

**BROOKHAVEN SCIENCE ASSOCIATES, LLC
GENERAL TERMS AND CONDITIONS
FOR NON-COMMERCIAL SERVICES**

AT

BROOKHAVEN NATIONAL LABORATORY

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Section 1 - General Clauses Applicable to Fixed Price and Cost Type Contracts.

Article 1.1 Definitions

The following terms shall have the meanings below:

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

Article 1.2 Order of Precedence

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

Article 1.3 Acceptance of Agreement

By signing this Agreement or performing the services 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. An attempted acknowledgment or acceptance which contains provisions conflicting with or additional to these Terms and Conditions or which varies any terms or conditions shall have no force or effect. BSA's failure to enforce any of the provisions of this Agreement shall not be construed as evidence to interpret the requirements of this Agreement, nor a waiver of any requirement, nor a waiver of BSA's right to enforce each and every provision. All rights and obligations of the parties shall survive final performance of this Agreement.

Article 1.4 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 1.5 Assignment

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

Article 1.6 Compliance with Laws and Regulations

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

Article 1.7 Independent Contractor; Hold Harmless

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

Article 1.8 Other Contracts

BSA may undertake or award other agreements for additional work. The Contractor shall fully cooperate with such other contractors and BSA employees and carefully fit his own work to such additional work as may be directed by BSA's technical representative. The Contractor shall not

commit or permit any act which will interfere with performance of the work by any other contractor or BSA employee.

Article 1.9 Notice Regarding Late Performance

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

Article 1.10 Inspection and Acceptance

- (a) "Services" as used in this clause, includes services performed, workmanship, and materials furnished or used in performing services under this Agreement.
- (b) The Contractor shall provide and maintain an inspection system acceptable to BSA covering the services under this Agreement. The Contractor shall maintain complete records of all inspection work performed and make them available to BSA during agreement performance and for as long as this Agreement requires.
- (c) BSA and the Government have the right to inspect and test all services under this Agreement to the extent practicable at all times and places 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.
- (d) If any of the services are not compliant with the requirements of the Agreement, BSA may require the Contractor to reperform the services at no increase in the Agreement price, or for no additional fee if this is a cost type contract. When the defects in services cannot be corrected by reperformance, BSA may (1) require the Contractor to take necessary action to ensure future compliant performance and (2) reduce the price, or any fee payable if this is a cost type agreement, to reflect the reduced value of the services performed.
- (e) If the Contractor fails to promptly reperform the services or to take any action necessary to ensure future compliant performance, BSA may (1) reperform the service and charge to the Contractor any cost incurred by BSA, through contract or otherwise, that is directly related to this reperformance, or if this is a cost type agreement, reduce any fee payable to the Contractor by an equitable amount under the circumstances and/or (2) terminate for default.
- (f) BSA shall effect acceptance of all 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 1.11 No Waiver

BSA's acceptance of the 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 1.12 New Materials

Unless otherwise specified in this Agreement, all items 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 any recycled or recovered material as defined by the Environmental Protection Agency in 40 CRF 247.

Article 1.13 Suspect/Counterfeit Items

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

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

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

- lifting materials such as slings, hooks, cables, and shackles;
- threaded fasteners fraudulently marked as high-strength bolts;
- refurbished electrical circuit breakers sold under false certifications;
- valves;
- piping and piping components;
- electrical devices;
- channel members, plate, bar, and flanges;
- and other structural items.

See the BNL Suspect / Counterfeit Items, Subject Area, 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 BSA and contractor workers, the public, and the environment. Failure of a safety or mission critical system due to an S/CI could also have security implications at DOE facilities.

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

- The rights of BSA in this clause are in addition to any other rights provided by law or under this Agreement.

Article 1.14 Hazardous Material Identification and Material Safety Data

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

Article 1.15 Title and Risk of Loss

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

Article 1.16 Warranty

Notwithstanding inspection and acceptance by BSA under any provision of this Agreement, the Contractor warrants that all services performed and items provided hereunder shall be of first-class quality, free from defects in workmanship and conform to the requirements of the Agreement at the time of acceptance. The warranty shall begin on acceptance and extend for a period of one year. If any nonconformity appears within that time, BSA may require the Contractor to reperform the services or replace or repair the goods at its own expense. 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 and in addition to any other rights and remedies provided by law or under other provisions of this Agreement.

