

PART III – LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

SECTION J

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

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ATTACHMENT D

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

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

RECITALS

- (a) On the effective date of _____, _____, _____, DOE and the Contractor entered into Agreement(s) No. _____, or a Supplemental Agreement(s) 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 [name of Contractor] [account title] account.

COVENANTS

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

1. The Government shall have a title to the credit balance in said account to secure the repayment of all funds transferred to the Contractor, and said title shall be superior to any lien, title, or claim of the 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 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into this Agreement by reference, but the Financial Institution shall not be responsible for the application of funds withdrawn from said account.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 DOE at:

[Name of office]
[Street address]
[City]
[State and Zip Code]
5. DOE shall authority funds that shall remain available to the extent that obligations have been incurrent in good faith there under 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 DOE solicitation No. DE-SOL-0002555. 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 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 _____ years, beginning on the _____ day of _____, _____, and ending on the day of _____, _____.
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 90 days prior to the desired termination date. The specific provisions for operating the account during this 90-day period are contained in Covenant 11.
9. DOE or the Contractor may terminate this Agreement at any time upon 30 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 90-day period to clear outstanding payment items.

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 (Covenant 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" and "Schedule of Financial Institution Processing Charges." 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.

Date Signed

By _____
(Typed Name of Contractor Officer)

(Signature of Contracting Officer)

WITNESS

(Typed Name of Witness)

(Name of Contractor)

(Signature of Witness)

By _____
(Name of Contractor's Representative)

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

(Signature of Contractor's Representative)

(Title)

(Address)

(Date Signed)

(Name of Witness)

(Name of Financial Institution)

(Name of Financial Institution Representative)

(Signature of Witness)

(Signature of Financial Institution Representative)

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

(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 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.

(Corporate Seal) (Signature)

CERTIFICATE

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

(Corporate Seal) (Signature)

CERTIFICATE

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

(Corporate Seal) (Signature)