

PART III - SECTION J

APPENDIX C

**SPECIAL FINANCIAL INSTITUTION AGREEMENT
FOR USE WITH THE
PAYMENTS-CLEARED FINANCING ARRANGEMENT**

- Note: (1) The Successful Offeror shall enter into a new banking agreement(s) during this Contract's Transition Term, utilizing the format contained in this Appendix C and include other applicable contract terms and conditions.
- (2) Items in brackets [] below are provided for clarification and will be removed from the document prior to execution.

Agreement entered into this, _____ day of _____, 200__ [insert date], between the UNITED STATES OF AMERICA, represented by the U.S. Department of Energy (hereinafter referred to as "DOE"), and _____ [the Contractor], a corporation/legal entity existing under the laws of the State of _____ (hereinafter referred to as the Contractor) and _____, and _____ [the Financial Institution] a financial institution corporation existing under the laws of the State of _____, located at _____ (hereinafter referred to as the Institution).

RECITALS

1. On the effective date of _____, 200__ [insert date], DOE and the Contractor entered into Agreement No. DE-AC52-07NA27344 providing for transfer of funds on a payment-cleared basis.
2. DOE requires that amounts transferred to the Contractor thereunder be deposited in a special demand deposit account at a financial institution covered by U.S. Department of the Treasury-approved Government deposit insurance organizations that are identified in I TFM 6-9000 (see Fig. IX-10). These special demand deposits must be kept separate from the Contractor's general or other funds and the parties are agreeable to so depositing said amounts with the Financial Institution.
3. The special financial institution account shall be designated “_____ [name of Contractor], _____ [account title] Account.”

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that –

1. The Government shall have a title to the credit balance in said account to secure the repayment of all funds transferred to the Contractor, and said title shall be superior to any lien, title or claim of the Institution or others with respect to such accounts.
2. The Institution shall be bound by the provisions of said Agreement(s) between DOE and the Contractor relating to the transfer of funds into and withdrawal of funds from the above special demand deposit account, which are hereby incorporated into this Agreement by reference, but the Institution shall not be responsible for the application of funds withdrawn from said account. After receipt by the Institution directions from DOE, the Institution shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by the Institution from the Government upon DOE stationery and purporting to be signed by, or signed at the written direction of, the Government may insofar as the rights, duties, and liabilities of the Institution are concerned, be considered as having been properly issued and filed with the Institution by DOE.
3. DOE, or its authorized representatives, shall have access to the financial records maintained by the Institution with respect to such special demand deposit account at all reasonable times and for all reasonable purposes, including, but without limitation to, the inspection or copying of such financial records and any or all memoranda, checks, payment requests, correspondence, or documents pertaining thereto. Such financial records shall be preserved by the Institution for a period of 6 years after the final payment under the Agreement.
4. In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the special demand deposit account, the Institution shall promptly notify DOE at-

Contracting Officer
Livermore Site Office
7000 East Avenue Mail Stop L293
Livermore, California 94551

5. DOE shall authorize funds that shall remain available to the extent that obligations have been incurred in good faith thereunder by the Contractor to the Institution for the benefit of the special demand deposit account. The Institution agrees to honor upon presentation for payment all payments issued by the Contractor and to restrict all withdrawals against the funds authorized to an amount sufficient to maintain the average daily balance in the special demand deposit account in a net positive and as close to zero as administratively possible.

(For compensation by direct payment of fee)

The Institution agrees to service the account in this manner based on the requirements and specifications contained in DOE or Contractor Solicitation No. _____ . The Institution agrees that per-item costs, detailed in the

form "Schedule of Financial Institution Processing Charges," contained in the Institution's aforesaid bid will remain constant during the term of this Agreement. The Institution shall calculate the monthly fees based on services rendered and invoiced the Contractor. The Contractor shall issue a check or automated clearing house authorization transfer to the Institution in payment thereof.

Or

(For compensation by noninterest-bearing time deposit only)

The Institution agrees to service the account in this manner based on the requirements and specifications contained in DOE or Contractor Solicitation No. _____, in consideration of the placement by DOE on a noninterest-bearing time deposit with the Institution in an amount agreed upon as shown on the form "Calculation of Time Account Balance Required" contained in the Institution's bid dated _____, _____. The Institution agrees that per-item costs, detailed in the form "Schedule of Financial Institution Processing Charges," contained in the Institution's aforesaid bid will remain constant during the term of this Agreement. The Contractor shall withdraw \$_____ in funds from the special demand deposit account and use such funds to make a noninterest-bearing time deposit in a separate account in the Institution. This account will hereinafter be defined as the time deposit account. The funds in the time deposit account will remain on deposit and shall not be withdrawn or used for any purpose without the authorization of DOE. The amount of the deposit may be adjusted upward or downward, but only with the approval of DOE.

