



EXCEPTION TO SF 30, APPROVED BY NARS 5/79		1. CONTRACT ID CODE		PAGE OF PAGES 1 OF 5
AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		2. AMENDMENT/MODIFICATION NO. M066		3. EFFECTIVE DATE See Block 16c.
6. ISSUED BY CODE		4. REQUISITION/PURCHASE REQ. NO.		5. PROJECT NO. (If applicable)
U.S. Department of Energy Chicago Service Center 9800 South Cass Avenue Argonne, Illinois 60439		7. ADMINISTERED BY (If other than Item 6)		
		U.S. Department of Energy Berkeley Site Office 1 Cyclotron Road, MS 90-1023 Berkeley, CA 94720		
8. NAME AND ADDRESS OF CONTRACTOR (No., street, country, State, and ZIP Code)		()	9A. AMENDMENT OF SOLICITATION NO.	
The Regents of the University of California Office of the President, Laboratory Management 1111 Broadway Street, Suite 1450 Oakland, CA 94607-4081				
			9B. DATED (SEE ITEM 11)	
		(X)	10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC02-05CH11231/A000	
			10B. DATED (SEE ITEM 13)	
CODE	FACILITY CODE		April 19, 2005	
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				
The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended. is not ex-tended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 25, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.				
12. ACCOUNTING AND APPROPRIATION DATA (If required) See Page 2				
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.				
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN CONTRACT/ORDER NO. IN ITEM 10A.				
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103 (b).				
X C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: FAR 43.102 and 43.103(a).				
D. OTHER (Specify type of modification and authority)				
E. IMPORTANT: Contractor ___ is not, X is required to sign this document and return ___ copies to the issuing office.				
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) Description of changes begins on page 2.				
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.				
15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)		
Sandra M. Vinson, Director, Contracts & Administration University of California, Office of the President		Charles W. Marshall, Contracting Officer U.S. Department of Energy		
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA		16C. DATE SIGNED
 (Signature of person authorized to sign)	12/18/2008	By  (Signature of Contracting Officer)		12/22/2008
30-105		STANDARD FORM 30		

Approved as to legal form: William A Eklund Dec. 17, 2008
 William A Eklund
 University Counsel
 Office of General Counsel
 Date

- a. Clause H.46 *Energy Efficiency in Energy Consuming Products (July 2006)* is hereby deleted and reserved as a result of the addition of clause I.122 FAR 52.223-15 *Energy Efficiency in Energy Consuming Products (DEC 2007)* which is the final version of this requirement based on the rulemaking process.
- b. Clause H.47 *Implementation of Designated Standard Clauses and Directives* is added to establish a new prime contract appendix, Appendix P that will contain supplementary understandings of the parties regarding implementation of designated standard clauses and/or directives.

CLAUSE H. 47 –IMPLEMENTATION OF DESIGNATED CONTRACT CLAUSES AND DIRECTIVES

To promote effective contract administration, the Parties have entered into advance understandings with respect to implementation of designated contract clauses and have documented them in Appendix P, “Advance Understandings Regarding Implementation of Designated Contract Clauses and Directives,” to this Contract.

(End of Clause)

- c. Clause I.74 DEAR 952.250-70 *Nuclear Hazards Indemnity Agreement (JUN 1996)* is modified by new clause I.126 DEAR 970.250-70 *Nuclear Hazards Indemnity Agreement (OCT 2005)* which makes the indemnification of clause I.74 applicable only to covered actions occurring prior to August 8, 2005.
- d. Clause I.120 FAR 52.203-13 *Contractor Code of Business Ethics and Conduct (DEC 2007)* is added as follows:

FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2007)

(a) *Definition.*

“United States,” as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Code of business ethics and conduct.*

- (1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall—
 - (i) Have a written code of business ethics and conduct; and
 - (ii) Provide a copy of the code to each employee engaged in performance of the contract.
- (2) The Contractor shall promote compliance with its code of business ethics and conduct.

(c) *Awareness program and internal control system for other than small businesses.* This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract. The Contractor shall establish within 90 days after contract award, unless the Contracting Officer establishes a longer time period—

(1) An ongoing business ethics and business conduct awareness program; and

(2) An internal control system.