Article 1.17 Taxes

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

Article 1.18 Extras

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

Article 1.19 Suspension of Work

- (a) At any time, BSA’s Procurement and Property Management (PPM) Division 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 incurring costs associated with such suspension as directed by BSA’s PPM Division.

- (b) Prior the expiration of the suspension notice, BSA shall either: (1) cancel or extend the notice; or (2) terminate the work covered by the notice as provided in the Termination articles of these General Terms and Conditions. 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 Terms and Conditions.

Article 1.20 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 JAMS, or its successor, for mediation, following the procedure described in subparagraph B, below. Pending settlement or a final judgment, the Contractor will proceed diligently with performance of this Agreement according to the instructions of BSA's contractual representative.
- (b) **Mediation** Except as provided in this Agreement, the parties agree that neither will commence any civil action with respect to any dispute, claim or controversy arising out of or relating to this Agreement until the matter has been submitted to JAMS (45 Broadway, 28th Floor, New York, NY 10006, 212-751-2700), its successor, for mediation and that process has been completed. Either party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties agree to cooperate with JAMS and with one another in selecting a mediator from JAMS panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. The parties further agree that they will treat as confidential all offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees. The parties also agree that they will treat any such communications as privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or 45 days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire. The provisions of this Article may be enforced by any Court of competent jurisdiction, and the party seeking enforcement will be entitled to an award of all costs, fees and expenses, including attorneys fees, to be paid by the party against whom enforcement is ordered.
- (c) **Waiver of Right to Litigate in Court Before Completing Negotiation and Mediation and Waiver of Right to Jury Trial and Designation of Court Sitting in the State of**

New York. The Contractor agrees to submit all disputes, claims or controversies arising out of or relating to this Agreement to negotiation and then mediation as described above before bringing any action in court. The contractor further acknowledges that, in the event it brings any such action in court, that 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 this provision for this contract is voluntary.

Article 1.21 Disputes Concerning Labor Standards

Disputes arising out of the labor standards provisions of this Agreement are subject to the *Disputes* clause except to the extent such disputes involve the meaning of classifications or wage rates contained in the wage determination decision of the Secretary of Labor or the applicability of the labor provisions of the Agreement. Such questions shall be referred to the Secretary of Labor in accordance with the procedures of the U.S. Department of Labor.

Article 1.22 Notice to BSA of Labor Disputes

The Contractor shall immediately give BSA's PPM Division written notice of actual or potential labor disputes which delay or threaten to delay timely performance under this Agreement as soon as the Contractor has knowledge of such disputes. The notice shall include all relevant information concerning the actual or potential labor dispute.

Article 1.23 Applicable Law

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

Article 1.24 Bankruptcy

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

Article 1.25 Walsh-Healy Public Contracts Act

If this agreement is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh-Healy Public Contracts Act, as amended (41 USC 35-45), there are hereby incorporated by reference all regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

Article 1.26 Patent Indemnity – Subcontracts

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

Article 1.27 Organizational Conflicts of Interest (DEAR 952.209-72)

(applicable to agreements for advisory and assistance services)

- (a) Purpose. The purpose of this clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this Agreement, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this Agreement.
- (b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as “Contractor”) in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venture, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.
 - (1) Use of Contractor’s Work Product.
 - (i) The Contractor shall be ineligible to participate in any capacity in BSA agreements, contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Contractor’s performance of work under this Agreement for a period of five years after the completion of this Agreement. Furthermore, unless so directed in writing by BSA’s PPM Division, the Contractor shall not perform any advisory and assistance services work under this Agreement on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.
 - (ii) If, under this Agreement, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by BSA’s PPM Division, in which case the restriction in this subparagraph shall not apply.
 - (iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items BSA.
 - (2) Access to and use of information.
 - (i) If the Contractor, in the performance of this Agreement, obtains access to information, such as BSA plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of BSA’s PPM Division it shall not:
 - (A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

