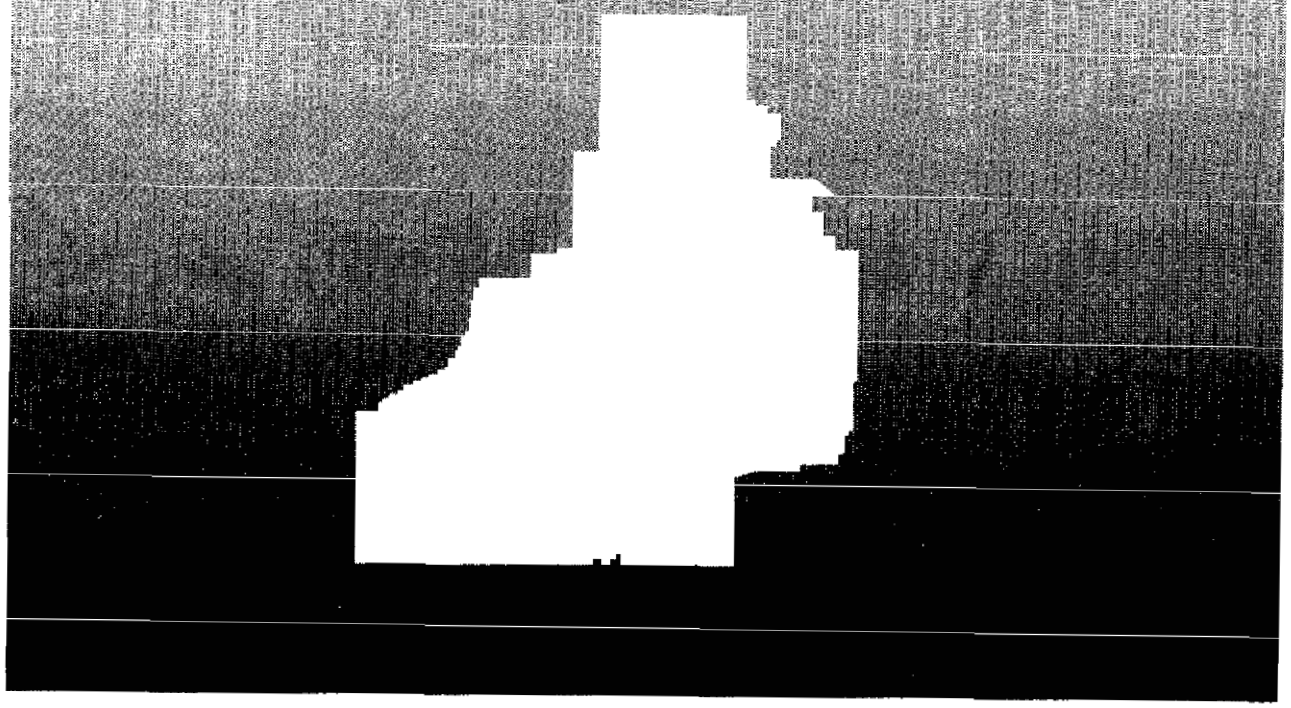
Federal Facility Agreement and Consent Order



THE STATE OF IDAHO, DEPARTMENT OF HEALTH & WELFARE

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10

THE UNITED STATES DEPARTMENT OF ENERGY, IDAHO FIELD OFFICE

for the

Idaho National Engineering Laboratory

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10,
THE STATE OF IDAHO, DEPARTMENT OF HEALTH AND WELFARE,
AND THE
UNITED STATES DEPARTMENT OF ENERGY

IN THE MATTER OF: THE U.S. DEPARTMENT OF ENERGY IDAHO NATIONAL ENGINEERING LABORATORY ("INEL"), Idaho Falls, Idaho	FEDERAL FACILITY AGREEMENT AND CONSENT ORDER Administrative Docket Number: 1088–06–29–120

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ATTACHMENTS

A. . . . . .Action Plan for Implementation of the Federal Facility Agreement and Consent Order
B. . . . . .Mutual Cooperative Funding Agreement

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Based on the information available to the Parties on the effective date of this Federal Facility Agreement and Consent Order ("Agreement"), and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

I. JURISDICTION

Each Party is entering into this Agreement pursuant to the following authorities:

1.1 The United States Environmental Protection Agency, Region 10 ("U.S. EPA") enters into this Agreement pursuant to Section 120 (e) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9620 (e), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99–499 (hereinafter jointly referred to as "CERCLA"); Sections 3004 (u) and (v), 3005, 3008(h), and 6001 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6924 (u) and (v), 6925, 6928 (h), and 6961, as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), Pub. L. 98–616 (hereinafter jointly referred to as "RCRA"); and Executive Order 12580 (January 8, 1987).

