

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>		1. CONTRACT ID CODE	PAGE OF	PAGES
			1	1

2. AMENDMENT/MODIFICATION NO. <p style="text-align: center;">M001</p>	3. EFFECTIVE DATE <p style="text-align: center;">See Block 16C</p>	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
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ISSUED BY  U.S. Department of Energy Pacific Northwest Site Office P.O. Box 350 Richland, Washington 99352	7. ADMINISTERED BY (If other than Item 6)  CODE
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8. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, state and zip code)  Battelle Memorial Institute Pacific Northwest Division Richland, Benton, Washington 99352  DUNS #032987476	(X)	9A. AMENDMENT OF SOLICITATION NO.
		9B. DATED (SEE ITEM 11)
	x	10A. MODIFICATION OF CONTRACT/ ORDER NO. DE-GM06-00RL01831
		10B. DATED (SEE ITEM 13) 02/01/00

CODE	FACILITY CODE
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**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning \_\_\_\_\_ copies of the amendment, (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

(X)	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
x	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: <p style="text-align: center;">Mutual Agreement of the Parties</p>
	D. OTHER (Specify type of modification and authority)

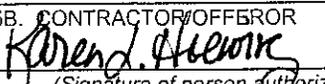
E. IMPORTANT: Contractor  is not,  is required to sign this document and return 2 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

This modification is being issued to transfer this agreement from Richland Operations Office (RL) to the Office of Science (SC). The agreement has been updated to reflect the new agreement number (DE-GM05-00RL01831 versus DE-GM06-00RL01831), references to RL have been changed to either SC, or Pacific Northwest Site Office (PNSO), where appropriate, and references to the Hanford Site have been changed to the Hanford and/or Pacific Northwest Northwest National Laboratory Site.

The updated agreement is attached. This modification results in no other changes.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)  Karen L. Hoewing, General Counsel	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)  Paul W. Kruger, ACO
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)	15C. DATE SIGNED <p style="text-align: center;">9-29-04</p>
15D. UNITED STATES OF AMERICA	16B. DATE SIGNED <p style="text-align: center;">10/4/04</p>
	16C. DATE SIGNED <p style="text-align: center;">10/4/04</p>

**AGREEMENT DE-GM05-00RL01831**

**USE PERMIT**

**between**

**the United States**

**Department of Energy**

**and**

**Battelle Memorial Institute**

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## USE PERMIT

The UNITED STATES OF AMERICA (hereinafter called the "Government"), acting through the UNITED STATES DEPARTMENT OF ENERGY (hereinafter called "DOE"), hereby grants to BATTELLE MEMORIAL INSTITUTE (hereinafter called "Battelle"), a not-for-profit corporation existing under and by virtue of the laws of the State of Ohio, with its principal place of business at Columbus, Ohio, a permit to use for its own account certain Government facilities and property referred to in Appendix "A" hereto, as long as such facilities and property are operated and managed by Battelle under Contract DE-AC05-76RL01830 (hereinafter referred to as the "Operating Contract"), subject to the following terms, conditions and understandings.

## RECITALS

1. DOE has elected, pursuant to legal authority, to enter into the Operating Contract under which Battelle has agreed to undertake the performance of certain functions for DOE involved in and associated with the operation and management of the Pacific Northwest National Laboratory (hereinafter called "PNNL"), Richland, Washington.
2. Battelle desires to stimulate the diversification of the Tri-City and Pacific Northwest economy through research and development and other activities for its own account utilizing certain facilities and property referred to in Appendix "A" and other facilities and property. Battelle is uniquely qualified to do so because of its corporate structure and purpose. To advance these objectives, Battelle has utilized in excess of \$113 million from its own funds between 1965 and 2004 and intends to continue to invest Battelle's own funds to advance these objectives.
3. DOE has determined that DOE's efforts directed toward the diversification of the Tri-City area would be furthered by permitting Battelle to conduct such activities.
4. Battelle has agreed to comply with the terms and conditions of this Use Permit only in utilizing for its own account the Government facilities and property referred to in Appendix "A".
5. There are no statutory provisions dealing with use permits as such. The authority of a Federal agency to grant use permits is recognized as an inherent power of controlling and managing the Government property for which it is responsible. The Battelle Use Permit is predicated on the well-established authority of Government agencies to grant revocable licenses for the use of Government property. 34 Op. Atty. Gen. 320 (1924); 38 Op. Atty. Gen. 534 (1936); 47 Comp. Gen. 387 (1968), and has been in continuous existence since the inception of the M&O contract since 1965.

6. DOE and Battelle agree that work performed by Battelle under this agreement is performed neither on behalf of DOE nor as a part of PNNL in its status as a Federally Funded Research and Development Center or as a DOE national laboratory, but as a separate division of Battelle for its own account.

