

Part III -- List of Documents, Exhibits and Other Attachments
SECTION J: ATTACHMENT 2 -- SPECIAL FINANCIAL INSTITUTION AGREEMENT FOR USE
WITH THE PAYMENTS-CLEARED FINANCING ARRANGEMENT

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

Agreement entered into this _____ day of _____ 20__ [*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 _____ [*the Financial Institution*] a financial institution corporation existing under the laws of the State of _____ located at _____ (hereinafter referred to as the Financial Institution).

RECITALS

1. On the effective date of _____ 20__ [*insert date*], DOE and the Contractor entered into Contract No. _____ [*insert Contract number*], or Supplemental Agreement(s) thereto, 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 ITFM 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*], _____ [*Contract Number*], [*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 Financial Institution or others with respect to such accounts.
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 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 the 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 six (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 DOE at:

U.S. Department of Energy, Naval Reactors Laboratory Field Office
Contracting Officer
PO Box 109
West Mifflin, PA 15122-0109

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.

(For compensation by direct payment of fee)

The Financial Institution agrees to service the account in this manner based on the requirements and specifications contained in DOE or Contract Solicitation No. _____, dated _____, 2018. The Financial Institution agrees that per-item costs, detailed in the form "Schedule of Financial Institution Processing Charges," contained in the Financial Institution's aforesaid bid will remain constant during the term of this Agreement. The Financial 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 Financial Institution in payment thereof.

6. The Financial 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 _____ 20____, and ending on the ____ day of _____ 20____. [*Insert applicable dates*]
8. The 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 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. The DOE or the Contractor may terminate this Agreement at any time upon 30 day's 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 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 the 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 90-day period to allow for clearance of outstanding payment items. Within seven (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 Financial Institution for services rendered up to the expiration date.
 - (a) If the analysis indicates that the Financial 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 Financial Institution for prior cumulative loss of earnings, and
 2. Maintain on deposit in the time deposit account sufficient Federal funds to compensate the Financial Institution for services rendered.
 - (b) If the analysis indicates that the Financial 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 Financial 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 Financial Institution for services rendered during the 90-day period, adjustments shall be made to the time deposit account to compensate the Financial 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 Financial Institution that are not inconsistent with this 90-day additional term shall remain in effect for this period.

The Financial 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

By _____
(Typed Name of Contracting Officer)

(Signature of Contracting Officer)

Date Signed

WITNESS

(Typed Name of Witness)

(Signature of Witness)

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

(Typed Name of Contractor)

By _____
(Name of Contractor's Representative)

(Signature of Contractor's Representative)

(Title)

(Address)

(Date of Signed)

WITNESS

(Name of Witness)

(Signature of Witness)

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

(Name of Financial Institution)

By _____
(Name of Financial Institution Representative)

(Signature of Financial Institution Representative)

(Title)

(Address)

(Date Signed)

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.

(Signature)

(Corporate Seal)

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.

(Signature)

(Corporate Seal)