1.2 The State of Idaho, Department of Health and Welfare ("IDHW"), by and through its Director, enters into this Agreement pursuant to Sections 107, 120, and 121 of CERCLA, 42 U.S.C. §§ 9607, 9620 and 9621; Sections 3004 (u) and (v), 3006, and 6001 of RCRA, 42 U.S.C. §§ 6924 (u) and (v), 6926, and 6961; the Environmental Protection and Health Act ("EPHA"), Idaho Code ("I.C.") § 39–101, et seq.; and the Hazardous Waste Management Act ("HWMA"), I.C. § 39–4401 et seq.

1.3 The United States Department of Energy ("U.S. DOE") enters into this Agreement pursuant to Section 120 (e) of CERCLA, 42 U.S.C. § 9620 (e); Sections 3004 (u) and (v), 3008 (h), and 6001 of RCRA, 42 U.S.C. §§ 6924 (u) and (v), 6928, and 6961; Executive Orders 12580 (January 8, 1987) and 12088 (October 1978); the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq.; and the Atomic Energy Act of 1954 ("AEA"), as amended, 42 U.S.C. § 2011 et seq.

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1.4 It is the position of IDHW that corrective action requirements are applicable to INEL and that such requirements are enforceable pursuant to state and federal law. It is the position of U.S. DOE and U.S. EPA that such requirements are not enforceable because INEL is listed on the National Priorities List. Subject to, and without waiving the provisions of, Part XXXI, to the extent, if any, corrective action is required pursuant to RCRA and HWMA at INEL, the Parties agree that this Agreement shall be deemed to constitute, and to fulfill the requirements of, a Consent Order under I.C. § 39–4413; provided, however, that in the event of any judicial or administrative action, nothing in this Agreement shall constitute or be interpreted as an admission or stipulation (nor evidence thereof) of a waiver by U.S. DOE and U.S. EPA of any jurisdictional or other claim or defense, including any jurisdictional or other claim or defense regarding the applicability of Idaho law.

1.5 As provided in 55 Fed. Reg. 11,015–11,018 (March 26, 1990), U.S. EPA authorized the State of Idaho to operate its hazardous waste program in lieu of the federal hazardous waste program. U.S. EPA retains oversight authority pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. 271.19.

II. DEFINITIONS

2.1 The terms used in this Agreement shall have the same meaning as defined in Section 101 of CERCLA, 42 U.S.C. § 9601; the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300; Section 1004 of RCRA, 42 U.S.C. § 6903; and HWMA, I.C. § 39–4403. In addition:

(a) "Action Plan" shall mean the CERCLA/NCP response action process for implementing this Agreement, which is set forth as Attachment A;

(b) "Additional Work" shall mean any new or different work beyond the approved Scope of Work as provided for by Part XV;

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(c) "Agreement" shall mean this document and shall include all attachments, modifications, and final primary documents which shall be in writing are hereby fully incorporated herein and are fully enforceable;

(d) "ARARs" shall mean all Applicable or Relevant and Appropriate Requirements for response actions as required by Section 121 (d) of CERCLA, 42 U.S.C. § 9621 (d);

(e) "Authorized representative" shall include any person, including a Party's contractors, who is specifically designated by a Party to have a defined capacity, including an advisory capacity;

(f) "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99–499, and any regulations promulgated pursuant thereto;

(g) "Consent Order" shall mean an Agreement which in no way constitutes or shall be construed as a unilateral order of any kind;

(h) "Days" shall mean calendar days, unless otherwise specified. Any submittal under the terms of this Agreement that would be due on a Saturday, Sunday, or a state or federal holiday shall be due on the following business day;

(i) "Deadline" shall mean an enforceable date which is also subject to stipulated penalties;

(j) "Document" shall mean every document, report, schedule, deliverable, work plan, or other item to be submitted to U.S. EPA and/or IDHW pursuant to this Agreement;

(k) "Hazardous substances" shall mean all hazardous wastes, pollutants, contaminants, or constituents regulated under CERCLA, RCRA, or HWMA;

(l) "HWMA" shall mean the Idaho Hazardous Waste Management Act of 1983, I.C. §§ 39-4401 et seq., as amended, and any regulations promulgated pursuant thereto;

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(m) "IDHW" shall mean the State of Idaho Department of Health and Welfare or any of its successor agencies, employees, and authorized representatives;

(n) "INEL" shall mean the Idaho National Engineering Laboratory located near Idaho Falls, Idaho, as described at 54 Fed. Reg. 48,184 (November 21, 1989);

(o) "Interim Action" ("IA") shall mean any early action taken in an operable unit to achieve significant risk reduction quickly, or to expedite completion of total site cleanup, and which should not be inconsistent with nor preclude the implementation of the final remedy;

(p) "Lead Agency" shall mean the regulatory agency (U.S. EPA or IDHW) which is designated primary administrative technical oversight responsibility with respect to implementing this Agreement at a particular Waste Area Group pursuant to the Action Plan;

(q) "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, as amended;

(r) "Paragraph" shall mean a numbered Paragraph of this Agreement;

(s) "Part" shall mean one of the subdivisions of this Agreement which is designated by a Roman Numeral;

(t) "Parties" shall mean U.S. DOE, U.S. EPA, and IDHW;

(u) "Project Manager" shall mean each Party's primary lead for all INEL–related contacts under this Agreement;

(v) "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), Pub. L. 98–616, and any regulations promulgated pursuant thereto;

(w) "Response Action" includes all activities taken pursuant to the Action Plan of this Agreement, subject to Paragraph 5.3, to satisfy the requirements of CERCLA and the corrective action requirements of HWMA.

