (d) above, will be in accordance with the fee policy then in effect, utilizing the adjusted fee base and maintaining the same fee ratio proposed (i.e. proposed vs. maximum) by the Contractor during the contract competition and reflected in the current contract.

B.4 ALLOWABILITY OF SUBCONTRACTOR FEE

If the Contractor is part of a consortium, joint venture, and/or other teaming arrangement, the team shall share in this contract fee structure and separate additional subcontractor fee for teaming partners shall not be considered an allowable cost under the contract. If a subcontractor, supplier, or lower-tier subcontractor is a wholly owned, majority owned, or affiliate of any team member, any fee or profit earned by such entity shall not be considered an allowable cost under this contract unless otherwise approved by the Contracting Officer.

B.5 PROVISIONAL PAYMENT OF PERFORMANCE FEE

The Contractor may, subject to the approval of the Contracting Officer, be paid provisional performance fee payments consistent with the provisions of the Section I Clause entitled, "DEAR 970.5232-2 – Payments and Advances". The Contractor shall promptly refund to the Government any amount of provisional performance fee paid that exceeds the amount of performance fee earned.

CLAUSE H.21 – EMPLOYEE COMPENSATION: PAY AND BENEFITS

(a) Total Compensation System

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system consistent with FAR 31.205-6 and DEAR 970.3102-05-6; "Compensation for Personal Services" ("Total Compensation System"). DOE-approved standards, if any, shall be applied to the Total Compensation System. The Contractor's Total Compensation System shall be fully documented, consistently applied, and acceptable to the Contracting Officer. Periodic appraisals of contractor performance with respect to the Contractors' Total Compensation System will be conducted.

- (1) The description of the Contractor's total cash compensation program should include the following components:
 - (A) Philosophy and strategy for all pay delivery programs.
 - (B) System for establishing a job worth hierarchy.
 - (C) Method for relating internal job worth hierarchy to external market.
 - (D) System that links individual and/or group performance to compensation decisions.
 - (E) Method for planning and monitoring the expenditure of funds.
 - (F) Method for ensuring compliance with applicable laws and regulations.
 - (G) System for communicating the programs to employees.
 - (H) System for internal controls and self-assessment.
 - (I) System to ensure that reimbursement of compensation, including stipends, for employees who are on joint appointments with a parent or other organization shall be on a pro-rated basis.

(b) Reports and Information

The Contractor shall provide the Contracting Officer with the following reports and information with respect to pay and benefits provided under this contract:

- (1) An 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.
- (2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(2)(ii) and their total cash compensation at the time of Contract award, and at the time of any subsequent change to their total cash compensation.
- (3) The Compensation and Benefits Report no later than March 1 of each year.

(c) Pay and Benefit Programs

The Contractor shall maintain pay and benefit programs for its Employees; provided, however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program.

(1) Cash Compensation

(A) The Contractor shall submit the following to the Contracting Officer for a determination of cost allowability for reimbursement under the contract:

- (i) Any proposed major compensation program design changes prior to implementation.
- (ii) An Annual Compensation Increase Plan (CIP). The Compensation Increase Plan (CIP) for a Contractor that has received Contracting Officer approval for having an Employee Compensation Program with the components identified under (a)(1) above should include the following components and data:
 - (1) Market analysis summary, including a comparison of average pay to market average pay.
 - (2) Merit Fund requests for each Employee Group (i.e., S&E, Administrative, Technical, Exempt/Non-Exempt).
 - (3) Aging factors used for escalating survey data.
 - (4) Projection of escalation in the market.
 - (5) Information to support proposed structure adjustments, if any.
 - (6) Analysis to support special adjustments or promotions that exceed the 1% Promotion/Adjustment fund authorized under Section III of Appendix A.
 - (7) Discussion of recruitment/retention issues (e.g., turnover and hiring) relevant to the proposed increase amounts.
 - (8) A discussion of the impact of budget and business constraints on the CIP amount.
 - (9) Information to support a request for variable pay beyond that authorized under Section X of Appendix A.
 - (10)
 - (a) Reimbursed salary levels are used to establish the annual CIP fund.
 - (b) The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous plan year.

- (c) All pay actions granted under the compensation increase plan are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end.
 - (d) Specific Employee or Payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the contractor and the Contracting Officer.
 - (e) The Contracting Officer may adjust the CIP amount after approval based on major changes in factors that significantly affect the plan amount (for example, in the event of a major reduction in force or significant ramp-up).
 - (f) The Contractor may make minor shifts of merit funds between employment categories (e.g., Scientist/Engineer, Admin, Exempt, Non-Exempt) after approval of the CIP in order to meet the compensation requirements of its organization, subject to the following guidelines:
 - Minor shift is defined as up to 10% of the approved merit funds from one employment category to another (e.g., 10% of Admin merit funds shifted to Technician employment category).
 - Total merit increase expenditures will be limited to the total merit fund approved.
 - Contractors will notify the Contracting Officer that funds have been shifted.
- (iii) Individual compensation actions for the top contractor official (e.g., laboratory director/plant manager or equivalent) and key personnel not included in the CIP. For those key personnel included in the CIP, DOE will approve salaries upon the initial contract award and when key personnel are replaced during the life of the contract. DOE will have access to all individual salary reimbursements. This access is provided for transparency; DOE will not approve individual salary actions (except as previously indicated).
- (B) The Contracting Officer's approval of individual compensation actions will be required only for the top contractor official (e.g., laboratory director/plant manager or equivalent) and key personnel as indicated in (c)(1)(A)(iii) above. The contractor shall not be reimbursed for the top contractor official's incentive compensation. The base salary reimbursement level for the top contractor official establishes the maximum allowable salary reimbursement under the contract when compared to subordinate compensation, which would include base salary and any potential incentive compensation under an incentive

compensation agreement. Unusual circumstances may require a deviation for an individual on a case-by-case basis. Any such deviations must be approved by the Contracting Officer.

(C) Severance Pay is not payable to an employee under this contract if the employee:

- (i) Voluntarily separates, resigns or retires from employment, (unless associated with a workforce restructuring action in accordance with Section J, Appendix A entitled "Advance Understanding on Human Resources", paragraph XII).
- (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.

(D) Service Credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement contract.

(d) Pension and Other Benefit Programs

- (1) No presumption of allowability will exist when the Contractor implements a new benefit plan or makes changes to existing benefit plans for Employees until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans.
 - (2) Cost reimbursement for Employee pension and other benefit programs sponsored by the Contractor will be based on the Contracting Officer's approval of Contractor actions pursuant to an approved "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" as described below.
 - (3) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (A) and (B) below. The studies shall be used by the Contractor in calculating the cost of benefits under new or existing benefit plans. An Employee Benefits Value (Ben-Val) Study Method using no less than 15 comparator organizations and an Employee Benefits Cost Survey comparison Method shall be used in this evaluation to establish an appropriate comparison method. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan.
- (A) The Ben-Val, every two years for each benefit tier (e.g., group of employees receiving a benefit package based on date of hire), which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Employees measured against the RV of

benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value studies do not address post-retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post-retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources and,

- (B) An Employee Benefits Cost Study Comparison, annually for each benefit tier that analyzes the Contractor's employee benefits cost for Employees 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. Department of Labor's Bureau of Labor Statistics or other Contracting Officer approved broad based national survey.
- (4) When the net benefit value exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the Contracting Officer for approval, unless waived in writing by the Contracting Officer.
- (5) When the average total benefit per capita cost or total benefit cost as a percent of payroll exceeds the comparator group by more than five percent, the Contractor shall submit an analysis of the specific plan costs that are above the per capita cost range or total benefit cost as a percent of payroll and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range or total benefit cost as a percent of payroll, unless waived in writing by the Contracting Officer.
- (6) Within two years of Contracting Officer approval of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and per capita cost range or percent of payroll as approved by the Contracting Officer.
- (7) The Contractor may not terminate any benefit plan during the term of the contract without the prior approval of the Contracting Officer in writing.
- (8) Cost reimbursement for post-retirement benefits other than pensions (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.
- (9) Each Contractor sponsoring a Defined Benefit pension plan and/or postretirement benefit plan will participate in the annual plan management process which includes written responses to a questionnaire regarding plan management, providing forecasted estimates of future reimbursements in connection with the plan and

participating in a conference call to discuss the contractor submission.

- (10) Each contractor will respond to quarterly data calls issued through ibenefits, or its successor system.

(e) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs

- (1) Employees working for the Contractor shall only accrue credit for service under this contract after the date of contract award.
- (2) Except for Commingled Plans in existence as of the effective date of the contract, any pension plan maintained by the Contractor for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan that provides credit for service not performed under a DOE cost-reimbursement contract. When deemed appropriate by the Contracting Officer, Commingled Plans shall be converted to separate plans at the time of new contract award or the extension of a contract.

(f) Basic Requirements

The Contractor shall adhere to the requirements set forth below in the establishment and administration of pension plans that are reimbursed by DOE pursuant to cost reimbursement contracts for management and operation of DOE facilities and pursuant to other cost reimbursement facilities contracts. Pension Plans include Defined Benefit and Defined Contribution plans.

- (1) The Contractor shall become a sponsor of the existing pension and other benefit plans (or comparable successor plans), including other post-retirement benefit (PRB) plans, as applicable, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans consistent with the requirements of ERISA and the Internal Revenue Code (IRC). The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of contract performance.
- (2) DOE approval is required prior to implementing any change to a pension plan covering prime cost reimbursement contracts for management and operation of DOE facilities, and other contracts when designated. Changes shall be in accordance with and pursuant to the terms and conditions of the contract.
- (3) Each contractor pension plan shall be subjected to a limited-scope audit annually that satisfies the requirements of ERISA section 103, except that every third year the Contractor must conduct a full-scope audit satisfying ERISA section 103. Alternatively, the Contractor may conduct a full-scope audit satisfying ERISA section 103 annually. In all cases, the Contractor must submit the audit results to the Contracting Officer. In years in which a limited scope audit is conducted, the Contractor must provide the

Contracting Officer with a copy of the qualified trustee or custodian's certification regarding the investment information that provides the basis for the plan sponsor to satisfy reporting requirements under ERISA section 104.

- (4) The Contractor shall comply with the requirements of ERISA if applicable to the pension plan and any other applicable laws.

(g) Reporting Requirements for Designated Contracts

The following reports shall be submitted to DOE as soon as possible after the last day of the plan year by the contractor responsible for each designated pension plan funded by DOE but no later than the dates specified below:

- (1) Forms 5500. Copies of IRS Forms 5500 with Schedules for each DOE-funded pension plan, no later than that submitted to the IRS.
- (2) Forms 5300. Copies of all forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin-off, or merger of a plan submitted to the IRS.

(h) Changes to Pension Plans

At least sixty (60) days 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 are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

- (1) For proposed changes to pension plans and pension plan funding, the Contractor shall provide the following to the Contracting Officer:
 - (A) a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout;
 - (B) except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the counsel used by the plan for purposes of compliance with all legal requirements applicable to private sector defined benefit pension plans;
 - (C) the Summary Plan Description; and,
 - (D) any such additional information as requested by the Contracting Officer.
- (2) Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval. The justification must:
 - (A) demonstrate the effect of the plan changes on the contract net benefit value or per capita benefit costs,

(B) provide the dollar estimate of savings or costs, and

(C) provide the basis of determining the estimated savings or cost.

(i) Terminating Plans

- (1) DOE Contractors shall not terminate any pension plan (Commingled or site specific) without requesting Departmental approval at least 60 days prior to the scheduled date of plan termination.

(j) Special Programs

Contractors must advise DOE and receive prior approval for each early-out program, window benefit, disability program, plan-loan feature, employee contribution refund, asset reversion, or incidental benefit.

(k) Definitions

- (1) Commingled Plans. Cover employees from the contractor's private operations and its DOE contract work.
- (2) Defined Benefit Pension Plan. Provides a specific benefit at retirement that is determined pursuant to the formula in the pension plan document.
- (3) Defined Contribution Pension Plan. Provides benefits to each participant based on the amount held in the participant's account. Funds in the account may be comprised of employer contributions, employee contributions, investment returns on behalf of that plan participant and/or other amounts credited to the participant's account.
- (4) Pension Fund. The portfolio of investments and cash provided by employer and employee contributions and investment returns. A pension fund exists to defray pension plan benefit outlays and (at the option of the plan sponsor) the administrative expenses of the plan.
- (5) Separate Plan. Must satisfy IRC Sec. 414(l) definition of a single plan, designate assets for the exclusive benefit of employees under DOE Contract, exist under a separate plan document (having its own DOL plan number) that is distinct from corporate plan documents and identify the Contractor as the plan sponsor.

CLAUSE H.26 – LABOR RELATIONS

- (a) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.
- (b) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto and shall consult with and obtain the approval of the Contracting Officer regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting, proposing or agreeing to: (1) items of special interest to the Government; (2) changes in any pension or other benefit plans; or (3) any collective bargaining proposal which can be calculated to affect allowable costs under this contract, unless these costs are within the economic bargaining parameters already approved by the Contracting Officer.
- (c) The Contractor will seek to maintain 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 22.1 and DEAR 970.2201 and all applicable Federal and State Labor Relations laws.
- (d) The Contractor 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, labor arbitrations, and settlement agreements and will furnish such additional information as may be required from time to time by the Contracting Officer.

CLAUSE H.27 - NON-FEDERAL AGREEMENTS FOR COMMERCIALIZING TECHNOLOGY (PILOT)

This Clause implements a PILOT program for a new technology transfer mechanism, Agreements for Commercialization of Technology (ACT). In accordance with the requirements specified in this Clause, the Contractor may conduct privately-sponsored research at the Contractor's risk for third parties. In performing ACT work, the Contractor may use staff and other resources associated with this Contract for the purposes of conducting research and furthering the technology transfer mission of the Department, on the condition that such use does not interfere with Contractor's activities conducted as authorized by other parts of this Contract. The resources that may be used include Government-owned or leased facilities, equipment, or other property that is either in Contractor's custody or available to the Contractor under this Contract (unless specifically excluded by the Contracting Officer). For Contractor's activities conducted under authority of this Clause, the Contractor shall provide full-cost recovery, assume indemnification and liability as provided in Paragraph 9, below, and may assume other risks normally borne by private parties sponsoring research at the Laboratory. In exchange for accepting such risks, or for other private consideration provided by the Contractor, the Contractor is authorized to negotiate separate agreements (ACT agreements) with the sponsoring third parties. Under ACT agreements, the Contractor may charge those parties additional compensation beyond the direct costs of the work at the Laboratory. Any statement of work involving Federal funds or falling within the scope of a Federally-funded contract or award (other than this Contract) shall not be eligible for an ACT transaction.

DOE and the Contractor recognize that implementation of ACT under this Clause is a PILOT program authorized by the Department and that during the PILOT either party may suggest changes to the program based on the experiences gained. Furthermore, the Contractor recognizes that the Department may decide to end the PILOT at any time and that termination of the PILOT by the Department will be in accordance with Paragraph 12, below.

1. *Authority to Perform work under this Clause.* Pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.) and other applicable authorities, the Contractor may perform work for non-federal entities, in accordance with the requirements of this Clause.
2. *Contractor's Implementation.* The Contractor must draft, implement, and maintain formal policies, practices, and procedures in accordance with this Clause, which must be approved by the Contracting Officer and such approval shall not be unreasonably withheld.
3. *Conditions for Participation in ACT.* The Contractor.
 - a. Must not perform ACT activities that would place it in direct competition with the private sector;
 - b. May only conduct work under this Clause if the work does not interfere with or adversely affect projects and programs the Contractor conducts on behalf of the Government under this Contract, and complies with FFRDC requirements applicable to the Facility. If the Government determines that an activity conducted under this Clause interferes with the Department's work under the Contract, or that termination/stay/suspension of work under an ACT agreement is in the best interest of the Government, the Contractor must stop the interfering ACT work immediately to the extent necessary to resolve the interference. At any time, the Contracting Officer may

require the use of specified Government-owned or leased property and facilities for the exclusive use of the Facility's mission by providing a written notice excluding said property from the Contractor's activities under this Clause. Any cost incurred as a result of Contracting Officer decisions identified in this subparagraph shall be borne by the Contractor. The Contracting Officer shall provide to the Contractor in writing its decision, identifying the issues and reasons for the decisions. The Contractor shall be provided with a reasonable opportunity to address and resolve the issues identified by the Contracting Officer;

- c. Except as otherwise excluded in this Clause, must perform all ACT activities in accordance with the standards, policies, and procedures that apply to performance under this Contract, including but not limited to environmental, safety and health, security, safeguards and classification procedures, and human and animal research regulations;
- d. Contractor must utilize its standard Laboratory subcontracting procedures for any work subcontracted by the Laboratory under the Contract. Otherwise, the Contractor may subcontract ACT work scope that is not performed under the Contract using commercially reasonable subcontracting practices and terms. Costs for performing such subcontracting activities outside the scope of the Contract are not reimbursable under the Contract;
- e. Must make available to DOE a summary of project information for each active ACT project, consisting of: total estimated costs; project title and description; project point of contact; and, estimated start and completion dates;
- f. Is responsible for addressing the following items in ACT agreements as appropriate, as they are in non-federal WFO agreements: disposition of property acquired under the agreement, export control, notice of intellectual property infringement, and a statement that the Government and/or Contractor shall have the right to perform similar services in the Statement of Work for other Parties as otherwise authorized by this Contract subject to applicable data restrictions;
- g. Must include a standard legal disclaimer notice on all publications generated under ACT activities. Each DOE contractor has its own pre-approved publications statement, and this should be used; and
- h. Must insert the following disclaimer in each agreement under ACT, which must be conspicuous (e.g. bold type, all capital letters, or large font) in all Agreements under ACT so as to meet the standards of due notice.

DISCLAIMER

THIS AGREEMENT IS SOLELY BETWEEN BROOKHAVEN SCIENCE ASSOCIATES, LLC ACTING IN A PRIVATE CAPACITY AND [THE OTHER IDENTIFIED PARTY(IES)]. THE UNITED STATES GOVERNMENT IS **NOT** A PARTY TO THIS AGREEMENT, THIS AGREEMENT DOES NOT CREATE ANY OBLIGATIONS OR LIABILITY ON BEHALF OF THE GOVERNMENT AND THE

GOVERNMENT MAKES NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT; THAT THE GOODS, SERVICES, MATERIALS, PRODUCTS, PROCESSES, INFORMATION, OR DATA TO BE FURNISHED HEREUNDER WILL ACCOMPLISH INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE INCLUDING THE INTENDED PURPOSE; OR THAT ANY OF THE ABOVE WILL NOT INTERFERE WITH PRIVATELY OWNED RIGHTS OF OTHERS. THE GOVERNMENT SHALL NOT BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO SUCH RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS AGREEMENT. THIS DISCLAIMER DOES NOT AFFECT ANY RIGHTS THE GOVERNMENT MAY HAVE AGAINST THIRD PARTIES ARISING FROM WORK CONDUCTED IN CONNECTION WITH THIS AGREEMENT.