#### TERMS AND CONDITIONS OF AGREEMENT

##### 1. Scope

In conducting activities for its own account consistent with this Use Permit, Battelle may utilize the Government-owned facilities and property described in Appendix "A" as being available for such use, provided that such utilization is not incompatible with existing or planned DOE programs and that it does not substantially interfere with Battelle's performance of work under the Operating Contract, or with the work of another DOE on-site operating contractor.

##### A. Activities Conducted in Government-Owned Facilities or Using Government-Owned Property or Equipment

- (1) Unless such requirement is waived or amended in writing by DOE, Battelle shall, with respect to any 1831 client funded activity to be conducted in the Government-owned facilities or using Government-owned property or equipment, give written notice to the Contracting Officer or his/her designee at least 15 calendar days in advance of commencing such activity. Such notice shall contain:
  - a. The client's name and address, unless the client has requested Battelle to withhold it.
  - b. A description of the work in sufficient detail to permit DOE to evaluate questions of organizational conflicts of interests, incompatibility of work with existing or planned DOE programs, and potential interference with the conduct of DOE programs, it being understood that Battelle may withhold information which is proprietary to Battelle or a Battelle client.
  - c. Anticipated use of the major Government-owned equipment and facilities and Battelle-owned Consolidated Laboratory facilities, if any.
  - d. Estimated term of the work.
  - e. Approximate dollar magnitude of the work.
  - f. Security considerations and requirements, if any, for the work proposed. Such considerations and requirements shall include: 1) classification of work; 2) security significance of work locations;

- 3) other pertinent security evaluations; and 4) and whether or not the contract is with a Sensitive Foreign Nation. Sensitive Foreign Nations are those designated by the government and whose names are provided to Battelle by the Contracting Officer or his/her designee from time to time.
- g. Battelle's evaluations of health and safety hazards involved, if any.
  - h. A statement to the effect that in Battelle's judgment the work proposed is not incompatible with existing or planned DOE programs and it will not substantially interfere with Battelle's performance of work under the operating contract, or with the work of another DOE on-site operating contractor.
  - i. The identity of the project manager.
  - j. An indication of whether the work will be conducted off-site.
- (2) If DOE, within 15 calendar days after receipt of such notice, asserts no objection or does not request additional information in writing or notify Battelle in writing that additional information will be requested, it will be deemed to have approved such program, if conducted according to the information provided by Battelle in the notice, as not being incompatible with existing or planned DOE programs.
- (3) DOE may, within the 15-day period specified in (2) above, request additional information to clarify or supplement the information contained in the notice. Battelle will supply such additional information within a reasonable time after the request of DOE, provided that Battelle shall not be required to divulge information that is proprietary to Battelle or a Battelle client. If DOE asserts no objection within 15 calendar days after receipt of such additional information, it will be deemed to have approved such program if conducted according to the information provided by Battelle as not being incompatible with existing or planned DOE programs; provided, however, that if Battelle withholds information which is considered by DOE to be necessary to determine compatibility, DOE may, within 15 days after Battelle's refusal to supply such information, direct that the activity not be undertaken in the Government-owned facilities.
- (4) In the event DOE does not request additional information and asserts no objection within the time period specified in (2) above, or if within the time periods specified in (3) above, DOE requests additional information and asserts no objection or issues no directive that the activity not be undertaken, Battelle may proceed with the work under the terms of and subject to the provisions of this Use Permit, it being understood that Battelle assumes the obligation that such work shall be carried on in such

a manner and at such times so as not to substantially interfere with Battelle's performance of work under the Operating Contract, or with the work of another DOE on-site operating contractor.

- (5) Within 10 days after receipt by Battelle of notice of acceptance of any proposal by a client, Battelle will, with respect to any activity to be conducted in the Government-owned facilities, or using Government-owned property or equipment, so notify the Contracting Officer or his/her designee. Such notice shall include such information as is necessary to update the notice required by subparagraph (1). It is understood and agreed that Battelle will pre-finance activities performed under this Use Permit by depositing sufficient funds in the DOE bank account to cover the estimated outlays to be incurred. Deposits will be at the beginning of each month, or more frequently, if required, to cover Use Permit cost to be paid from the Government's bank account.
- (6) With respect to all client funded work performed by Battelle, Battelle will inform the Contracting Officer or his/her designee on a quarterly basis of the percentage utilization of each of the following: 1) Government-owned property in equipment center, 2) Government-owned facility, and 3) staff within each Research Division. Reasonable requests for more frequent reports will be accommodated.

B. Activities Conducted in the Government-Owned Facilities

In addition to the activities referred to in A above, Battelle may utilize the Government-owned facilities and property described in Appendix "A" to conduct support services for its activities.

