

**ATTACHMENT J.16**

**APPENDIX P**

**ADVANCE UNDERSTANDINGS REGARDING IMPLEMENTATION  
OF DESIGNATED CONTRACT CLAUSES AND DIRECTIVES**

**Applicable to the Operation of  
Ernest Orlando Lawrence Berkeley National Laboratory**

**Contract No. DE-AC02-05CH11231**

## **Appendix P**

### **ADVANCE UNDERSTANDINGS REGARDING IMPLEMENTATION OF DESIGNATED CONTRACT CLAUSES AND DIRECTIVES**

Pursuant to Clause H.47, “Implementation of Designated Contract Clauses”, this Appendix sets forth advance understandings of the Parties regarding implementation of contract clauses referenced herein with requirements under the Contract for the management of Ernest Orlando Lawrence Berkeley National Laboratory.

#### **1. *Clause I.125 DEAR 952.235-71 Research Misconduct (July 2005)***

The Contracting Officer has accepted the Contractor’s Research Misconduct policy (RPM 2.05 I) (revised February 28, 2008) as an appropriate implementation of the requirements of DEAR 952.235-71 – Research Misconduct. Amendments to the policy will be submitted to the Contracting Officer for review to determine continued compliance with DEAR 952.235-71 – Research Misconduct.

#### **2. *Clause I.124 DEAR 952.204-77 Computer Security (August 2006)***

For purposes of this Contract, the term “writing”, “written”, and “written records” as used in DEAR 952.204-77 Computer Security (August 2006) is understood to include an electronic record demonstrating that, as a condition of receiving a password to gain access to a DOE computer, a user has accepted the terms of use required by 10 CFR 727 for the user; such acceptance shall be for the user and any other person with whom the password is shared by the user regardless of whether such sharing is prohibited by the terms of use.

#### **3. *DOE O 221.2A - Cooperation with the Office of Inspector General***

In accordance with Section 6 of DOE O 221.2A “Cooperation with the Office of Inspector General”, the requirement of employee cooperation with the Office of Inspector General does not abrogate an employee’s individual constitutional rights. The Contractor will not be deemed to have breached this Contract if it advises an employee regarding the constitutional rights she or he may have with regard to a request by a representative of the Office of Inspector General for an interview with, briefing by, or an affidavit or sworn statement from, the employee. Nor is the Contractor required under this Contract to take an adverse action against an employee who exercises his or her constitutional rights in conjunction with such a request by a representative of the Office of Inspector General.

#### **4. *Clause I.78 DEAR 970.5203-3 Contractor’s Organization (DEC 2000)***

Paragraph (d) incorporates by reference 48CFR970.0371, *conduct of employees of DOE management and operating contractors*. DEAR 970.0371-8, employee disclosure concerning other employment services, specifically, 970-0371-8(b): “The contractor shall provide a copy of all disclosures to the contracting officer.”

The parties hereby establish the understanding that (1) LBNL will provide DOE with disclosures in cases where a conflict of interest has been identified that requires management and otherwise (2) disclosures will be made available to DOE upon request.

**5. Clause H.30 Contractor Assurance System.**

In implementing this clause the parties agree on the following:

- a. In paragraph (a) the term “Board of Directors” shall mean the “LBNL Contract Assurance Council”.
- b. In paragraph (a) the term “throughout the Contractor’s organization” shall mean those portions of the University operations that are subject to contract DE-AC02-05CH11231, alternatively - “the Laboratory”.

**6. Clause I.141 – FAR 52.204-9 Personal Identity Verification of Contractor Personnel (JAN 2011).**

In implementing this clause the parties agree on the following:

- a. Lawrence Berkeley National Laboratory (LBNL) is an unclassified facility, however, the Laboratory Director and certain staff members have personal security clearance to receive information and participate in classified meetings at other facilities. Clause I.141 will apply only to those LBNL personnel who do hold a personal security clearance and receive the federal credential referenced in this clause.