4. *Contracting Authority.*

- a. Subject to DOE approval as described in this Paragraph, the Contractor is hereby authorized to negotiate terms and conditions between the Contractor and third parties when entering into ACT agreements. The Contractor will have no authority to bind the Government in any way with such terms and conditions. The Government will have no obligation to the Contractor due to such terms and conditions.
- b. The Contractor shall submit an ACT proposal package (Package) to the Contracting Officer for approval prior to beginning work under an ACT Agreement.
 - i. A complete Package will include at a minimum: the identity of the parties to the ACT Agreement; the principal place of performance; any foreign ownership or control of the ACT Agreement parties; a Statement of Work; an estimate of costs incurred under the Contract; an anticipated schedule; identification of key Government equipment and facilities that will be used under the ACT Agreement; a list of expected deliverables; identification of the IP Lead and proposed selection of IP rights, as defined in DOE Class Waiver W(C)-2011-013; a signed certification by the private party(ies) that the Contractor offered the option to use CRADA and WFO alternatives (see Paragraph 7a) sufficiently that the private parties are aware of the relative costs and other differences between the ACT agreement and the CRADA and WFO alternatives; source of funds, including a statement that no Federal funds, including pass-through funds received as a subcontractor or partner, are being utilized to fund the agreement; applicable ES&H and NEPA documentation; a statement of consideration, summarizing the risk and/or consideration offered the private participants in exchange for charging beyond full cost recovery or for other compensation provided by the participants; and when multiple third parties are parties to the ACT Agreement, or otherwise requested by the Contracting Officer, an IP Management Plan that sets forth the proposed disposition of IP rights, and income and royalty sharing, among the parties to an ACT agreement.

- ii. If the Contractor, Contractor's parent, member, subsidiary, or other entity in which the Contractor, Contractor's parent, member or subsidiary has an equity interest, is a party to the ACT Agreement, the Contractor shall include as necessary a project-specific addendum to the Master OCI Plan in the Package to address special circumstances not fully anticipated in the prior approved Master OCI Plan (see Paragraph 7).
 - iii. If the ACT Agreement includes a foreign entity as a party or the statement of work includes the use of human subjects, animal subjects, classified or sensitive subject matter or describes a work scope involving high risks or hazards including environmental issues, the Contractor shall include additional information as necessary or as requested by the Contracting Officer.
- c. The Contracting Officer shall use reasonable best efforts to review each complete Package submitted by the Contractor under subparagraph b. of this Paragraph within ten (10) business days of receiving the Package and provide the Contractor with approval or non-approval of the Package. The review of the complete Package by the Contracting Officer shall include a determination that the proposed work: (1) is consistent with or complementary to DOE missions and the missions of the Facility; (2) will not adversely impact programs assigned to the Facility; (3) will not place the Facility in direct competition with the domestic private sector; and (4) will not create a detrimental future burden on DOE resources.
- d. Except as conditionally allowed under subparagraph i. below, the Contracting Officer must approve the Package before the Contractor may begin work under the proposed ACT Agreement. If the Contracting Officer rejects the Package then the Contracting Officer must provide said rejection to the Contractor in writing including the reasons for the rejection. Upon receipt of the Contracting Officer's written rejection, the Contractor agrees to not further pursue the work described in the package or incur additional costs under the Contract for the work described in the Package.
- i. The Contractor may request a preliminary determination that the proposed scope of work is consistent with the Facility mission and the Contracting Officer will use his/her best efforts to provide such a determination within three (3) business days. Upon such a determination from the Contracting Officer the Contractor may begin work under the ACT Agreement at the Contractor's risk pending final approval of the complete Package. The Contractor must submit a complete Package, as identified in subparagraph 4b above, within (10) business days of the preliminary determination.

All costs associated with the performance of work under a preliminary determination are the responsibility of the Contractor, as no Federal funds will be used to fund any work conducted under this Clause.

- ii. If the Contractor, Contractor's parent, member, subsidiary, or other entity in which the Contractor, Contractor's parent, member or subsidiary has an equity interest is a party sponsoring work in connection with the ACT agreement, work may not commence until approval of the complete Package by the Contracting Officer

5. *Advance Payment for ACT Projects.* The Contractor shall be responsible for providing adequate advance payment for ACT work conducted under this Clause consistent with procedures defined in the Department's Financial Management Handbook. The Contractor shall be solely responsible for collecting payments from third parties for any work conducted under this Clause and such collections shall be independent of providing advance payment. For such payments and for any costs, obligations, or liabilities arising due to the Contractor's work under this Clause, the Contractor is entirely at risk and the Government shall have no risk.
6. *Costs.* All direct costs associated with Contractor's work conducted under this Clause shall be directly charged to separate and identifiable accounts in accordance with the requirements of the Department's Financial Management Handbook. An allocable portion of indirect costs normally applied to equivalent work under this Contract shall also be applied to work conducted under this Clause in accordance with the requirements of the Financial Management Handbook. As required by the Financial Management Handbook, changes to the Handbook will be incorporated into this Clause by a unilateral administrative modification to the contract.
 - a. Work conducted under this Clause shall be excluded from Contract award fee calculations and such fee shall not be allocable to work conducted under this Clause.
 - b. No Federal funds will be used to fund work conducted under this Clause.
7. *Organizational Conflict of Interest.* Contractor shall conduct work under this Clause in a manner that minimizes the appearance of conflicts of interest and avoids or neutralizes actual conflicts of interest with Contractor's functions under this Contract. Accordingly, Contractor shall develop a Master Organizational Conflict of Interest Mitigation Plan (OCI Plan). The Master OCI Plan should address OCI issues that arise as a result of the Contractor taking a financial interest in ACT projects, especially in those cases where the Contractor retains rights in ACT IP. Such Master OCI Plan shall be provided to the Contracting Officer for review and approval as soon as practicable after execution of the Contract modification incorporating this Clause into the Contract. In addition to those elements expressly stated in the Master OCI Plan, the Department may condition any ACT transaction on such other mitigating conditions it determines are appropriate. The Master OCI Plan shall, at a minimum, include elements that address the following:
 - a. *Full Disclosure.* Before work can begin under an ACT transaction, all parties to ACT agreements must sign a DOE-approved certification that they have been fully informed about the availability of WFO agreements and CRADAs in addition to ACT. The certification at a minimum shall briefly describe WFO agreements, CRADAs and ACT, and will include the relative disposition of IP rights and the costs (including any additional compensation to the Contractor under ACT) under each agreement for the scope of work being proposed for the Laboratory.
 - b. *Priority of Work.* The Contractor shall not give work under ACT any special attention or priority over other work at the Laboratory. Work under ACT shall be approved by the Contracting Officer and assigned the same priority relative to other work at the Laboratory that it would normally have if performed under a non-Federal WFO

agreement. The Contracting Officer has discretion to determine the agency's priority of work, considering the Contractor's input.

- c. *Participation by Contractor-related Entity.* Where the Contractor, Contractor's parent, member, subsidiary, or other entity in which the Contractor, Contractor's parent, member or subsidiary has an equity interest, is a party to the ACT Agreement, the Contractor shall include as necessary an addendum to the Master OCI Plan to address special circumstances not fully anticipated in the Master OCI Plan.
 - d. *Right of Inquiry for ACT IP Designation.* DOE Patent Counsel may inquire into Contractor's designation of any invention or data as arising under an ACT transaction. Contractor is responsible for curing any defect identified in such inquiry, and if Contractor cannot adequately justify the designation or cure the defect, then the parties to the ACT agreement may receive modified rights in the IP to the degree necessary to resolve the issues identified by the inquiry.
8. *Intellectual Property.* Disposition of intellectual property (IP) arising from work conducted under this Clause shall be governed by Class Waiver W(C)-2011-013 (ACT Class Waiver) which is incorporated herein by reference.
- a. All Contractor ACT inventions shall be reported to DOE pursuant to the requirements of the DEAR 970.5227-10 clause of this Contract.
 - b. In reporting ACT inventions, the Contractor shall identify the ACT agreement under which the invention was made and specify the rights reserved by the Government pursuant to the ACT Class Waiver.
 - c. All technical data identified by the ACT client as ACT Protected Information shall also be marked to identify the ACT agreement under which the data was generated.
 - d. The Contractor shall ensure that all rights and obligations concerning ACT IP, including the appropriate IP provisions authorized in the ACT Class Waiver, are clearly provided in ACT agreements, and that all parties granted any rights in ACT IP are informed of the terms of the waived rights, including the rights reserved by the Government.
 - e. Where the Contractor receives ownership of license rights to ACT IP, the Contractor may elect to commercialize the ACT IP consistent with the Technology Transfer Mission clause of this Contract.
 - f. As an alternative to subparagraph e., the Contractor may elect to retain private ownership of the ACT IP and commercialize the IP using its private funds, where no costs for developing, patenting, and marketing will be allowable under this Contract. The Contractor will share royalties collected on ACT IP with inventors in accordance with paragraph (h) of the Technology Transfer Mission clause of this Contract.
 - g. Where terms and conditions governing Data and Subject Inventions under this Contract are inconsistent with the terms of the ACT Class Waiver, the ACT Class

Waiver will control. Except, as provided in this paragraph 8, licensing of ACT Subject Inventions the Contractor retains in its private capacity will not be subject to the Technology Transfer Mission clause of this Contract.

9. *Contractor Liability and Indemnification.*

a. *General Indemnity.*

- (i) The Contractor agrees to indemnify and hold harmless the Government, the Department, and persons acting on their behalf from all liability, including costs and expenses incurred, to any person, including the ACT Participants, for injury to or death of persons or other living things or injury to or destruction of property arising out of the performance of an ACT transaction by the Government, the Department, Contractor, or persons acting on their behalf, or arising out of the use of the services performed, materials supplied, or information given hereunder by any person including the Contractor, and not directly resulting from the fault or negligence of the Government, the Department, or persons (other than the Contractor) acting on their behalf.
- (ii) Subject to Contracting Officer approval, the General Indemnity set forth in (i) above may be modified or waived where: (1) ACT Participants are not providing material or equipment to the Contractor to be used in the performance of the Statement of Work under the ACT transaction; and (2) ACT Participants are not sending their employees to the Facility as part of the Statement of Work; and (3) the specific activities performed under the ACT transaction are normally performed by the DOE Contractor at the Facility.
- (iii) Notwithstanding the provisions in a (i) and a (ii) above, the Contractor shall indemnify and hold harmless the Government, the Department, and persons acting on their behalf for loss, damage, or destruction of Government property resulting from the fault or negligence of the Contractor. Such indemnification shall be subject to a liability limit of \$2,000,000 (two million dollars) per year, or such greater liability limit approved by the cognizant DOE/NNSA Program for the Facility. Above the applicable liability limit, Contractor's responsibility to the Government for such loss, damage or destruction shall be as set forth in the "Property" clause of this Contract.

b. *Intellectual Property Indemnity.* The Contractor shall indemnify the Government, its agents, and employees against liability, including costs, for infringement of any United States patent, copyright, or other intellectual property arising out of any acts required or directed to be performed under the Statement of Work under an ACT transaction to the extent such acts are not already performed at the Facility. Such indemnity shall not apply to a claimed infringement that is settled without the consent of the Contractor unless required by a court of competent jurisdiction.

c. *Product Liability Indemnity.*

- (i) Except for any liability resulting from any negligent acts or omissions of the Government, the Contractor agrees to indemnify the Government for all damages, costs, and expenses, including attorney's fees, arising from personal injury or

property damage occurring as a result of the making, using, or selling of a product, process, or service by or on behalf of the ACT Participants or the Contractor, their assignees, or licensees, which was derived from the work performed under ACT transactions. In respect to this clause, neither the Government nor the Contractor shall be considered assignees or licensees as a result of reserved Government rights in ACT IP. The indemnity set forth in this paragraph shall apply only if the Contractor shall have been informed as soon and as completely as practical by the Government of the action alleging such claim and shall have been given an opportunity, to the maximum extent afforded by applicable laws, rules, or regulations, to participate in and control its defense, and the Government shall have provided all reasonably available information and reasonable assistance requested by the Contractor. No settlement for which the Contractor would be responsible shall be made without the Contractor's consent, unless required by final decree of a court of competent jurisdiction.

- (ii) Where Contractor assigns the responsibility for indemnifying the Government under subsection c (i) above to other ACT Participants, DOE agrees to seek such indemnification from the Contractor only to the extent not satisfied after reasonable efforts to obtain indemnification from those other ACT Participants.
 - d. Claims and liabilities resulting from Contractor's performance of work under an ACT transaction authorized pursuant to this Clause shall not be subject to the Contract clause entitled "Insurance - Litigation and Claims." In no event shall the Contractor be reimbursed under the Contract for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, and judgment and settlements) incurred as a result of third party claims related to the Contractor's performance under this clause.
 - e. Contractor shall not include any guarantee or requirement that will obligate the Government to pay or incur any costs or create any liability on behalf of the Government in any ACT agreement or commitment the Contractor executes under authority of this Clause. The Contractor agrees if the Contractor does include such a guarantee or requirement, it will have no effect on the Government that is, the Contractor will be responsible for any costs or liability due to such a guarantee or requirement.
10. *ACT Records.* All records associated with Contractor's activities conducted under authority of this Clause shall be treated as Contractor-owned records under the provisions of the Access to and Ownership of Records clause of this Contract.
11. *Reports and Abstracts.* The Contractor shall produce the following deliverables for each ACT Agreement:
- a. An initial abstract suitable for public release at the time the ACT transaction is approved by DOE;
 - b. A non-proprietary final report, upon completion or termination of the Agreement, to include a list of subject inventions; and
 - c. Where pursuant to the ACT Class Waiver, the Government reserves the right to use generated data after the particular project expires, computer software in source and

executable object code format as defined within the statement of work or elsewhere within the Agreement.

12. *Termination of ACT Authority.* The PILOT Program implemented by this Clause will terminate consistent with the Department of Energy's termination of the ACT Pilot Program. The Government may provide the Contractor with written notice to terminate Contractor's authority to conduct work under this Clause at any time. If the Contractor's authority to conduct work under this Clause has expired or been terminated, the Contractor may be permitted, subject to any other provisions of this Clause, to complete any work that was DOE approved work at the time Contractor's authority to conduct work under this Clause was terminated by the Government.
13. *Successor Contractor.*
 - a. To minimize the potential for negative Government programmatic impact and to facilitate seamless transition of work to a successor contractor of the Facility, ACT Agreement(s) executed under this Clause and any contractual instruments associated therewith may be novated to the successor contractor with the mutual consent of the Contractor, the successor contractor, and the parties to the affected ACT Agreement(s). If the ACT Agreement(s) cannot be novated, then the Contractor as a private sponsor shall be permitted to enter into a Non-Federal Work for Other's agreement with the successor contractor that will enable completion of the statement of work. Such agreements shall be entered into pursuant to DOE WFO policies. DOE shall make good faith efforts to incorporate the terms of the applicable ACT Agreement.
 - b. The Contractor may retain private ownership of any individual piece of ACT IP that it obtained during the term of the Contract if the Contractor demonstrates:
 - (i) the ACT IP was successfully commercialized or deployed in the commercial marketplace using private funds; or
 - (ii) the Contractor expended at least \$20,000 (USD) of private funds for patenting, marketing, licensing, or maturing the ACT IP.
 - (iii) If the Contractor has not satisfied the criteria of Subparagraph b. to this Paragraph, then the Contractor and Contracting Officer, with input from the DOE Patent Counsel providing oversight to the Facility shall, prior to expiration or termination of the Contract, enter into negotiations to determine an equitable distribution of rights in the affected ACT IP. Such negotiations shall consider the equities of the parties with respect to each piece of intellectual property including, at a minimum, the private expenditures made by the Contractor for patenting, marketing, licensing, and maturing the ACT IP up to the date of Contract expiration or termination; which party is best positioned to appropriately commercialize the ACT IP; and any other equities that may apply under the circumstances.
14. *Minimum Reporting Requirements for ACT Activities.* During the ACT PILOT, the Contractor shall maintain records of its activities related to ACT in a manner and to the

extent satisfactory to DOE and specifically including, but not limited to the number of ACT agreements, the amount of funds reimbursed to DOE for work under ACT, the number of private sector entities engaged through ACT that had not previously engaged the Laboratory and the number that had not previously engaged any DOE/NNSA laboratory, the amount of funds reimbursed to DOE by newly engaged entities, the number of parties and types of entities engaged in each individual ACT agreement, and the number of invention disclosures, licenses and start-ups arising from ACT. The Contractor shall obtain from each entity engaged in ACT the entity's reason(s) for selecting ACT for laboratory engagement. Also during the PILOT, the Contractor shall report the above-identified data semiannually to DOE and in such a format which will serve to adequately inform DOE of the Contractor's activities under ACT while protecting any data not subject to disclosure under this Contract. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.

CLAUSE H.42 - RISK MANAGEMENT AND INSURANCE PROGRAMS

Contractor officials shall ensure that the requirements set forth below are applied in the establishment and administration of DOE-funded prime cost reimbursement contracts for management and operation of DOE facilities and other designated long-lived onsite contracts for which the contractor has established separate operating business units.

1. BASIC REQUIREMENTS

- a. Maintain commercial insurance or a self-insured program, (i.e., any insurance policy or coverage that protects the contractor from the risk of legal liability for adverse actions associated with its operation, including malpractice, injury, or negligence) as required by the terms of the contract. Types of insurance include automobile, general liability, and other third party liability insurance. Other forms of coverage must be justified as necessary in the operation of the Department facility and/or the performance of the contract, and approved by the DOE.
- b. Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (See DEAR 970.5070, Indemnification, and DEAR 950.70, Nuclear Indemnification of DOE Contractors).
- c. Demonstrate that insurance programs and costs comply with the cost limitations and exclusions at FAR 28.307, Insurance Under Cost Reimbursement Contracts, FAR 31.205-19, Insurance and Indemnification, DEAR 952.231-71 Insurance-Litigation and Claims, and DEAR 970.5228-1, Insurance-Litigation and Claims.
- d. Demonstrate that the insurance program is being conducted in the government's best interest and at reasonable cost.
- e. The contractor shall submit copies of all insurance policies or insurance arrangements to the Contracting Officer no later than 30 days after the purchase date.
- f. When purchasing commercial insurance, the contractor shall use a competitive process to ensure costs are reasonable.
- g. Ensure self-insurance programs include the following elements:

2. Compliance with criteria set forth in FAR 28.308, Self-Insurance. Approval of self-insurance is predicated upon submission of verifiable proof that the self-insurance charge does not exceed the cost of purchased insurance. This includes hybrid plans (i.e., commercially purchased insurance with self-insured retention (SIR) such as large deductible, matching deductible, retrospective rating cash flow plans, and other plans where insurance reserves are under the control of the insured). The SIR components of such plans are self-insurance and are subject to the approval and submission requirements of FAR 28.308, as applicable.

3. Demonstration of full compliance with applicable state and federal regulations and related professional administration necessary for participation in alternative insurance programs.
4. Safeguards to ensure third party claims and claims settlements are processed in accordance with approved procedures.
5. Accounting of self-insurance charges.
6. Accrual of self-insurance reserve. The Contracting Officer's approval is required and predicated upon the following:
 - a. The claims reserve shall be held in a special fund or interest bearing account.
 - b. Submission of a formal written statement to the Contracting Officer stating that use of the reserve is exclusively for the payment of insurance claims and losses, and that DOE shall receive its equitable share of any excess funds or reserve.
 - c. Annual accounting and justification as to the reasonableness of the claims reserve submitted for Contracting Officer's review.
 - d. Claim reserves, not payable within the year the loss occurred, are discounted to present value based on the prevailing Treasury rate.
 - e. Separately identify and account for interest cost on a Letter of Credit used to guarantee self-insured retention, as an unallowable cost and omitted from charges to the DOE contract.
 - f. Comply with the Contracting Officer's written direction for ensuring the continuation of insurance coverage and settlement of incurred and/or open claims and payments of premiums owed or owing to the insurer for prior DOE contractors.

