

**SECTION J**

**APPENDIX B**

**SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT**

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

Agreement entered into this 29th day of January, 2009, between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as "DOE"), and USA Repository Services LLC, a limited liability company existing under the laws of the State of Delaware (hereinafter referred to as the Contractor) and U.S. Bank, a financial institution corporation existing under the laws of the State of Delaware, located at Reno, Nevada (hereinafter referred to as the Financial Institution).

**RECITALS**

- (a) On the effective date of October 30, 2008, DOE and the Contractor entered into Agreement(s) No. DE-AC28-09RW11003, 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 thereunder be deposited in a special demand deposit account at a financial institution covered by Department of the Treasury-approved Government deposit insurance organizations that are identified in I TFM 6-9000.

This special demand deposit account 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 "USA Repository Services LLC (USA-RS) 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into this Agreement by reference, but the Financial Institution shall not be responsible for the application of funds withdrawn from said account.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 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—

U.S. Department of Energy  
Office of Civilian Radioactive Waste Management  
Procurement Division  
1551 Hillshire Drive  
Las Vegas, NV 89134-6321

- (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 Contractor's solicitation No. YMP-20, dated January 14, 2009. 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 clearing house authorization transfer to the Financial Institution in payment thereof.

- (6) The Financial Institution shall post collateral, acceptable under Department of the Treasury 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 noninterest-bearing time deposit account), less the Department of the Treasury-approved deposit insurance.
- (7) This Agreement, with all its provisions and covenants, shall be in effect beginning on the 1<sup>st</sup> day of April, 2009, and ending on the 31<sup>st</sup> day of March, 2014.
- (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 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 (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. During this 90-day period, DOE shall place on deposit in that account sufficient funds to cover all outstanding payments items presented for payment.

During the entire 90 day period, it is further understood that:

- (a) The Financial Institution shall maintain collateral in an amount sufficient to collateralize the highest balance in the demand deposit account, less Federal Deposit Insurance Corporation coverage on the account.
- (b) All service charges shall be consistent with the amounts reflected in this Agreement.
- (c) All terms and conditions of the bid submitted by the Financial Institution that are not inconsistent with the 90-day additional term shall remain in effect.
- (d) 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," 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.



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, Donald K. Murano, certify that I am the Vice President, General Counsel and Secretary of the corporation named as Contractor herein; that Stephen Piccolo, who signed this Agreement on behalf of the Contractor, was then Executive Vice President and Deputy General Manager of said corporation; and that said Agreement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

USA RS,

 January 29, 2009,

~~(Corporate Seal)~~ (Signature)

DONALD MURANO, SECRETARY TO BOARD OF MANAGERS

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

\_\_\_\_\_  
(Corporate Seal) (Signature)

U.S. Bank no longer uses a Corp seal.