2. Term

- A. This Use Permit shall continue in effect during the term of the Operating Contract and any extensions or renewals thereof, and, unless otherwise agreed, upon the expiration of the Operating Contract this Use Permit shall automatically expire.
- B. If, prior to its specified expiration date, the Operating Contract is terminated in whole or in part, DOE may terminate this Use Permit in whole or in part at any time after the effective date of the termination of the Operating Contract by giving Battelle a 30-days written notice and upon the date specified in such notice this Use Permit shall terminate; provided, however, that for a period of one year following the effective date of the termination of the Operating Contract or until the date on which the Operating Contract would have expired had it not been terminated, whichever period of time is lesser, this Use Permit shall continue in effect as to those facilities and that property necessary for the performance of research and development work in progress or work for which Battelle has been committed prior to receiving notice of the termination of the Operating Contract; provided, further, that such continued use will not substantially interfere with the conduct of DOE programs.

- C. In cases involving nuclear-related work DOE may, but shall not be obligated to, extend Battelle's permission to use all or part of the facilities and property beyond the periods provided for herein under such terms and conditions as DOE deems appropriate.
- D. In the event that DOE selects a successor contractor to replace Battelle to manage and operate PNNL, Battelle will coordinate its access to DOE facilities and equipment on a non-interference basis with said successor contractor in order to complete work in progress or work for which Battelle has been committed prior to receiving notice of the termination of the Operating Contract. An agreement between the successor contractor and Battelle will be required to perform any new work using DOE facilities and equipment.

3. Termination

In the event Battelle refuses, fails, or neglects to comply with the terms and conditions hereof, and such refusal, failure or neglect continues for a period of 30 calendar days after written notice thereof has been given by DOE to Battelle, DOE, upon the expiration of said 30 days, or at any time thereafter, may terminate this Use Permit by giving Battelle a 10-calendar-day written notice and upon the date specified in such notice, this Use Permit shall terminate. All rights and remedies of DOE under this Article 3 shall be cumulative and shall not exclude any other remedy afforded to DOE by law, and the use of or resort to any one or more shall not exclude or be deemed a waiver of any other or others.

4. Charges

Battelle shall compensate DOE for the Government facilities and property used by Battelle for its own account and for any materials, supplies, utilities, labor or services provided by DOE or at DOE expense. Such compensation shall be determined in accordance with charges, rates and schedules established by DOE and accepted by Battelle. In establishing such charges, rates and schedules, DOE agrees that it will consult with Battelle and that it will take into consideration Battelle's interests and competitive position as well as DOE's full cost recovery principles and the prevailing commercial rates for similar use of similar facilities, property, materials, supplies, utilities, labor, or services. Either DOE or Battelle may propose changes to DOE's charges, rates, and schedules and such changes shall become effective upon acceptance by the other party; provided, however, that unless otherwise agreed, if DOE proposes a change, Battelle shall not thereafter commit itself to any work for its own account which would be affected by the change proposed by DOE, until agreement of the parties hereto has been reached on the proposed change. Unless otherwise agreed, no changes in DOE's charges, rates, or schedules shall apply to work for Battelle's own account that is in progress or for which Battelle has been committed prior to the effective date of the change.

5. Taxes and Assessments

Battelle shall have the duty to pay and shall hold harmless the Government from the payment of all legally imposed taxes, and charges of a similar nature which may be levied by any duly constituted authority of the Government, the State, the County, or other political subdivision of the State attributable to Battelle's activities undertaken pursuant to this Use Permit irrespective of whether the taxes or other charges are levied upon the activities themselves or are levied upon the use of, or are measured by the value of, the Government-owned property utilized therein.

6. Books and Accounts; Audit

Battelle shall establish and maintain accounts and records covering the work for Battelle's own account in which Government facilities and property or Government-furnished materials, utilities, labor or services are utilized. In keeping such accounts Battelle shall employ a system of accounting acceptable to DOE and conforming to generally accepted accounting principles. Such accounts and records shall contain all information and data DOE shall reasonably require in order to enable DOE to determine or confirm the compensation applicable under Article 4 hereof. Such accounts and records relating to work undertaken pursuant to this Use Permit shall be subject to inspection and audit by DOE at reasonable times in order to enable DOE to determine or confirm the compensation applicable under Article 4 hereof; to determine or confirm that Battelle is complying with the terms of this Use Permit, and to the extent necessary to fulfill DOE's responsibilities pursuant to the Atomic Energy Act of 1954, as amended, and any other law or regulation. Battelle shall not be required to divulge the client's name if the client has requested that its name be withheld, or information that is proprietary to a Battelle client, except as otherwise provided herein.