7. PLAN EXPERIENCE REPORTING.

The Contractor shall:

- a. Provide the Contracting Officer with annual experience reports for each type of insurance (e.g., automobile and general liability), listing the following for each category:
 - (1) The amount paid for each claim.
 - (2) The amount reserved for each claim.
 - (3) The direct expenses related to each claim.
 - (4) A summary for the year showing total number of claims.
 - (5) A total amount for claims paid.

(6) A total amount reserved for claims.

(7) The total amount of direct expenses.

- b. Provide the Contracting Officer with an annual report of insurance costs and/or self-insurance charges. When applicable, separately identify total policy expenses (e.g., commissions, premiums, and costs for claims servicing) and major claims during the year, including those expected to become major claims (e.g., those claims valued at \$100,000 or greater).
- c. Provide additional claim financial experience data as may be requested on a case-by-case basis.

8. TERMINATING OPERATIONS.

The Contractor shall:

- a. Ensure protection of the government's interest through proper recording of cancellation credits due to policy terminations and/or experience rating.
- b. Identify and provide continuing insurance policy administration and management requirements to a successor, other DOE contractor, or as specified by the Contracting Officer.
- c. Reach agreement with DOE on the handling and settlement of self-insurance claims incurred but not reported at the time of contract termination; otherwise, the contractor shall retain this liability.

9. SUCCESSOR CONTRACTOR OR INSURANCE POLICY CANCELLATION.

The Contractor shall:

- a. Obtain the written approval of the Contracting Officer for any change in program direction; and
- b. Ensure insurance coverage replacement is maintained as required and/or approved by the Contracting Officer.

CLAUSE I.3 – FAR 52.203-5 COVENANT AGAINST CONTINGENT FEES (MAY 2014)

- (a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.
- (b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

CLAUSE I.5 – FAR 52.203-7 ANTI-KICKBACK PROCEDURES (MAY 2014)

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause,

(1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and

(2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The 41 U.S.C. chapter 87, Kickbacks, prohibits any person from --

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)

(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may

(i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or

(ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$150,000.

**CLAUSE I.6 – FAR 52.203-8 - CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS
FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)**

(a) If the Government receives information that a contractor or a person has violated 41 U.S.C. 2102-2104, Restriction on Obtaining and Disclosing Certain Information, the Government may -

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which --

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct violates 41 U.S.C. 2102 for the purpose of either --

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct punishable under 41 U.S.C. 2105(a).

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

**CLAUSE I.7 – FAR 52.203-10 – PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR
IMPROPER ACTIVITY (MAY 2014)**

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of 41 U.S.C. 2102 or 2103, as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be --

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award-fee contracts --

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may --

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the statute by its

subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

**CLAUSE I.12 – FAR 52.203-17 – CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS
AND REQUIREMENT TO INFORM EMPLOYEES OF
WHISTLEBLOWER RIGHTS (APR 2014)**

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

**CLAUSE I.18 - FAR 52.208-8 - REQUIRED SOURCES FOR HELIUM AND HELIUM USAGE
DATA (APR 2014)**

(a) Definitions.

"Bureau of Land Management," as used in this clause, means the Department of the Interior, Bureau of Land Management, Amarillo Field Office, Helium Operations, located at 801 South Fillmore Street, Suite 500, Amarillo, TX 79101-3545.

"Federal helium supplier" means a private helium vendor that has an in-kind crude helium sales contract with the Bureau of Land Management (BLM) and that is on the BLM Amarillo Field Office's Authorized List of Federal Helium Suppliers available via the Internet at http://www.blm.gov/nm/st/en/fo/Amarillo_Field_Office.html.

"Major helium requirement" means an estimated refined helium requirement greater than 200,000 standard cubic feet (scf) (measured at 14.7 pounds per square inch absolute pressure and 70 degrees Fahrenheit temperature) of gaseous helium or 7510 liters of liquid helium delivered to a helium use location per year.

(b) Requirements --

(1) Contractors must purchase major helium requirements from Federal helium suppliers, to the extent that supplies are available.

(2) The Contractor shall provide to the Contracting Officer the following data within 10 days after the Contractor or subcontractor receives a delivery of helium from a Federal helium supplier --

- (i) The name of the supplier;
- (ii) The amount of helium purchased;
- (iii) The delivery date(s); and
- (iv) The location where the helium was used.

(c) *Subcontracts* --The Contractor shall insert this clause, including this paragraph (c), in any subcontract or order that involves a major helium requirement.

CLAUSE 1.21 – FAR 52.209-10 - PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS (DEC 2014)

(a) *Definitions.* As used in this clause--

"Inverted domestic corporation" means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

"Subsidiary" means an entity in which more than 50 percent of the entity is owned—

(1) Directly by a parent corporation; or

(2) Through another subsidiary of a parent corporation.

(b) If the contractor reorganizes as an inverted domestic corporation or becomes a subsidiary of an inverted domestic corporation at any time during the period of performance of this contract, the Government may be prohibited from paying for Contractor activities performed after the date when it becomes an inverted domestic corporation or subsidiary. The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

(c) Exceptions to this prohibition are located at 9.108-2.

CLAUSE I.31 – FAR 52.219-4 - NOTICE OF PRICE EVALUATION FOR HUBZONE SMALL BUSINESS CONCERNS (OCT 2014)

(a) *Definition.* See 13 CFR 125.6(e) for definitions of terms used in paragraph (d).

(b) *Evaluation preference.*

(1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference; and

(ii) Otherwise successful offers from small business concerns.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) When the two highest rated offerors are a HUBZone small business concern and a large business, and the evaluated offer of the HUBZone small business concern is equal to the evaluated offer of the large business after considering the price evaluation preference, award will be made to the HUBZone small business concern.

(c) *Waiver of evaluation preference.* A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraphs (d) and (e) of this clause do not apply if the offeror has waived the evaluation preference.

___ Offer elects to waive the evaluation preference.

(d) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction.

(i) At least 15 percent of the cost of contract performance to be incurred for personnel will be spent on the prime contractor's employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the prime contractor's employees or on a combination of the prime contractor's employees and employees of HUBZone small business concern subcontractors;

(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns; or

(4) Construction by special trade contractors.

(i) At least 25 percent of the cost of contract performance to be incurred for personnel will be spent on the prime contractor's employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the prime contractor's employees or on a combination of the prime contractor's employees and employees of HUBZone small business concern subcontractors;

(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns.

(e) A HUBZone joint venture agrees that the aggregate of the HUBZone small business concerns to the joint venture, not each concern separately, will perform the applicable percentage of work requirements.

(f)

(1) When the total value of the contract exceeds \$25,000, a HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business concern manufacturers.

(2) When the total value of the contract is equal to or less than \$25,000, a HUBZone small business concern nonmanufacturer may provide end items manufactured by other than a HUBZone small business concern manufacturer provided the end items are produced or manufactured in the United States.

(3) Paragraphs (f)(1) and (f)(2) of this section do not apply in connection with construction or service contracts.

(g) Notice. The HUBZone small business offeror acknowledges that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this contract. The HUBZone offeror shall provide the Contracting Officer a copy of the notice required by 13 CFR 126.501 if material changes occur before contract award that could affect its HUBZone eligibility. If the apparently successful HUBZone offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will proceed to award to the next otherwise successful HUBZone small business concern or other offeror.

CLAUSE I.32 – FAR 52.219-8 - UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2014)

(a) *Definitions.* As used in this contract--

"HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

"Service-disabled veteran-owned small business concern"—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) "Service-disabled veteran" means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Small disadvantaged business concern, consistent with 13 CFR 124.1002," means a small business concern under the size standard applicable to the acquisition, that--

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by--

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

"Veteran-owned small business concern" means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern--

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(c) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(d)

(1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(2) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management database or by contacting the SBA. Options for contacting the SBA include—

(i) HUBZone small business database search application Web page at
http://dsbs.sba.gov/dsbs/search/clsp_searchhubzone.cfm; or
<http://www.sba.gov/hubzone>;

(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416; or

(iii) The SBA HUBZone Help Desk at hubzone@sba.gov.

CLAUSE I.33 – FAR 52.219-9 – SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2014)

(a) This clause does not apply to small business concerns.

(b) *Definitions.* As used in this clause—

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

“Commercial item” means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

“Electronic Subcontracting Reporting System (eSRS)” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

“Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business concerns, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and with women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

- (i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
- (ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);
- (iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;
- (iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;
- (v) Total dollars planned to be subcontracted to HUBZone small business concerns;
- (vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and
- (vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to --

- (i) Small business concerns,
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns, and
- (vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the System for Award Management (SAM), veterans service organizations, the National Minority Purchasing Council Vendor

Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with --

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns (including ANC and Indian tribes);
and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$650,000 (\$1.5 million for construction of any public facility with further subcontracting possibilities) to adopt a plan similar to the plan that complies with the requirements of this clause.

(10) Assurances that the offeror will --

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit the Individual Subcontracting Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with the paragraph (I) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(v) Provide its prime contract number, its DUNS number, and the e-mail address of the offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating --

- (A) Whether small business concerns were solicited and if not, why not;
- (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
- (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
- (D) Whether HUBZone small business concerns were solicited and, if not, why not;
- (E) Whether small disadvantaged business concerns were solicited and if not, why not;
- (F) Whether women-owned small business concerns were solicited and if not, why not; and
- (G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact --

- (A) Trade associations;
- (B) Business development organizations;
- (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
- (D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through --

- (A) Workshops, seminars, training, etc., and
- (B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

- (1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
 - (2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.
 - (3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.
 - (4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the SAM database or by contacting SBA.
 - (5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.
 - (6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.
- (f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided --
- (1) The master plan has been approved;
 - (2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one plan. When a modification meets the criteria in 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with—

(1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(iii) The authority to acknowledge receipt or reject the *ISR* resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) *SSR*.

(i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$650,000 (over \$1.5 million for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

**CLAUSE I.39 – FAR 52.222-4 - CONTRACT WORK HOURS AND SAFETY STANDARDS-
OVERTIME COMPENSATION (MAY 2014)**

(a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37).

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards statute.

(d) *Payrolls and basic records.*

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower-tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

CLAUSE I. 40 – FAR 52.222-11 - SUBCONTRACTS (LABOR STANDARDS) (MAY 2014)

(a) *Definition.* "Construction, alteration or repair," as used in this clause means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

- (1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;
- (2) Painting and decorating;
- (3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;
- (4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the "site of the work" as defined in the FAR clause at 52.222-6, Construction Wage Rate Requirements of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of the work" definition; and
- (5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Construction Wage Rate Requirements, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the "site of the work" definition).

(b) The Contractor or subcontractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—

- (1) Construction Wage Rate Requirements;
- (2) Contract Work Hours and Safety Standards -- Overtime Compensation (if the clause is included in this contract);
- (3) Apprentices and Trainees;
- (4) Payrolls and Basic Records;
- (5) Compliance with Copeland Act Requirements;
- (6) Withholding of Funds;
- (7) Subcontracts (Labor Standards);
- (8) Contract Termination – Debarment;

(9) Disputes Concerning Labor Standards;

(10) Compliance with Construction Wage Rate Requirements and Related Regulations;
and

(11) Certification of Eligibility.

(c) The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).

(d)

(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

I.44 – FAR 52.222-35 - EQUAL OPPORTUNITY FOR VETERANS (JUL 2014)

(a) *Definitions.* As used in this clause--

"Active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," "qualified disabled veteran," and "recently separated veteran" have the meanings given at FAR 22.1301.

(b) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) *Subcontracts.* The Contractor shall insert the terms of this clause in subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

**CLAUSE I.45 – FAR 52.222-36 – EQUAL OPPORTUNITY FOR WORKERS WITH
DISABILITIES (JUL 2014)**

(a) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60.741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

CLAUSE I.46 – FAR 52.222-37 - EMPLOYMENT REPORTS ON VETERANS (JUL 2014)

(a) *Definitions.* As used in this clause, "Armed Forces service medal veteran," "disabled veteran," "active duty wartime or campaign badge veteran," and "recently separated veteran," have the meanings given in FAR 22.1301.

(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on--

(1) The total number of employees in the contractor's workforce, by job category and hiring location, who are disabled veterans, other protected veterans (*i.e.*, active duty wartime or campaign badge veterans), Armed Forces service medal veterans, and recently separated veterans;

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of disabled veterans, other protected veterans (*i.e.*, active duty wartime or campaign badge veterans), Armed Forces service medal veterans, and recently separated veterans; and

(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

(c) The Contractor shall report the above items by completing the Form VETS-100A, entitled "Federal Contractor Veterans' Employment Report (VETS-100A Report)."

(d) The Contractor shall submit VETS-100A Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date--

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-100A. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

(g) The Contractor shall insert the terms of this clause in subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(7) Scanner--A commercially available imaging product that functions as an electro-optical device for converting information into electronic images that can be stored, edited, converted, or transmitted, primarily in a personal computing environment. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as scanners.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Federally controlled facility, only imaging equipment that, at the time of submission of proposals and at the time of award, was EPEAT silver-registered or gold-registered.

(c) For information about EPEAT®, see www.epa.gov/epeat.

CLAUSE I.57A – FAR 52.223-13 ACQUISITION OF EPEAT® – REGISTERED IMAGING EQUIPMENT (JUN 2014) (ALTERNATE I) (JUN 2014)

(a) *Definitions.* As used in this clause--

"Imaging equipment" means the following products:

(1) Copier--A commercially available imaging product with a sole function of the production of hard copy duplicates from graphic hard-copy originals. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as copiers or upgradeable digital copiers (UDCs).

(2) Digital duplicator--A commercially available imaging product that is sold in the market as a fully automated duplicator system through the method of stencil duplicating with digital reproduction functionality. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as digital duplicators.

(3) Facsimile machine (fax machine)--A commercially available imaging product whose primary functions are scanning hard-copy originals for electronic transmission to remote units and receiving similar electronic transmissions to produce hard-copy output. Electronic transmission is primarily over a public telephone system but also may be via computer network or the Internet. The product also may be capable of producing hard copy duplicates. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as fax machines.

(4) Mailing machine--A commercially available imaging product that serves to print postage onto mail pieces. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as mailing machines.

(5) Multifunction device (MFD)--A commercially available imaging product, which is a physically integrated device or a combination of functionally integrated components, that performs two or more of the core functions of copying, printing, scanning, or faxing. The copy functionality as addressed in this definition is considered to be distinct from single-sheet convenience copying offered by fax machines. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as MFDs or multifunction products.

(6) Printer--A commercially available imaging product that serves as a hard-copy output device and is capable of receiving information from single-user or networked computers, or other input devices (e.g., digital cameras). The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as printers, including printers that can be upgraded into MFDs in the field.

**CLAUSE I.57B – FAR 52.223-14 ACQUISITION OF EPEAT® – REGISTERED TELEVISIONS
(JUN 2014) (ALTERNATE I) (JUN 2014)**

(a) *Definitions.* As used in this clause—

“Television or TV” means a commercially available electronic product designed primarily for the reception and display of audiovisual signals received from terrestrial, cable, satellite, Internet Protocol TV (IPTV), or other digital or analog sources. A TV consists of a tuner/receiver and a display encased in a single enclosure. The product usually relies upon a cathode-ray tube (CRT), liquid crystal display (LCD), plasma display, or other display technology. Televisions with computer capability (e.g., computer input port) may be considered to be a TV as long as they are marketed and sold to consumers primarily as televisions.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for Contractor use at a Federally controlled facility, only televisions that, at the time of submission of proposals and at the time of award, were EPEAT® silver-registered or gold-registered.

(c) For information about EPEAT®, see www.epa.gov/PEAT.

**CLAUSE I.59 – FAR 52.223-16 – ACQUISITION OF EPEAT® -REGISTERED PERSONAL
COMPUTER PRODUCTS (JUN 2014) (ALTERNATE I) (JUN
2014)**

(a) *Definitions.* As used in this clause—

“Computer” means a device that performs logical operations and processes data. Computers are composed of, at a minimum:

- (1) A central processing unit (CPU) to perform operations;
- (2) User input devices such as a keyboard, mouse, digitizer, or game controller; and
- (3) A computer display screen to output information. Computers include both stationary and portable units, including desktop computers, integrated desktop computers, notebook computers, thin clients, and workstations. Although computers must be capable of using input devices and computer displays, as noted in (2) and (3) above, computer systems do not need to include these devices on shipment to meet this definition. This definition does not include server computers, gaming consoles, mobile telephones, portable hand-held calculators, portable digital assistants (PDAs), MP3 players, or any other mobile computing device with displays less than 4 inches, measured diagonally.

“Computer display” means a display screen and its associated electronics encased in a single housing or within the computer housing (e.g., notebook or integrated desktop computer) that is capable of displaying output information from a computer via one or more inputs such as a VGA, DVI, USB, DisplayPort, and/or IEEE 1394-2008™, Standard for High Performance Serial Bus. Examples of computer display technologies are the cathode-ray tube (CRT) and liquid crystal display (LCD).

“Desktop computer” means a computer where the main unit is intended to be located in a permanent location, often on a desk or on the floor. Desktops are not designed for portability and utilize an external computer display, keyboard, and mouse. Desktops are designed for a broad range of home and office applications.

“Integrated desktop computer” means a desktop system in which the computer and computer display function as a single unit that receives its AC power through a single cable. Integrated desktop computers come in one of two possible forms:

- (1) A system where the computer display and computer are physically combined into a single unit; or
- (2) A system packaged as a single system where the computer display is separate but is connected to the main chassis by a DC power cord and both the computer and computer display are powered from a single power supply. As a subset of desktop computers, integrated desktop computers are typically designed to provide similar functionality as desktop systems.

“Notebook computer” means a computer designed specifically for portability and to be operated for extended periods of time either with or without a direct connection to an AC power source.

Notebooks must utilize an integrated computer display and be capable of operation off of an integrated battery or other portable power source. In addition, most notebooks use an external power supply and have an integrated keyboard and pointing device. Notebook computers are typically designed to provide similar functionality to desktops, including operation of software similar in functionality to that used in desktops. Docking stations are considered accessories for notebook computers, not notebook computers. Tablet PCs, which may use touch-sensitive screens along with, or instead of, other input devices, are considered notebook computers.

"Personal computer product" means a computer, computer display, desktop computer, integrated desktop computer, or notebook computer.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for Contractor use at a Federally controlled facility, only personal computer products that, at the time of submission of proposals and at the time of award, were EPEAT® silver-registered or gold-registered.

(c) For information about EPEAT, see www.epa.gov/epeat.

**CLAUSE I.65 – FAR 52.225-1 – BUY AMERICAN – SUPPLIES (MAY 2014); MODIFIED BY
DEAR 970.2570 (NOV 2010)**

(a) *Definitions.* As used in this clause--

"Commercially available off-the-shelf (COTS) item"—

(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into an end product.

"Cost of components" means--

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic end product" means—

(1) An unmanufactured end product mined or produced in the United States;

(2) An end product manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap

generated, collected, and prepared for processing in the United States is considered domestic; or

(ii) The end product is a COTS item.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) 41 U.S.C. chapter 83, Buy American, provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (See 12.505(a)(1)).