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(x) "RI/FS Work Plan" is a plan which contains five (5) distinct components. These are: (1) a Work Plan; (2) a Sampling and Analysis Plan which consists of a Field Sampling Plan and a Quality Assurance Project Plan; (3) a Data Management Plan Supplement; (4) a Health and Safety Plan; and (5) a Community Relations Plan Supplement;

(y) "State" shall refer to the State of Idaho, Department of Health and Welfare, its employees, and authorized representatives;

(z) "Support Agency" shall mean the regulatory agency (U.S. EPA or IDHW) which has not been assigned as Lead Agency. The Support Agency provides review, comments, and consultation as resources permit;

(aa) "Target date" shall not mean an enforceable date and shall not be subject to stipulated penalties;

(bb) "United States Department of Energy" ("U.S. DOE") shall mean the United States Department of Energy, and any of its successor agencies, employees, and authorized representatives;

(cc) "United States Environmental Protection Agency" ("U.S. EPA") shall mean the United States Environmental Protection Agency, including Region 10, and any of its successor agencies, employees, and authorized representatives;

(dd) "WAG Manager" shall mean each Party's lead for implementing WAG–specific Action Plan requirements; and

(ee) "Waste Area Groups" or "WAG" shall mean one of the ten (10) permanent management areas of INEL as defined in the Action Plan. Each WAG contains one or more operable units, with designated Lead and Support Agencies as specified in the Action Plan.

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III. PARTIES

3.1 The Parties to this Agreement are U.S. EPA, IDHW, and U.S. DOE. Each undersigned representative of a Party certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement.

3.2 Contractors of each Party are not considered Parties to this Agreement. The Parties shall be responsible for ensuring that their respective contractors conduct their activities in conformance with the requirements of this Agreement.

3.3 U.S. DOE shall provide a copy of this Agreement and relevant attachments to each of its prime contractors at INEL. A copy of this Agreement shall be made available to all other contractors and subcontractors at INEL retained to perform work under this Agreement.

3.4 U.S. DOE agrees to undertake all actions required by the terms and conditions of this Agreement and not to contest IDHW or U.S. EPA jurisdiction to execute this Agreement and enforce its requirements as provided herein, including, but not limited to, Part X and subject to Part XXXI.

3.5 This Part III shall not be construed as a promise to indemnify any person.

3.6 Under no condition shall a Party under this Agreement utilize the services of any consultant, prime contractor, or subcontractor who has been suspended, debarred, or voluntarily excluded within the scope of 40 C.F.R. Part 32 or under the Federal Acquisition Regulations ("FAR") at 48 C.F.R. Subpart 9.4 et seq.

IV. STATEMENT OF PURPOSE

4.1 The general purposes of this Agreement are to:

(a) Ensure that the environmental impacts associated with releases or threatened releases of hazardous substances at INEL are thoroughly investigated and that appropriate response

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actions are undertaken and completed as necessary to protect the public health, welfare, and the environment;

(b) Establish a procedural framework and schedule for developing, prioritizing, implementing, and monitoring appropriate response actions at INEL in accordance with CERCLA, RCRA, and HWMA;

(c) Facilitate cooperation, exchange of information, and participation of the Parties in such actions;

(d) Minimize the duplication of analysis and documentation;

(e) Expedite the cleanup process to the maximum extent practicable consistent with protection of human health and the environment; and

(f) Supersede the Consent Order and Compliance Agreement ("COCA"), Docket No. 1086-05-16-3008/3013, issued pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and executed on July 10, 1987.

4.2 Specifically, the purposes of this Agreement are to:

(a) Identify IA alternatives which are appropriate at INEL prior to the implementation of final actions at INEL. IA alternatives shall be identified and informally proposed by the Parties as early as possible and prior to formal proposal. This process is designed to promote cooperation among the Parties in promptly identifying IA alternatives;

(b) Establish requirements for the performance of investigations to determine fully the nature and extent of any threat to the public health or welfare or the environment caused by any release or threatened release of hazardous substances at INEL, and to establish requirements for the performance of studies for U.S. DOE to identify, evaluate, and select alternatives for the appropriate action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances at INEL;

(c) Implement the selected response actions in accordance with the Action Plan; and

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(d) Assure compliance with applicable federal and state hazardous waste laws and regulations for matters covered herein.