(i) The Contractor's internal control system shall—

(A) Facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) For example, the Contractor's internal control system should provide for—

(A) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting;

(B) An internal reporting mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports;

(C) Internal and/or external audits, as appropriate; and

(D) Disciplinary action for improper conduct.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of \$5,000,000 and a performance period of more than 120 days, except when the subcontract—

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.
(End of Clause)

e. Clause I.121 FAR 52.203-14 *Display of Hotline Poster(s)* (DEC 2007) is added as follows:

FAR 52.203-14 DISPLAY OF HOTLINE POSTER(S) (DEC 2007)

(a) *Definition.*

“United States,” as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Display of fraud hotline poster(s).* Except as provided in paragraph (c)—

- (1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites—
 - (i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and
 - (ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.
 - (2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.
 - (3) Any required posters may be obtained as follows:
 - (i) DOE IG Hotline Poster; and
 - (ii) The website(s) or other contact information for obtaining the poster(s)(<http://ig.energy.gov/hotline.htm> .)
 - (c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.
 - (d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5,000,000, except when the subcontract—
 - (1) Is for the acquisition of a commercial item; or
 - a. Is performed entirely outside the United States.
(End of Clause)
- f. Clause I.122 FAR 52.223-15 *Energy Efficiency in Energy Consuming Products*(DEC 2007) is added in place of Clause H.46 as follows:

**FAR 52.223-15 ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS
(DEC 2007)**

- (a) *Definition.* As used in this clause—

“Energy-efficient product”—

 - (1) Means a product that—
 - (i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

- (ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.
 - (2) The term "product" does not include any energy-consuming product or system designed or procured for combat or combat-related missions ([42 U.S.C. 8259b](#)).
 - (b) The Contractor shall ensure that energy-consuming products are energy efficient products (*i.e.*, ENERGY STAR® products or FEMP-designated products) at the time of contract award, for products that are—
 - (1) Delivered;
 - (2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;
 - (3) Furnished by the Contractor for use by the Government; or
 - (4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.
 - (c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless—
 - (1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or
 - (2) Otherwise approved in writing by the Contracting Officer.
 - (d) Information about these products is available for—
 - (1) ENERGY STAR® at <http://www.energystar.gov/products>; and
 - (2) FEMP at http://www1.eere.energy.gov/femp/procurement/eep_requirements.html.
- (End of Clause)
- g. Clause I.123 FAR 52.223-16 *IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products* (DEC 2007) is added as follows:

FAR 52.223-16 IEEE 1680 STANDARD FOR THE ENVIRONMENTAL ASSESSMENT OF PERSONAL COMPUTER PRODUCTS (DEC 2007)

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

“Computer monitor” means a video display unit used with a computer.

“Desktop computer” means a computer designed for use on a desk or table.

“Notebook computer” means a portable-style or laptopstyle computer system.

“Personal computer product” means a notebook computer, a desktop computer, or a computer monitor, and any peripheral equipment that is integral to the operation of

such items. For example, the desktop computer together with the keyboard, the mouse, and the power cord would be a personal computer product. Printers, copiers, and fax machines are not included in peripheral equipment, as used in this definition.

- (b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Government-owned facility, only personal computer products that at the time of submission of proposals were EPEAT Bronze registered or higher. Bronze is the first level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

For information about the standard, see www.epeat.net.

(End of Clause)

- h. Clause I.124 DEAR 952.204-77 *Computer Security* (AUG 2006) is added as follows:

DEAR 952.204-77 COMPUTER SECURITY (AUG 2006)

- (a) Definitions.

(1) *Computer* means desktop computers, portable computers, computer networks (including the DOE Network and local area networks at or controlled by DOE organizations), network devices, automated information systems, and or other related computer equipment owned by, leased, or operated on behalf of the DOE.

(2) *Individual* means a DOE contractor or subcontractor employee, or any other person who has been granted access to a DOE computer or to information on a DOE computer, and does not include a member of the public who sends an e-mail message to a DOE computer or who obtains information available to the public on DOE Web sites.

- (b) Access to DOE computers. A contractor shall not allow an individual to have access to information on a DOE computer unless:

(1) The individual has acknowledged in writing that the individual has no expectation of privacy in the use of a DOE computer; and,

(2) The individual has consented in writing to permit access by an authorized investigative agency to any DOE computer used during the period of that individual's access to information on a DOE computer, and for a period of three years thereafter.

- (c) No expectation of privacy. Notwithstanding any other provision of law (including any provision of law enacted by the Electronic Communications Privacy Act of 1986), no individual using a DOE computer shall have any expectation of privacy in the use of that computer.

- (d) Written records. The contractor is responsible for maintaining written records for itself and subcontractors demonstrating compliance with the provisions of paragraph (b) of this section. The contractor agrees to provide access to these records to the DOE, or its authorized agents, upon request.