(c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(d) The Contractor shall use only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Certificate."

CLAUSE I.67 – FAR 52.225-9 - BUY AMERICAN-CONSTRUCTION MATERIALS (MAY 2014)

(a) *Definitions.* As used in this clause--

"Commercially available off-the-shelf (COTS) item"—

(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means--

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Domestic construction material" means—

(1) An unmanufactured construction material mined or produced in the United States;

(2) A construction material manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

"Foreign construction material" means a construction material other than a domestic construction material.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) *Domestic preference.*

(1) This clause implements the 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR 12.505(a)(2)). The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows:
_____ [Contracting Officer to list applicable excepted materials or indicate "none"]

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) *Request for determination of inapplicability of the Buy American statute.*

(1)

(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including--

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) *
Item 1			
Foreign construction material			
Domestic construction material			
Item 2			
Foreign construction material			
Domestic construction material			

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

*[*Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]*

**CLAUSE I.69 – FAR 52.225-21 – REQUIRED USE OF AMERICAN IRON, STEEL, AND
MANUFACTURED GOODS--BUY AMERICAN STATUTE -
CONSTRUCTION MATERIALS (MAY 2014)**

(a) *Definitions.* As used in this clause—

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site.

"Domestic construction material" means the following—

(1) An unmanufactured construction material mined or produced in the United States. (The Buy American statute applies.)

(2) A manufactured construction material that is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States. (Section 1605 of the Recovery Act applies.).

"Foreign construction material" means a construction material other than a domestic construction material.

"Manufactured construction material" means any construction material that is not unmanufactured construction material.

"Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"Unmanufactured construction material" means raw material brought to the construction site for incorporation into the building or work that has not been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(b) Domestic preference.

(1) This clause implements—

(i) Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring, unless an exception applies, that all manufactured construction material in the project is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives); and

(ii) 41 U.S.C chapter 83, Buy American, by providing a preference for unmanufactured construction material mined or produced in the United States over unmanufactured construction material mined or produced in a foreign country.

(2) The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraph (b)(3) and (b)(4) of this clause.

(3) This requirement does not apply to the construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate "none"]

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable;

(A) The cost of domestic manufactured construction material, when compared to the cost of comparable foreign manufactured construction material, is unreasonable when the cumulative cost of such material will increase the cost of the contract by more than 25 percent;

(B) The cost of domestic unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of comparable foreign unmanufactured construction material by more than 6 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

(iii) The application of the restriction of section 1605 of the Recovery Act to a particular manufactured construction material would be inconsistent with the public interest or the application of the Buy American statute to a particular unmanufactured construction material would be impracticable or inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act or the Buy American statute.

(1)

(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to section 1605 of the Recovery Act or the Buy American statute applies, use of foreign construction material is noncompliant with section 1605 of the American Recovery and Reinvestment Act or the Buy American statute.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Cost Comparison

Construction material description	Unit of measure	Quantity	Cost (dollars)
			*
Item 1:			
Foreign construction material			
Domestic construction material			
Item 2			
Foreign construction material			
Domestic construction material			

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.] [Include other applicable supporting information.]

*Include all delivery costs to the construction site.]

CLAUSE I.74 – FAR 52.230-2 - COST ACCOUNTING STANDARDS (MAY 2014)

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall --

(1) *(CAS-covered Contracts Only)* By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)

(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C.6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under 41 U.S.C. chapter 71, Contract Disputes.

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$700,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

CLAUSE I.76 – FAR 52.232-17 - INTEREST (MAY 2014)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Certified Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in paragraph (e) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(c) Final Decisions. The Contracting Officer will issue a final decision as required by 33.211 if—

(1) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(2) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(3) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(d) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(e) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(f) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(1) The date on which the designated office receives payment from the Contractor;

(2) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(g) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

CLAUSE I.77 – FAR 52.232-24 - PROHIBITION OF ASSIGNMENT OF CLAIMS (MAY 2014)

The assignment of claims under the Assignment of Claims Act of 1940 "31 U.S.C. 3727, 41 U.S.C. 6305" is prohibited for this contract.

CLAUSE I.79 – FAR 52.233-1 - DISPUTES (MAY 2014) (ALTERNATE I) (DEC 1991)

(a) This contract is subject to 41 U.S.C. chapter 71, Contract Disputes.

(b) Except as provided in 41 U.S.C. chapter 71, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under 41 U.S.C. chapter 71 until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under 41 U.S.C. chapter 71. The submission may be converted to a claim under 41 U.S.C. chapter 71, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)

(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)

(i) The contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in 41 U.S.C. chapter 71.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from

(1) the date that the Contracting Officer receives the claim (certified, if required); or

(2) the date that payment otherwise would be due, if that date is later, until the date of payment.

With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

CLAUSE I.88 – FAR 52.244-6 - SUBCONTRACTS FOR COMMERCIAL ITEMS (OCT 2014)

(a) *Definitions.* As used in this clause—

“Commercial item” has the meaning contained Federal Acquisition Regulation 2.101, Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)

(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (41 U.S.C. 3509), if the subcontract exceeds \$5,000,000 and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) 52.219-8, Utilization of Small Business Concerns (Oct 2014) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iv) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(v) 52.222-35, Equal Opportunity for Veterans (Jul 2014) (38 U.S.C. 4212(a));

(vi) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).

(vii) 52.222-37, Employments Reports on Veterans (Jul 2014) (38 U.S.C. 4212).

(viii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.

(ix) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).

(x) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Jul 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(ix) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Dec 2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

(xii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

APPENDIX A

ADVANCE UNDERSTANDING ON HUMAN RESOURCES

**Applicable to the Operations of
Brookhaven National Laboratory**

BROOKHAVEN NATIONAL LABORATORY

ADVANCE UNDERSTANDING ON HUMAN RESOURCES

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I. INTRODUCTION

- (a) This Advance Understanding is intended to document the principles and measures for evaluation of the Contractor's Human Resources Management (CHRM) programs and other items of allowable personnel costs and related expenses not specifically addressed elsewhere under this contract.
- (b) The Contractor shall select, manage, and direct its work force and apply its human resource policies in general conformity with its private operations and/or industrial practices insofar as they are consistent with this contract. Any changes to the personnel policies or practices in place as of the effective date of this contract which would increase costs, is subject to approval in advance by the Contracting Officer. Any programs or policies initiated for corporate application, permanently or for a finite period, that will impact staffing levels or compensation costs (i.e., furloughs or salary cuts) will not be applicable to Laboratory employees or employees otherwise funded through this contract, without prior approval of the Contracting Officer.
- (c) The Laboratory's programs will comply with the Federal Acquisition Regulation (FAR) cost principles and FAR contract clauses, as supplemented by the Department of Energy Acquisition Regulation (DEAR), for all Human Resources programs. The Contractor shall use effective management review procedures and internal controls to assure compliance with the FAR and DEAR as well as to ensure that the cost limitation set forth herein are not exceeded, and that areas which require prior approval of the DOE Contracting Officer or designated representative are reviewed and approved prior to incurrence of costs.
- (d) This Appendix A may be modified from time to time by agreement of the Parties. Either Party may, at any time, request that this Appendix A be revised, and the Parties hereto agree to negotiate in good faith concerning any requested revision. Revisions to this Appendix A shall be accomplished by executing modification to the prime contract.
- (e) The Laboratory Director may make exceptions to the provisions of Appendix A when such exceptions are in the best interest of contract operations or will facilitate or enhance contract performance and are approved in advance by the Contracting Officer.
- (f) The Contractor, or designated representative, shall promptly furnish all reports and information required or otherwise indicated in this Advance Understanding to the Contracting Officer. The Contractor recognizes that the Contracting Officer or designated representative may make other data requests from time to time and the Contractor agrees to cooperate in meeting requests.
- (g) It is understood that no provision of this Appendix can affect any right guaranteed to a bargaining unit employee by the terms of a Collective Bargaining Agreement.

SECTION II - HUMAN RESOURCES STRATEGY, BUSINESS PLANNING AND PERFORMANCE MANAGEMENT

The Laboratory Business Plan highlights areas important to DOE and aligns with critical contract vision components. The HR Business Plan, which is subordinate to the Laboratory Business Plan, will be reviewed with DOE representatives at least annually. Any significant changes to the HR business practices shall be submitted to the DOE Contracting Officer for approval. Contract performance metrics and measures will be developed in partnership with DOE and are detailed in the Appendix B entitled "Performance Evaluation and Measurement Plan."

CHRM performance objectives and targets will align with, and facilitate the achievement of the Laboratory mission; be limited in number; focus on strategic results, systems-based measures, and assessment against industry best practices; be developed annually and mutually agreed upon by the Contractor and DOE in accordance with Appendix B entitled "Performance Evaluation and Measurement Plan"; be reviewed periodically to target key strategic objectives and results; and include outcomes that result in cost effective management of laboratory human resources to support accomplishment of DOE and Laboratory mission, strategy and objectives.

SECTION III - COMPENSATION

(a) Salary Increases.

- (1) Any combination of salary increases for an individual in a single calendar year, including merit increases and those resulting from reclassification and promotion, which result in a salary that is 25% greater than the employee's salary prior to the increase shall require prior approval by the Laboratory Director. Salary increases that exceed 15% shall be reported annually to the Contracting Officer.
- (2) An administrative stipend may be paid to an employee who is temporarily assigned responsibilities of a higher level position or other significant duties not part of the employee's regular position. The sum of stipend and base salary shall not exceed the maximum salary of the higher level position. The Associate Laboratory Director for Human Resources' approval, at least, is required for all stipends. The Laboratory Director must authorize administrative stipends that exceed 15% of the appointee's annual base salary. The entire amount of the stipend shall be removed when the employee reverts back to their original position. All stipends shall be reported annually to the Contracting Officer.
- (3) Notwithstanding any other term or condition set forth in this Contract, the Contracting Officer's approval of compensation actions pursuant to Clause H.21, Employee Compensation Pay and Benefits, will consider:

- A. relative alignment of proposed salaries with subordinate levels;

- B. available market data, comparing total-cash compensation;
- C. total compensation relative to the Executive Compensation Benchmark Amount established periodically by the Office of Federal Procurement Policy (OFPP).

(b) Compensation Increase Plan (CIP).

- (1) The Contractor shall submit the CIP proposal not later than 60 days prior to the start of the new salary cycle.
- (2) In order to pay "on-market-on-average," in the calculation of market position, Laboratory salary data shall be matched to survey data as of the midpoint of the salary cycle (i.e., July 1 for a 1/1-12/31 salary cycle).
- (3) The CIP shall be expressed as a percentage of the reimbursed base payroll for the end of the preceding salary cycle (i.e., the base payroll for 12/31 for a 1/1-12/31 salary cycle)
- (4) The Contractor is authorized a Promotion/Adjustment fund of up to 1% of base reimbursed payroll. Additional funding for promotions/adjustments shall be included in the CIP request as a discrete line item.

(c) Payment of Joint Appointees and Seconded Individuals.

- (1) Joint Appointees and Seconded Individuals shall be paid at the salary and fringe benefit rates established by the home institution, for the percentage of time worked at the host institution.
- (2) The contractor shall provide a quarterly report of Joint Appointees and Seconded Individuals in a format approved by the Contracting Officer.

SECTION IV - ANCILLARY PAY COMPONENTS

(a) Premium Pay.

The Contractor is authorized to provide shift differentials and other premium pay, reporting allowances, meal allowances, and hazardous duty pay, as approved by the Contracting Officer.

(b) Extended Work Week.

When deemed essential to the performance of work under this contract, an extended work week may be established at the Laboratory or any portion thereof.

(c) Medical Evacuation Services/Insurance.

Employees required to perform official travel to foreign countries where local care is substandard (according to U.S. standards) may have coverage that pays for evacuation services to an acceptable medical facility in a proximal location on an urgent or emergency basis. The policy shall cover evacuation, expatriation of remains, and ancillary costs associated with the incident. Costs for such coverage for eligible employees are allowable.

- (d) Foreign Travel.
Allowances payable for official travel in foreign areas will be at rates established by the Secretary of State.

SECTION V - PAYMENTS ON TERMINATION OF EMPLOYMENT

- (a) Sick Leave. The payment of accumulated sick leave upon termination is unallowable unless provided in a Contractor's written policy where the Contracting Officer has granted prior approval.
- (b) Vacation. The Contractor is authorized to pay for accumulated vacation upon termination at the rate in effect as of the date of termination, including any shift differential.

- (c) Termination for Administrative Convenience.

An employee dismissed for the administrative convenience of the Laboratory may in appropriate circumstances be given a termination payment of two weeks' pay. An individual employee may be considered for other termination pay for other administrative reasons with the approval of the Director and the Contracting Officer.

SECTION VI - LABOR RELATIONS

- (a) Collective Bargaining.

Costs of fringe benefits and wages paid to employees under collective bargaining agreements are allowable. All other reasonable costs and expenses, such as expenses relating to the grievance process, arbitration and arbitration awards, and other costs and expenses incurred pursuant to applicable collective bargaining agreements and revisions thereto, are also allowable.

- (b) Collective Bargaining Agreements.

The Contractor shall provide copies of collective bargaining agreements to the Contracting Officer as they are ratified or modified.

(c) Bargaining Unit Activity.

Pay for absences from work by employees acting in the capacity of union officers, union stewards and committee members for time spent in handling grievances, negotiating with the Laboratory, and serving on labor management (Laboratory) committees, are allowable.

(d) Grievances.

The contractor shall submit by May 31 and November 30 a semi-annual report on all third-step grievances or other grievances for which further judicial or administrative proceedings are anticipated. Generally documents relevant to the third step grievance do not have to be included in the report; however, the report should provide the following information:

- (1) List of all third step grievances filed during the previous six-month period and dates the third step grievances were filed;
- (2) A brief description of issues regarding the grievance (a few sentences to no more than a paragraph);
- (3) If settled, the date of settlement, and terms of the settlement. If a denial is made at the third step and the period for requesting arbitration passes, report the matter as closed.
- (4) If not settled during the six-month reporting period, carry over the item to subsequent six-month reporting periods until settlement, request for arbitration, closure, or other proceeding occurs.

SECTION VII – STAFF SETTLEMENT COSTS

- (a) Staff Settlement Costs - The Contractor is authorized to resolve claims settlements up to \$25,000 without the advance approval of the Contracting Officer. Workers' compensation claims settlements shall be in accordance with Clause H.25, Workers' Compensation Insurance.

SECTION VIII – PROGRAMS INVOLVING EMPLOYEE ABSENCE FROM THE WORKPLACE

(a) Paid Leave.

The Laboratory will provide a reasonable and cost effective paid leave program approved by the Contracting Officer.

(b) Sabbaticals/Temporary Assignments of Laboratory Employees to Other Institutions for Teaching and Research.

The Contractor shall be reimbursed for expenditures consistent with Contracting Officer approved Laboratory policy arising out of an approved employee assignment to another institution for teaching and/or research if the assignment does not exceed one year. However, DOE requires thirty (30) calendar days prior written notice.

(c) Military Leave.

Military leave and associated pay is authorized in accordance with Contractor policies, and/or State or Federal law.

(d) Security Leave.

Wages or salaries paid to employees when access authorization is suspended by DOE will be allowable costs under the following conditions:

If a position which does not require access authorization is not available, the Laboratory Director or designee may place the employee on leave with pay at his or her base compensation until final disposition of the case. Leave with pay requires the Contracting Officer's concurrence that no position is available to which the employee might reasonably be transferred.

(e) Temporary Domestic Assignment Allowances.

Temporary domestic assignment allowances shall be consistent with AL 2013-01 dated October 18, 2012 entitled "Contractor Domestic Extended Personnel Assignments," which may be revised from time to time, and Contractor policy consistent with the aforementioned AL.

SECTION IX – EMPLOYEE TRAINING, EDUCATION AND DEVELOPMENT

- (a) The Laboratory Director or designee shall send an annual report to the Contracting Officer providing the number of employees participating in training, education and development programs and the dollars spent.
- (b) The Laboratory shall establish training, education and development programs that are consistent with DOE requirements and guidance, industry standards, and other Federal, State and local regulations. These programs shall ensure that employees are well-qualified and competent to manage facilities and meet mission requirements through administrative, professional and technical excellence.

(1) Training.

The Laboratory may permit selected employees to attend training classes while receiving full pay in order to enable them to acquire the needed skills to qualify them for more responsible jobs and maintain competence in their field.

(2) Education.

- (A) The Laboratory may approve and support educational courses taken by employees which serve to improve efficiency and productivity of Laboratory operations, increase needed skills, or prepare employees for increased responsibilities.
- (B) An employee or third party on behalf of an employee may be paid for tuition, required textbooks and fees for courses approved in advance by the Laboratory.

(3) Development.

The Contractor shall be reimbursed for the cost of development programs, including but not limited to, apprenticeship training, supervisory training, management development, career updating and redirection, and work-study and other programs supporting the development of staff in fields of interest to the Laboratory.

SECTION X - EMPLOYEE PROGRAMS

(a) Awards.

Annually the contractor shall provide the Contracting Officer with reports on the individual award program expenditures. The contractor may only expend up to an amount previously approved by the Contracting Officer.

The contractor may expend an amount not to exceed 1.5% (0.015) of the Laboratory's January 1 reimbursed base payroll for the awards identified under (1), (2), and (3) below:

(1) Service/Retirement/Non-Performance awards.

The contractor is authorized to provide monetary or non-monetary recognition for achievements not based on performance. Awards may include, for example, Length of Service/Retirement Recognition; Safety Awards; Patent Awards; Suggestion Program.

(2) Performance award programs.

The Contractor may recognize employees or groups of employees who have distinguished themselves by their significant contributions and outstanding performance in the course of their work. Awards may be provided to employees or groups of employees in the form of cash.

Additionally, noteworthy achievements and special efforts may be recognized by the presentation of plaques, certificates, and memorabilia.

(3) Performance Incentives and Other Non-Base Compensation Programs.

The Contractor may expend non-base compensation amounts in payments to employees in accord with programs submitted to and approved by the DOE Contracting Officer, including, but not limited to, senior management incentives, project incentives, strategic skill stipends, and lump sum amounts in lieu of salary increases. If the contractor deviates from approved program parameters, the contractor shall seek prior approval from the Contracting Officer.

Annually the Contractor shall provide the Contracting Officer with reports on the individual award program expenditures.

(b) Cost of Health Services.

The contractor shall be reimbursed for the costs of operating a Health Unit for Laboratory employees, including but not limited to the following: Pre-employment physicals and other medical examinations required to meet Laboratory employment requirements, medical care for occupational injuries and to provide relief for minor physical complaints of employees while at the Laboratory, and health examinations provided as a health service for employees.

(c) Other.

(1) The contractor may develop, administer and support a variety of employee programs. These programs may include athletic, cultural, and family activities. Participant fees may be collected to partially offset the cost of some or all of these activities. Profits from group buying services operated for the benefit of all employees may be used to assist in the support of the recreation program. Appropriate facilities, utilities, and maintenance may be provided by the Laboratory. Entertainment costs, including costs of amusement, diversions, and social activities are unallowable, as well as directly related costs such as tickets, meals, alcohol, lodging, rentals, transportation and gratuities.

