

**BROOKHAVEN SCIENCE ASSOCIATES, LLC
GENERAL TERMS AND CONDITIONS
FOR NONCOMMERCIAL ITEMS
AT
BROOKHAVEN NATIONAL LABORATORY**

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Article 1 DEFINITIONS

The following terms shall have the meanings below:

- (a) "Agreement" means the contract; or purchase order; or Basic Ordering Agreement (BOA); or Task Agreement, and any modifications thereto, including all contract documents (Contract Documents). The Agreement includes without limitation the specifications, drawings, General Terms and Conditions and any special or supplemental terms and conditions, when incorporated into this Agreement by reference or otherwise.
- (b) "BSA" means Brookhaven Science Associates, LLC acting under Prime Contract No. DE-AC02-98CH10886 between BSA and the United States Government (Government) for the operation of Brookhaven National Laboratory (referred to as Brookhaven, BNL, or Laboratory), and includes the successor to, or any duly authorized representative of BSA.
- (c) "Brookhaven", "BNL", or "the Laboratory" refers to the Brookhaven National Laboratory site at Upton, New York.
- (d) "BSA's PPM Division" means the BSA Procurement and Property Management Division (PPM).
- (e) "Contract" is the document (including but not limited to contract; or purchase order; or Basic Ordering Agreement (BOA); or Task Agreement) that is executed by both BSA and the Contractor that creates the Agreement.
- (f) "Contract Documents" means all documents that comprise this Agreement including without limitation, the specifications, drawings, the General Terms and Conditions and any special or supplemental terms and conditions, when incorporated into this Agreement by reference or otherwise. "Government" means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof. This Agreement does not bind nor purport to bind the Government.
- (g) "Contractor" means any person or organization that has entered into this Agreement with BSA.
- (h) "Government" means the United States of America including the U.S. Department of Energy (DOE) or any duly authorized representative(s) thereof.
- (i) "Prime Contract" means Contract No. DE-AC02-98CH10886 between BSA and the Government.
- (j) The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

Article 2 ORDER OF PRECEDENCE

In the event of an inconsistency among provisions of this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

- (a) the Contract,
- (b) special terms and conditions included in or incorporated by reference in the Contract,
- (c) Supplemental Terms and Conditions,
- (d) General Terms and Conditions,
- (e) the Statement of Work,
- (f) specifications and
- (g) drawings, if any, incorporated in this Agreement by reference or otherwise.

Article 3 ACCEPTANCE OF AGREEMENT, SURVIVABILITY

- (a) By signing this Contract, delivering the supplies, or performing the requirements indicated herein, the Contractor agrees to comply with all the terms and conditions and all specifications and other documents incorporated in this Agreement by reference or otherwise. Notwithstanding the above, this Agreement shall become a binding contractual commitment within 10 days after the Contractor receives it unless the Contractor furnishes written notice of objection to BSA within said 10 days.
- (b) An attempted acknowledgment or acceptance which contains provisions conflicting with or additional to these Terms and Conditions or which varies any terms or conditions shall have no force or effect.
- (c) All rights and obligations of the parties shall survive final performance of this Agreement.

Article 4 COMPLETE AGREEMENT

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

Article 5 RESPECTFUL WORKPLACE POLICY

BSA is committed to providing a safe work environment for employees, contractors, guests and visitors, that is based on courtesy, civility and respectful communication. Acts or threats of violence, obscene or harassing telephone calls, verbal abuse, and any behavior meant to intimidate others are examples of actions that are prohibited on site at any time. Violators of this policy will be subject to disciplinary action up to and including discharge, debarment from site, or criminal arrest and prosecution.

Article 6 REPORTING ENVIRONMENTAL, SAFETY, HEALTH AND TECHNICAL CONCERS

The Contractor will ensure that all Contractor employees are notified quarterly that they have the right to report environment, safety, health and technical concerns that have not been resolved through routine work processes through the Department of Energy Differing Professional Opinion (DPO) process ((the DOE DPO process can be found in Attachment 2 to DOE O 442.2 and at <http://www.hss.doe.gov/nuclearsafety/qa/dpo.html>). The notification must provide points of contact (name, phone number and email addresses of DPO Managers) as listed on the DOE DPO web page, as well as the DOE DPO web page address.