- (e) Subcontracts. The contractor shall insert this clause, including this paragraph (e), in subcontracts under this contract that may provide access to computers owned, leased or operated on behalf of the DOE.

(End of Clause)

- i. Clause I.125 DEAR 952.235-71 *Research Misconduct* (JUL 2005) is added as follows:

DEAR 952.235-71 RESEARCH MISCONDUCT (JUL 2005)

- (a) The contractor is responsible for maintaining the integrity of research performed pursuant to this contract award including the prevention, detection, and remediation of research misconduct as defined by this clause, and the conduct of inquiries, investigations, and adjudication of allegations of research misconduct in accordance with the requirements of this clause.
- (b) Unless otherwise instructed by the contracting officer, the contractor must conduct an initial inquiry into any allegation of research misconduct. If the contractor determines that there is sufficient evidence to proceed to an investigation, it must notify the contracting officer and, unless otherwise instructed, the contractor must:
- (1) Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct and an identification of appropriate remedies or a determination that no further action is warranted;
 - (2) If the investigation leads to a finding of research misconduct, conduct an adjudication by a responsible official who was not involved in the inquiry or investigation and is separated organizationally from the element which conducted the investigation. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.
 - (3) Inform the contracting officer if an initial inquiry supports a formal investigation and, if requested by the contracting officer thereafter, keep the contracting officer informed of the results of the investigation and any subsequent adjudication. When an investigation is complete, the contractor will forward to the contracting officer a copy of the evidentiary record, the investigative report, any recommendations made to the contractor's adjudicating official, the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response (if any).
- (c) The Department may elect to act in lieu of the contractor in conducting an inquiry or investigation into an allegation of research misconduct if the contracting officer finds that:
- (1) The research organization is not prepared to handle the allegation in a manner consistent with this clause;
 - (2) The allegation involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;

- (3) DOE involvement is necessary to ensure the public health, safety, and security, or to prevent harm to the public interest; or,
 - (4) The allegation involves possible criminal misconduct.
- (d) In conducting the activities under paragraphs (b) and (c) of this clause, the contractor and the Department, if it elects to conduct the inquiry or investigation, shall adhere to the following guidelines:
- (1) *Safeguards for information and subjects of allegations.* The contractor shall provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith to the attention of the contractor without suffering retribution. Safeguards include: protection against retaliation; fair and objective procedures for examining and resolving allegations; and diligence in protecting positions and reputations. The contractor shall also provide the subjects of allegations confidence that their rights are protected and that the mere filing of an allegation of research misconduct will not result in an adverse action. Safeguards include timely written notice regarding substantive allegations against them, a description of the allegation and reasonable access to any evidence submitted to support the allegation or developed in response to an allegation and notice of any findings of research misconduct.
 - (2) *Objectivity and Expertise.* The contractor shall select individual(s) to inquire, investigate, and adjudicate allegations of research misconduct who have appropriate expertise and have no unresolved conflict of interest. The individual(s) who conducts an adjudication must not be the same individual(s) who conducted the inquiry or investigation, and must be separate organizationally from the element that conducted the inquiry or investigation.
 - (3) *Timeliness.* The contractor shall coordinate, inquire, investigate and adjudicate allegations of research misconduct promptly, but thoroughly. Generally, an investigation should be completed within 120 days of initiation, and adjudication should be complete within 60 days of receipt of the record of investigation.
 - (4) *Confidentiality.* To the extent possible, consistent with fair and thorough processing of allegations of research misconduct and applicable law and regulation, knowledge about the identity of the subjects of allegations and informants should be limited to those with a need to know.
 - (5) *Remediation and Sanction.* If the contractor finds that research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process. The contractor must take all necessary corrective actions. Such action may include but are not limited to, correcting the research record and as appropriate imposing restrictions, controls, or other parameters on research in process or to be conducted in the future. The contractor must coordinate remedial actions with the contracting officer. The contractor must also consider whether personnel sanctions are appropriate. Any such sanction must be considered and effected consistent with any applicable personnel laws, policies, and

procedures, and shall take into account the seriousness of the misconduct and its impact, whether it was done knowingly or intentionally, and whether it was an isolated event or pattern of conduct.

- (e) DOE reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with the terms and conditions of the award instrument and applicable laws and regulations. However, the contractor's good faith administration of this clause and the effectiveness of its remedial actions and sanctions shall be positive considerations and shall be taken into account as mitigating factors in assessing the need for such actions. If DOE pursues any such action, it will inform the subject of the action of the outcome and any applicable appeal procedures.