(2) Wellness program. Costs of a Wellness Program to promote employee health and fitness are allowable. This program shall be limited to activities related to stress management, tobacco cessation, exercise, nutrition, weight loss, health education, flu and other recommended adult vaccinations, health risk factor identification, and counseling related to these activities..

(3) Employee Assistance Program. The contractor shall:

(A) Maintain a program of preventive services, education, short- term counseling, coordination with and referrals to outside agencies, and

follow-up upon return to work that conforms to the requirements of 10 CFR 707.6, Employee Assistance, Education, and Training;

- (B) Submit for approval by the Contracting Officer any changes to the Employee Assistance Program implementation plan;
- (C) Prepare and submit information to DOE concerning Employee Assistance Program services as requested by the Contracting Officer. Such reports shall not include individual identifiers.
- (4) Employee Communications. The costs incurred in the publication, printing and distribution of a newsletter, handbooks and other employee communication media designed to effectuate better employee relations and understanding of Appendix A and current employment regulations shall be reimbursed.
- (5) Lectureship Program.

The Laboratory is authorized to maintain a Lectureship Program under which distinguished scientists, and other experts on such subjects as diversity and leadership, are invited to the Laboratory to deliver a program, and to be available to members of the staff for discussion of such subjects. Specific programs include, but are not limited to, the BSA Distinguished Lectureship Program, the Pegram Lectureship Program, and the Brookhaven Women in Science Lectureship Program.

The lecturer may be paid travel expenses in accordance with DOE travel reimbursement requirements and be given, without charge, the use of an on-site apartment. Lecture fees or honorariums provided to a lecturer that exceeds \$5,000 for any single lecture event or total lectureship costs (including all fees, honorariums and travel expenses) that will exceed \$100,000 in any calendar year require Contracting Officer approval.

SECTION XI - COSTS OF RECRUITING PERSONNEL

- (a) On an annual basis, the Laboratory will conduct workforce planning, documented in the form of a plan, and submit it to the Contracting Officer for review and approval. The Plan will identify critical skills necessary to meet mission and contract requirements, provide an updated gap analysis, and outline that year's strategy for the recruitment and retention of those skills, as well as for any necessary restructuring.
- (b) The Contractor may incur costs for the recruitment of personnel (except as expressly prohibited in FAR Part 31), as follows:
 - (1) Costs of advertising and agency and consultant fees.

- (2) Recruiting Expenses - The Laboratory may reimburse, consistent with other provisions of this contract, employees traveling for recruiting purposes, the actual cost incurred for the following expenses: transportation, lodging, and meals for prospective employees and, when approved, for spouses or representatives of academic institutions, professional societies and other scientific organizations and incidental expenses incurred in recruiting.
 - (3) Costs associated with pre-employment screening, including pre-placement physical examination, shall be allowable.
- (c) Recruitment/Retention Tools.
- (1) The Contractor may pay a sign-on bonus of up to \$20,000, to recruit employees with critical skills.
 - (2) An annual retention bonus of up to 20% of an employee's base salary is authorized to retain employees with critical skills. The retention incentive shall not exceed 30% of the employee's salary when combined with other variable pay components in a year. Contracting Officer approval is required for retention bonuses exceeding a period of 5 years.
 - (3) The Contractor is authorized to provide service credit of up to 10 years to critical skill new-hires for previous relevant experience at another DOE facility or external organization. Credited service under a critical skills policy may be used to determine accrual rate for vacation benefits.
 - (4) Costs associated with an Employee Referral Award Program (ERAP). The ERAP program was instituted in order to reward employees who refer successful candidates for employment. For certain specified jobs, BNL employees may recommend applicants to the HR Division and subsequently receive a monetary award if the referral is hired. An award of \$1,000 will be made for referral and hire for an exempt level position; \$500 for referral for a non-exempt hire. Payment will be made after the referred candidate has completed 90 days of employment. Referring employee must still be at the Laboratory to be eligible.

SECTION XII – REDUCTIONS IN CONTRACTOR EMPLOYMENT

Reductions in employment will be conducted in accordance with the contractor's personnel management policies and practices and in accordance with applicable Departmental guidance on workforce restructuring, as revised from time to time.

(a) Work Force Transition.

In implementing the annual Workforce Plan required in Section XI (a), the Laboratory will develop appropriate work force transition strategies consistent with restructuring objectives contained in the Department's "Planning Guidance for Contractor Work Force Restructuring."

(b) Workforce Restructuring Actions.

- (1) The Contractor will notify or request approval of workforce restructuring actions in accordance with the following:

RESTRUCTURING ACTION	#EMPLOYEES POTENTIALLY IMPACTED	ACTION REQUIRED
Voluntary	50-99	CO Notification
Voluntary	100+	CO Approval
Involuntary	50+	CO Approval

- (A) Notifications will include a business case outlining the drivers necessitating restructuring activity, an implementation strategy and communication plan.
 - (B) Actions requiring approval will additionally require a workforce restructuring plan prepared in accordance with DOE policy.
 - (C) Notifications and Approval actions shall be submitted a minimum of 10 business days prior to announcement to employees.
 - (D) Waivers or self-select forms that vary from those provided in DOE policy documents are subject to approval by DOE.
- (2) Any employee who volunteers for layoff or retirement during a time period in which the Contractor has a DOE approved or Laboratory Management approved active reduction in force plan or action will be eligible for severance pay provided the termination is accepted by Laboratory management and results in the retention of an employee who otherwise would have been laid off. Severance not associated with workforce restructuring is unallowable.

(3) Severance Pay Benefit.

- (A) Eligibility. All regular employees who work at least 20 hours per week are eligible on the first day of employment. Term employees are eligible after 6 months of employment.
 - (B) Severance Pay Benefit. 1 week of base pay for each of the first 10 years of service; 1.5 weeks of base pay for each of the next 5 years of service; and 2 weeks of base pay for years of service above 15 years. For active non-union employees, the maximum severance benefit provided by the Plan is 39 weeks of Base Pay with a cap of \$50,000.
- (4) Pay in Lieu of Notice. Any employee who is involuntarily separated due to a work force restructuring may be given, up to two weeks, pay in lieu of the required minimum written notice of termination. Pay in lieu of notice exceeding this amount

requires prior Contracting Officer approval. Accumulated vacation credit is also paid.

- (5) The Contractor, to the extent practicable, shall provide outplacement services in the forms of skills assessment and resume preparation to those employees who are involuntarily separated due to a layoff.

(c) Displaced Worker Medical Benefit.

Contractor employees who separate from employment voluntarily or involuntarily (other than for cause) and who were eligible for medical insurance coverage under the contractor's plan at the time of separation from employment are eligible for medical coverage under the DOE Displaced Workers' Medical Benefits Program, provided they are not eligible for coverage under another plan, e.g. another employer's group health plan, the contractor's retiree medical plan, a spouse's medical plan, or Medicare, based on the following schedule:

- (1) First Year: The contractor's contribution for an active employee.
- (2) Second Year: One half of the contractor's Cobra premium.
- (3) Third and Subsequent Years: Reasonable administrative costs that exceed the two percent administrative fee paid by the displaced worker.

Eligibility is determined in accordance with Departmental guidance on workforce restructuring.

SECTION XIII – EMPLOYEE BENEFITS

(a) Energy Employees' Occupational Illness Compensation Program Act (EEOICPA).

The Laboratory agrees to comply with requests for information, records, and other program requirements to ensure the orderly administration and adjudication of claims under the EEOICPA.

(b) Dependent Care Facilities.

The Laboratory is authorized to provide a dependent care benefit program consistent with the written directions of the Contracting Officer.

The Contractor shall sub-contract the operation of the dependent care center, unless otherwise approved by the Contracting Officer. Support costs for labor, materials, and supplies expended for the operation of a dependent care facility shall not be allowable under any circumstances unless the facility is for the exclusive use of Laboratory employees, users, and guests and except for any expense items such as

utilities, maintenance, food services, medical services, or supplies already used in support of site operations and readily available. The cost of meals shall not be allowable.

(c) Adoption Assistance

The Laboratory may reimburse employees up to \$5,000 for costs associated with the adoption of an unrelated minor child. If both of the adoptive parents are employees, up to \$10,000 may be reimbursed. Reimbursable costs may include attorney fees, agency fees, court costs, transportation costs and medical costs.

APPENDIX C

SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT

**Applicable to the Operations of
Brookhaven National Laboratory**

APPENDIX C

SPECIAL FINANCIAL INSTITUTION ACCOUNT

History of Amendments

<u>Amendments</u>	<u>Dated</u>
Original Letter of Credit	December 22, 1997
Amendment to Agreement	April 3, 2003
Amendment to Agreement	April 8, 2004
Amendment to Agreement	September 29, 2004
Amendment to Agreement	November 30, 2007
Amendment to Agreement	December 31, 2009
Amendment to Agreement	May 3, 2010
Amendment to Agreement	January 5, 2015
Amendment to Agreement	February 10, 2015

CHECKS-PAID METHOD OF LETTER OF CREDIT FINANCING

This agreement is entered into this First day of January 1998, between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as DOE); Associated Universities, Inc., corporation/legal entity existing under the laws of the State of New York, or successor contractor, (hereinafter referred to as the Contractor); and Chase Manhattan Bank, a banking institution wholly owned by Chase Manhattan Corporation, existing under the laws of the State of New York, located at 55 Water Street, Room 718, New York City, NY 10041, (hereinafter referred to as the Bank).

RECITALS

- (a) On the effective date of August 21, 1995, DOE and the Contractor entered into Modification No. MJ27 of Contract No. DE-AC02-76CH00016, or successor contract, providing for transfer of funds on a payments-cleared basis.
- (b) DOE requires that amounts transferred to the Contractor thereunder be deposited in a Special Demand Deposit Account at a financial institution covered by the U.S. Department of Treasury - approved Government deposit insurance organizations that are identified in I TFM 6-9000.

These special demand deposits must be kept separate from the Contractor's general or other funds; and the parties are agreeable to so depositing said amounts with the Bank.

- (c) The special demand deposit account shall be designated Associated Universities, Inc. (or successor Contractor)/Brookhaven National Laboratory General Operating Account.

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that:

- (1) The Government shall have a title to the credit balance in said account to secure the repayment of all funds transferred to the Contractor and said title shall be superior to any lien or claim of the Bank or others with respect to such accounts.
- (2) The provisions of said contract(s) between DOE and the Contractor relating to the transfer of funds into and withdrawal of funds from the special demand deposit account, but the Bank shall not be responsible for the application of funds withdrawn from said account. After receipt by the Bank of directions from DOE, the Bank shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by the Bank from the Government upon DOE stationary and purporting to be signed by, or signed at the written direction of, the Government may, insofar as the rights, duties, and liabilities of the Bank are concerned, be considered as having been properly issued and filed with the Bank by DOE.
- (3) DOE, or its authorized representatives, shall have access to financial records maintained by the Bank with respect to such a special demand deposit account at all reasonable times and for all reasonable purposes, including, but without limitation to, the inspection or copying of such financial records and any or all memoranda, payment requests, correspondence, or documents pertaining thereto. Such financial records shall be preserved by the Bank for a period of six (6) years after the final payment under this Agreement.

- (4) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the special demand deposit account, the Bank will promptly notify the Department of Energy at the Chicago Operations Office, 9800 S. Cass Avenue, Argonne, Illinois 60439.
- (5) DOE shall authorize funds that shall remain available to the extent that obligations that have been incurred in good faith thereunder by the Contractor [Associated Universities, Inc., or successor Contractor] to the Bank for the benefit of the special demand deposit account. The Bank agrees to honor upon presentation for payment all payments issued by the Contractor and to restrict all withdrawals against the funds authorized to an amount sufficient to maintain the average daily balance in the special demand deposit account in a net positive as close to zero as administratively possible.

If the calculated average daily balance for the month, inclusive of the time deposit account, results in a positive account balance which exceeds the balance needed to cover transaction costs for that month, and the financial institution had no control over the positive balance, the financial institution will compensate DOE for the loss of the availability of funds by multiplying the average daily balance for the month by the Treasury Tax and Loan Funds Rate divided by 12. If the financial institution caused the positive account balance, it shall compensate by multiplying the excess fund balance by the Federal Funds Rate adjusted for the proper period of time. The compensation will be remitted to the cognizant DOE finance office.

The Bank agrees to service the account in this manner based on the requirements and specifications contained in this Agreement, in consideration of the placement by DOE of a noninterest-bearing time deposit in an amount agreed upon. The Bank agrees that per item costs, detailed in the Attachment C "Quotation Pricing Sheet" contained in the Bank's aforesaid bid will remain constant during the term of this Agreement, but may be reviewed for adequacy at the request of either party, with a formal review required semiannually. The contractor will withdraw \$565,000 in funds from the special demand deposit account in the Bank. This account will hereinafter be defined as the time deposit account. The funds in the time deposit will remain on deposit and shall not be withdrawn or used for any purposes without the authorization of DOE. The amount of the deposit may be adjusted upward or downward but only with the approval of DOE.

- (6) The Bank will post collateral, acceptable under Department of Treasury Circular No. 176, with the Federal Reserve Bank in amount equal to the net balances (including the noninterest-bearing time deposit account) in all of the accounts included in this Agreement.
- (7) This Agreement, with all its provisions and covenants, shall be in effect for a term of two years, beginning on the first day of January, 1998, and ending through the thirty-first day of December, 1999.
- (a) DOE may extend the term of this Agreement for an additional one year term by written notice to the Contractor and the Bank provided that DOE shall give the Contractor and Bank a preliminary written notice of its interest at least 90 days before this Agreement expires. The preliminary notice does not commit DOE to an extension.
- (b) If the DOE exercises this option, the extended agreement shall be considered to include this option provision.
- (c) The duration of the Agreement, including the exercise of any options under this Covenant, shall not extend past December 31, 2000.

- (8) DOE or the Contractor may terminate this Agreement at any time within the agreement period submitting written notice to the other parties 90 (ninety) days prior to the desired termination date. The specific provisions for operating the account during the 90 (ninety) day period are contained in Covenant (11).
- (9) DOE or the Contractor may terminate this Agreement at any time within the agreement period upon 30 days written notice to the bank if DOE or the Contractor, or both parties find that the bank has failed to substantially perform its obligations under this Agreement or that the Bank is performing its obligations in a manner that precludes administering the program in a effective and efficient manner or that precludes the effective utilization of the Government's cash resources.
- (10) Notwithstanding the provisions of Covenants 8 and 9, in the event the contract (referenced in Recital (a) between the DOE and the Contractor) is not renewed or is terminated, this Agreement between DOE, the Contractor and the Bank may be terminated automatically by DOE or will be assignable to a successor Contractor upon the delivery of written notice to the Bank.
- (11) In the event of termination or expiration the Bank agrees to retain the Contractor's special demand deposit account for an additional 90-day period to clear outstanding payment items. Within seven (7) days of expiration of the agreement an analysis of the special demand deposit account shall be made by the DOE to determine whether an insufficient or excessive balance was maintained in the time deposit account to compensate the Bank for services rendered up to the expiration date.
 - (a) If the analysis indicates that the Bank has been insufficiently compensated for services rendered up to the expiration of the Agreement, the Contractor shall:
 - (1) Maintain on deposit, during this 90 day period; sufficient Federal funds to reimburse the Bank for prior cumulative loss of earnings, and
 - (2) Maintain on deposit in the time deposit account sufficient Federal funds to compensate the bank for services rendered.
 - (b) If the analysis indicates that the Bank has been overcompensated for services rendered up to the expiration of the Agreement, DOE shall close out the time deposit account and secure from the Bank a payment in an amount equal to the cumulative excess compensation less compensation for estimated services to be rendered during the 90-day period.
 - (c) If cumulative excess compensation is not sufficient to compensate the Bank for services rendered during the 90-day period, adjustments will be made to the time deposit account to compensate the Bank for the difference between the cost of services rendered during the 90-day period and the cumulative excess compensation.

During the entire 90 day period, it is further understood that:

- (a) The Bank shall maintain collateral in an amount sufficient to collateralize the highest balance in the account, less Federal Deposit Insurance Corporation coverage on the accounts.
- (b) All service charges shall be consistent with the amounts reflected in this Agreement.
- (c) All terms and conditions of the aforesaid bid submitted by the Bank which are not inconsistent with this 90-day additional term shall remain in effect

(d) This agreement shall continue in effect, with exception of the following:

- (1) Funds Authorized (Covenant 5)
- (2) Term Agreement (Covenant 7).
- (3) Termination of Agreement (Covenant 8 and 9).

The Bank has submitted the forms entitled "Offeror Representations and Certifications" and "Quotation Pricing Sheet," the latter of which includes the calculation of required compensating balance. These forms have been accepted by the Contractor and the Government and are incorporated herein with the document entitled "Financial Institution's Information on the Checks-Paid Letter of Credit" as an integral part of this agreement.

Any direction received by the Bank from DOE which alters any portion of the terms and conditions of this agreement, including the amount of the time deposit agreed to herein, shall not be valid unless signed by the Contracting Officer.

IN WITNESS WHEREOF the parties hereto have caused this Agreement which consists of 5 pages including the signature pages, to be executed as of the day and year first above written.

12-5-97
Date Signed

WITNESS

(Typed Name of Witness)

(Signature of Witness)

Note-In case of corporation,
Witness not required. Type
Names under all signatures.

ROBERT P. GORDON
CONTRACTING OFFICER
By _____
(Typed name of Contracting Officer)

[Signature]
(Signature of Contracting Officer)

Associated Universities, Inc.

(Typed Name of Contractor)

By Jerome Hudis

(Typed Name of Contractor's Representative)

[Signature]
(Signature of Contractor's Representative)

Vice President and Controller

(Title)

1400 16th Street, N.W.
Washington, DC 20036

(Address)

December 3, 1997

(Date of Signature)

(Typed Name of Witness)

The Chase Manhattan Bank

(Typed Name of Bank)

(Signature of Witness)

By Joseph M. Bognanno

(Name of Bank Representative)

[Signature]
(Signature of Bank Representative)
*See attached letter.

Vice President

(Title)

One Chase Square - Tower 8
Rochester, NY 14643

(Address)

December 22, 1997

(Date of Signature)

NOTE-The Contractor, if a corporation, should cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and the Certificate.

CERTIFICATE

I, Leland F. Willis, certify that I am the Vice President of
Environmental Safety and Health of the corporation named as Contractor herein; that
Jerome Hudis, who signed this Agreement on behalf of
the Contractor was then Vice President and Controller of said corporation; that
said Agreement was duly signed for and in behalf of said corporation by authority of its
governing body, and is within the scope of its corporate powers.

 (Signature) _____ (Corporate Seal)

NOTE-Bank Depository, if a corporation, should cause the following certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and the Certificate.

CERTIFICATE

I, _____, certify that I am the _____
Of the corporation named as Bank Depository herein: that _____,
Who signed this Agreement on behalf of the Bank Depository was then _____
Of said corporation, the said Agreement was duly signed for and in behalf of said corporation by
Authority of its governing body, and is within the scope of corporate powers.

_____ (Corporate Seal)
(Signature)

AG(C)

**AMENDMENT TO AGREEMENT
CHECKS-PAID METHOD OF LETTER OF CREDIT FINANCING**

This is an Amendment to the Agreement entered into the First day of January 1998 between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as DOE); Associated Universities, Inc., corporation/legal entity existing under the laws of the State of New York, or successor contractor, (hereinafter referred to as the Contractor); and Chase Manhattan Bank, a banking institution wholly owned by Chase Manhattan Corporation, existing under the laws of the State of New York, located at 55 Water Street, Room 718, New York City, NY 10041, (hereinafter referred to as the Bank).