Article 7 ASSIGNMENT

Neither this Agreement nor any interest therein nor claim there under shall be assigned or transferred by the Contractor except as expressly authorized in writing by BSA, provided that the Contractor or its assignee's rights to be paid amounts due as a result of performance of this Agreement may be assigned to a bank, trust company or other

financing institution, including any federal lending institution. This Agreement is assignable by BSA to the Government or to a successor contractor for the operation of Brookhaven. The Contractor agrees to look solely to the Government or to such successor contractor for payment of the part so assigned, and to execute a novation agreement so recognizing the successor contractor if requested to do so by BSA.

Article 8 DISPUTES

- (a) **Good Faith Negotiation.** The parties agree that they will attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of or relating to this Agreement. Either party may initiate negotiations by providing written notice in letter form to the other party, setting forth the subject of the dispute and the relief requested. The recipient of such notice agrees to respond in writing within five days with a statement of its position on and recommended solution to the dispute. If the dispute is not resolved by this exchange of correspondence, then representatives of each party with full settlement authority will meet at a mutually agreeable time and place within fifteen days of the date of the initial notice in order to exchange relevant information and perspectives, and to attempt to resolve the dispute. If the dispute is not resolved by these negotiations, the matter will be submitted to Judicial Arbitration and Mediation Services (JAMS), or its successor, for mediation, following the procedure described in Subparagraph B, below. Pending settlement or a final judgment, the Contractor will proceed diligently with performance of this Agreement according to the instructions of BSA's contractual representative.
- (b) **Mediation.** Except as provided in this Agreement, the parties agree that neither will commence any civil action with respect to any dispute, claim or controversy arising out of or relating to this Agreement until the matter has been submitted to JAMS (45 Broadway, 28th Floor, New York, NY 10006, 212-751-2700), its successor, for mediation and that process has been completed. Either party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties agree to cooperate with JAMS and with one another in selecting a mediator from JAMS panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. The parties further agree that they will treat as confidential all offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees. The parties also agree that they will treat any such communications as privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation

session, or forty-five (45) days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire. The provisions of this Article may be enforced by any court of competent jurisdiction, and the party seeking enforcement will be entitled to an award of all costs, fees and expenses, including attorney's fees, to be paid by the party against whom enforcement is ordered.

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

Article 9 INDEPENDENT CONTRACTOR; HOLD HARMLESS

- (a) In conducting the work hereunder the Contractor is acting in the capacity of an independent contractor and is not an agent or employee of BSA and/or the Government. However, BSA shall have general direction of the work and the right to control its final result obtained, within the limits of the specifications. Nothing contained in this Agreement or any lower-tier subcontract shall create any contractual relationship between any such lower-tier subcontractor and BSA. The Contractor is solely responsible for its actions and those of its subcontractors, agents and/or employees.
- (b) The Contractor will defend, hold harmless and indemnify the Government and BSA and their respective officers, agents and employees from and against any and all liability, including all losses and damages and any expense connected therewith arising out of or connected with the work, excepting only liability arising from affirmative acts, done with intent to cause loss, damage or injury, by the Government or BSA or the officers, agents or employees of either.
- (c) The Contractor's obligations under this clause shall not be limited by any legal limitation on the amount or type of damages, compensation or benefits payable under workers' compensation acts, disability benefit acts or other employee benefit acts.
- (d) The Contractor's liability insurance shall provide coverage for the Contractor's obligations under this clause in accordance with the Article on Insurance.