V. STATUTORY COMPLIANCE

5.1 This Agreement integrates U.S. DOE's CERCLA response obligations and RCRA and HWMA corrective action obligations at INEL which relate to the release(s) of hazardous substances covered by this Agreement. Compliance with activities required by this Agreement will be deemed to: achieve compliance with CERCLA, 42 U.S.C. § 9601, et seq.; satisfy the corrective action requirements of Sections 3004 (u) and (v) of RCRA, 42 U.S.C. §§ 6924(u) and (v), for a RCRA permit, and Section 3008 (h), 42 U.S.C. § 6928 (h), for interim status facilities; satisfy the corrective action requirements of HWMA; and meet or exceed all applicable or relevant and appropriate federal and state laws and regulations to the extent required by Section 121 of CERCLA, 42 U.S.C. § 9621.

5.2 Based upon the foregoing, the Parties intend that any response action selected, implemented, and completed under this Agreement will be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further response action under federal or state law.

5.3 Nothing in this Agreement shall alter U.S. DOE authority with respect to removal actions which are conducted pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, as provided by Executive Order 12580.

VI. REGULATORY DETERMINATIONS

6.1 The following sections of this Part constitute a summary of the facts upon which U.S. EPA and IDHW are proceeding for the purposes of this Agreement. Neither the facts nor determinations stated in this Agreement shall be considered admissions by U.S. DOE; nor shall they be used for any purpose other than determining the jurisdictional basis of this Agreement.

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6.2 INEL is a facility as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and was listed by U.S. EPA on the National Priorities List ("NPL") on November 21, 1989. 54 Fed. Reg. 44,184 (November 21, 1989).

6.3 Since the establishment of the INEL Site in 1949, materials subsequently defined as hazardous substances have been produced, disposed of, and released at INEL;

6.4 U.S. DOE is a generator of hazardous waste and an owner/operator of a hazardous waste management facility at INEL. Facilities at INEL engaged in treatment, storage, or disposal of hazardous waste at the INEL facility are subject to interim status requirements;

6.5 U.S. DOE owned and operated its facility as a hazardous waste management facility on and after November 19, 1980, the applicable date which renders facilities subject to interim status requirements or the requirement to have a permit under Sections 3004 and 3005 of RCRA, 42 U.S.C. §§ 6924 and 6925, and HWMA; and July 3, 1986, the applicable date for interim status for permits under Sections 3004 and 3005 of RCRA, 42 U.S.C. §§ 6924 and 6925, and HWMA for mixed waste facilities.

6.6 Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, U.S. DOE notified U.S. EPA of its hazardous waste activity. In its notification, U.S. DOE identified itself as a generator of hazardous waste and an owner/operator of INEL, a treatment, storage, and disposal facility for hazardous waste;

6.7 There have been releases and there may continue to be releases and threatened releases of hazardous substances into the environment within the meaning of Sections 101(22), 104, 106, and 107 of CERCLA, 42 U.S.C. §§ 9601(22), 9604, 9606, and 9607; Section 3004 (u) of RCRA, 42 U.S.C. § 6924 (u); and HWMA, I.C. 39–4408, at or from INEL. With respect to those releases or threatened releases, U.S. DOE is a responsible person within the meaning of Section 107 of CERCLA, 42 U.S.C. § 9707, and HWMA, I.C. 39–4403;

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6.8 The actions to be taken pursuant to this Agreement are reasonable and necessary to protect the public health, welfare, or the environment.

VII. REGULATORY APPROACH

A. Project Management

7.1 As provided in the Action Plan, each Party shall designate a Project Manager for the purpose of overseeing the implementation of this Agreement. Any Party may change its designated Project Manager by written notification to the other Parties ten (10) days before the change, to the extent possible. To the maximum extent possible, communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Manager. Each Project Manager shall be responsible for assuring that all communications from the other Parties are appropriately disseminated to that responsible Project Manager's organization. Any Party may also provide written notification of an alternate Project Manager.

7.2 The Action Plan identifies all Waste Area Groups ("WAGs") and designates the Lead Regulatory Agency ("Lead Agency") for each WAG at INEL. U.S. EPA and IDHW will reevaluate the Lead Agency assignments for all WAGs four (4) years after the effective date of this Agreement. This Agreement shall be amended by U.S. EPA and IDHW to incorporate transitional changes, as necessary.

7.3 The Lead Agency responds to all submittals in accordance with Part VIII. The regulatory agency not designated as Lead Agency shall be the Supporting Regulatory Agency ("Support Agency"). The Support Agency receives copies of all submittals and provides review, comment, and consultation as resources permit in accordance with Part VIII. In the event of a disagreement, disputes are resolved according to Part IX.

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B. Response Actions

7.4 The Parties seek to ensure site--wide consistency, minimize the potential for conflict, eliminate potentially duplicative or uncoordinated requirements, utilize well–established and available processes and guidance, achieve compliance with CERCLA, RCRA, and HWMA, and agree that the HWMA corrective action process is functionally equivalent to the CERCLA response action process. Therefore, the requirements of CERCLA and the NCP shall be reflected in the Action Plan.