6. The Institution shall post collateral, acceptable under U.S. Department of the Treasury Department Circular 176, with the Federal Reserve Bank in an amount equal to the net balances in all of the accounts included in this Agreement (including the non interest-bearing time deposit account), less the U.S. Department of the Treasury-approved deposit insurance.
7. This Agreement, with all its provisions and covenants, shall be in effect for a term of ____ years, beginning on the ____ day of _____, 200 __, and ending on the ____ day of _____, 200 __. [Insert applicable dates]
8. DOE, the Contractor, or the Institution may terminate this Agreement at any time within the agreement period upon submitting written notification to the other parties 90 days prior to the desired termination date. The specific provisions for operating the account during this 90-day period are contained in Covenant 11.
9. DOE or the Contractor may terminate this Agreement at any time upon 30 day's written notice to the Institution if DOE or the Contractor, or both parties, find that the Institution has failed to substantially perform its obligations under this Agreement or that the Institution is performing its obligations in a manner that precludes administering the

program, in an effective and efficient manner or that precludes the effective utilization of the Government's cash resources.

10. Notwithstanding the provisions of Covenants 8 and 9, in the event that the Agreement, referenced in Recital 1, between DOE and the Contractor is not renewed or is terminated, this Agreement between DOE, the Contractor, and the Institution shall be terminated automatically upon the delivery of written notice to the Institution.
11. In the event of termination, the Institution agrees to retain the Contractor's special demand deposit account for an additional 90-day period to allow for clearance of outstanding payment items. Within 7 days of the expiration of the Agreement term, an analysis of the special demand deposit account shall be made by DOE to determine whether an insufficient or excessive balance was maintained in the time deposit account to compensate the Institution for services rendered up to the expiration date.
 - (a) If the analysis indicates that the Institution has been insufficiently compensated for services rendered up to the expiration of the Agreement, the Contractor shall:
 1. Maintain on deposit, during this 90-day period, sufficient Federal funds to reimburse the Institution for prior cumulative loss of earnings, and
 2. Maintain on deposit in the time deposit account sufficient Federal funds to compensate the Institution for services rendered.
 - (b) If the analysis indicates that the Institution has been overcompensated for services rendered up to the expiration of the Agreement, DOE shall close out the time deposit account and secure from the Institution a payment in an amount equal to the cumulative excess compensation less compensation for estimated services to be rendered during the 90-day period.
 - (c) If cumulative excess compensation is not sufficient to compensate the Institution for services rendered during the 90-day period, adjustments shall be made to the time deposit account to compensate the Institution for the difference between the cost of services rendered during the 90-day period and the cumulative excess compensation.

This Agreement shall continue in effect for the 90-day additional period, with exception of the following:

1. Term Agreement (Covenant 7)
2. Termination of Agreement (Covenants 8 and 9)

All terms and conditions of the aforesaid bid submitted by the Institution that are not inconsistent with this 90-day additional term shall remain in effect for this period.

The Institution has submitted the forms entitled “Technical Representations and Certifications”, “Schedule of Financial Institution Processing Charges”, and “Calculation of Time Account Balance Required.” These forms have been accepted by the Contractor and the Government and are incorporated herein with the document entitled “Financial Institution’s Information on Payments Cleared Financing Arrangement,” as an integral part of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement, which consists of _____ pages, including the signature pages, to be executed as of the day and year first above written.

THE UNITED STATES OF AMERICA

Date Signed

By _____
(Typed Name of Contracting Officer)

(Signature of Contracting Officer)

WITNESS

(Typed Name of Witness)

(Typed Name of Contractor)

(Signature of Witness)

Note: In the case of a corporation, a witness is not required. Type or print names under all signatures.

By _____
(Name of Contractor's Representative)

(Signature of Contractor's Representative)

(Title)

(Address)

(Date of Signed)

WITNESS

(Name of Witness)

By _____
(Name of Financial Institution)

(Name of Financial Institution Representative)

(Signature of Witness)

(Signature of Financial Institution Representative)

(Title)

(Title)

(Address)

(Date Signed)

Note: In the case of a corporation, a witness is not required. Type or print names under all signatures.

NOTE

The Contractor, if a corporation, shall cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and the Certificate.

CERTIFICATE

I, _____, certify that I am the _____ of the corporation named as Contractor herein; that _____, who signed this Agreement on behalf of the Contractor, was then _____ of said corporation; and that said Agreement was duly signed for an in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(Corporate Seal) (Signature)

NOTE

Financial Institution, if a corporation, shall cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and the Certificate.

CERTIFICATE

I, _____, certify that I am the _____ of the corporation named as Financial Institution herein; that _____, who signed this Agreement on behalf of the Financial Institution, was then _____ of said corporation; and that said Agreement was duly signed for an in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(Corporate Seal) (Signature)