

ATTACHMENT J.3

APPENDIX C

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

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

Contract No. DE-AC02-05CH11231

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

Agreement Number 1000001911 entered into this, 1st day of November, 2019, between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as "DOE" or "Government"), and the Regents of the University of California, a corporation/legal entity existing under the laws of the State of California and under contract for managing and operating the Lawrence Berkeley National Laboratory (LBNL) (hereinafter referred to as the Contractor) and Wells Fargo Bank, N.A, a financial institution corporation existing under the laws of the State Delaware (hereinafter referred to as the Financial Institution).

RECITALS

(a) On the effective date of May 2005, DOE and the Contractor entered into Contract No. DE-AC02-05CH11231 or a Supplemental Contract thereto, providing for the transfer of funds on a payments-cleared basis.

(b) DOE requires that amounts transferred to the Contractor there under be deposited in a special demand deposit account at a financial institution covered by Treasury-approved Government deposit insurance organizations that are identified in I TFM 6-9000.

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.

(c) The special demand deposit account shall be designated "Lawrence Berkeley National Laboratory, Agreement No. 1000001911, DOE Special Bank 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 Financial Institution or others with respect to such account.

2. The Financial Institution shall be bound by the provisions of said Agreement(s) between DOE and the Contractor relating to the transfer of funds into the and withdrawal of funds from the above special demand deposit account, which are hereby incorporated into this Agreement by reference, but the Financial Institution shall not be responsible for the application of funds withdrawn from said account. After receipt by the Financial Institution of directions from DOE, the Financial 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 Financial 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 Financial Institution are concerned, be considered as having been properly issued and filed with the Financial Institution by DOE.

3. DOE, or its authorized representatives, shall have access to financial records maintained by the Financial 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 Financial 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 Financial Institution shall promptly notify both DOE and LBNL at:

Maria Robles
Contracting Officer
DOE Berkeley Site Office
One Cyclotron Road
Berkeley, CA 94720

Andrew Padilla
Pr. Subcontract Administrator
Lawrence Berkeley National Laboratory
One Cyclotron Road, Mail-Stop 971-PROC
Berkeley, CA 94720

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 Financial Institution for the benefit of the special demand deposit account. The Financial 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.

The Financial Institution agrees to service the account in this manner based on the requirements and specifications contained in the following documents: Statement of Work for Banking Services dated October 16, 2019, Data Security, Privacy and Information Management Requirements, dated December 11, 2018, and Schedule of Services and Charges for Lawrence Berkeley National Laboratory Banking Services Agreement No. 1000001911. The Financial Institution agrees that per-item costs, detailed in the Schedule of Services and Charges for Lawrence Berkeley National Laboratory Banking Services Agreement No. 1000001911, shall remain constant or lower, during the term of this Agreement.

The Financial Institution shall calculate the fees based on services rendered, and charge basis, and invoice the Contractor. The Contractor shall issue a check or automated clearinghouse authorization transfer to the Financial Institution in payment thereof.

6. The Financial Institution shall post collateral in accordance with 31 CFR 202 with the Federal Reserve bank in an amount equal to the net balances in all of the accounts included in this Agreement (including the noninterest-bearing time deposit account), less the Treasury-approved deposit insurance.

7. This Agreement, with all its provisions and covenants, shall be in effect for a term of three (3) years, beginning on the 1st day of November, 2019, and ending on the 31st day of October, 2022. The Agreement may be extended for two additional periods of one year each, under the same pricing, terms, and conditions. Any such extension shall be by issuance of a written modification executed by all parties to the Agreement.

8. DOE, the Contractor, or the Financial Institution may terminate this Agreement at any time within the agreement period upon submitting written notification to the other parties 180 days prior to the desired termination date. The specific provisions for operating the account during this 180-day period are contained in Covenant 11.

9. DOE or the Contractor may terminate this Agreement at any time upon 30 days' written notice to the Financial Institution if DOE or the Contractor, or both parties, find that the Financial Institution has failed to substantially perform its obligations under this Agreement or that the Financial Institution is performing its obligation in a manner that precludes administering the program in an effective and efficient manner of 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 (a), between DOE and the Contractor is not renewed or is terminated, this Agreement between DOE, the Contractor, and the Financial Institution shall be terminated automatically upon the delivery of written notice to the Financial Institution.

11. In the event of termination, the Financial Institution agrees to retain the Contractor's special demand deposit account for an additional 180-day period to clear outstanding payment items.

12. Insurance

A. Types of Coverage

The Financial Institution shall obtain, keep in force, and maintain insurance to cover its performance under this Agreement of the types and in the amounts set forth below. Such insurance shall be maintained in full force and effect during the performance of work required by this Agreement. The stipulation of required coverage and limits of insurance shall not in any way limit the liability of the Financial Institution.

<u>Commercial General Liability Insurance</u>	<u>Minimum Limit</u>
• Per Occurrence	\$ 1,000,000
• Products/Completed Operations Aggregate	\$ 2,000,000
• Personal and Advertising Injury	\$ 1,000,000

- General Aggregate \$ 2,000,000

Privacy, Technology and Data Security Liability, Cyber Liability,
or Technology Professional Liability Insurance

	<u>Minimum Limit</u>
• Each Occurrence	\$ 1,000,000
• Annual Aggregate	\$ 5,000,000

The Privacy, Technology and Data Security Liability, Cyber Liability, or Technology Professional Liability insurance policy shall provide coverage for privacy and data security breaches, including coverage for reasonable costs in investigating and responding to privacy and/or data breaches.