7.5 The Parties agree to apply the Action Plan at all WAGs, regardless of the Lead Agency designation.

7.6 It is the intent of the Parties that the Action Plan process shall apply to all cleanups covered by this Agreement to the exclusion of any process in future RCRA or HWMA corrective action regulations which would otherwise be applicable. In the event that the regulatory agencies determine that the process of such corrective action regulations become applicable and could impose inconsistent or duplicative requirements, the Parties shall amend this Agreement to assure compliance with CERCLA and ensure that the CERCLA/NCP response action process referenced in the Action Plan continues to be applied at all WAGs.

C. Permitting

7.7 The Parties recognize that under Section 121 (e) (1) of CERCLA, 42 U.S.C. 9621 (e) (1), response actions called for by this Agreement and conducted entirely on the INEL Site are exempted from the procedural requirement to obtain federal, state, or local permits, when such response action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. 9621. Nonetheless, these actions shall satisfy, to the extent authorized by law, all the applicable or relevant and appropriate federal and state standards, requirements, criteria, or limitations which would have been included in any such permit. Accordingly, when U.S. DOE proposes that a response action be conducted entirely on

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the INEL Site which, in the absence of Section 121 (e) (1) of CERCLA and the NCP, would require a federal or state permit, U.S. DOE shall include in the appropriate documents submitted to the Lead and Support Agencies:

(a) Identification of each permit which would otherwise be required;

(b) Identification of the standards, requirements, criteria, or limitations which would have had to have been met to obtain each permit; and

(c) Explanation of how the response action proposed will meet the standards, requirements, criteria, or limitations of this Part.

7.8 The Parties further recognize that on–going hazardous waste management activities at INEL not subject to this Agreement may require the issuance of permits under federal and state laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, this Agreement shall be referenced and incorporated as corrective action in any permit issued to U.S. DOE for ongoing hazardous waste management activities at INEL. With respect to response action portions of this Agreement incorporated by reference into permits, the Parties intend that judicial review of the incorporated portions shall, to the extent authorized by law, only occur under the provisions of CERCLA.

VIII. CONSULTATION WITH U.S. EPA AND IDHW

A. Applicability

8.1 The provisions of this Part establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding submitted documents, specified herein as either primary or secondary documents. In accordance with Section 120 of CERCLA, 42 U.S.C. § 9620, U.S. DOE will normally be responsible for issuing primary and secondary documents to U.S. EPA and IDHW. As of the effective date of this Agreement, all draft and final documents for any deliverable document identified herein shall be prepared, distributed, and subject to dispute in accordance with Paragraphs 8.3 through 8.24 below.

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8.2 The designation of a document as "draft" or "final" is solely for purposes of consultation with U.S. EPA and IDHW in accordance with this Part. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final," to the public for review and comment as appropriate and as required by law.

B. General Process for Submission of Documents

8.3 Primary documents include those documents that are major, discrete portions of required activities. Primary documents shall be initially issued by U.S. DOE in draft, subject to review and comment by U.S. EPA and IDHW. Following receipt of comments on a particular draft primary document, U.S. DOE shall respond to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document shall become the final primary document either thirty (30) days after submittal of a draft final document if dispute resolution is not invoked, unless otherwise agreed as provided in Paragraph 8.18, or as modified by decision of the dispute resolution process. The lead/support agencies shall, within the first fifteen (15) days of this thirty (30) day period for finalization of primary documents, identify to U.S. DOE any issues or comments in order to provide sufficient time for review, discussion, and modification of draft final documents, as necessary, to resolve potential disputes.

8.4 Secondary documents include those documents that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents shall be issued by U.S. DOE in draft subject to review and comment by U.S. EPA and IDHW. Although U.S. DOE shall respond to comments received, the draft secondary documents may be finalized in the context of the corresponding draft final primary document to be issued. A secondary document may be disputed at the time the corresponding draft final primary document is issued.

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C. Primary Documents

8.5 As required by the Action Plan, U.S. DOE shall complete and transmit for each OU/WAG the applicable primary documents to U.S. EPA and IDHW for review and comment in accordance with the provisions of this part:

(a) Remedial Investigation ("RI")/Feasibility Study ("FS") Scope of Work ("SOW")

(b) RI/FS Work Plan

(c) RI/FS Report

(d) Record of Decision ("ROD")

(e) Remedial Design ("RD")

(f) Remedial Action ("RA") Work Plan

(g) RA Report

(h) Operations and Maintenance Report

8.6 Only the draft final versions for the primary documents identified above shall be subject to dispute resolution. U.S. DOE shall complete and transmit draft primary documents in accordance with the deadlines established in Table A.1 of Appendix A of the Action Plan. The Action Plan is appended to the Agreement as Attachment A.