- (B) compete for work for BSA based on such information for a period of six (6) months after either the completion of this Agreement or until such information is released or otherwise made available to the public, whichever is first;
 - (C) submit an unsolicited proposal to BSA which is based on such information until one year after such information is released or otherwise made available to the public; and
 - (D) release such information unless such information has previously been released or otherwise made available to the public by BSA.
 - (ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this Agreement, it shall treat such information in accordance with any restrictions imposed on such information.
 - (iii) The Contractor may use technical data it first produces under this Agreement for its private purposes consistent with paragraphs (b)(2)(i)(A) and (D) of this clause and the patent, rights in data, and security provisions of this Agreement.
- (c) Disclosure after award.
 - (1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this Agreement, occur during the performance of this Agreement, it shall make an immediate and full disclosure of such changes in writing to BSA's PPM Division. Such disclosure may include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. BSA may, however, terminate the Agreement for convenience if it deems such termination to be in the best interest of BSA.
 - (2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to BSA, BSA may terminate this Agreement for default.
- (d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this Agreement, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the agreement for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this Agreement.
- (e) Waiver. Requests for waiver under this clause shall be directed in writing to BSA's PPM Division and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of BSA, BSA's PPM Division may grant such a waiver in writing.
- (f) Subcontracts.
 - (1) The Contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving the performance of advisory and assistance services as that term is defined at FAR 37.201. The terms "agreement," "contract," "Contractor" and "BSA's PPM Division" shall be appropriately modified to preserve BSA's rights.
 - (2) Prior to the award under this Agreement of any subcontracts for advisory and assistance services, the Contractor shall obtain from the proposed subcontractor or

consultant the disclosure required by DEAR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Contractor. If the conflict cannot be avoided or neutralized, the Contractor must obtain the approval of BSA's PPM Division prior to entering into the subcontract.

Article 1.28 Indemnity for Defective Cost or Pricing Data

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

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

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

Article 1.29 Liability with Respect to Cost Accounting Standards

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

Article 1.30 Whistleblower Protection for Contractor Employees

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

Article 1.31 Identification of Employees

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

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

The Contractor agrees to incorporate FAR 52.222-54 and the substance of this clause Article 1.31, in all subcontracts issued under this Agreement.

Article 1.32 Reporting Executive Compensation (Agreements valued at \$25,000 or more)

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

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

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

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

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

Article 1.33 Clauses Incorporated by Reference

This Agreement incorporates the following Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses by reference, as they exist on the

effective date of this Agreement, with the same force and effect as if they were in full text. The FAR clauses are available through the General Services Administration (GSA) at <http://www.arnet.gov/far/>, and the DEAR clauses are available at <http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/Procurement/Acquisition+Regulation1>, or they may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. Whenever necessary to make the context of the clauses applicable to this Agreement, the term “Contractor” shall mean the Contractor, the term “Contract” shall mean this Agreement, and where noted or where necessary to derive proper meaning in a subcontract situation the terms “DOE”, “Government” and “Contracting Officer” shall mean BSA, except the terms “DOE”, “Government” and “Contracting Officer” do not change: (1) in the phrases “Government Property”, “Government-Furnished Property”, “Government Equipment” and “Government-Owned Equipment”, or where otherwise intended that title ownership or rights are to remain with the Government; or (2) where statute or regulation vests authority exclusively in specific agencies or officials; or (3) where otherwise specifically modified in this Agreement. However, except in clauses FAR 52.227-1, “Authorization and Consent”, FAR 52.227-14, “Rights in Data-General”, FAR 52.227-16, “Additional Data Requirements”, FAR 52.227-23, “Rights to Proposal Data (Technical)”, DEAR 952.227-11, “Patent Rights Retention 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 1.34	Gratuities	52.203-3
Article 1.35	Covenant against Contingent Fees	52.203-5
Article 1.36	Utilization of Small Business Concerns	52.219-8
Article 1.37	Contract Work Hours and Safety Standards Act – Overtime Compensation	52.222-4
Article 1.38	Prohibition of Segregated Facilities	52.222-21
Article 1.39	Equal Opportunity	52.222-26
Article 1.40	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 1.41	Affirmative Action for Workers with Disabilities (agreements greater than \$10,000)	52.222-36
Article 1.42	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 1.43	Service Contract Act of 1965, as Amended (agreements greater than \$2,500 and as designated in the agreement)	52.222-41
Article 1.44	Combating Trafficking in Persons	52.222-50
Article 1.45	Employment Eligibility Verification	52.222-54
Article 1.46	Hazardous Material Identification and Material Safety Data	52.223-3
Article 1.47	Energy Efficiency in Energy-Consuming Products	52.223-15
Article 1.48	Buy American Act – Supplies	52.225-1
Article 1.49	Restrictions on Certain Foreign Purchases	52.225-13
Article 1.50	Rights in Data-General, with Alternate V and DEAR 927.409(a) and (d)(3). (Alternate II is applicable if limited rights in data is	52.227-14