Article 10 NOTICE REGARDING LATE PERFORMANCE

If the Contractor encounters difficulty in meeting performance requirements, or anticipates difficulty in complying with the delivery schedule or date, the Contractor shall immediately notify BSA's Procurement and Property Management Division (PPM) in

writing, giving pertinent details, including the date by which it expects to complete performance or make delivery. This notice shall be informational only, and BSA's receipt of this notice shall not be construed as a waiver of any schedule or date, or any rights or remedies provided by law or under this Agreement.

Article 11 NO WAIVER

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

Article 12 NEW MATERIALS

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

Article 13 HAZARDOUS MATERIALS IDENTIFICATION AND MATERIAL SAFETY DATA

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

Article 14 EXCUSABLE DELAYS

The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as acts of God or the public enemy, acts of BSA, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify BSA in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to BSA of the cessation of such occurrence.

Article 15 TERMINATION FOR CONVENIENCE

BSA reserves the right to terminate this Agreement, or any part hereof, for its convenience or that of the Government. In the event of such termination, BSA's Procurement and Property Management Division (PPM) shall deliver a notice specifying the extent of the termination and its effective date. The Contractor shall immediately stop all work so terminated and shall immediately cause any and all of its affected suppliers

and subcontractors to cease work. Subject to the terms of this Agreement, BSA shall be liable only for payment under the payment provisions of this Agreement for services rendered prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to BSA's satisfaction using its standard record keeping system, have resulted from the termination. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided. In no event shall the agreed amount exceed the total price of the Agreement.

Article 16 TERMINATION FOR DEFAULT

- (a) Ten days after giving the Contractor written notice of its intent, BSA may terminate this Agreement for default, in whole or in part, if the Contractor fails to comply with any of the terms of this Agreement, fails to make progress so as to endanger performance of this Agreement or fails to provide adequate assurance of future performance. In this event, BSA shall not be liable for any services or supplies not accepted.
- (b) If this Agreement is terminated for default, BSA may require the Contractor to deliver any supplies and materials, manufacturing materials, and manufacturing drawings that the Contractor has specifically produced or acquired for the terminated portion of this Agreement. BSA shall pay the agreed-upon price for services performed and accepted in addition to completed supplies delivered and accepted. BSA and the Contractor shall agree on the amount of payment for all other deliverables.
- (c) BSA's rights and remedies under this Article are in addition to any other rights and remedies provided by law or under this Agreement.

Article 17 PAYMENT

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

Article 18 CHANGES

- (a) At any time, BSA may, by written notice, make changes within the general scope of this Agreement, in any or all of the following:
 - (i) scope of work to be performed,
 - (ii) method and manner of performance,
 - (iii) place of performance,

- (iv) drawings, designs or specifications if the Agreement calls for delivery of supplies specially manufactured for BSA,
- (v) method of shipping or packing the supplies, and
- (vi) place of delivery.

If any such change causes an increase or decrease in the price or estimated cost of or the time required for performance of any part of the work hereunder, whether or not changed by the order, or otherwise affects any other terms and conditions of this Agreement, BSA shall make an equitable adjustment in the price or estimated cost and/or performance schedule and other affected terms and shall modify the agreement accordingly. Such adjustment shall be made by written amendment to this Agreement signed by both parties. The Contractor must assert any claim for adjustment within 30 days from the date it receives BSA's change notice; however, BSA may, in its sole discretion, receive and act on any claim for adjustment at any time before final payment. Failure to agree to any adjustment shall be settled in accordance with the Disputes article of these General Terms and Conditions. Nothing in this clause, including any disagreement with BSA about the equitable adjustment, shall excuse the Contractor from proceeding with work hereunder, as changed.

- (b) Only BSA's Procurement and Property Management Division (PPM) is authorized to issue changes, whether formal or informal, on BSA's behalf. If the Contractor considers that any direction or instruction by BSA's technical personnel constitutes a change, the Contractor shall not rely on such direction or instruction without obtaining written confirmation from BSA's PPM Division.
- (c) When costs are a factor in any determination of a price adjustment pursuant to this clause or any provision of this Agreement, such cost shall be in accordance with the cost principles and procedures in FAR Subpart 31 and DEAR Subpart 931.