WHEREAS, the parties entered into an Agreement dated the First day of January 1998 entitled "Checks-Paid Method of Letter of Credit Financing;" and

WHEREAS, Brookhaven Science Associates, LLC succeeded Associated Universities, Inc., as the Contractor for Brookhaven National Laboratory effective the First day of March 1998; and

WHEREAS, The Chase Manhattan Corporation merged with J.P. Morgan & Co. Incorporated on December 31, 2000; and

WHEREAS, the parties have proceeded under the aforesaid Agreement from the First day of March 1998 until the date hereof; and

WHEREAS, the parties are desirous of formally extending the term of the aforesaid Agreement;

NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. The Term of the Agreement with all its provisions and covenants is hereby extended through the Fourth day of January 2004.
2. DOE may extend the Term of the Agreement for an additional period of time to be contemporaneous with any extension of time granted by DOE to the Contractor for the operation of Brookhaven National Laboratory, provided DOE gives written notice to the Contractor and the Bank at least ninety days prior to the Fourth day of January 2004. Such notice shall not commit DOE to the extension, which shall only occur after a formal amendment to the agreement is executed by the parties.

NOTE: The Contractor, if a Company, should cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Amendment and the Certificate.

CERTIFICATE

I, Gregory Fess, certify that I am the Secretary of the Company named as Contractor herein; that Brian P. Sack, who signed this Amendment on behalf of the Contractor was then Chief Financial Officer of said Company; that said Amendment was duly signed for and in behalf of said Company by authority of its governing body, and is within the scope of its Company powers.

Gregory Fess (Company Seal)
Signature

NOTE: Bank Repository, if a Corporation, should cause the following certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Amendment and the Certificate.

CERTIFICATE

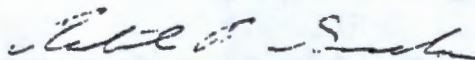
I, Margaret E. Garvin, certify that I am ~~the~~ an Assistant Secretary of the Corporation named as Bank Depository herein; that Joseph M. Bugnare who signed this Amendment on behalf of the Bank Depository was then a Vice President of said Corporation; that said Amendment was duly signed for and in behalf of said Corporation by authority of its governing body, and is within the scope of its corporate powers.

M. E. Garvin (Corporate Seal)
Signature

IN WITNESS WHEREOF the parties hereto have caused this Amendment which consists of three pages including the signature pages, to be executed as of the day and year first above written.

4-4-03
Date Signed

By: Robert P. Gordon, Contracting Officer
(Typed Name of Contracting Officer)


(Signature of Contracting Officer)

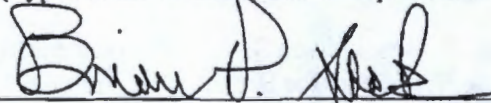
WITNESS

(Typed Name of Witness)

Brookhaven Science Associates, LLC
(Typed name of Contractor)

(Signature of Witness)

By: Brian P. Sack
(Typed name of Contractor's Representative)


(Signature of Contractor's Representative)

Note-In case of Company.
Witness not required. Type
names under all signatures.

Chief Financial Officer
(Title)

P.O. Box 5000, Bldg. 460, Upton, NY 11973
(Address)

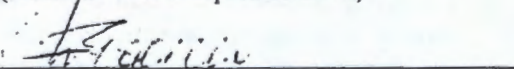
4/2/03
(Date of Signature)

(Typed Name of Witness)

JPMorgan Chase Bank
(Typed name of Bank)

(Signature of Witness)

By: Joseph M. Bognanno
(Name of Bank Representative)


(Signature of Bank Representative)

Note-In case of Company.
Witness not required. Type
names under all signatures.

Vice President
(Title)

One Chase Square-Tower 10, Rochester, NY 14643
(Address)

4/5/03
(Date of Signature)

**AMENDMENT TO AGREEMENT
CHECKS-PAID METHOD OF LETTER OF CREDIT FINANCING**

This is an Amendment to the Agreement entered into the First day of January 1998 between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as DOE); Associated Universities, Inc., corporation/legal entity existing under the laws of the State of New York, or successor contractor, (hereinafter referred to as the Contractor); and Chase Manhattan Bank, a banking institution wholly owned by Chase Manhattan Corporation, existing under the laws of the State of New York, located at 55 Water Street, Room 718, New York City, NY 10041, (hereinafter referred to as the Bank).

WHEREAS, the parties entered into an Agreement dated the First day of January 1998 entitled "Checks-Paid Method of Letter of Credit Financing;" and

WHEREAS, Brookhaven Science Associates, LLC succeeded Associated Universities, Inc., as the Contractor for Brookhaven National Laboratory effective the First day of March 1998; and

WHEREAS, The Chase Manhattan Corporation merged with J.P. Morgan & Co. Incorporated on December 31, 2000; and

WHEREAS, the parties have proceeded under the aforesaid Agreement from the First day of March 1998 until the date hereof; and

WHEREAS, the parties are desirous of formally extending the term of the aforesaid Agreement;

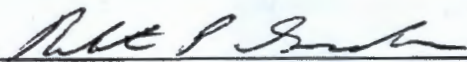
NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. The Term of the Agreement with all its provisions and covenants is hereby extended through the Second day of July 2004.
2. DOE may extend the Term of the Agreement for an additional period of time to be contemporaneous with any extension of time granted by DOE to the Contractor for the operation of Brookhaven National Laboratory. Such notice shall not commit DOE to the extension, which shall only occur after a formal amendment to the agreement is executed by the parties.

IN WITNESS WHEREOF the parties hereto have caused this Amendment which consists of three pages including the signature pages, to be executed as of the day and year first above written.

Date Signed

By: Robert P. Gordon, Contracting Officer
(Typed Name of Contracting Officer)


(Signature of Contracting Officer)

WITNESS

(Typed Name of Witness)

Brookhaven Science Associates, LLC
(Typed name of Contractor)

(Signature of Witness)

By: Brian P. Sack
(Typed name of Contractor's Representative)


(Signature of Contractor's Representative)

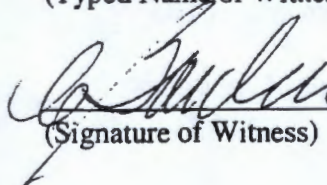
Note-In case of Company,
Witness not required. Type
names under all signatures.

Chief Financial Officer
(Title)

P.O. Box 5000, Bldg. 460, Upton, NY 11973
(Address)

(Date of Signature)

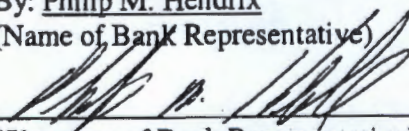
Catherine I. Bowden
(Typed Name of Witness)


(Signature of Witness)

Note-In case of Company,
Witness not required. Type
names under all signatures.

JPMorgan Chase Bank
(Typed name of Bank)

By: Philip M. Hendrix
(Name of Bank Representative)


(Signature of Bank Representative)

Vice President
(Title)

One Chase Square-Tower 10, Rochester, NY 14643
(Address)

April 8, 2004
(Date of Signature)

NOTE: The Contractor, if a Company, should cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Amendment and the Certificate.

CERTIFICATE

I, Gregory Fess, certify that I am the Secretary of the Company named as Contractor herein; that Brian P. Sack, who signed this Amendment on behalf of the Contractor was then Chief Financial Officer of said Company; that said Amendment was duly signed for and in behalf of said Company by authority of its governing body, and is within the scope of its Company powers.

Gregory Fess (Company Seal)
Signature

NOTE: Bank Repository, if a Corporation, should cause the following certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Amendment and the Certificate.

CERTIFICATE

I, Margaret E. Garrity, certify that I am ~~the~~ an Assistant Secretary of the Corporation named as Bank Depository herein; that Philip M. Hendrix, who signed this Amendment on behalf of the Bank Depository was then a Vice President of said Corporation; that said Amendment was duly signed for and in behalf of said Corporation by authority of its governing body, and is within the scope of its corporate powers.

Meggy (Corporate Seal)
Signature

**AMENDMENT TO AGREEMENT
CHECKS-PAID METHOD OF LETTER OF CREDIT FINANCING**

This is an Amendment to the Agreement entered into the First day of January 1998 between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as DOE); Associated Universities, Inc., corporation/legal entity existing under the laws of the State of New York, or successor contractor, (hereinafter referred to as the Contractor); and Chase Manhattan Bank, a banking institution wholly owned by Chase Manhattan Corporation, existing under the laws of the State of New York, located at 55 Water Street, Room 718, New York City, NY 10041, (hereinafter referred to as the Bank).

WHEREAS, the parties entered into an Agreement dated the First day of January 1998 entitled "Checks-Paid Method of Letter of Credit Financing;" and

WHEREAS, Brookhaven Science Associates, LLC succeeded Associated Universities, Inc., as the Contractor for Brookhaven National Laboratory effective the First day of March 1998; and

WHEREAS, The Chase Manhattan Corporation merged with J.P. Morgan & Co. Incorporated on December 31, 2000; and

WHEREAS, the parties have proceeded under the aforesaid Agreement from the First day of March 1998 until the date hereof; and

WHEREAS, the parties are desirous of formally extending the term of the aforesaid Agreement;

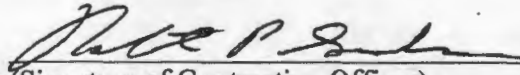
NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. The Term of the Agreement with all its provisions and covenants is hereby extended through the Fourth day of January, 2008.
2. DOE may extend the Term of the Agreement for an additional period of time to be contemporaneous with any extension of time granted by DOE to the Contractor for the operation of Brookhaven National Laboratory. Such notice shall not commit DOE to the extension, which shall only occur after a formal amendment to the agreement is executed by the parties.

IN WITNESS WHEREOF the parties hereto have caused this Amendment which consists of three pages including the signature pages, to be executed as of the day and year first above written.

Sept 29, 2004
Date Signed

By: Robert P. Gordon, Contracting Officer
(Typed Name of Contracting Officer)


(Signature of Contracting Officer)

WITNESS

(Typed Name of Witness)

Brookhaven Science Associates, LLC
(Typed name of Contractor)

(Signature of Witness)

By: Brian P. Sack
(Typed name of Contractor's Representative)


(Signature of Contractor's Representative)

Note-In case of Company,
Witness not required. Type
names under all signatures.

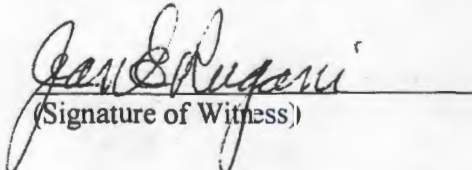
Chief Financial Officer
(Title)

P.O. Box 5000, Bldg. 460, Upton, NY 11973
(Address)

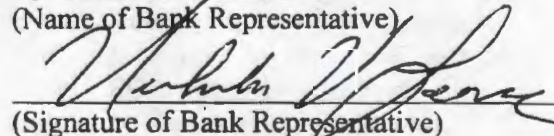
September 29, 2004
(Date of Signature)

Jean E Rugani
(Typed Name of Witness)

JPMorgan Chase Bank
(Typed name of Bank)


(Signature of Witness)

By: Nicholas V. Leone
(Name of Bank Representative)


(Signature of Bank Representative)

Note-In case of Company,
Witness not required. Type
names under all signatures.

Vice President
(Title)

277 Park Avenue, New York, NY 10172
(Address)

(Date of Signature)

NOTE: The Contractor, if a Company, should cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Amendment and the Certificate.

CERTIFICATE

I, Gregory Fess, certify that I am the Secretary of the Company named as Contractor herein; that Brian P. Sack, who signed this Amendment on behalf of the Contractor was then Chief Financial Officer of said Company; that said Amendment was duly signed for and in behalf of said Company by authority of its governing body, and is within the scope of its Company powers.

Gregory Fess (Company Seal)
Signature

NOTE: Bank Repository, if a Corporation, should cause the following certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Amendment and the Certificate.

CERTIFICATE

I, Enisun USA LLC, certify that I am the ASSISTANT SECRETARY of the Corporation named as Bank Depository herein; that NICHOLAS V. LEONE, who signed this Amendment on behalf of the Bank Depository was then VICE PRESIDENT of said Corporation; that said Amendment was duly signed for and in behalf of said Corporation by authority of its governing body, and is within the scope of its corporate powers.

Nicholas V. Leone (Corporate Seal)
Signature

**AMENDMENT TO AGREEMENT
CHECKS-PAID METHOD OF LETTER OF CREDIT FINANCING**

This is an Amendment to the Agreement entered into the First day of January 1998 between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as DOE); Associated Universities, Inc., corporation/legal entity existing under the laws of the State of New York, or successor contractor, (hereinafter referred to as the Contractor); and Chase Manhattan Bank, a banking institution wholly owned by Chase Manhattan Corporation, existing under the laws of the State of New York, located at 55 Water Street, Room 718, New York City, NY 10041, (hereinafter referred to as the Bank).

WHEREAS, the parties entered into an Agreement dated the First day of January 1998 entitled "Checks-Paid Method of Letter of Credit Financing;" and

WHEREAS, Brookhaven Science Associates, LLC succeeded Associated Universities, Inc., as the Contractor for Brookhaven National Laboratory effective the First day of March 1998; and

WHEREAS, The Chase Manhattan Corporation merged with J.P. Morgan & Co. Incorporated on December 31, 2000; and

WHEREAS, the parties have proceeded under the aforesaid Agreement from the First day of March 1998 until the date hereof; and

WHEREAS, the parties are desirous of formally extending the term of the aforesaid Agreement;

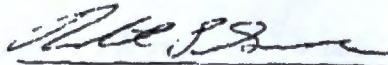
NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. The Term of the Agreement with all its provisions and covenants is hereby extended through the Fourth day of January, 2010.
2. DOE may extend the Term of the Agreement for an additional period of time to be contemporaneous with any extension of time granted by DOE to the Contractor for the operation of Brookhaven National Laboratory. Such notice shall not commit DOE to the extension, which shall only occur after a formal amendment to the agreement is executed by the parties.

IN WITNESS WHEREOF the parties hereto have caused this Amendment which consists of three pages including the signature pages, to be executed as of the day and year first above written.

11-16-07
Date Signed

By: Robert P. Gordon, Contracting Officer
(Typed Name of Contracting Officer)


(Signature of Contracting Officer)

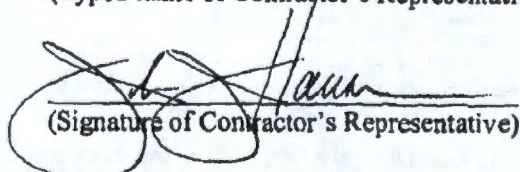
WITNESS

(Typed Name of Witness)

Brookhaven Science Associates, LLC
(Typed name of Contractor)

(Signature of Witness)

By: John J. Hauser
(Typed name of Contractor's Representative)


(Signature of Contractor's Representative)

Chief Financial Officer
(Title)

Note-In case of Company,
Witness not required. Type
names under all signatures.

P.O. Box 5000, Bldg. 460, Upton, NY 11973
(Address)

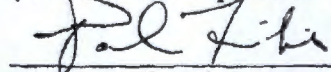
11-16-07
(Date of Signature)

(Typed Name of Witness)

JPMorgan Chase Bank
(Typed name of Bank)

(Signature of Witness)

By: Paul Lionikis
(Name of Bank Representative)


(Signature of Bank Representative)

Note-In case of Company,
Witness not required. Type
names under all signatures.

Vice President
(Title)

420 West Van Buren Street, Floor 09, Chicago, IL 60606
(Address)

11/30/07
(Date of Signature)

NOTE: The Contractor, if a Company, should cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Amendment and the Certificate.

CERTIFICATE

I, Gregory Fess, certify that I am the Secretary of the Company named as Contractor herein; that John J. Hauser, who signed this Amendment on behalf of the Contractor was then Chief Financial Officer of said Company; that said Amendment was duly signed for and in behalf of said Company by authority of its governing body, and is within the scope of its Company powers.

 _____ (Company Seal)
 Gregory Fess, Secretary Signature
 Brookhaven Science Associates, LLC

NOTE: Bank Repository, if a Corporation, should cause the following certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Amendment and the Certificate.

CERTIFICATE

I, _____, certify that I am the _____
 of the Corporation named as Bank Depository herein; that _____,
 who signed this Amendment on behalf of the Bank Depository was then _____
 of said Corporation; that said Amendment was duly signed for and in behalf of said
 Corporation by authority of its governing body, and is within the scope of its corporate
 powers.

 Signature (Corporate Seal)

SEE ATTACHED
 CERTIFICATE

CERTIFICATE OF
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

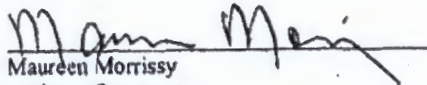
I, Maureen Morrissey, DO HEREBY CERTIFY that I am a duly elected and qualified Assistant Secretary of JPMorgan Chase Bank, National Association, a national banking association duly organized and existing under the laws of the United States of America (the "Bank") and that set forth below is a true and correct copy of resolutions duly adopted by the directors of the Bank pursuant to a unanimous written consent dated January 17, 2007. I further certify that said resolutions, at the date hereof, are still in full force and effect.

RESOLVED that loan agreements, contracts, indentures, mortgages, deeds, releases, conveyances, assignments, transfers, certificates, certifications, declarations, leases, discharges, satisfactions, settlements, petitions, schedules, accounts, affidavits, bonds, undertakings, guarantees, proxies, requisitions, demands, proofs of debt, claims, records, notes signifying indebtedness of JPMorgan Chase Bank, N.A. (the "Bank"), and any other contracts, instruments or documents in connection with the conduct of the business of the Bank, whether or not specified in the resolutions of the Bank's Board of Directors (the "Board") may be signed, executed, acknowledged, verified, delivered or accepted on behalf of the Bank by the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, a Vice Chairman of the Board, a Vice Chairman, any member of the Operating Committee or Executive Committee, any Executive Vice President, the Chief Financial Officer, the Treasurer, the Controller, the Chief Risk Officer, the Secretary, any Senior Vice President, any Managing Director, any Vice President, or any other officer who the Secretary or any Assistant Secretary certifies as having a functional title or official status which is equivalent to any of the foregoing, and the seal of the Bank may be affixed to any thereof and attested by the Secretary, any Vice President or any Assistant Secretary; *provided, however*, that any guarantees, comfort letters or other letters of support issued by the Bank in respect of obligations of any of the Bank's affiliates or subsidiaries ("Support Documents") may be executed only where consistent with such resolutions of the Board dated the date hereof, as may be amended, relating to the provision of Bank guarantees and other support issued by the Bank in respect of obligations of its subsidiaries and affiliates;

RESOLVED that powers of attorney may be executed on behalf of the Bank by the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, a Vice Chairman of the Board, a Vice Chairman, any member of the Operating Committee or Executive Committee, any Executive Vice President, the Chief Financial Officer, the Treasurer, the Controller, the Chief Risk Officer, the Secretary, any Senior Vice President, and by any Managing Director having a rank equivalent to Senior Vice President; *provided, however*, that such powers of attorney may not provide authority for signing Support Documents except as where consistent with such resolutions of the Board dated the date hereof, as may be amended, relating to the provision of Bank guarantees and other support issued by the Bank in respect of obligations of its subsidiaries and affiliates.