D. Secondary Documents

8.7 As required by the Action Plan, U.S. DOE shall complete and transmit the following applicable draft secondary documents to U.S. EPA and IDHW for review and comment in accordance with the provisions of this part:

(a) Scope of Work for Interim Actions

(b) Preliminary Scoping Track 2 Sampling and Analysis Plan

(c) Preliminary Scoping Track 2 Summary Report

(d) RI Report/Baseline Risk Assessment

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(e) Proposed Plan

(f) Health and Safety Plans submitted with RI/FS Work Plans

8.8 Although U.S. EPA and IDHW may comment on the draft documents for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Paragraphs 8.4 and 8.6. Target dates are established for the completion and transmission of draft secondary documents pursuant to the Action Plan.

E. Meetings of the Project Managers on Development of Documents

8.9 The Project Managers shall meet or confer approximately every fourteen (14) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at INEL on the primary and secondary documents. Prior to preparing any draft document specified in Paragraphs 8.5 and 8.7 above, the Project Managers shall meet to discuss the document in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft document.

F. Identification and Determination of Potential ARARs

8.10 For those primary documents or secondary documents that consist of or include ARAR determinations, the Project Managers shall meet prior to the issuance of a draft document, to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. Draft ARAR determinations shall be prepared by U.S. DOE in accordance with Section 121 (d) (2) of CERCLA, 42 U.S.C. § 9621 (d) (2), the NCP, and pertinent guidance issued by U.S. EPA and IDHW which is not inconsistent with CERCLA and the NCP.

8.11 In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances at a site, the particular actions proposed as a remedy, and the characteristics of a site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be re-examined throughout the RI/FS process until a ROD is issued.

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G. Review and Comment on Draft Documents

8.12 U.S. DOE shall complete and transmit each draft primary document to U.S. EPA and IDHW on or before the corresponding deadline established for the issuance of the document. U.S. DOE shall complete and transmit the draft secondary document in accordance with the target dates established for the issuance of such documents established herein.

8.13 Unless the Parties mutually agree to another time period, all draft primary documents shall be subject to a forty–five (45) day period for review and comment, and all draft secondary documents shall be subject to a thirty (30) day period for review and comment with the exception of the RI with Baseline Risk Assessment which shall be forty–five (45) days. Review of any document by U.S. EPA or IDHW concerns all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, and any pertinent guidance or policy promulgated by U.S. EPA or IDHW. Comments by U.S. EPA and IDHW shall be provided with adequate specificity so that U.S. DOE may respond to the comments and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of U.S. DOE, U.S. EPA, or IDHW, shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy documents, the Lead Agency may extend the forty–five (45) day comment period for an additional twenty (20) days by written notice to the other Parties prior to the end of the forty–five (45) day period. On or before the close of the comment period, the Lead Agency shall, and the Support Agency may, transmit their written comments to U.S. DOE.

8.14 Representatives of U.S. DOE shall make themselves readily available to U.S. EPA and IDHW during the comment period for purposes of informally responding to questions and comments on draft documents. Oral comments made during such discussions need not be the subject of a written response by U.S. DOE on the close of the comment period.

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8.15 In commenting on a draft document which contains a proposed ARARs determination, U.S. EPA and IDHW shall include a reasoned statement of whether they object to any portion of the proposed ARARs determination. To the extent that U.S. EPA or IDHW do object, they shall explain the basis for their objection in detail and shall identify any ARARs which they believe were not properly addressed in the proposed ARARs determination.

8.16 Following the close of the comment period for a draft document, U.S. DOE shall give full consideration to all written comments on the draft document submitted during the comment period. With the exception of the RI with Baseline Risk Assessment, which shall be forty–five (45) days, U.S. DOE shall transmit to U.S. EPA and IDHW its written response to comments received during the comment period within thirty (30) days of the close of the comment period on a draft secondary document. Within forty–five (45) days of the close of the comment period on a draft primary document, U.S. DOE shall transmit to U.S. EPA and IDHW a draft final primary document, which shall include U.S. DOE's response to all written comments received within the comment period. While the resulting draft final document shall be the responsibility of U.S. DOE, it shall be the product of consensus to the maximum extent possible.

8.17 In cases involving complex or unusually lengthy documents, U.S. DOE may extend the comment period provided in Paragraph 8.16 for an additional twenty (20) days by providing notice to U.S. EPA and IDHW. In appropriate circumstances, this time period may be further extended in accordance with Part XIII.

8.18 Project Managers may agree to extend by fifteen (15) days the period for finalization of the draft final primary documents provided in Paragraph 8.3 as necessary for editing purposes.

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H. Availability of Dispute Resolution for Draft Final Primary Documents

8.19 Dispute resolution shall be available to the Parties for draft final primary documents as set forth in Part IX. When dispute resolution is invoked on a draft final primary document, work may be stopped in accordance with the procedures set forth in Part IX.