Article 19 INSPECTION AND ACCEPTANCE

- (a) BSA has the right to inspect and test all items and services (including, but not limited to, raw materials, components, intermediate assemblies and end products) to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance. BSA shall perform inspections and tests in a manner that will not unduly delay the work. If BSA performs tests or inspections on the contractor's premises or that of a subcontractor, the Contractor shall furnish, or cause to be furnished, all reasonable facilities and assistance for the safe and convenient performance of these duties at no additional cost to BSA. BSA assumes no contractual obligation to perform any test or inspection for the Contractor's benefit unless specifically set forth elsewhere in this Agreement. BSA's failure to inspect the items and services shall not relieve the Contractor from responsibility, nor impose liability on BSA, for nonconformity.
- (b) If BSA specifies an inspection system elsewhere in this Agreement, the Contractor shall provide and maintain such inspection system and deliver only those items and services that have been found to conform to the requirements of this Agreement. The Contractor shall maintain complete records of all inspections

and make them available to BSA during performance and for as long as this Agreement requires.

- (c) If BSA finds the materials or work to be defective, the Contractor shall promptly repair or replace such materials or work as directed by BSA at no increase in the agreement price. The Contractor shall bear the transportation cost. If the Contractor fails to act as directed within 10 days from BSA's written notice, BSA may repair or replace such materials or work by contract or otherwise and assess the Contractor the excess cost it incurred as a result and/or terminate the Contractor for default. If the Contractor is not ready for inspection or if prior rejection makes reinspection or retest necessary, BSA may charge the Contractor the additional cost of test and/or inspection. The Contractor shall not tender for acceptance corrected or rejected items or services without disclosing the former rejection or requirement for correction, and shall disclose the corrective action taken.
- (d) BSA shall effect acceptance of all materials and services ordered hereunder within a reasonable time after delivery. Except as otherwise provided for in this Agreement, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

Article 20 TAXES

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

Article 21 TITLE AND RISK OF LOSS

Unless specified elsewhere in this Agreement, title to items furnished under this Agreement shall pass to the Government upon acceptance, regardless of when or where BSA takes physical possession. If BSA makes partial or progress payments, title shall pass to the Government for the items covered by the payment. Unless the Agreement specifically provides otherwise, risk of loss or damage to the items provided under this Agreement shall remain with the Contractor until delivery of the items to the destination specified in the Agreement.

Article 22 WARRANTY

Notwithstanding inspection and acceptance by BSA under any provision of this Agreement, the Contractor warrants that the material, supplies and/or equipment delivered (hereinafter called "the goods") and any services performed hereunder, shall be of first-class quality and shall accord in every respect with the description, specifications, drawings, and/or samples elsewhere identified in this Agreement. The Contractor also warrants that all goods delivered hereunder shall be free from defects in design (unless the design is furnished by the Buyer), material and workmanship. The warranty shall begin on acceptance and extend for a period of one year or the manufacturer's warranty period, whichever is longer. If any nonconformity appears within that time, BSA, in

addition to any other rights and remedies provided by law, or under other provisions of this Agreement, may require the Contractor to

- (a) replace or repair the goods and/or reperform the services at no increase in price or
- (b) reduce the Agreement price to reflect the reduced value of the Contractor's performance.

When supplies are returned, the Contractor shall bear the risk of loss and transportation cost. If the Contractor fails to replace or repair the goods or reperform the services within 10 days of BSA's written notice to do so, BSA shall have the right by contract or otherwise to replace or repair the goods or reperform the services, and charge the Contractor the cost occasioned thereby. Furthermore, the warranties provided for in this paragraph shall be in addition to such other warranties as may be specifically provided for elsewhere in this Agreement.

Article 23 EXTRAS

Except as otherwise provided in this Agreement, BSA shall not pay for extras unless authorized in writing by BSA.