required. Alternate III is applicable if delivery is for restricted computer software).

Article 1.51	Additional Data Requirements	52.227-16
Article 1.52	Rights to Proposal Data (Technical)	52.227-23
Article 1.53	Interest	52.232-17
Article 1.54	Subcontracts for Commercial Items	52.244-6
Article 1.55	Government Property	52.245-1
Article 1.56	Preference for U.S. Flag Air Carriers	52.247-63
Article 1.57	Preference for Privately-Owned U.S. Flag Commercial Vessels	52.247-64
		DEAR Ref.
Article 1.58	Whistleblower Protection for Contractor Employees	952.203-70
Article 1.59	Security Requirements (agreements involving or are likely to involve classified information or special nuclear material)	952.204-2
Article 1.60	Classification/Declassification (agreements involving or are likely to involve access to classified information)	952.204-70
Article 1.61	Computer Security (agreements that may provide access to computers owned, leased or operated on behalf of the DOE)	952.204-77
Article 1.62	Patent Rights Retention by the Contractor (short form) (agreements to small business for experimental, research & development, demonstration or design work)	952.227-11
Article 1.63	Patent Rights Acquisition by the Government (agreements to other than small business for experimental, research & development, demonstration or design work)	952.227-13
Article 1.64	Research Misconduct (agreements involving research)	952.235-71
Article 1.65	Laws, Regulations, and DOE Directives	970.5204-2
Article 1.66	Access to and Ownership of Records (Cost Reimbursable agreements greater than \$2,000,000 and/or agreement is for or involves a critical task)	970.5204-3
Article 1.67	Rights in Data-Facilities (agreements for design or operation of plants or facilities or specially designed equipment for plants or facilities)	970.5227-1
Article 1.68	Refund of Royalties	970.5227-8
Article 1.69	Accounts, Records and Inspection	970.5232-3

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

Article	Title of Clause	FAR Ref.
Article 1.70	Restrictions on Subcontractor Sales to the Government	52.203-6
Article 1.71	Anti-Kickback Procedures (except subparagraph c(1))	52.203-7
Article 1.72	Limitation on Payments to Influence Certain Federal Transactions	52.203-12
Article 1.73	Audit and Records – Negotiation (Cost Reimbursable, Incentive, Time and Material, Labor-Hour or price redeterminable agreements)	52.215-2
Article 1.74	Integrity of Unit Prices (except paragraph (b))	52.215-14
Article 1.75	Limitations on Pass-Through Charges (Cost Reimbursable agreements)	52.215-23
Article 1.76	Toxic Chemical Release Reporting	52.223-14
Article 1.77	Authorization and Consent	52.227-1
		DEAR Ref.
Article 1.78	Authorization and Consent (paragraph (a) only; agreements for research and development)	970.5227-4

Article 1.79 Notice and Assistance Regarding Patent and Copyright Infringement 970.5227-5