B. Insurance Certificate Requirements

a. Primary and Noncontributory Endorsement. The general liability insurance coverage, by a valid endorsement, shall be primary and noncontributory and shall not participate with or be in excess over any other valid collectible insurance or program of self-insurance of the Contractor or the U.S. Government. Statements on the certificate designating the insurance as primary and noncontributory will not suffice, an endorsement is required.

b. Certificate Holder. The Certificate Holder shall be listed as follows.

The Regents of the University of California and the U.S. Government
Lawrence Berkeley National Laboratory
c/o Insurance Tracking Services, Inc. (ITS)
P.O. Box 20270
Long Beach, CA 90801

c. Rating. The required insurance shall be obtained from insurance companies authorized to do business in California that have an A.M. Best rating of A-: VII or better, or an equivalent Standard & Poor's rating of AA or better or Moody's rating of Aa or better; or that are acceptable to the Contractor.

d. Deductible. Subcontractor shall bear all financial responsibility for all pertinent deductibles, self-insured retentions and/or self-insurance with no contribution required from the Contractor and/or DOE.

e. Self-Insurance Retention. Subcontractor shall bear all financial responsibility for all pertinent deductibles, self-insured retentions and/or self-insurance with no contribution required from the Contractor and/or DOE.

f. Applicability. The insurance certificates submitted may be able to be applied to future LBNL Agreements, and it is preferred that it not be made applicable,

or reference, a specific Agreement.

C. Notification

The Financial Institution or its insurers shall provide written notification to the Contractor's Procurement Representative and Insurance Tracking Services, Inc. (ITS) at least 30 days in advance of any modification, change, or cancellation of any of the insurance coverage.

D. Certificate Submission

The Contractor has contracted with Insurance Tracking Services, Inc. (ITS), a third party responsible for verifying the Financial Institution's compliance with the insurance requirements contained in the Agreement with the Contractor.

ITS will correspond directly with the Financial Institution to convey insurance deficiencies, policy renewal requests and any other insurance documentation that may be lacking in order to establish full compliance with the Contractor's insurance requirements.

Prior to commencing any Services at a location other than the Financial Institution's or lower-tier subcontractor's facilities, the Financial Institution shall provide certificate(s) of insurance and any necessary endorsements or other documentation confirming the required insurance coverage, by submitting them to the Contractor's authorized insurance compliance monitoring representative, ITS at lbl@instracking.com or fax to (562) 435-2999, or mail to:

The Regents of the University of California and the U.S. Government
Lawrence Berkeley National Laboratory
c/o Insurance Tracking Services, Inc. (ITS)
P.O. Box 20270
Long Beach, CA 90801

E. The requirements of this Covenant shall be met by the Financial Institution at no additional cost to DOE and the Contractor.

13. This Agreement shall continue in effect for the 180-day additional period, with exception of the following:

- a. Term Agreement (Covenant 7)
- b. Termination of Agreement (Covenant 8 and 9)

All terms and conditions of the aforesaid documents listed in Covenant 5 that are not inconsistent with this 180-day additional term shall remain in effect for this period.

14. The Financial Institution has submitted the forms entitled "Technical Representations and Certifications" and "University of California Lawrence Berkeley National Laboratory Representations and Certifications." These forms, in addition to the "Offeror's Pricing" form have been accepted by the Contractor and the Government and are incorporated herein as an integral part of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement, which consists of 9 pages, including the signature pages, to be executed as of the day and year first above written.

THE UNITED STATES OF AMERICA

U.S. Department of Energy

**Maria
Robles**

Digitally signed
by Maria Robles
Date: 2019.10.29
10:50:14 -07'00'

By _____

(Name of Contracting Officer)

(Signature of Contracting Officer)

(Date of Signature)

The Regents of the University of California

By Arthur Guimaraes

(Name of Contractor's Representative)



(Signature of Contractor's Representative)

Chief Operating Officer

(Title)

1111 Broadway, Suite 2100, Oakland CA 94607

(Address)

10/25/2019

(Date of Signature)

By

(Name of Financial Institution Representative)



(Signature of Financial Institution Representative)

SENIOR VICE PRESIDENT

(Title)

1750 H ST, NW SUITE 200 WASHINGTON, DC 20007

(Address)

202-416-2618

(Telephone Number)

10/24/2019

(Date of Signature)

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 the and 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 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 the and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

DR

(Corporate Seal) (Signature)

[Handwritten Signature]

SENIOR VICE PRESIDENT

WELLS FARGO BANK, N.A.

10/24/2019

District of Columbia: SS

Subscribed and Sworn to before me

this 29 day of October, 2019

[Handwritten Signature]

DIANA PATRICIA BECERRA, Notary Public, D.C.

My commission expires September 30, 2023



CERTIFICATE OF INCUMBENCY

I, Anne Shaw, Secretary and Chief of Staff to The Regents of The University of California, a corporation organized and existing under the laws of the State of California (the "Corporation"), hereby certify that the persons named below hold the positions set forth next to their names and the signatures provided below are genuine.

Name	Title	Signature
Janet Napolitano	President	
Jagdeep Singh Bachher	Vice President and CIO	
Arthur Guimaraes	Chief Operating Officer	
Steven Sterman	Senior Managing Director	



Anne Shaw

Secretary and Chief of Staff to

The Regents of the University of California, a Corporation

Dated: July 29, 2016