Article 24 LIMITATION OF LIABILITY

Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to BSA for consequential damages resulting from any defect or deficiencies in accepted items.

Article 25 COMPLIANCE WITH LAWS

- (a) The Contractor shall comply with all applicable federal, state, local laws and ordinances, executive orders, all pertinent lawful orders, rules and regulations, including those applicable by reason of the fact that this Agreement is issued under the Prime Contract and such compliance shall be a material requirement of this Agreement. If the Contractor is required to obtain licenses and/or permits to comply with this Article, it will do so without additional expense to BSA.
- (b) The Contractor warrants that each chemical substance constituting or contained in items furnished by this Agreement is on the list of substances published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act, as amended. With each delivery the Contractor shall provide BSA any applicable Material Safety Data Sheet as required by the Occupational Safety and Health Act and applicable regulations including, without exception, 29 CFR 1910.1200.
- (c) The Contractor shall perform work under this Agreement in a manner that is safe, healthy and environmentally acceptable, and shall develop and manage a comprehensive program in support of these objectives. Specific requirements may be included in special or supplemental terms to this Agreement.
- (d) The Contractor shall include this clause in all subcontracts, at any tier, involving performance of this Agreement.

**Article 26 COMPLIANCE WITH INTERNET PROTOCOL VERSION 6 (IPv6)
IN ACQUIRING INFORMATION TECHNOLOGY**

This clause is applicable if this contract involves the acquisition of Information Technology (IT) that uses Internet Protocol (IP) technology. The Contractor agrees that

- (a) all deliverables that involve (IT) that uses (IP) (products, services, software, etc.) comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products; and
- (b) it has IPv6 technical support for fielded product management, development and implementation available.

If the Contractor plans to offer a deliverable that offers IT that is not initially compliant, the Contractor agrees to

- (c) obtain BSA's approval before starting work on the deliverable; and
- (d) have IPv6 technical support for fielded product management, development and implementation available.

Should the Contractor find that the Statement of Work or specifications of this contract do not conform to IPv6 standards, it must notify BSA of such nonconformance and act in accordance with BSA's instructions.

Article 27 AUTHORIZATION AND CONSENT

The Government has given its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this Agreement or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract) which is expected to exceed \$100,000.

Article 28 PATENT INDEMNITY-SUPPLIES AND SERVICES

If the amount of this Agreement is in excess of \$10,000, the Contractor shall indemnify BSA, the Government, and their officers, agents, and employees against liability, including costs, for infringement of any United States letters patent (except U.S. letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this Agreement, or out of the use or disposal by or for the account of the Government or BSA of such supplies or construction work. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government (with notice to BSA) of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof, and further, such indemnity shall not apply to:

- (a) An infringement resulting from compliance with specific written instructions of BSA or the Government directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the Agreement not normally used by the Contractor.

- (b) An infringement resulting from addition to, or change in, such supplies or components furnished or construction work performed which addition or change was made subsequent to delivery or performance by the Contractor, or
- (c) A claimed infringement which is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

Article 29 REPORTING OF ROYALTIES

If this Agreement is in an amount which exceeds \$10,000 and if any royalty payments totaling more than \$250 are directly involved in the Agreement or are reflected in the Agreement price to BSA, the Contractor agrees to report in writing to the Government through BSA during the performance of this Agreement and prior to its completion or final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this Agreement together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which royalties are to be paid. The approval of DOE or BSA of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

Article 30 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

The provisions of this clause shall be applicable only if the amount of this Agreement exceeds \$100,000.

- (a) The Contractor shall report to the Government through BSA promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the Contractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government when requested by the Government or BSA, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government or BSA.
- (c) This clause shall be included in all subcontracts.