I. Finalization of Draft Final Primary Documents

8.20 The draft final primary document shall serve as the final primary document if no Party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should U.S. DOE's position be sustained. If U.S. DOE's determination is not sustained in the dispute resolution process, U.S. DOE shall prepare, within not more than thirty–five (35) days, a revision of the draft final document which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Part XIII hereof.

J. Subsequent Modifications of Final Primary Documents

8.21 Following finalization of any primary document pursuant to Paragraph 8.20, any Party to this Agreement may seek to modify the document, including seeking additional field work, pilot studies, computer modeling, or other supporting technical work, only as provided in Paragraphs 8.22 and 8.23.

8.22 A Party may seek to modify a primary document after finalization if it determines, based on new information (i.e., information that became available, or conditions that became known, after the document was finalized) that the requested modification is necessary. A Party may seek such a modification by submitting a concise written request to the Project Manager of the other Parties. The request shall specify the nature of the requested modification and the new information upon which the request is based.

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8.23 In the event that agreement of the Project Managers is reached, the modification shall be incorporated by reference and become fully enforceable under the Agreement pursuant to Part XXX. In the event that consensus is not reached by the Project Managers on a modification, any Party may invoke dispute resolution as provided in Part IX to determine if such modification shall be made. Modification of a document shall be required only upon a showing that: (1) the requested modification is based on significant new information; and (2) the requested modification could be of significant assistance in evaluating impacts on the public health or welfare or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.

8.24 Nothing in this Part shall alter U.S. EPA's or IDHW's ability to request the performance of additional work, in accordance with Part XV.

IX. RESOLUTION OF DISPUTES

9.1 Except as expressly set forth in this Agreement, if a dispute arises under this Agreement, the procedures of this Part shall apply. It is the intent of the Parties to resolve issues at the OU or WAG Manager level and that the Support Agency shall invoke Dispute Resolution only for significant issues.

9.2 All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Part shall be implemented to resolve a dispute.

(a) Within thirty (30) days after: (1) the submittal of a draft final primary document pursuant to Part VIII of this Agreement, or (2) any action which leads to or generates a dispute, the disputing Party shall submit to the other Parties a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the information the disputing Party is relying upon to support its position.

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(b) Prior to any Party's issuance of a written statement of dispute, the disputing Party shall engage the other Parties in informal dispute resolution among the Project Managers and/or their immediate supervisors. During this informal dispute resolution period the Parties shall meet as many times as are necessary to discuss and attempt resolution of the dispute.

(c) If agreement cannot be reached on any issue within the informal dispute resolution period, the disputing Party shall forward a written statement of dispute to the Dispute Resolution Committee ("DRC") thereby elevating the dispute to the DRC for resolution.

(d) The Dispute Resolution Committee ("DRC") will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. U.S. DOE may designate a different individual and an alternate with respect to matters at the Naval Reactors Facility ("WAG 8") and the Argonne National Laboratory – West ("WAG 9"). The individuals designated to serve on the DRC shall be employed at a policy level equivalent to Senior Executive Service ("SES") or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The U.S. EPA's representative on the DRC is the Hazardous Waste Division Director of U.S. EPA's Region 10 ("U.S. EPA Division Director"). The IDHW representative on the DRC is the Chief of the Hazardous Materials Bureau ("Bureau Chief"). U.S. DOE's representative on the DRC is the Assistant Manager for Environmental Restoration and Waste Management. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Part XVIII.

(e) Following elevation of a dispute to the DRC, the DRC shall have twenty–one (21) days to unanimously resolve the dispute and issue a written decision signed by all Parties. If the DRC is unable to unanimously resolve the dispute within this twenty–one (21) day period the written statement of dispute shall be forwarded to the Senior Executive Committee ("SEC") for resolution.

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(f) The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The U.S. EPA representative on the SEC is the Regional Administrator of U.S. EPA's Region 10 ("U.S. EPA RA"). The IDHW representative on the SEC is the Administrator of the Division of Environmental Quality ("DEQ Administrator"). U.S. DOE's representative on the SEC is the Manager of the U.S. DOE Idaho Field Office. The SEC members shall, as appropriate, confer, meet, and exert their best efforts to resolve the dispute and issue a written decision signed by all Parties. If unanimous resolution of the dispute is not reached within twenty–one (21) days, the U.S. EPA RA shall issue a written position for disputes arising at U.S. EPA–lead WAGs, and the DEQ Administrator shall issue a written position for disputes arising at IDHW–lead WAGs. Any Party may, within twenty–one (21) days of the issuance of U.S. EPA's or IDHW's position, issue a written notice elevating the dispute to the Administrator of U.S. EPA for U.S. EPA–lead WAGs or the Governor of the State of Idaho for IDHW–lead WAGs for resolution in accordance with all applicable laws and procedures. In the event that a Party elects not to elevate the dispute to the Administrator or Governor within the designated twenty–one (21) day escalation period, the Party shall be deemed to have agreed with U.S. EPA RA's or DEQ Administrator's written position with respect to the dispute.