7. Improvements, Alteration or Modification of the Government-Owned Facilities

- A. With the prior written approval of DOE, Battelle may, at its own expense, improve, alter, or modify the Government facilities or property, or construct new facilities on Government-owned real property in order to accommodate or better perform work for its own account. Unless otherwise agreed, title to all materials and equipment which are attached to or incorporated in any Government equipment, building, structure, or realty shall vest in the Government without cost to the Government; provided, that Battelle shall retain title to and may remove at any time all such materials and equipment attached to or incorporated in any Government equipment, building, structure, or realty if such Government equipment, building, structure, or realty can be restored to as good condition as existed prior to the installation of such materials and equipment, reasonable wear and tear and acts of God excepted.
- B. Upon expiration or termination of the Operating Contract or this Use Permit, whichever occurs later, Battelle shall, at its own expense, within a reasonable time, remove any materials and equipment to which Battelle retains title and any other Battelle-owned property, and restore and, if required, decontaminate the remaining equipment and facilities to the satisfaction of DOE; provided, that Battelle may be permitted to abandon any materials and equipment to which

Battelle retains title, and any other Battelle-owned property in place and may be relieved of its obligation to restore and decontaminate when, as determined by DOE, such action will not be detrimental to the Government's utilization of the facilities or property. Battelle shall promptly restore, after removal by it of any materials and equipment to which Battelle retains title, the Government equipment, building, structure, or realty at its own expense to as good condition as existed prior to the installation of such materials and equipment, reasonable wear and tear and acts of God excepted. The foregoing requirement for decontamination, repair, or restoration shall apply only to the extent the facilities or property were contaminated, damaged, improved, altered, or modified as a result of their use for Battelle's own account.

- C. Without otherwise limiting DOE's rights under this paragraph, DOE may condition its approval to improve, alter, or modify the Government facilities or property, or to abandon any materials and equipment to which Battelle retains title, or to any other Battelle-owned property, upon Battelle furnishing to the Government a nonexclusive, irrevocable, royalty-free license to any patented items or processes which are attached to, or incorporated in any Government equipment, building, structure, realty, or which are abandoned, by Battelle to: 1) practice or to have practiced for the Government at such facilities, 2) practice and to have practiced in similar Government facilities, and 3) sell or dispose of such facilities or property, or any portion thereof, as provided by law.

8. Patents

- A. (1) With respect to any invention or discovery conceived or first actually reduced to practice after September 30, 1979, by Battelle or its employees or consultants or by the employees or consultants of organizations sponsoring work at Battelle in the course of or under any agreement or activity undertaken pursuant to this Use Permit in which scientific or technical information and data developed by Battelle in the performance of work for DOE under the Operating Contract, but not reported to DOE on an unrestricted basis (hereinafter referred to as "DOE Information and Data") were specifically necessary for the conception or first actual reduction to practice of any invention or discovery, the Government, as represented by DOE, reserves a nonexclusive, irrevocable, royalty-free license for U. S. governmental purposes in any such invention or discovery and any patent application or patent that may result; provided, however, that nothing herein shall be deemed to modify or alter DOE's rights with respect to any invention or discovery made or conceived in the course of or under the Operating Contract. For purposes of this Article, scientific or technical information and data which are obtained by Battelle other than through its performance of the Operating Contract, or which are published, shall not be deemed to be DOE Information and Data. To the extent necessary to enable DOE to determine the Government's rights under this Article, Battelle shall afford DOE the right to inspect the original records of inventions conceived or first actually reduced to

practice after September 30, 1979, in the course of or under any arrangement or activity undertaken pursuant to this Use Permit; provided, that no original records pertaining to work sponsored by third parties (other than Battelle affiliates or subsidiaries) shall be made available without the client's consent which will not be unreasonably withheld, but if withheld then arrangements shall be made between counsel for Battelle and DOE for a review, at Battelle facilities, of the original record of any such invention and directly related information, with such records treated as proprietary data in accordance with the provisions of Article 10 for purposes of this review.

- (2) Battelle shall report any invention or discovery covered by A(1) above within six months after conception or first actual reduction to practice and will advise DOE, within six months of such reporting, as to whether Battelle or the client intends to file a United States patent application with respect to such invention or discovery; provided, however, if Battelle or the client advises that neither desires to file, DOE may file any patent application, domestic or foreign, as it determines appropriate. If Battelle or the client does not file a patent application within one year of reporting such invention or discovery, DOE, if it desires to file any patent application, will so notify Battelle and if Battelle or the client does not file a patent application within 60 days after date of such notification, DOE may file any patent application, domestic or foreign, as it determines appropriate. If DOE files a patent application, all right, title, and interest in and to such invention or discovery shall be assigned to DOE, subject to retention by Battelle or the client, as the case may be, of at least a nonexclusive, irrevocable, royalty-free license for its own uses. With respect to any such filing, Battelle agrees that it will execute all documents and do all things necessary and proper to assist DOE and will use its best efforts to secure from its employees, the client, and the inventor or inventors the execution of all documents and to have them do all things necessary and proper to assist DOE.