Article 31 SUSPECT/ COUNTERFEIT ITEMS

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

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

- (h) Types of materials, parts, and components, known to have been misrepresented include, but are not limited to:
 - (i) lifting materials such as slings, hooks, cables, and shackles;
 - (j) threaded fasteners fraudulently marked as high-strength bolts;
 - (k) refurbished electrical circuit breakers sold under false certifications;
 - (l) valves;
 - (m) piping and piping components;
 - (n) electrical devices;
 - (o) channel members, plate, bar, and flanges;
 - (p) and other structural items.
 - (i) See the BNL Suspect / Counterfeit Items, Subject Area Exhibits, found at: https://sbms.bnl.gov/sbmsearch/subjarea/72/72_SA.cfm?parentID=72, for more information on identifying suspect/counterfeit items. S/CIs may pose immediate and potential threats to the safety of DOE and contractor workers, the public, and the environment. Failure of a safety or mission critical system due to an S/CI could also have security implications at DOE facilities.
- (q) Items furnished to BSA under this Agreement shall not include suspect/counterfeit parts nor shall such parts be used in performing any work under this Agreement whether on or off the Laboratory site.
- (r) If suspect/counterfeit parts are furnished under this Agreement and are found on the Laboratory site, such parts shall be impounded by BSA or they shall be removed by the Contractor as directed by BSA. The Contractor shall promptly replace such parts with supplies acceptable to BSA and the Contractor shall be liable for all costs relating to impoundment, removal, and replacement. BSA may turn such parts over to the U.S. Office of the Inspector General for investigation and reserves the right to withhold payment pending the outcome of any investigation.
- (s) The rights of BSA in this clause are in addition to any other rights provided by law or under this Agreement.

Article 32 APPLICABLE LAW

The parties agree that the federal common law of government contracts will govern the construction and interpretation of this Agreement and all claims arising under or related to this Agreement or work performed under this Agreement or claims of breach of this Agreement, regardless of the forum in which any party to this Agreement brings action. For purposes of this Agreement, the federal common law of government contracts will consist of the interpretation of contract clauses and the law enunciated and applied to

government contracts by the Boards of Contract Appeals, the Comptroller General (CG), and Federal Courts having jurisdiction over the Boards or the CG. The term "Board of Contract Appeals" means those established under the Contract Disputes Act of 1978, 41 U.S.C. 607(a)(1), and successor bodies.

Article 33 SUSPENSION OF WORK

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

Article 34 BANKRUPTCY

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

Article 35 WALSH-HEALY PUBLIC CONTRACTS ACT

If this Contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$15,000 and is otherwise subject to the Walsh-Healy Public Contracts Act, as amended (41 USC 35-45), there are hereby incorporated by reference all regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

Article 36 INTELLECTUAL PROPERTY INDEMNITY

The Contractor shall indemnify BSA and the Government and their officers, agents, and employees against alleged or actual liability, including costs of any nature whatsoever, for the Contractor's infringement or misappropriation of third party intellectual property, including, but not limited to, patents, copyrights, trademarks, or trade secrets that the Contractor has used, included, or embodied in its performance of the Contract. The Contractor will promptly notify BSA in the event it is notified that it has infringed or misappropriated a third party's intellectual property; in the event that infringement or misappropriation has occurred, in addition to the indemnification and at BSA's sole

option, the Contractor will either procure the rights for BSA and the Government to use the intellectual property or BSA will terminate the Contract for cause.

Article 37 INDEMNITY FOR DEFECTIVE COST OR PRICING DATA

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

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

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

Article 38 LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS

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

Article 39 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES

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

Article 40 PRESS RELEASES AND OTHER PUBLIC DISSEMINATION OF CONTRACT INFORMATION

Press releases through print, broadcast or other media concerning the award, performance, results or conclusions from the work under this Contract shall not be made or otherwise distributed to the public without prior written consent by BSA. Any material

proposed to be released shall be submitted to the BSA Contractual Representative no later than two weeks prior to the intended press release.

