



GENERAL PROVISIONS SUPPLEMENT
Nuclear Hazards Indemnity Agreement and
Price-Anderson Amendments Act
For the Pacific Northwest National Laboratory
Operated by Battelle Memorial Institute

This General Provisions Supplement is in addition to the General Provision provided with this contract. This Supplement is provided because work to be performed or goods to be delivered under this contract have been identified by Battelle as qualifying for certain liability protections under the Atomic Energy Act, as well as certain responsibilities under the Price-Anderson Amendments Act. This Supplement is incorporated into the contract with the same force and effect as all other general provisions applicable to this contract.

Nuclear Hazards Indemnity Agreement (cl. 3110C – Nov. 2008)

This clause applies when the Contract may involve risk of public liability from a nuclear incident.

- 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 the Department of Energy (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. Indemnification.
1. 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 (a) claims for public liability as described in Paragraph D.2 of this clause; and (b) 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 170t of the Act in the aggregate for each nuclear incident or precautionary evaluation 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 Paragraph D.1 of this Clause is public liability as defined in the Act which (a) arises out of or in connection with the activities under this Contract, including transportation; and (b) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.
- E. Waiver of Defenses.
1. 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—
 - a. Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
 - b. 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
 - c. 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
 - d. 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:
 - (i) 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—
 - (a) Negligence;
 - (b) Contributory negligence;
 - (c) Assumption of risk; or
 - (d) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
 - (ii) Any issue or defense as to charitable or governmental immunity; and
 - (iii) 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.

- e. The term extraordinary nuclear occurrence means an event that 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.
 - f. 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:
- a. 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;
 - b. Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
 - c. Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
 - d. 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;
 - e. 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 therefore are either payable or required to be provided under any workmen's compensation or occupational disease law;
 - f. Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
 - g. 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
 - h. 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 (i) the limit of liability provisions under subsection 170e of the Act, and (ii) 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 Battelle 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 the Battelle Contracts Representative, the Contractor shall furnish promptly to Battelle, copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. Battelle and 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 Battelle for the payment of any claim that DOE 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 Battelle or 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 "Disputes" provided, however, that this clause shall be subject to the clauses entitled "Covenant Against Contingent Fees," "Officials Not to Benefit," and "Examination of Records by the Comptroller General," 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. The Contractor is specifically exempt from civil penalties pursuant to Section 234A(d)(7) of the Price-Anderson Amendments Act of 1988.
- 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 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 Subcontract. The Contractor shall insert this clause in any subcontract that 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. Battelle's prime contract was in effect prior to August 8, 2005, and contains the clause at DEAR 952.250-70 (June 1996). The indemnity of Paragraph D.1. is limited to the indemnity provided by the June 1996 clause 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 civil violations of the Atomic Energy Act of 1954 under this contract is that in effect for Battelle prior to August 8, 2005 (see Paragraph I. of this clause).

Price-Anderson Amendments Act (cl. 3111 - Nov 2008)

This clause applies when the Contract may involve risk of public liability from a nuclear incident.

In addition to applicable Quality and ES&H contract clauses and requirements, the following shall apply:

A. Indemnification for Nuclear Safety Violations

1. **Applicability.** The provisions of this clause shall be applicable if the Contractor's products or services are subject to the Nuclear Hazards Indemnity provisions of section 170 of the Atomic Energy Act of 1954, as amended, and the U.S. Department of Energy's Procedural Rules for DOE Nuclear Activities as described in Title 10, Code of Federal Regulations, Part 820 (10 CFR Part 820), or could otherwise have any effect on nuclear or radiological safety.
2. The Contractor assumes full responsibility and shall indemnify, hold harmless, and defend Battelle, its directors, officers, and employees from any civil liability, if any, under §234A of the Atomic Energy Act of 1954, as amended, or the implementing regulations, arising out of the activities of the Contractor, its subcontractors, suppliers, agents, employees, and their officers, or directors. The Contractor's obligation to indemnify and hold harmless shall expressly include attorney fees and other reasonable costs of defending any action or proceeding instituted under §234A or DOE's implementing regulations.

B. Nuclear Safety Regulations

1. **Applicability.** The provisions of this clause apply to any activity carried out pursuant to this contract by the Contractor, its subcontractors, suppliers, and employees that has the potential to result in a risk of harm to an individual from radiation or radioactive material, or the potential to affect a DOE nuclear facility or radiological activity. The term "individual" as used in this clause includes, without limitation, general employees, radiological workers, embryo/fetus of a declared pregnant worker, minors, and members of the public. The requirements of this clause do not apply to activities that are regulated, and either indemnified or subject to financial assurance provisions, through a license by the Nuclear Regulatory Commission or a State under an Agreement with the Nuclear Regulatory Commission (an Agreement State), including activities certified by the Nuclear Regulatory Commission under §1701 (42 USC §2297(f)) of the Atomic Energy Act of 1954, as amended. Other specific applicability exclusions are

identified in 10 CFR §820 and related Department of Energy regulations.

2. The Contractor shall comply, as applicable, with the requirements of Title 10, Code of Federal Regulations, Part 835, "Occupational Radiation Protection" (10 CFR Part 835). The Contractor's programs and associated documents are subject to review at all times by Battelle.
 3. The Contractor shall: (1) comply, as applicable with the requirements of Title 10, Code of Federal Regulations, Part 830 "Nuclear Safety Management," including Subpart A, Quality Assurance Requirements or a quality assurance program that meets the stated requirements of 10 CFR 830.120, and (2) implement, document, and maintain such programs (e.g., administrative controls, procedures, and technical work documents) as necessary to ensure compliance with the QA requirements section of this contract. The Contractor's programs and associated documents are subject to review at all times by Battelle.
 4. The Contractor shall: (1) comply with all applicable requirements of Title 10, Code of Federal Regulations, Part 708, "Contractor Employee Protection" (10 CFR 708), and (2) implement, document, and maintain such programs as necessary to ensure compliance with this requirement. The Contractor's programs and associated documents are subject to review at all times by Battelle.
 5. The Contractor shall (1) comply with all applicable requirements of newly promulgated Department of Energy nuclear safety requirements in Title 10, Code of Federal Regulations, and (2) implement, document, and maintain such programs as necessary to ensure compliance with these requirements. The Contractor's programs and associated documents are subject to review at all times by Battelle.
 6. If any noncompliance or deficiency occurs in the programs or activities subject to this clause, or a lack of appropriate or timely corrective action by the Contractor, causes a potential violation of nuclear safety requirements, then the Contractor may be subject to enforcement actions under the Atomic Energy Act, 10 CFR 820 and/or other provisions of this contract.
 7. Where reporting of a potential violation of a nuclear safety regulation to the DOE is necessary, the Contractor shall report through Battelle.
- C. The Contractor shall include the provisions of this clause, including this paragraph, in all lower tier Contracts for any activity subject to the applicability requirements in paragraphs 1a and 2a.