- B. No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by Battelle or its employees and consultants and employees and consultants of the client with respect to any invention or discovery based on said "DOE Information and Data" to the extent described in A(1) above in the course of or under any arrangement or activity undertaken pursuant to this Use Permit.
- C. Except as otherwise authorized in writing by DOE, Battelle will obtain patent agreements to effectuate the provisions of Paragraphs A and B of this Article from all Battelle employees or consultants, or employees or consultants of clients who perform any part of the work under this Use Permit while assigned to work at the Government-owned facilities, or while utilizing the Government-owned property or DOE Information and Data, except non-technical personnel, such as clerical employees and manual laborers.

- D. Except as otherwise authorized in writing by DOE, Battelle will insert in all arrangements, client agreements, subcontracts, or purchase orders undertaken pursuant to this Use Permit provisions making this Paragraph applicable to the work thereunder, except for subcontracts and purchase orders for standard or commercial supplies or raw materials. Such provisions may be incorporated by reference to specified provisions residing on a Battelle web site.
- E. Battelle agrees to indemnify DOE, its officers, agents, and employees against liability of any kind (including cost and expenses incurred) for the use of any invention or discovery and for the infringement of any Letters Patent (not including liability arising pursuant to Section 183, Title 35, (1952) U. S. Code, prior to the issuance of Letters Patent) occurring in the performance of work under any arrangement or activity undertaken pursuant to this Use Permit, or arising by reason of the use or disposal by Battelle of items manufactured by Battelle or supplied by Battelle to private parties in connection with such work.
- F. Nothing herein shall be deemed to preclude DOE from waiving any obligations of Battelle or its clients under this Paragraph or making additional waivers when DOE, in its sole discretion, determines that such waiver is appropriate and consistent with its policies.

9. Access and Technical Data

- A. To the extent necessary to fulfill the responsibilities of DOE under any law or regulation, or for the purposes of determining compliance with the terms of this Use Permit, DOE, at all reasonable times, subject to Article 10, shall have access to all or any part of the facilities described in Appendix "A" and shall have the right to inspect all activities conducted therein; provided, however, DOE's right to inspect shall not include the right to obtain technical data except as hereinafter provided.
- B. The Government shall have the right to use for Governmental purposes any information or knowledge contained in any drawings, sketches, designs, data, specifications, technical and scientific data, photographs, negatives, reports, findings, recommendations, and memoranda of every description (all of which are hereinafter included in the term "technical data") made in the course of or under any arrangement or activity undertaken hereunder which specifically results from the use of said "DOE Information and Data."
- C. Battelle shall furnish to DOE, without charge, one copy of any technical data as to which the Government has rights under B above. To the extent necessary to enable DOE to determine the Government's rights under this Paragraph, DOE shall have the right to inspect the technical data specifically resulting from the use of said "DOE Information and Data" which is made in the course of or under any arrangement or activity undertaken hereunder, provided that no proprietary information of a client (other than Battelle subsidiaries and affiliates) shall be made available without the client's consent, which will not be unreasonable withheld.

- D. When furnishing any technical data referred to in Paragraph C above, Battelle or the client, as the case may be, will make reasonable efforts to identify any invention made by Battelle or the client if not previously reported.
- E. Except as otherwise authorized in writing by DOE, Battelle will include in all of its arrangements, client agreements, subcontracts, or purchase orders undertaken pursuant to this Use Permit provisions to effectuate the purposes of Paragraphs A through D above of this Paragraph, except in subcontracts and purchase orders for standard or commercial supplies or raw materials. Such provisions may be incorporated by reference to specified provisions residing on a Battelle web site.
- F. On application by Battelle, DOE may, in its sole discretion, relieve Battelle from its obligations or agree to waive any rights of the Government under this Paragraph.

10. Proprietary Information

Except for the rights to use provided in Paragraph 8.A and in Paragraph 9.B, DOE shall exert its best efforts to: 1) protect information obtained pursuant to this Use Permit as proprietary and not use such information in any way which will violate its proprietary nature; 2) communicate, disclose or publish any part of such information within the Government only to the extent such communication, disclosure or publication is required in the administration of this Use Permit; 3) insure against communication, disclosure or publication outside the Government of any part of such information, without the written consent of Battelle, except to the extent such information is: a) generally known or available from other sources without obligation concerning its confidentiality; b) available to others without obligation concerning its confidentiality; or c) available to the government without obligation concerning its confidentiality; provided, nothing herein shall be deemed to limit or restrict the right of DOE to communicate, duplicate, use or disclose such information as required to fulfill the responsibilities of DOE pursuant to any law including applicable Executive Orders and Federal Regulations.