Article 41 REPORTING EXECUTIVE COMPENSATION (Agreements valued at \$25,000 or more)

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

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

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

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

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

Article 42 IDENTIFICATION OF EMPLOYEES

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

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

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

Article 43 CLAUSES INCORPORATED BY REFERENCE

This Agreement incorporates the following Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses by reference, as they exist on the effective date of this Agreement, with the same force and effect as if they were in full text. The FAR and DEAR clauses are available at <http://farsite.hill.af.mil/> or they may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. Whenever necessary to make the context of the clauses applicable to this Agreement, the term “Contractor” shall mean the Contractor, the term “Contract” shall mean this Agreement, and where noted or where necessary to derive proper meaning in a subcontract situation the terms “DOE”, “Government” and “Contracting Officer” shall mean BSA, except the terms “DOE”, “Government” and “Contracting Officer” do not change:

- (a) in the phrases “Government Property”, “Government-Furnished Property”, “Government Equipment” and “Government-Owned Equipment”, or, where otherwise intended that title, ownership or rights are to remain with the Government; or
- (b) where statute or regulation vests authority exclusively in specific agencies or officials; or
- (c) where otherwise specifically modified in this Agreement.

However, except in clauses FAR 52.227-1, “Authorization and Consent” , FAR 52.227-14, “Rights in Data-General”, FAR 52.227-16, “Additional Data Requirements”, FAR 52.227-23, “Rights to Proposal Data (Technical)”, DEAR 952.227-11, “Patent Rights by the Contractor (Short Form)”, DEAR 952.227-13, “Patent Rights Acquisition by the Government”, DEAR 970.5227-1, “Rights in Data-Facilities”, DEAR 970.5227-4, “Authorization and Consent” and DEAR 970.5227-5, “Notice and Assistance Regarding Patent and Copyright Infringement”, in which clauses “Government” shall mean the U. S. Government and “Contracting Officer” shall mean the DOE Contracting Officer for Prime Contract DE-AC02-98CH10886 with Brookhaven Science Associates, LLC., (BSA).

Article	Title of Clause	FAR Ref.
Article 44	Gratuities	52.203-3
Article 45	Covenant against Contingent Fees	52.203-5

Article 46	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009	52.203-15
Article 47	Personal Identity Verification of Contractor Personnel	52.204-9
Article 48	Required Sources for Helium and Helium Usage Data (agreements involving a major helium requirement)	52.208-8
Article 49	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment	52.209-6
Article 50	Utilization of Small Business Concerns	52.219-8
Article 51	Contract Work Hours and Safety Standards Act – Overtime Compensation	52.222-4
Article 52	Prohibition of Segregated Facilities	52.222-21
Article 53	Equal Opportunity	52.222-26
Article 54	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans (agreements of \$100,000 or more)	52.222-35
Article 55	Affirmative Action for Workers with Disabilities (agreements greater than \$10,000)	52.222-36
Article 56	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans (agreements of \$100,000 or more)	52.222-37
Article 57	Notification of Employee Rights Under the National Labor Relations Act, Paragraphs (a) to (f)	52.222-40
Article 58	Combating Trafficking in Persons	52.222-50
Article 59	Employment Eligibility Verification	52.222-54
Article 60	Affirmative Procurement of Biobased Products Under Service and Construction Contracts	52.223-2
Article 61	Hazardous Material Identification and Material Safety Data	52.223-3
Article 62	Energy Efficiency in Energy Consuming Products	52.223-15
Article 63	Contractor Policy to Ban Text Messaging While Driving	52.223-18
Article 64	Buy American Act - Supplies	52.225-1
Article 65	Restrictions on Certain Foreign Purchases	52.225-13
Article 66	Rights in Data-General with Alternate V and DEAR 927.409(a) and (d)(3). (Alternate II is applicable if limited rights in data is required. Alternate III is applicable if delivery is for restricted computer software).	52.227-14
Article 67	Additional Data Requirements	52.227-16
Article 68	Rights to Proposal Data (Technical)	52.227-23
Article 69	Interest	52.232-17
Article 70	Subcontracts for Commercial Items	52.244-6
Article 71	Government Property	52.245-1
Article 72	Preference for U.S. Flag Air Carriers	52.247-63
Article 73	Preference for Privately-Owned U.S. Flag Commercial Vessels	52.247-64
		DEAR. Ref