I further certify that **PAUL M. LIONIKIS** is a Vice President of JPMorgan Chase Bank, National Association and is empowered to act in conformity with the above resolutions.

WITNESS my hand and the seal of JPMorgan Chase Bank, National Association as of this 3rd day of December, 2007.


Maureen Morrissey
Assistant Secretary

(Corporate Seal)

**AMENDMENT TO AGREEMENT
CHECKS-PAID METHOD OF LETTER OF CREDIT FINANCING**

This is an Amendment to the Agreement entered into the First day of January 1998 between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as DOE); Associated Universities, Inc., corporation/legal entity existing under the laws of the State of New York, or successor contractor, (hereinafter referred to as the Contractor); and Chase Manhattan Bank, a banking institution wholly owned by Chase Manhattan Corporation, existing under the laws of the State of New York, located at 55 Water Street, Room 718, New York City, NY 10041, (hereinafter referred to as the Bank).

WHEREAS, the parties entered into an Agreement dated the First day of January 1998 entitled "Checks-Paid Method of Letter of Credit Financing;" and

WHEREAS, Brookhaven Science Associates, LLC succeeded Associated Universities, Inc., as the Contractor for Brookhaven National Laboratory effective the First day of March 1998; and

WHEREAS, The Chase Manhattan Corporation merged with J.P. Morgan & Co. Incorporated on December 31, 2000; and

WHEREAS, the parties have proceeded under the aforesaid Agreement from the First day of March 1998 until the date hereof; and

WHEREAS, the parties are desirous of formally extending the term of the aforesaid Agreement;

NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. The Term of the Agreement with all its provisions and covenants is hereby extended through the Fourth day of January, 2015.
2. DOE may extend the Term of the Agreement for an additional period of time to be contemporaneous with any extension of time granted by DOE to the Contractor for the operation of Brookhaven National Laboratory. Such notice shall not commit DOE to the extension, which shall only occur after a formal amendment to the agreement is executed by the parties.

IN WITNESS WHEREOF the parties hereto have caused this Amendment which consists of three pages including the signature pages, to be executed as of the day and year first above written.

12-30-09
Date Signed

By: Robert P. Gordon, Contracting Officer
(Typed Name of Contracting Officer)


(Signature of Contracting Officer)

WITNESS

(Typed Name of Witness)

Brookhaven Science Associates, LLC
(Typed name of Contractor)

(Signature of Witness)

By: Mark Israel
(Typed name of Contractor's Representative)


(Signature of Contractor's Representative)

Note-In case of Company,
Witness not required. Type
names under all signatures.

Assistant Laboratory Director for Finance
(Title)

P.O. Box 5000, Bldg. 460, Upton, NY 11973
(Address)

12-28-09
(Date of Signature)

(Typed Name of Witness)

JPMorgan Chase Bank
(Typed name of Bank)

(Signature of Witness)

By: Chris Casey
(Name of Bank Representative)


(Signature of Bank Representative)

Note-In case of Company,
Witness not required. Type
names under all signatures.

Vice President
(Title)

1 Chase Manhattan Plaza, Floor 8, New York, NY 10015
(Address)

12-31-09
(Date of Signature)

NOTE: The Contractor, if a Company, should cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Amendment and the Certificate.

CERTIFICATE

I, Michael Goldman, certify that I am the Secretary of the Company named as Contractor herein; that Mark Israel, who signed this Amendment on behalf of the Contractor was then Assistant Laboratory Director for Finance of said Company; that said Amendment was duly signed for and in behalf of said Company by authority of its governing body, and is within the scope of its Company powers.

 _____ (Company Seal)
Signature

NOTE: Bank Repository, if a Corporation, should cause the following certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Amendment and the Certificate.

CERTIFICATE

I, _____, certify that I am the _____ of the Corporation named as Bank Depository herein; that _____, who signed this Amendment on behalf of the Bank Depository was then _____ of said Corporation; that said Amendment was duly signed for and in behalf of said Corporation by authority of its governing body, and is within the scope of its corporate powers.

Signature (Corporate Seal)

**AMENDMENT TO AGREEMENT
CHECKS-PAID METHOD OF LETTER OF CREDIT FINANCING**

This is an Amendment entered into as of January 1, 2010 (the "Amendment") to the Agreement entitled "Checks-Paid Method of Letter of Credit Financing" entered into the First day of January 1998 (the "Agreement") between UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as "DOE"); Associated Universities, Inc., corporation/legal entity existing under the laws of the State of New York, or successor contractor, (hereinafter referred to as the "Contractor"); and Chase Manhattan Bank, a banking institution wholly owned by Chase Manhattan Corporation, existing under the laws of the State of New York, located at 55 Water Street, Room 718, New York City, NY 10041, now known as JPMorgan Chase Bank, N.A., a national banking association organized under the laws of the United States of America with offices at 1 Chase Manhattan Plaza, Floor 8, New York, NY 10005 (the "Bank").

WHEREAS, the DOE, the Contractor and the Bank may be referred to collectively in this Amendment as the "parties"; and

WHEREAS, Brookhaven Science Associates, LLC succeeded Associated Universities, Inc., as the Contractor for Brookhaven National Laboratory effective the First day of March 1998; and

WHEREAS, through several mergers, JPMorgan Chase Bank, N.A. succeeded Chase Manhattan Bank as the Bank;

WHEREAS, the parties have proceeded under the aforesaid Agreement as amended from time to time from the First day of March 1998 until the date hereof; and

WHEREAS, the parties are desirous of formally extending the term of the aforesaid Agreement;

NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

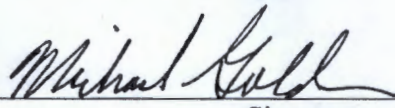
1. The term of the Agreement with all its provisions and covenants as amended from time to time is hereby extended through the Fourth day of January, 2015.
2. DOE may extend the Term of the Agreement for an additional period of time to be contemporaneous with any extension of time granted by DOE to the Contractor for the operation of Brookhaven National Laboratory. Such notice shall not commit DOE, the Contractor or the Bank to the extension, which shall only occur after a formal amendment to the Agreement is executed by the parties.

May 3, 2010
(Date of Signature)

NOTE: The Contractor, if a Company, should cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Amendment and the Certificate.

CERTIFICATE

I, Michael Goldman, certify that I am the Secretary of the Company named as Contractor herein; that Mark Israel, who signed this Amendment on behalf of the Contractor was then Assistant Laboratory Director for Finance of said Company; that said Amendment was duly signed for and in behalf of said Company by authority of its governing body, and is within the scope of its Company powers.



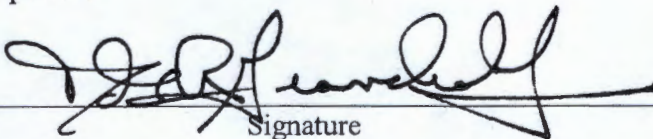
Signature

(Company Seal)

NOTE: Bank Repository, if a Corporation, should cause the following certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Amendment and the Certificate.

CERTIFICATE

I, Dale R. Granchalek, certify that I am an Executive Director of the national banking association named as Bank herein; that Christopher J. Casey who signed this Amendment on behalf of the Bank was then Vice President of said association; that said Amendment was duly signed for and in behalf of said association by authority of its governing body, and is within the scope of its corporate powers.



Signature

(Association Seal)

J.P.Morgan

Rikki O. Jones
Executive Director and Associate General Counsel
Legal and Compliance Department

January 5, 2015

Anne Troutman, Legal Counsel
Brookhaven Science Associates, LLC
Brookhaven National Laboratory, Building
460
Upton, NY 11973

RE: DOE Contract DE-AC02-98CH10886 Extension

Dear Ms. Troutman:


As requested, we are confirming our agreement to extend the terms of the current Letter of Credit arrangement under DOE Contract DE-AC02-98CH10886 to your new DOE Contract DE-SC0012704, effective January 5, 2015 through February 5, 2015.

Very truly yours,

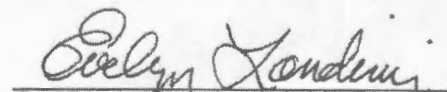


Rikki O. Jones
Executive Director and Associate General Counsel

CC: Eugene Waiters
Jonathan Jenkins



Anne Troutman
BSA/BNL Legal Counsel



Evelyn Landini
DOE Business Management Division Director

J.P.Morgan

February 10, 2015

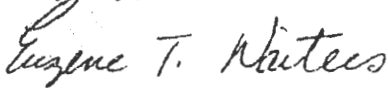
Anne Troutman, Legal counsel
Brookhaven Science Associates, LLC
Brookhaven National Laboratory, Building 460
Upton, NY 11973

RE: DOE Contract DE-AC02-98CH10886 Extension

Dear Ms. Troutman:

As requested, we are confirming our agreement to extend the terms of the Letter of Credit arrangement under DOE Contract DE-AC02-98CH10886 to your new DOE Contract DE-SC0012704, effective February 6, 2015 through March 8, 2015.

Very truly yours,



Eugene T. Waiters
Executive Director

CC: Rikki O. Jones
Jonathan Jenkins
Patricia Miele

Accepted for Brookhaven Science Associates, LLC



Accepted for the U.S. Department of Energy



4 New York Plaza, 13th Floor, New York, New York 10004

JPMorgan Chase Bank, N.A.

APPENDIX E

KEY PERSONNEL

**Applicable to the Operations of
Brookhaven National Laboratory**

Pursuant to the Section I Clause entitled "DEAR 952.215-70 – Key Personnel", the following positions are considered to be essential to work being performed.

Title	Name
Laboratory Director	Dr. Doon Gibbs
Deputy Director for Science and Technology	Dr. Robert Tribble
Deputy Director for Operations	Mr. John Anderson, Jr.
Associate Laboratory Director for Energy Sciences	Dr. James Misewich
Associate Laboratory Director for Nuclear & Particle Physics	Dr. Berndt Mueller
Associate Laboratory Director for Environmental Safety & Health	Ms. Gail Mattson

APPENDIX H

SMALL BUSINESS SUBCONTRACTING PLAN

**Applicable to the Operations of
Brookhaven National Laboratory**

FY2015 SMALL BUSINESS SUBCONTRACTING PLAN

January 5, 2015 through September 30, 2015

Identification Data

Contractor: **BROOKHAVEN SCIENCE ASSOCIATES, LLC**

Address: **BROOKHAVEN NATIONAL LABORATORY**
Upton, New York 11973-5000

Solicitation or Contract Number: **DE-SC0012704**

Total Amount of the Contract for the Performance Period: \$500,000,000.

Period of Contract Performance: January 5, 2015 through September 30, 2015

I. Type of Plan

Individual Contract Plan – An Individual Contract Plan covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract (except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the Contract).

This Individual Subcontracting Plan is for FY2015. Brookhaven Science Associates, LLC (BSA) small business goals are set for each fiscal year of the Contract.

II. Goals

BSA has established separate dollar and percentage goals for small business (SB including Alaska Native Corporations [ANC] and Indian Tribes), small disadvantaged business (SDB - including ANCs and Indian Tribes), women-owned small business (WOB), HUBZone small business (HUB), service-disabled veteran-owned small business (SDVOB) and veteran-owned small business (VOB) concerns (hereafter referred to the six small business categories) as subcontractors, as specified in FAR 19.704.

Subcontracting goals for the six small business categories (including ANCs and Indian Tribes) are included in Appendix 1.

Below is an estimate of the principal types of supplies and services to be subcontracted under this Contract, and an indication of the supplies and services planned for subcontracting to the six categories of small business (including ANCs and Indian Tribes) and large business.

<u>Subcontracted Supplies/Services</u>	<u>SB</u>	<u>SDB</u>	<u>WOB</u>	<u>HUB</u>	<u>SDVOB</u>	<u>VOB</u>	<u>LB</u>
A & E	X	---	---	---	X	X	X
Construction	X	X	X	X	X	X	X
R & D	X	X	---	---	---	---	X
Services	X	X	X	X	X	X	X
Materials/Supplies	X	X	X	X	X	X	X
Electrical	X	X	X	X	X	X	X
IT (Computer)	X	X	X	X	X	X	X
Equipment (Major)	X	---	---	---	---	---	X

Note: The NAICS codes have not been included as the breadth of work subcontracted would require an extensive listing. The Small Business Liaison Officer (SBLO) will work directly with the procurement staff to ensure solicitations of small businesses (including ANCs and Indian Tribes) to the maximum extent possible.

The goals for the six small business categories (including ANCs and Indian Tribes) are based on consultations with the DOE. Potential suppliers will be identified using BSA's current vendor base, and various directories including: System for Award Management (SAM), the DOE-OSDBU Small Business Contacts Database, Women's Chamber of Commerce, The Suffolk County Women's Business Enterprise Coalition (SCWBEC), The Procurement Technical Assistance Center's (PTAC) Database, the Small Business Administration-Small Business Development Center (SBA-SBDC) databases, and sharing the small business databases from the other National Labs, etc. The areas to be subcontracted to each target small business group have been determined by historic references and current needs. Capabilities to provide goods and services are determined on an individual basis.

BSA will ensure timely payment of amounts due pursuant to the terms of its subcontracts with the six small business concerns (including ANCs and Indian Tribes). BSA will use Small Business Set Asides to support the small business goals stated in Appendix 1.

a. Small Business Set-Asides Types:

1. Small Business Set-Aside (including ANCs and Indian Tribes):

Each acquisition of supplies or services with an anticipated dollar value exceeding the Micro-Purchase (\$3,000) but not over the Simplified Acquisition Threshold (\$150,000) (FAR 2.101) will be reserved exclusively for small business concerns (including ANCs and Indian Tribes) and shall be set aside for small business (including ANCs and Indian Tribes) unless there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery.

2. Construction Set-Asides:

Acquisition of construction estimated to cost \$4 million or less, including new construction, and repair and alteration of structures, shall be a small business set-aside (including ANCs and Indian Tribes). For acquisition in excess of \$4 million, small business (including ANCs and Indian Tribes) will be considered on a case-by-case basis.

III. Sole Source Procurements:

BSA may award contracts on a sole-source basis to these types of small Businesses (including ANCs and Indian Tribes):

- a. Small Business Administration (SBA) certified 8(a) small businesses (including ANCs and Indian Tribes); in accordance with FAR 19.805 (2) for purchases valued at: (A) \$6.5 million or less for 8(a) small business within North American Industry Classification System (NAICS) codes for manufacturing or \$4 million or less for small business within any other NAICS codes. There will be no limit on the anticipated value of contracts awarded on a sole-source basis to ANC; and
- b. SBA certified Historically Underutilized Small Businesses (HUB) Zone small businesses in accordance with FAR 19.1306 (2) for purchases valued at: (A) \$6.5 million or less for HUBZone small business within North American Industry Classification System (NAICS) codes for manufacturing or \$4 million or less for HUBZone small business within any other NAICS codes. There will be no limit on the anticipated value of contracts awarded on a sole-source basis to ANC; and
- c. Service-Disabled Veteran-Owned Small Business (SDVOB) small businesses in accordance with FAR 19.1406 (2) sole-source awards to service-disabled veteran-owned small business concerns for \$6 million or less for requirement within the NAICS codes for manufacturing; or \$3.5 million for a requirement within any other NAICS codes. There will be no limit on the anticipated value of contracts awarded on a sole-source basis to ANC.
- d. Set Asides to Small Business for procurements less than the Simplified Acquisition Threshold (SAT).

To further facilitate Brookhaven National Laboratory Small Business Program, BSA will, without further documentation to the file, and based on its unilateral decision, utilize the option of making awards without competition up to the simplified acquisition threshold (\$150,000) to small business concerns (including ANCs and Indian Tribes) in accordance with the Department of Energy Acquisition Guide, Chapter 19: Small Business Program - Overview; section D (Discretionary Set-Asides) dated December 2010;

- e. A Protégé under a DOE Prime Contractor Mentor-Protégé Program can be awarded a contract on a noncompetitive basis, without the need for a sole source justification for any value.

Note: Indirect costs have not been included in the dollar and percentage subcontracting goals stated in Appendix 1.

IV. Program Administrator

The Contractor's subcontracting program administrator is:

Name: Jill Clough-Johnston
Title: Small Business Liaison Officer
Address: Brookhaven National Laboratory
Procurement & Property Management Division
Building 902B
Upton, New York 11973

Telephone: (631) 344-3173

Email: clough@bnl.gov

Duties: General overall responsibility for Brookhaven Science Associates (BSA) subcontracting program, i.e., developing, preparing, and executing subcontracting plans and monitoring performance relative to the requirements of this particular plan. These duties include, but are not limited to, the following activities:

- a. Developing and promoting laboratory-wide policy initiatives that demonstrate BSA's support for awarding contracts and subcontracts to the six small business categories (including ANCs and Indian Tribes).
- b. Making arrangements for the utilization of various sources for the identification of the six small business categories (including ANCs and Indian Tribes) through some of the following resources: System for Award Management (SAM), the DOE-OSDBU Small Business Contacts Database, GSA Office of Small Business, Women's Chamber of Commerce Database, the Procurement Technical Assistance Center's Database, the SBA-SBDC databases, sharing the Small Business databases from the other National Labs, the National Minority Business Directory, etc. This effort will be focused on identification of reliable, competitive suppliers in the areas where achieving small business goals has been a challenge.
- c. Attending or arranging for the attendance of the procurement personnel at small business opportunity workshops; seminars, trade fairs, procurement conferences, etc.
- d. Ensuring small businesses (including ANCs and Indian Tribes) are made aware of subcontracting opportunities and basic prerequisites for the preparation of a responsive bid.

- e. Conducting or arranging for training for procurement personnel regarding the intent and impact of Public Law 95-507 on purchasing procedures.
- f. Supporting the PPM Compliance and Policy Manager in randomly reviewing procurements to ensure the maximum possible participation of the six small business categories (including ANCs and Indian Tribes).
- g. Monitoring the over \$650,000 (\$1,500,000 for construction) large business subcontractors' performance and making suggestions for the utilization of small business, where applicable, so that any adjustments necessary to achieve the subcontracting plan goals can be made.
- h. Preparing, inputting and submitting timely subcontracting reporting through the eSRS.
- i. Coordinating BSA's activities during compliance reviews by Federal agencies.
- j. Assuring the integrity of supplier information by reviewing the Representations and Certifications, ensuring that supplier NAICS codes and socioeconomic classifications are included in the descriptions of new suppliers.