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

Article	Title of Clause	FAR Ref.
		DEAR Ref.
Article 1.80	Displaced Employee Hiring Preference	952.226-74
Article 1.81	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 1.82	Contractor Code of Business Ethics and Conduct (agreements greater than \$5,000,000)	52.203-13
Article 1.83	Display of Hotline Poster(s) (agreements greater than \$5,000,000)	52.203-14
Article 1.84	Price Reduction for Defective Cost or Pricing Data (agreements greater than \$700,000)	52.215-10
Article 1.85	Price Reduction for Defective Cost or Pricing Data - Modifications (agreements greater than \$700,000)	52.215-11
Article 1.86	Subcontractor Cost or Pricing Data (agreements greater than \$700,000)	52.215-12
Article 1.87	Subcontractor Cost or Pricing Data – Modifications (agreements greater than \$700,000)	52.215-13 52.219-9
Article 1.88	Small Business Subcontracting Plan (agreements to large business)	52.219-16
Article 1.89	Liquidated Damages – Subcontracting Plan (agreements to large business)	
Article 1.90	Cost Accounting Standards (except Paragraph (b); negotiated agreements to large business)	52.230-2
Article 1.91	Disclosure and Consistency of Cost Accounting Practices (negotiated agreements to large business)	52.230-3
Article 1.92	Administration of Cost Accounting Standards (negotiated agreements to large business)	52.230-6

Section 2 – General Clauses Applicable Only to Fixed Price Contracts

Article 2.1 Payment

BSA shall make payment for accepted services performed and/or items delivered as set forth in this Agreement. Unless otherwise provided herein, 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 Accounts 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 in the Agreement. 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 performance and/or deliveries which it accepts.

Article 2.2 Pricing of Adjustments

When costs are a factor in any determination of a price adjustment pursuant to the “Changes” clause or any other provisions of this Agreement, such costs shall be in accordance with the cost principles and procedures in Federal Acquisition Regulation (FAR) Subpart 31 and Department of Energy Acquisition Regulation (DEAR) Subpart 931.

Article 2.3 Changes

- (a) At any time, by written notice BSA may make changes within the general scope of this Agreement, in any or all of the following: (1) description of the services to be performed, (2) time of performance (hours of the day, days of the week, etc.), (3) place of performance, (4) drawings, designs or specifications if the Agreement calls for delivery of supplies specially manufactured for BSA, (5) method of shipping or packing the supplies, and (6) place of delivery. If any such change causes a difference in the cost or the time required for performance, BSA shall make an equitable adjustment in the price and/or delivery schedule and other affected provisions. Such adjustment shall be made by written amendment to this Agreement signed by both parties. The Contractor must assert any claim for adjustment within 30 days from the date it receives BSA’s change notice; however, BSA may, in its sole discretion, receive and act on any claim for adjustment at any time before final payment. Failure to agree to any adjustment shall be settled in accordance with the *Disputes* article of these General 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 (PPM) Division 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 2.4 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 (PPM) Division shall deliver a notice to the Contractor’s designated contractual representative 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 subcontractors and suppliers to cease work. BSA shall be liable only for payment under the payment provisions of this Agreement for services rendered before the effective date 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 that reasonably could have been avoided. In no event shall the agreed amount exceed the total price of the Agreement.

Article 2.5 Termination for Default

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

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

Section 3 – General Clauses Applicable Only to Cost Type Agreements

Article 3.1 Allowable Cost and Payment

- (a) The Contractor shall submit invoices in reasonable detail to the address indicated in the Agreement as work progresses. A statement of the claimed allowable cost for performing the work under this Agreement shall accompany each invoice. If applicable, invoices shall include a list of the property acquired by the Contractor to which title vests in the Government in accordance with the *Government Property* clause of this Section. Invoices may be submitted once every month (or at more frequent intervals if approved by BSA). Payments may be made 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 date on which an electronic funds transfer was made.
- (b) For reimbursement of work performed under this Agreement, BSA shall pay the Contractor allowable costs in accordance with this Agreement and Subpart 31.2 of the FAR as supplemented by Subpart 931.2 of the DEAR in effect on the date of this Agreement. The term "cost" includes only: 1) costs the Contractor has paid for items or services directly for the Agreement at the time of the invoice, and 2) provided the Contractor is not delinquent in paying costs of Agreement performance in the ordinary course of business, costs incurred but not necessarily paid for materials from Seller's inventory, direct labor, direct travel, other direct in-house costs, allocable and allowable indirect costs. Costs and expenses incurred by BSA that are determined by DOE to be unallowable that result from the acts or omissions of the Contractor or its subcontractors may be recovered by BSA from the Contractor.
- (c) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the FAR in effect for the applicable period. Within 90 days after expiration of each of its fiscal years, the Contractor shall submit proposed final indirect cost rates for that period and supporting cost data to BSA or the cognizant audit agency, whichever applies. The Contractor and BSA (or the cognizant audit agency) shall determine and execute a written understanding of the final indirect cost rates.
- (d) Quick close-out procedures of Subpart 42.7 of the FAR may be used.