11. DOE Control of Access to the Government-Owned Facilities

DOE shall have the right to and may exercise such control over access to the Government-owned facilities, including without limitation the use of roads and streets as is reasonably necessary to fulfill its responsibilities pursuant to the Atomic Energy Act of 1954, as amended, or any other law or regulation, and it may require such facilities to be evacuated when appropriate for health and safety reasons. Necessary access by Battelle's clients or other persons authorized by Battelle will not be unreasonable restricted. DOE shall not be liable to Battelle or others for any loss or damage resulting solely from the exercise of this right; provided, however, that Battelle or others do not hereby waive any rights they may have to recover for loss or damage arising out of the negligent acts of the Government, DOE, other contractors of DOE, and the officers, employees or representatives of any of them in the performance of DOE programs or work.

12. Work for Government Agencies

- A. Battelle is authorized to and may conduct work for Government agencies and may perform such work under the terms of this Use Permit; provided, however, that DOE shall have the right and may direct such work to be performed by Battelle under the provisions of the Operating Contract where: 1) DOE program interests are involved or 2) where the other Government agency requests DOE to have the work performed by Battelle under the provisions of the Operating Contract.
- B. No indemnity or hold harmless provision in this Use Permit in favor of the Government or provision for responsibility or liability on the part of Battelle shall apply to the extent that Battelle is indemnified, held harmless, or is otherwise relieved of responsibility or liability under another Government contract with respect to activities conducted pursuant to this Use Permit.
- C. Should Battelle propose to undertake work for DOE under the terms of this Use Permit for other than Broad Agency Announcements, special notice shall be provided in writing, which includes electronic mail, of such intent to the Contracting Officer. This special notice will be sent in conjunction with the notice normally provided under other provisions of this Agreement to the Contracting Officer's designee.

13. Performance of Work for Sole Account of Battelle

Battelle shall include in every agreement, contract or purchase order entered into in connection with the performance of work for its own account or for others using the Government facilities or property as authorized under this Use Permit, a statement to the effect that although the work is being performed at, or the materials and supplies are being delivered to, DOE's Hanford and/or Pacific Northwest National Laboratory Site, the agreement, contract or purchase order is not entered into by Battelle for the account of the Government or DOE, but is for the sole account of Battelle.

14. Priority of Work in an Emergency Situation

- A. In the event an emergency situation arises involving an on-site or off-site incident as hereinafter defined, which as determined by the Contracting Officer requires the utilization of the Government-owned facilities or property or of personnel then engaged in the conduct of activities for Battelle's own account, Battelle shall, upon request of the Contracting Officer, cease all or any part of such activities during the duration of the emergency situation and shall make the facilities, property and personnel immediately available for such work as the Contracting Officer shall direct. The Government, DOE, their officers, employees or authorized representatives shall not be liable for any loss sustained by Battelle, its clients, or others directly or indirectly attributable to the cessation of activities requested under the authority of this Paragraph.
- B. (1) An on-site incident means an occurrence at any DOE facility on the Hanford and/or Pacific Northwest National Laboratory Site which the Contracting Officer determines has resulted in or may reasonably be expected to result in: a) the spread of radioactive contamination within or

without the Hanford and/or Pacific Northwest National Laboratory Site endangering the health and safety of personnel within such site or of the public or b) an interruption in production in a major facility in the production chain at the Hanford and/or Pacific Northwest National Laboratory Site of more than ten days' duration.

- (2) An off-site incident means an occurrence at a location outside the Hanford and/or Pacific Northwest National Laboratory Site which the Contracting Officer determines requires assistance by Battelle personnel under the radiological assistance program of DOE.

15. Disclaimer of Warranty: No DOE Obligation to Rebuild Facilities

- A. DOE makes no representations, warranties, or undertakings as to the condition of any of the Government facilities and property described in Appendix "A" hereto, or that such facilities and property are free and clear of all hidden hazards, or as to the fitness or availability of such facilities and property for any particular purpose.
- B. In the event the Government facilities and property described in Appendix "A" or some part of them are destroyed or damaged irrespective of the cause or causes therefor, DOE shall be under no obligation to rebuild, restore or repair such facilities and property for the use of Battelle under this Use Permit.

16. Permits

Except as otherwise approved by DOE, in connection with Battelle's use for its own account of the Government facilities and property described in Appendix "A" hereto, Battelle shall procure all necessary permits or licenses and abide by all applicable laws, regulations and ordinances of the United States and of the State, territory and political subdivision in which work undertaken pursuant to this Use Permit is performed; provided, that nothing contained in this Use Permit shall be deemed to relieve Battelle from any liability it may have under Section 53(e)(8) of the Atomic Energy Act of 1954, as amended.

17. Protection Against Third-Party Claims and Liability

- A. Battelle shall indemnify and hold harmless the Government, DOE, contractors of DOE, and the officers, employees or representatives of any of them, from any and all claims and liability (including attorney's fees incurred in the defense of any suit, action or other legal proceedings) by or to third-parties for injury to or death of persons, or injury to or destruction of property caused by or arising out of the conduct of any of the activities undertaken pursuant to this Use Permit. The foregoing shall not apply to any injury, destruction, or death as: 1) may be caused by the negligence of the Government, DOE, other contractors of DOE, and the officers, employees or representatives of any of them; 2) as to which Battelle is a person indemnified by DOE under Section 170 of the Atomic Energy Act of 1954, as amended.