V. Equitable Opportunity

BSA will ensure that small businesses (including ANCs and Indian Tribes) have an equitable opportunity to compete for subcontracts. The various efforts include, but are not limited to, the following activities:

- a. Outreach efforts to obtain sources:
 - (i) The SBLO works with the Hauppauge Industrial Association (HIA), the Suffolk County Women's Business Enterprise Coalition (SCWBEC) and many other trade associations.
 - (ii) The SBLO also works with the: Stony Brook University/ Farmingdale College Small Business Development Centers (SBDC), the LaGuardia College – Procurement Technical Assistance Program (PTAP); and Small Business Administration (SBA).
 - (iii) Potential sources will be obtained from the SAM database and other electronic medium.
 - (iv) Utilization of the Internet to obtain new sources.
- b. Internal efforts to guide and encourage purchasing personnel:

- (i) Presenting workshops, seminars, and/or training programs including training in the use of the SAM.
 - (ii) Establishing, maintaining, and using small business source lists, guides, and other data for soliciting subcontracts, and encouraging procurement staff to utilize this data.
 - (iii) Monitoring activities to evaluate compliance with the subcontracting plan.
- c. Outreach efforts to promote small business development (including ANCs and Indian Tribes), will include:
- (i) Maintaining an annual list of outreach events and activities to attend and participate in.
 - (ii) Attending DOE small business conferences and other small business seminars and trade shows where it is expected that attendance will identify potential sources to aid in reaching the small business goals.
 - (iii) Working closely with both the on & off site SBDC's and the local SBA office.
 - (iv) Networking with other Management and Operation (M&O) contractor SBLO's.
 - (v) Working closely with CEGPA and other BSA directorates on outreach efforts.
 - (vi) Providing contact information for 8(a) (including ANCs and Indian Tribes) and HUB-Zone small businesses to assist them in achieving SBA certification.
 - (vii) Maintaining an internal Small Business Policy.
 - (viii) Participating in DOE SBPM conference calls.

VI. Flow-Down Clauses

BSA will continue to include the provisions under FAR 52.219-8, "Utilization of Small Business Concerns", in all subcontracts that offer further subcontracting opportunities. BSA will also require all subcontractors, except small business concerns and foreign suppliers, that receive subcontracts in excess of \$650,000 (\$1,500,000 for construction) to adopt a plan that complies with the requirements of the clause at FAR 52.219-9, "Small Business Subcontracting Plan."

These plans will be reviewed against the provisions of Public Law 95-507 to assure that all minimum requirements of an acceptable subcontracting plan have been satisfied. The acceptability of percentage goals will be determined on a case-by-case basis depending on the supplies/services involved, the availability of the six potential small business categories (including ANCs and Indian Tribes) and prior experience. Once approved and implemented, plans will be monitored through the submission of periodic reports, and/or, as time and availability of funds permit, periodic visits to subcontractors' facilities to review applicable records and subcontracting program progress.

VII. Reporting and Cooperation

BSA will cooperate in any studies or surveys that may be required by the contracting agency or the Small Business Administration; submit any periodic reports required under its Prime Contract, such as utilization reports, which show compliance with the subcontracting plan; submit timely "Subcontracting Report for Individual Contracts," (ISR) and "Summary Subcontract Report," (SSR) in accordance with the instructions identified on the eSRS website (www.esrs.gov); and ensure that large business subcontractors with subcontracting plans provide electronic input to the eSRS as required.

VIII. Document Retention

Records will be maintained to demonstrate the procedures adopted to comply with the requirements and goals in the subcontracting plan. These records will include, but not be limited to, the following:

- a. A list of sources, guides and other data used to identify suppliers and vendors.
- b. Documents to support internal guidance and encouragement, provided to buyers through:
 - (i) Workshops, seminars, training programs
 - (ii) Monitoring of activities to evaluate compliance
- c. The procurement files for all subcontract solicitations over \$150,000 will contain AMS-Form-002 which indicates for each solicitation whether small businesses (including ANCs and Indian Tribes) were solicited, and if any of the solicited the small business concerns received a subcontract award, as well as a justification for not soliciting small businesses or failure to award a subcontract to a solicited small business.
- d. Representations and Certifications Information
 - (i) 8(a) certification approval through copies of their SBA certification letter (including ANCs and Indian Tribes).

- (ii) Confirmation of HUB-Zone certification will be verified by searching the Dynamic Small Business Data Base (DSBS).

IX. Mentor-Protégé Program

BSA agrees to establish and implement an official DOE approved "Mentor-Protégé" in accordance with U.S. Department of Energy acquisition regulation (DEAR Part 19). The Small Business Liaison Officer is the individual designated to administer this program.

X. Description of Good Faith Effort

BSA intends to use all reasonable and good faith efforts (as described in this Plan) to award the stated percentages of the final actual subcontract base amount to the six small businesses concerns (including ANCs and Indian Tribes). The following steps will be taken:

- a. Issue and promulgate company-wide policy statements in support of small businesses (including ANCs and Indian Tribes). Develop written procedures and work instructions, and assign specific responsibilities regarding requirements of the applicable Public Law.
- b. Review specific procurement actions for possible acquisition from eligible small businesses (including ANCs and Indian Tribes).
- c. Demonstrate continuing management interest and involvement in support of this effort through such actions as regular reviews of progress.
- d. Train and motivate the procurement personnel regarding the need for the support of small businesses (including ANCs and Indian Tribes).
- e. Assist small businesses (including ANCs and Indian Tribes) by helping with questions on solicitations, quantities, specifications, and delivery requirements.
- f. Counsel and discuss subcontracting opportunities with small businesses (including ANCs and Indian Tribes).
- g. Execute Service Agreements, Teaming Agreements, and Basic Ordering Agreements with small business from the six qualified small business categories (including ANCs and Indian Tribes), as required, in an attempt to ensure availability and usage of subcontractor personnel to support work efforts when required.
- h. Establish and maintain a categorized list of potential subcontractors, including name, address, telephone number, email address, product/service sold, initials of the Buyer and/or Contract Specialist lead given to, and identification of the social economic small business category (including ANCs and Indian Tribes).

FY2015 SMALL BUSINESS SUBCONTRACTING PLAN

January 5, 2015 through September 30, 2015

This subcontracting plan was submitted by:

Signature: _____

Date: _____

Typed Name:

Anthony Guadagni

Title:

Manager Procurement and Property Management

Approval:

Signature: _____

Date: _____

Typed Name:

Evelyn Landini

Title:

Contracting Officer

FY2015 Small Business Subcontracting Plan - Appendix 1
January 5, 2015 through September 30, 2015

Contractor: BROOKHAVEN SCIENCE ASSOCIATES, LLC
Address: BROOKHAVEN NATIONAL LABORATORY
Upton, New York 11973-5000

1. Total estimated dollar value of all planned subcontracting, (to all types of business concerns) under this contract, is \$107,500,000.
2. The following percentage goals (expressed in terms of a percentage of total planned subcontracting dollars) and associated dollars are applicable to the contract cited above and will be pursued on a best efforts basis consistent with good commercial practices and best value assessments:
 - (i) Small Business (SB) (including ANCs and Indian Tribes) 50% or \$53,750,000 of total planned subcontracting dollars under this contract will go to subcontractors who are small business (% of value in 1).
 - (ii) Small Disadvantaged Business (SDB)/ 8(a) (including ANCs and Indian Tribes) 5% or \$5,375,000 of total planned subcontracting dollars under this contract will go to subcontractors who are small disadvantaged business/8(a) small businesses (including ANCs and Indian Tribes). This percentage is included in the percentage shown under 2(i) above as a subset.
 - (iii) Woman-Owned Small Business (WOB) 6% or \$6,450,000 of total planned subcontracting dollars under this contract will go to subcontractors who are woman-owned small business (% of "1"). This percentage is included in the percentage shown under 2(i) above as a subset.
 - (iv) Historically Underutilized Small Business (HUB) 3% or \$3,225,000 of total planned subcontracting dollars under this contract will go to subcontractors who are HUB small business (% of "1"). This percentage is included in the percentage shown under 2(i) above as a subset.
 - (v) Service-Disabled Veteran-Owned Small Business (SDVOB) 3% or \$3,225,000 of total planned subcontracting dollars under this contract will go to subcontractors who are service-disabled veteran-owned small business (% of "1"). This percentage is included in the percentage shown under 2(i) above as a subset.
 - (vi) Veteran-Owned Small Business (VOB) 3% or \$3,225,000 of total planned subcontracting dollars under this contract will go to subcontractors who are veteran-owned small business (% of "1"). This percentage is included in the percentage shown under 2(i) above as a subset.

APPENDIX I

DOE Directives/List B

**Applicable to the Operations of
Brookhaven National Laboratory**

There is no List A to this Appendix.

List B to this Appendix contains two parts as follows:

Part I: "Directives List"

This section contains a list of Directives that are considered by DOE as applicable to the BNL contract.

Part II: "Partial Deletions of Directives"

This section contains a list of Directives that are applicable, but have subsequently been revised by DOE to remove certain sections.

***See Part II, Partial Deletions**

Appendix I - Part I
DOE DIRECTIVES LIST

DOE Directives may be found at the following address: <http://www.directives.doe.gov>

DATE	TYPE	NUMBER	THROUGH CHANGE	SUBJECT TITLE Contractor Requirements Document (CRD) Includes Compliance Notes as Necessary
9/29/95	Order	130.1		CRD - Budget Formulation Process
5/2/01	Policy	141.1		Department of Energy Management of Cultural Resources
9/4/08	Manual	142.2-1	Admin Chg. 1 6-27-13	CRD – Manual for Implementation of the Voluntary Offer Safeguards Agreement and Additional Protocol with the International Atomic Energy Agency
12/15/06	Order	142.2A	Admin Chg. 1 6-27-13	CRD – Voluntary Offer Safeguards Agreement and Additional Protocol with the International Atomic Energy Agency
10/14/10	Order	142.3A		CRD – Unclassified Foreign Visits and Assignments Program
3/31/14	Order	150.1A		CRD – Continuity Programs
11/2/05	Order	151.1C		CRD - Comprehensive Emergency Management System
6/27/07	Order	153.1		CRD - Departmental Radiological Emergency Response Assets
12/23/08	Order	200.1A		CRD – Information Technology Management
1/7/05	Order	203.1		Limited Personal Use of Government Office Equipment Including Information Technology
5/8/01	Policy	205.1		Departmental Cyber Security Management Policy
5/16/11	Order	205.1B	Admin Chg. 3 4/29/14	CRD – Department of Energy Cyber Security Program
4/17/06	Manual	205.1-3	Admin Chg. 1 12/20/12	Telecommunications Security Manual
1/16/09	Order	206.1		CRD - Department of Energy Privacy Program
2/19/13	Order	206.2		CRD – Identity, Credential, and Access Management (ICAM)
4/8/11	Order	210.2A		CRD – DOE Corporate Operating Experience Program
4/19/08	Order	221.1A		CRD - Reporting Fraud, Waste, and Abuse to the Office of Inspector General
2/25/08	Order	221.2A		CRD - Cooperation with the Office of Inspector General
3/4/11	Order	225.1B		CRD - Accident Investigations
8-30-11	Order	227.1		CRD – Independent Oversight Program
6-27-11	Order	231.1B	Admin Chg. 1 11/28/12	CRD – Environment, Safety and Health Reporting
8/30/11	Order	232.2	Admin Chg. 1 3/12/14	CRD – Occurrence Reporting and Processing of Operations Information
12/13/10	Order	241.1B		CRD - Scientific and Technical Information Management
3/11/13	Order	243.1B		CRD – Records Management Program
2/2/06	Order	243.2		CRD - Vital Records
2/23/11	Order	252.1A	Admin Chg. 1 3/12/13	CRD - Technical Standards Program

DOE DIRECTIVES LIST

DOE Directives may be found at the following address: <http://www.directives.doe.gov>

DATE	TYPE	NUMBER	THROUGH CHANGE	SUBJECT TITLE Contractor Requirements Document (CRD) Includes Compliance Notes as Necessary
11/19/09	Order	313.1		CRD – Management and Funding of the Departments Overseas Presence
10/18/07	Order	341.1A Parts: 1.(a-b) 2.a., 2.a.(1-3), 2.a.(4)(a-h)		CRD - Federal Employee Health Services
2/23/10	Order	350.1	Chg. 5 9/30/14	CRD - Contractor Human Resource Management Programs
9/29/14	Order	350.3		Labor Standards Compliance, Contractor Labor Relations, and Contractor Workforce Restructuring Programs
11/16/11	Order	NA 350.2	Rev. 1 11/18/12	CRD – Use of Management and Operation Contractor Employees for Services to NNSA in the Washington, D.C., Area
5/31/11	Order	350.2B		CRD – Use of Management and Operating or Other Facility Management Contractor Employees for Services to DOE in the Washington D.C. Area
4/14/14	Policy	364.1		Health and Safety Training Reciprocity
8/17/09	Order	410.2	Admin Chg. 1 4/10/14	CRD – Management of Nuclear Materials
4/21/05	Order	412.1A	Admin Chg. 1 6/21/14	Work Authorization System
10/28/08	Order	413.1B		CRD – Internal Control Program
4/19/06	Order	413.2B	Admin Chg. 1 1/31/11	CRD - Laboratory Directed Research and Development
11/29/10	Order	413.3B		CRD – Program and Project Management for the Acquisition of Capital Assets
4/25/11	Order	414.1D	Admin Chg. 1 5/8/13	CRD – Quality Assurance
12/3/12	Order	415.1		CRD – Information Technology Project Management
2/8/11	Policy	420.1		Department of Energy Nuclear Safety Policy Compliance Note: Only applicable to BNL facilities categorized as Hazardous Category 1, 2 or 3 nuclear facilities
12/04/12	Order	420.1C		CRD – Facility Safety Compliance Note: Chapters 1, 3, and 5 are applicable to BNL facilities categorized as hazardous category 1, 2 and 3 nuclear facilities. In the future, if needed, BNL will implement chapters 1, 3, and 5 as applicable if a hazard category 1, 2 or 3 nuclear facility is proposed by BNL and approved by DOE.
7/21/11	Order	420.2C		CRD – Safety of Accelerator Facilities

DOE DIRECTIVES LIST

DOE Directives may be found at the following address: <http://www.directives.doe.gov>

DATE	TYPE	NUMBER	THROUGH CHANGE	SUBJECT TITLE Contractor Requirements Document (CRD) Includes Compliance Notes as Necessary
6/29/10	Order	422.1	Admin Chg. 1 6/25/13	CRD- Conduct of Operations Compliance Note: Applicable to Hazardous Category 1, 2, or 3 nuclear facilities and other facilities as defined by BSA in a Program Plan, to be approved by BHSO, for incorporating
4/16/10	Order	425.1D	Admin Chg. 1 4/2/13	CRD – Verification of Readiness to Start Up or Restart Nuclear Facilities Compliance Note: Only applicable to BNL facilities categorized as Hazardous Category 1, 2 or 3 nuclear facilities
4/21/10	Order	426.2	Admin Chg. 1 7/29/13	CRD - Personnel Selection, Training, Qualification, and Certification Requirements for DOE Nuclear Facilities
09/24/03	Order	430.1B	Admin Chg. 2 4/25/11	CRD – Real Property and Asset Management
4/21/10	Order	433.1B	Admin Chg. 1 3/12/13	CRD - Maintenance Management Program for DOE Nuclear Facilities Compliance Note: Only applicable to BNL facilities categorized as Hazardous Category 1, 2 or 3 nuclear facilities
11/7/13	Policy	434.1A		Conduct and Approval of Select Agent and Toxin Work at Department of Energy Sites
7/9/99	Order	435.1	Admin Chg. 1 8/28/01	CRD - Radioactive Waste Management
7/9/99	Manual	435.1-1	Admin Chg. 1 6/19/01	Radioactive Waste Management Manual
5/2/11	Order	436.1		CRD – Departmental Sustainability
11/27/02	Order	440.2C	Admin Chg. 1 6/22/11	CRD - Aviation Management and Safety
3/7/08	Manual	441.1-1		CRD - Nuclear Material Packaging Manual
6/6/01	Order	442.1A		CRD - Department of Energy Employee Concerns Program
7/29/11	Order	442.2		CRD – Differing Professional Opinions for Technical Issues Involving Environment, Safety and Health
3/17/11	Order	443.1B		CRD – Protection of Human Research Subjects
4-25-11	Policy	450.4A		Integrated Safety Management Policy
7/21/11	Order	452.8		CRD - Control of Nuclear Weapon Data
5/31/11	Order	456.1	Admin Chg. 1 2/14/13	CRD – The Safe Handling of Unbound Engineered Nanoparticles
9/15/05	Policy	456.1		Secretarial Policy Statement on Nanoscale Safety
2/11/11	Order	458.1	Admin Chg. 3 1/15/13	CRD- Radiation Protection of the Public and the Environment
5/14/10	Order	460.1C		CRD - Packaging and Transportation Safety

DOE DIRECTIVES LIST

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DATE	TYPE	NUMBER	THROUGH CHANGE	SUBJECT TITLE Contractor Requirements Document (CRD) Includes Compliance Notes as Necessary
12/22/04	Order	460.2A		CRD - Departmental Materials Transportation and Packaging Management
6/4/08	Manual	460.2-1A		Radioactive Material Transportation Practices Manual
11/10/08	Order	462.1	Admin Chg. 1 7/10/13	CRD – Import and Export of Category 1 and 2 Radioactive Sources Aggregated Quantities
12/29/10	Policy	470.1A		Safeguards and Security Program
8/12/08	Order	470.3B		Graded Security Protection (GPS) Policy
7/21/11	Order	470.4B		CRD – Safeguards and Security Program
1/16/09	Manual	470.4-4A*	1 10/12/10	CRD – Information Security Manual Compliance Note: This Directive is cancelled by Order 471.6, except for Section D. – Technical Surveillance Countermeasures, which will be retained in its entirety.
6/2/14	Order	470.5		CRD – Insider Threat Program
3/1/10	Order	471.1B		CRD - Identification and Protection of Unclassified Controlled Nuclear Information
4/9/03	Order	471.3	Admin Chg. 1 1/13/11	CRD - Identifying and Protecting Official Use Only Information
4/9/03	Manual	471.3-1	Admin Chg. 1 1/13/11	CRD - Manual for Identifying and Protecting Official Use Only Information
6/20/11	Order	471.6	Admin Chg. 1 11-23-12	CRD – Information Security Compliance Note: This Directive contains a Partial deletion of Manual 470.4-4A
7/27/11	Order	472.2	Admin Chg. 1 10-8-13	CRD – Personnel Security
6/27/11	Order	473.3		CRD - Protection Program Operations
6/27/11	Order	474.2	Admin Chg. 2 11/19/12	CRD – Nuclear Material Control and Accountability
12/10/04	Order	475.1		Counterintelligence Program
2/1/11	Order	475.2A		CRD – Identifying Classified Information
1/03/01	Manual	481.1-1A	Admin Chg. 1 9/28/01	Reimbursable Work for Non-Federal Sponsored Process Manual
11-6-13	Order	483.1A		CRD - DOE Cooperative Research and Development Agreements

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DATE	TYPE	NUMBER	THROUGH CHANGE	SUBJECT TITLE Contractor Requirements Document (CRD) Includes Compliance Notes as Necessary
8/17/06	Order	484.1	Admin Chg. 2 6/30/14	CRD - Reimbursable Work for the Department of Homeland Security
11/3/04	Order	522.1		CRD - Pricing of Departmental Materials and Services
1/6/03	Order	534.1B		CRD – Accounting
4/2/12	Order	551.1D		CRD – Official Foreign Travel
3/30/12	Order	580.1A	Admin Chg. 1 10/22/12	CRD – Department of Energy Personal Property Management Program

Appendix I - Part II

PARTIAL DELETIONS OF DIRECTIVES

DATE	DOE DIRECTIVE NUMBER	SUBJECT TITLE	DELETION DIRECTIVE DATE	SECTIONS DELETED
10/12/10	M 470.4-4A	Information Security Manual	Order 471.6	All, except for Section D. – Technical Surveillance Countermeasures, which will be retained in its entirety