- (e) At any time before final payment, BSA may have the Contractor's invoices and statements of cost audited. Any payment may be reduced by amounts found by BSA not to constitute allowable costs or adjusted for prior overpayments or underpayments.
- (f) The Contractor shall submit a completion invoice no later than one year from the completion date. On approval of that invoice and the Contractor's compliance with this Agreement, BSA shall pay any balance of allowable costs and that part of the fee not previously paid. The Contractor shall pay to BSA any refunds, rebates, credits or other amounts accruing to or received by the Contractor or any assignee under this Agreement to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by BSA. Before final payment under this Agreement, the Contractor and each assignee shall provide an acceptable assignment to BSA of refunds, rebates, credits or other amounts properly allocable to costs for which the Contractor has been reimbursed by BSA under this Agreement and a release discharging BSA and the Government, their officers, agents and employees from all liabilities, obligations and claims arising out of or under this Agreement except claims specifically stating the exact basis and amount.

Article 3.2a Fee

BSA shall pay the Contractor the fee as specified in the Agreement for performing work hereunder. The fee shall be paid as specified in the Agreement; provided, that after payment of 85 percent of the fee, BSA may withhold further payment of allowable cost until a reserve is set aside in an amount considered necessary to protect BSA's and the Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or \$100,000, whichever is less.

Article 3.2b No Fee

Where no fee is to be paid for performing this Agreement, after payment of 80 percent of the total estimated cost shown in the Agreement, BSA may withhold further payment of allowable cost until a reserve is set aside in an amount considered necessary to protect BSA's and the Government's interest. This reserve shall not exceed one percent of BSA's share of the total estimated cost or \$10,000, whichever is less.

Article 3.3 Limitation of Cost and Funds

- (a) The Contractor agrees to use its best efforts to perform the work specified in the Agreement within the estimated specified costs. BSA is not obligated to reimburse the Contractor for costs incurred in excess of the total amount obligated by BSA as specified in the Agreement. The Contractor is not obligated to continue performance under this Agreement (including actions under the Termination clause of this Agreement) or otherwise incur costs in excess of the total amount obligated as specified in the Agreement, until BSA increases the funding obligation. If this is a cost-sharing Agreement, the increase shall be allotted in accordance with the formula specified in the Agreement.
- (b) The Contractor shall notify BSA's PPM Division in writing whenever it has reason to believe that the total costs the Contractor has incurred and expects to incur in the next 60 days (1) shall exceed 75 percent of the total amount obligated to this Agreement, or (2) whenever it has reason to believe that the total estimated cost for performance of this Agreement shall be either greater or substantially less than previously estimated. The notice shall include the estimated amount of funds required to continue timely performance.
- (c) No notice, communication, or representation, other than by BSA's PPM Division, shall affect this Agreement's funding.

- (d) If the total obligated amount or the estimated cost specified in the Agreement is increased, any costs the Contractor incurs before the increase that are in excess of the previously obligated amount shall be allowable to the same extent as if incurred afterward, unless BSA issues a written notice directing that the increase is solely to cover termination or other specified expenses.

Article 3.4 Changes

- (a) At any time, by written notice BSA may make changes within the general scope of this Agreement, in any or all of the following: (1) description of the services to be performed, (2) time of performance (hours of the day, days of the week, etc.), (3) place of performance, (4) drawings, designs or specifications if the Agreement calls for delivery of supplies specially manufactured for BSA, (5) method of shipping or packing the supplies, and (6) place of delivery. If any such change causes an increase or decrease in the 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-- (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) 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 (PPM) Division 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) Notwithstanding the terms and conditions of paragraph (a) above, the estimated cost of this Agreement and, if this Agreement is incrementally funded, the funds obligated for performance of this Agreement, shall not be increased or considered to be increased except by specific written modification of the Agreement indicating the new Agreement estimated cost and, if this Agreement is incrementally funded, the new amount obligated to the Agreement. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost and Funds clause of this Agreement.