- (f) *Definitions.*

Adjudication means a formal review of a record of investigation of alleged research misconduct to determine whether and what corrective actions and sanctions should be taken.

Fabrication means making up data or results and recording or reporting them.

Falsification means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

Finding of Research Misconduct means a determination, based on a preponderance of the evidence, that research misconduct has occurred. Such a finding requires a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it be knowingly, intentionally, or recklessly committed.

Inquiry means information gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

Investigation means the formal examination and evaluation of the relevant facts.

Plagiarism means the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Research means all basic, applied, and demonstration research in all fields of science, medicine, engineering, and mathematics, including, but not limited to, research in economics, education, linguistics, medicine, psychology, social sciences statistics, and research involving human subjects or animals.

Research Misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, but does not include honest error or differences of opinion.

Research record means the record of all data or results that embody the facts resulting from scientists' inquiries, including, but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

- (g) By executing this contract, the contractor provides its assurance that it has established an administrative process for performing an inquiry, mediating if possible, or investigating, and reporting allegations of research misconduct; and that it will comply with its own administrative process and the requirements of 10 CFR part 733 for performing an inquiry, possible mediation, investigation and reporting of research misconduct.
- (h) The contractor must insert or have inserted the substance of this clause, including paragraph (g), in subcontracts at all tiers that involve research.

(End of Clause)

- j. Clause I.126 DEAR 952.250-70 *Nuclear Hazards Indemnity Agreement* (OCT 2005) is added as follows for indemnification of incidents occurring on or after August 8, 2005:

DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (Oct 2005)

- (a) *Authority.* This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
- (b) *Definitions.* The definitions set out in the Act shall apply to this clause.
- (c) *Financial protection.* Except as hereafter permitted or required in writing by DOE, the contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the contractor by DOE.
- (d)
 - (1) *Indemnification.* To the extent that the contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170d. of the Act, as that amount may be increased in accordance with section 170t., in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.
 - (2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which:
 - (i) arises out of or in connection with the activities under this contract, including transportation; and
 - (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

- (e) (1) *Waiver of Defenses.* In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
- (2) In the event of an extraordinary nuclear occurrence which:
- (i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
 - (ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
 - (iii) Arises out of or results from the possession, operation, or use by the contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or
 - (iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the contractor, on behalf of itself and other persons indemnified, agrees to waive:
 - (A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:
 1. Negligence;
 2. Contributory negligence;
 3. Assumption of risk; or
 4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
 - (B) Any issue or defense as to charitable or governmental immunity; and
 - (C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

- (v) The term *extraordinary nuclear occurrence* means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.
 - (vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the contractor is engaged in the performance of contractual activity under this contract.
- (3) The waivers set forth above:
- (i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
 - (ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
 - (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
 - (iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
 - (v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
 - (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
 - (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
 - (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under
 - (A) the limit of liability provisions under subsection 170e. of the Act, and
 - (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

- (f) *Notification and litigation of claims.* The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to
- (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and
 - (2) appear through the Attorney General on behalf of the contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
- (g) *Continuity of DOE obligations.* The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this contract.
- (h) *Effect of other clauses.* The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) *Civil penalties.* The contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to section 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders. If the contractor is a not-for-profit contractor, as defined by section 234Ad.(2), the total amount of civil penalties paid shall not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under this contract.
- (j) *Criminal penalties.* Any individual director, officer, or employee of the contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to section 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) *Inclusion in subcontracts.* The contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or

NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

- (l) Effective Date. This contract was in effect prior to August 8, 2005 and contains the clause at DEAR 952.250-70 (JUNE 1996) or prior version. The indemnity of paragraph (d)(1) is limited to the indemnity provided by the Price-Anderson Amendments Act of 1988 for any nuclear incident to which the indemnity applies that occurred before August 8, 2005. The indemnity of paragraph (d)(1) of this clause applies to any nuclear incident that occurred on or after August 8, 2005. The Contractor's liability for violations of the Atomic Energy Act of 1954 under this contract is that in effect prior to August 8, 2005.

(End of Clause)

- k. Appendix P – *Advance Understandings Regarding Implementation of Designated Contract Clauses and Directives* is added pursuant to new clause H.47. The initial text of this Appendix is as follows:

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.

- l. A conformed copy of Sections h and i are attached to this modification as is the new Appendix P.
- m. All other terms and conditions remain unchanged.