

**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.104 – DEAR 970.5232-4 -Obligation of Funds (DEC 2000)*

The Contractor agrees that the following applies to all *American Recovery and Reinvestment Act of 2009* (Public Law 111-5) funds obligated to the Contract and the work performed with such funds:

- a. Reference: Section E - Inspection and Acceptance.

Certification – In order for the Contracting Officer to accept any products or services funded by the Recovery Act, the Contractor shall certify that the items were delivered and/or work was performed for a purpose authorized under the Recovery Act.

- b. Reference: Section G, Contract Administration Data

The following reporting procedure will apply to submission of monthly cost reports for Recovery Act work specified in the work scope baseline.

#### Reports

- (a) The Contractor will separately identify costs that pertain to the Recovery Act work. The Contractor will provide a monthly report that identifies the total amount drawn on the letter of credit. The contractor shall submit a monthly report that separates and identifies Recovery Act costs associated with each appropriation at the Recovery Act program and project levels.
- (b) The Contractor shall certify in each monthly report that the costs included in the report for Recovery Act work were incurred only to accomplish the Recovery Act work in accordance with the work scope.

#### Indirect Charges

In accordance with the general principles of the Recovery Act the Contractor must take the following steps to minimize the impacts of indirect costs and enhance transparency and accountability of project:

- (a) Clearly identify the estimated full cost of projects to include total direct and indirect costs, indirect costs rates, and adjust existing indirect cost rate to account for the material infusion of funds provided in the Recovery Act;
- (b) Exempt funds from contract cost base for distributing Laboratory Directed Research and Development or similar funds taxing programs;
- (c) Ensure all funds transferred by (To Be Completed by Contracting Officer: Insert name of M&O Contractor) are completed using the Approved Funding Program process described in Chapter 12 of the Accounting Handbook; and

- (d) The Federal Administrative Charge (FAC) of three percent is waived on reimbursable work funded by the Recovery Act and performed by Departmental Federal offices or (To Be Completed by Contracting Officer: Insert name of M&O Contractor).
  - (e) In all cases listed above and otherwise, the Contractor shall develop and maintain prudent management and good business practices regarding their indirect rate structure as it applies to Recovery Act funding.
- c. Reference: Section J, Appendix I, Special Provisions Relating To Work Funded Under American Recovery And Reinvestment Act Of 2009 (Apr 2009)
- The terms of the referenced Special Provisions are a part of the provisions included in this agreement on implementation of Recovery Act funds obligated to the contract.
- d. Reference: Section I, Contract Clauses
- The following provisions applicable to projects funded by the Recovery Act are incorporated by reference —
- FAR 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (MAR 2009)
- FAR 52.204-11, American Recovery and Reinvestment Act – Reporting Requirements (MAR 2009)
- FAR 52.225-21, Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials (MAR 2009)
- e. Reference: I.103 DEAR 970.5232-3, Accounts, Records, and Inspection (DEC 2000). The Contractor agrees that the right to examination created under subparagraph (h)(1) of Clause I.103 includes the right of the Comptroller General of the United States, or an authorized representative, to interview any current employee regarding transactions under the contract.