Article 3.5 Termination

- (a) BSA reserves the right to terminate this Agreement in whole or in part: (1) for convenience if BSA determines that a termination is in the interest of BSA or the Government; or (2) for default if the Contractor fails to comply with any of the terms of this Agreement, or fails to perform satisfactorily under this Agreement, or fails to provide adequate assurance of future performance. Except for defaults of subtier subcontractors, the Contractor shall not be in default because of failure to perform if the failure arises from causes beyond the Contractor's reasonable control and without its fault or negligence. The Contractor will not be deemed to be in default for failure to perform caused by the failure of a subtier subcontractor if the failure was beyond the control of

both the Contractor and subtier subcontractor and without the fault or negligence of either; however, the Contractor will be in default if BSA directed the Contractor to purchase these services or supplies from another source and the Contractor failed to comply. A termination which was originally determined to be for default shall be treated as a termination for convenience if the Contractor was not in default.

- (b) In the event of termination, BSA's PPM Division shall deliver a notice specifying the extent and effective date. The Contractor shall immediately: (1) stop all work terminated thereunder; (2) cause any and all of its suppliers and subtier subcontractors to cease work to the extent it relates to the work terminated, and terminate all subcontracts to the extent that they relate to the work terminated; (3) transfer title and deliver to BSA, or use its best effort to sell, as directed by BSA (I) the fabricated and unfabricated parts, work in process, completed work, supplies, other material produced or acquired for the work terminated, (ii) completed or uncompleted plans, drawings, information, other property that would be required to be furnished to BSA had this Agreement been completed, (iii) jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this Agreement the cost of which the Contractor has been or will be reimbursed under this Agreement; (4) complete performance of the work not terminated; (5) reach settlement with all subtier subcontractors who claim monies owed if such settlement is claimed as reimbursable under this Agreement, and obtain BSA's approval of such settlements; and (6) protect and preserve any property in which BSA or the Government has or may acquire an interest.
- (c) Subject to the terms of this Agreement, the Contractor shall be paid: (1) all costs reimbursable under this Agreement, not previously paid, for performance before the effective date of the termination and those costs incurred after the effective date of the termination that are preapproved by BSA, less any claim which BSA has against the Contractor under this Agreement, less the proceeds of sale of materials, supplies, or other things acquired by the Contractor and sold but not credited to BSA, and less all unliquidated advance or other payments; (2) reasonable costs that Seller can demonstrate to BSA's satisfaction have resulted from the termination including approved amounts of settlements with subcontractors; (3) reasonable costs of settlement of the work terminated, including accounting, legal, clerical, and other expenses reasonably necessary to (I) prepare the Contractor's termination settlement proposal, and (ii) settle subtier subcontracts; and (4) a portion of the fee payable under the agreement as follows: (I) if the termination is for convenience, a percentage of the fee (if applicable) equal to the percentage of completion of work contemplated under the Agreement but excluding subtier subcontract effort included in subtier subcontractor's termination proposal which are reimbursable under this Agreement, less previous payments for fee; (ii) if the termination is for default, the fee payable shall be a proportionate part of the fee as the total number of articles or amount of services delivered to and accepted by BSA is to the total number of articles or amount of services of a like kind required by the Agreement. If the termination is for default, the Contractor shall not be paid for any costs for the preparation of the Contractor's termination settlement proposal.
- (d) Within six months of the effective date of the termination, the Contractor shall submit a final termination settlement proposal to BSA. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided. The cost principles in Part 31 of the FAR and Part 931 of the DEAR, in effect on the date of this Agreement, shall govern all costs claimed, agreed to, or determined under this clause.
- (e) BSA and the Contractor must agree to any equitable adjustment in fee for the continued portion of a partially terminated Agreement.