- B. Battelle shall maintain, or shall cause to be maintained, insurance for at least the following coverages and limits of liability:
- (1) Comprehensive General Liability, limits of liability: Bodily Injury, \$100,000 each person, \$300,000 aggregate; Property Damage, \$1,500,000 (unless a different amount is mutually agreed upon): a) premises – operations, b) protective liability – independent contractors, c) products – completed operations, and d) contractual liability covering this Article.
  - (2) Comprehensive Automobile Liability, including all owned, non-owned and hired motor vehicles, limits: Bodily Injury, \$100,000 each person, \$300,000 aggregate; Property Damage, \$100,000.

The above insurance is for the purpose of providing protection against claims which may arise from activities undertaken pursuant to this Use Permit whether such activities be those of Battelle or any of its contractors, or the officers, employees, or agents of Battelle or any of their contractors. DOE will be provided with a listing of insurance coverage and copies of such insurance policies will be maintained on file by Battelle and will be available for review by DOE. DOE shall be given 10 days' advance notice by mail of changes in or cancellation of any such insurance and will be provided with a revised listing when and if coverage changes.

- C. No express or implied provision, warranty, representation or term of this Use Permit is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Use Permit.

18. Loss or Damage to Government Property

- A. Whenever the Government facilities and property in the care, custody or control of Battelle under the Operating Contract are used by Battelle for its own account, such facilities and property shall be used in a prudent manner and in accordance with sound industrial practice.

- B. (1) Except for loss or destruction of, or damage to, the Government facilities or property in the care, custody or control of Battelle under the Operating Contract resulting from a failure of Battelle, due to willful misconduct or lack of good faith of Battelle's managerial personnel, to use such facilities or property as required by Paragraph A hereof, Battelle shall not be liable for: a) loss or destruction of, or damage to, such facilities or property and b) expenses related to or incidental to such loss, destruction of, or damage to, such facilities or property; when caused by any peril while the property is in transit off the site of the facilities or property; or when caused to such facilities by any of the following perils; or when caused to such property while the property is on the site of such facilities or on any other premises where such property may properly be located or by removal therefrom because of any of the following perils:

Fire; lightning; windstorm; cyclone; tornado; hail; explosion; riot attending a strike; civil commotion; vandalism and malicious mischief; nuclear incident; aircraft or objects falling therefrom; vehicles running on land or tracks (excluding vehicles owned or operated by Battelle or any agent or employee of Battelle); smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of rivers or streams; enemy attack or any action by the military forces of the United States in resisting enemy attack (all of which are hereinafter collectively called "excepted perils").

- (2) Except for loss or destruction of, or damage to, Government facilities or property at the Hanford and/or Pacific Northwest National Laboratory Site (excluding all facilities or property in the care, custody or control of Battelle under the Operating Contract which are covered by subparagraph B(1) above) caused by the willful misconduct or lack of good faith on the part of Battelle's managerial personnel, Battelle shall not be liable for: a) loss or destruction of, or damage to, such facilities or property; and b) expenses related to or incidental to such loss, destruction of, or damage to, such facilities and property, due to excepted perils when such loss, destruction or damage is caused by or arises out of any activity undertaken pursuant to this Use Permit; provided, that this waiver of liability shall be applicable only when the amount of such loss, destruction or damage caused by any of the excepted perils is in excess of \$5,000,000 or such other amount as the parties may agree upon from time to time.
- (3) Upon the happening of loss or destruction of, or damage to, any Government facilities or property at the Hanford and/or Pacific Northwest National Laboratory Site caused by or arising out of the activities undertaken pursuant to this Use Permit, Battelle shall furnish to the Pacific Northwest Site Office a statement of (a) the lost, destroyed, and damaged Government facilities or property, (b) the time and origin of the loss, destruction, or damage, (c) the identity of commingled Battelle and DOE

property, if any, of which such is a part, and (d) the insurance, if any, covering any part of or interest in such commingled property.