**7. DOE O 522.1 – Pricing of Departmental Materials and Services**

In accordance with page 1, paragraph 2.1 of DOE Order 522.1, Attachment 2 (Contractor Requirements Document), Pricing of Departmental Materials and Services, the prohibition for depreciation and imputed interest charges to non-DOE entities is applicable to DOE owned assets and does not apply to university owned assets deployed for performance of work under this contract.

**8. Clause H.49 – Conference Spending Consolidated and Further Continuing Appropriations Act, 2013 for Management and Operating Contracts (MAY 2013)**

In implementing this Clause the parties agree as follows:

- (1) With respect to paragraph (a) of the Clause: DOE has established a system for the approval of conferences called Conference Management Reporting and Approval Tool in the DOE iPortal at <https://iportal.doe.gov>. Contractor's use of, and DOE approval (if required) through that system will satisfy the requirement in

paragraph (a) of the Clause that costs associated with conferences be "directly and programmatically related to the purpose of the contract and the specific work authorization/order/task directing the conference activities."

- (2) With respect to paragraph (d) of the Clause, the Contractor shall be deemed to have met the standard to "aggressively seek to limit costs" and to keep costs "to the minimum necessary" if the costs meet the test of reasonableness under FAR 31.201-3.

#### **9. *Appendix A, Section XI - Costs of Recruiting Personnel***

In implementing the Appendix A revision, the parties agree as follows:

##### **(b) Recruitment/Retention Tools**

The \$25,000 does not preclude the contractor from requesting an amount greater than \$25,000 and/or request a factor other than a critical skill.

#### **10. *Clause H.21 - Employee Compensation: Pay and Benefits***

In implementing Clause H.21, (d) Pension and Other Benefit Programs paragraph (5) the parties agree as follows:

- (5) Cost reimbursement for post-retirement benefits other than pensions (PRBs) is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service not less than 5 years under a DOE cost reimbursement contract(s) immediately prior to retirement.

#### **11. *DOE O 206.1, Department of Energy Privacy Program***

DOE and the University recognize that the Laboratory maintains personally identifiable information (PII), some of which is Contractor-owned and some of which is Government-owned. To protect this information, the University will apply its own and applicable State and Federal regulations to Contractor-owned PII and will apply DOE 206.1 to Federal PII. Federal PII includes information the University maintains for DOE as listed in Clause H.7 or information in identifiable form that is not retrieved by name or personal identifier and is otherwise considered non-public PII under applicable Office of Science and DOE guidance.

#### **12. *Clause H.27 Implementing Procedures for Contractor-Funded Institutional Supporting Research and Development Program***

DOE and the Laboratory agree that the Contractor-Funded Institutional Supporting Research and Development Program (Program) benefits the DOE mission and

enables the Laboratory to perform its mission and create new capabilities. The DOE Contracting Officer issued implementation direction for the Program on September 22, 2005, updated on April 6, 2011, and further updated on August 17, 2011. All proposed projects under the Program will be reviewed and approved by the DOE Contracting Officer based on the following criteria (which supersedes the aforementioned plans):

- the Laboratory will provide a Brief Work Scope Description;
- the work shall be on a non-interference basis with DOE directed work;
- the work enhances the capabilities of the Laboratory to continue to perform its mission or create new capabilities consistent with overall needs of DOE;
- the Laboratory will not knowingly use its access to the Laboratory facilities under this program to compete with the private sector;
- the Laboratory will not use any funds pursuant to this program to augment any federally funded research; and
- the Laboratory will not knowingly pursue any projects that include facilities or equipment that would create more than nominal future burden on DOE resources to maintain and/or operate.

All funds expended shall be under the same terms and conditions as federally expended funds and treated as institutional research and development for cost accounting purposes. The LBNL Office of Sponsored Projects and Industry Partnerships will be responsible for ensuring that the projects under this program are not "Work for Others" projects, subject to Clause I.134. The Laboratory is authorized \$7M annually (combined gift receipts and other sources of contractor-funded activities, including management fee) for the Program.