Article 74	Whistleblower Protection for Contractor Employees	952.203-70
Article 75	Security Requirements (agreements involving or are likely to involve classified information or special nuclear material)	952.204-2
Article 76	Classification/Declassification (agreements involving or are likely to involve access to classified information)	952.204-70
Article 77	Computer Security (agreements that may provide access to computers owned, leased or operated on behalf of the DOE)	952.204-77
Article 78	Sustainable Acquisition Program	952.223-78
Article 79	Patent Rights-Retention by the Contractor (Short Form) (agreements to small business for experimental, research & development, demonstration or design work)	952.227-11
Article 80	Patent Rights-Acquisition by the Government (agreements to other than small business for experimental, research & development, demonstration or design work)	952.227-13
Article 81	Research Misconduct (agreements involving research)	952.235-71
Article 82	Laws, Regulations, and DOE Directives	970.5204-2
Article 83	Access to and Ownership of Records (Cost Reimbursable agreements greater than \$2,000,000 and/or agreement is for or involves a critical task)	970.5204-3
Article 84	Rights in Data-Facilities (agreements for design or operation of plants or facilities or specially designed equipment for plants or facilities)	970.5227-1
Article 85	Refund of Royalties	970.5227-8
Article 86	Accounts, Records, and Inspection	970.5232-3

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

Article	Title of Clause	FAR Ref.
Article 87	Restrictions on Subcontractor Sales to the Government	52.203-6
Article 88	Anti-Kickback Procedures (except subparagraph c(1))	52.203-7
Article 89	Limitation on Payments to Influence Certain Federal Transactions	52. 203-12
Article 90	Audit and Records – Negotiation (Cost Reimbursable, Incentive, Time and Material, Labor-Hour or price redeterminable agreements)	52.215-2
Article 91	Integrity of Unit Prices (except paragraph (b))	52.215-14
Article 92	Limitations on Pass-Through Charges (Cost Reimbursable agreements)	52.215-23
Article 93	Toxic Chemical Release Reporting (except paragraph (e))	52.223-14
Article 94	Authorization and Consent	52.227-1
		DEAR. Ref
Article 95	Organizational Conflicts of Interest and Alternate I	952.209-72
Article 96	Authorization and Consent (paragraph (a) only; agreements for research and development)	970.5227-4

Article 97	Notice and Assistance Regarding Patent and Copyright Infringement	970.5227-5
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The following clauses are applicable to agreements over \$500,000:

Article	Title of Clause	DEAR. Ref
Article 98	Displaced Employee Hiring Preference	952.226-74
Article 99	Workforce Restructuring under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993	970.5226-2

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

Article	Title of Clause	FAR Ref.
Article 100	Contractor Code of Business Ethics and Conduct (agreements greater than \$5,000,000)	52.203-13
Article 101	Display of Hotline Poster(s) (agreements greater than \$5,000,000)	52.203-14
Article 102	Price Reduction for Defective Cost or Pricing Data (agreements greater than \$700,000)	52.215-10
Article 103	Price Reduction for Defective Cost or Pricing Data – Modifications (agreements greater than \$700,000)	52.215-11
Article 104	Subcontractor Cost or Pricing Data (agreements greater than \$700,000)	52.215-12
Article 105	Subcontractor Cost or Pricing Data – Modifications (agreements greater than \$700,000)	52.215-13
Article 106	Small Business Subcontracting Plan (agreements to large business)	52.219-9
Article 107	Liquidated Damages – Subcontracting Plan (agreements to large business)	52.219-16
Article 108	Cost Accounting Standards (except Paragraph (b); negotiated agreements to large business)	52.230-2
Article 109	Disclosure and Consistency of Cost Accounting Practices (negotiated agreements to large business)	52.230-3
Article 110	Administration of Cost Accounting Standards (negotiated agreements to large business)	52.230-6