- (4) It is understood that any facility or property which Battelle is authorized to use, including that for which it is landlord or tenant or to which it has access under the Operating Contract will be considered to be in the care, custody or control of Battelle under the Operating Contract.
  - (5) Except to the extent of any loss or destruction of, or damage to, Government facilities and property for which Battelle is relieved of liability under the foregoing provisions of subparagraph B(1) of this Paragraph, and except for reasonable wear and tear or depreciation, the Government facilities and property used by Battelle for its own account shall be returned to DOE in as good condition as they existed immediately before they were used for Battelle's own account.
  - (6) In the event Battelle is indemnified, reimbursed, or compensated for any loss or destruction of, or damage to, the Government facilities or property at the Hanford and/or Pacific Northwest National Laboratory Site caused by or arising out of the activities undertaken pursuant to this Use Permit, or expenses related to or incidental to such loss, destruction or damage for which the Government has waived liability under the provisions of this Paragraph, it shall equitably reimburse the Government. Battelle shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage.
- C. Notwithstanding any other provisions of this Paragraph, Battelle shall not be liable for any loss or destruction of, or damage to, Government facilities or property caused by or arising out of the activities undertaken pursuant to this Use Permit, or expenses related to or incidental to such loss, destruction or damage, for which Battelle is a person indemnified by DOE under Section 170 of the Atomic Energy Act of 1954, as amended.

19. Applicability of Contract Provisions

- A. Notwithstanding the provisions of the Operating Contract, DOE agrees that it will not exercise the right to direct Battelle to conduct for others, under the Operating Contract (except in the case of work for other Government agencies as provided in Article 12 of this Use Permit) activities and studies of the type specified in Sections 31 and 33 of the Atomic Energy Act of 1954, as amended, unless Battelle is unable or unwilling to conduct such activities and studies under this Use Permit. DOE further agrees that it will not direct Battelle to conduct for others such activities and studies if the conduct of such activities and studies by Battelle would create a conflict of interest situation with work for Battelle's own account which is in progress or for which Battelle has been previously committed. Nothing herein shall, however, limit the right of DOE, pursuant to the terms of the Operating Contract, to have Battelle perform services related to DOE programs for other DOE contractors.

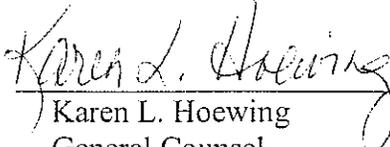
B. This Use Permit is intended to supplement Clause H-1 of the Operating Contract. The following clauses of the Operating Contract are by this reference incorporated herein and are a part hereof as fully as if incorporated herein at length: Clause 52.202-1 "Definitions" (Dec 2001) Modified by DEAR 902-200 (Mar 2002); Clause 52.203-3 "Gratuities" (Apr 1984); Clause 52.203-5 "Covenant Against Contingent Fees" (Apr 1984), except paragraph (b); Clause 952.204-2 "Security" (May 2002)(DEVIATION); Clause 52.222-3 "Convict Labor" (Aug 1996); Clause 52.222-26 "Equal Opportunity" (Apr 2002); Clause 52.222-36 "Affirmative Action for Workers with Disabilities" (Jun 1998); Clause 52.223-5 "Pollution Prevention and Right-to-Know Information (Aug 2003) Alternate I (Aug 2003); Clause 52.233-1 "Disputes" (Jul 2002) Alternate I (Jul 2002); and Clause 970.5223-1 "Integration of Environment, Safety, and Health into Work Planning and Execution" (Dec 2000). The Clause 52.233-1 "Disputes" is not applicable to any termination of this Use Permit pursuant to Paragraph 3 for incompatibility or for substantial interference, or to any matters relating to incompatibility or interference.

IN WITNESS WHEREOF, the parties hereto have executed this Use Permit, effective as of October 4, 2004.

UNITED STATES OF AMERICA  
US DEPARTMENT OF ENERGY

BATTELLE MEMORIAL INSTITUTE

 10/4/04  
\_\_\_\_\_  
Paul W. Kruger  
Administrative Contracting Officer

  
\_\_\_\_\_  
Karen L. Hoewing  
General Counsel

\_\_\_\_\_  
Date

September 29, 2004  
\_\_\_\_\_  
Date

APPENDIX "A"

Description of Government-owned Facilities and Property

Which Battelle May Use for Its Own Account

1. Battelle may utilize all Government-owned or leased facilities and property currently in the custody of Battelle under the Operating Contract (including those facilities occupied by Battelle as a tenant of other DOE contractors) except the following:
  - (a) Production or utilization facilities as defined in the Atomic Energy Act of 1954, as amended;
  - (b) Any facilities or property, the use of which for non-Government work is specifically or by necessary inference prohibited by law;
  - (c) Any facilities and property for which Battelle has been notified in writing by the DOE Contracting Officer or his/her designee that use for non-government work is prohibited pursuant to other provisions of this Use Permit; and
  - (d) Source and special nuclear materials as defined in the Atomic Energy Act of 1954, as amended, unless such use is specifically approved, in writing, by the DOE Contracting Officer or his/her designee.
  
2. Battelle may utilize all government-owned facilities and property placed in Battelle's custody subsequent to the effective date of this revision, except those for which the DOE Contracting Officer or his/her designee notifies Battelle in writing at the time Battelle assumes such custody to be unavailable for any of the reasons identified in 1(a), (b), or (d) above.