(g) Upon escalation of a dispute to the Administrator of U.S. EPA or Governor of Idaho pursuant to Paragraph 9.2(f), the Administrator or Governor, as appropriate, shall issue a final written decision to the Parties within twenty–one (21) days. Upon request, and prior to issuance of the final written decision, the U.S. EPA Administrator and the Governor of Idaho shall jointly meet and confer with the Secretary of U.S. DOE to discuss the issue(s) in dispute. If there is disagreement between the Administrator and the Governor regarding a final written decision, within twenty–one (21) days of its issuance, the Administrator or the Governor, as appropriate, shall issue a written statement of position. The duties of the Administrator and the Governor of Idaho as set forth in this Part shall not be delegated.

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(h) The pendency of any dispute under this Part shall not affect U.S. DOE's responsibility for timely performance of the work required by this Agreement, except that the time period for completion of work affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein or as mutually agreed. All elements of the work required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable schedule.

(i) When dispute resolution is in progress, work affected by the dispute shall immediately be discontinued if the appropriate Lead Agency DRC representative requests, in writing, that work related to the dispute be stopped because, in its opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or welfare or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. To the extent possible, the Party seeking a work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After stoppage of work, if a Party believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the Party ordering a work stoppage to discuss the work stoppage. Following this meeting, and further consideration of the issues, the appropriate Lead Agency DRC representative will issue, in writing, a final decision with respect to the work stoppage. This final written decision may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

(j) Within thirty–five (35) days of resolution of a dispute pursuant to the procedures specified in this Part, U.S. DOE shall incorporate the resolution and final determination into the appropriate plan, schedule, or procedures and proceed to implement this Agreement according to the amended plan, schedule, or procedures.

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(k) All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Part of this Agreement, except as provided in Part XXXI.

X. ENFORCEABILITY

10.1 The Parties agree that:

(a) Upon the effective date of this Agreement, any standard, regulation, condition, requirement, or order which has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to Section 310 of CERCLA, 42 U.S.C. § 9659, and any violation of such standard, regulation, condition, requirement, or order shall be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. §§ 9659 and 9609;

(b) All timetables or deadlines associated with the development, implementation, and completion of the RI/FS shall be enforceable by any person pursuant to Section 310 of CERCLA, 42 U.S.C. § 9659, and any violation of such timetables or deadlines will be subject to civil penalties under Sections 310 (c) and 109 of CERCLA, 42 U.S.C. §§ 9659 (c) and 9609;

(c) All terms and conditions of this Agreement which relate to interim or final response actions, including corresponding timetables, deadlines, or schedules, and all work associated with the interim or final response actions, shall be enforceable by any person pursuant to Section 310 of CERCLA, 42 U.S.C. § 9659, and any violation of such terms or conditions will be subject to civil penalties under Sections 310 (c) and 109 of CERCLA, 42 U.S.C. §§ 9659 (c) and 9609; and

(d) Any final resolution of a dispute pursuant to Part IX of this Agreement which establishes a term, condition, timetable, deadline, or schedule shall be enforceable by any person pursuant to Section 310 of CERCLA, 42 U.S.C. § 9659, and any violation of such term, condition, timetable, deadline, or schedule will be subject to civil penalties under Sections 310 (c) and 109 of CERCLA, 42 U.S.C. §§ 9659 (c) and 9609.

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10.2 This Agreement shall be referenced and incorporated, in pertinent part, in any HWMA hazardous waste permit for corrective action issued by IDHW to INEL. Permit requirements, including corrective action, may be enforced in accordance with Part XXXI.

10.3 The Parties agree that all Parties shall have the right to enforce the terms of this Agreement, subject to Part XXXI.

XI. STIPULATED PENALTIES

11.1 In the event that U.S. DOE fails to submit a primary document pursuant to the appropriate deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an interim or final response action at an EPA–lead OU,U.S. EPA may assess a stipulated penalty against U.S. DOE. If IDHW determines at a state–lead OU that U.S. DOE has failed in a manner as set forth above at an OU, it may identify and recommend stipulated penalties to U.S. EPA and, unless disputed pursuant to Part IX, such penalties may be assessed in accordance with this Part. A stipulated penalty may be assessed in an amount up to Five Thousand Dollars ($5,000) for the first week (or part thereof), and up to Ten Thousand Dollars ($10,000) for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

11.2 Upon determining that U.S. DOE has failed in a manner set forth in Paragraph 11.1, U.S. EPA shall so notify U.S. DOE in writing. If the failure in question is not or has not already been subject to dispute resolution at the time such notice is received, U.S. DOE shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did, in fact, occur. U.S. DOE shall not be liable for the stipulated penalty assessed if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

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11.3 The annual reports required by Section 120 (e) (5) of CERCLA, 42 U.S.C. § 9620 (e) (5), shall include, with respect to each final assessment of a stipulated penalty against U.S. DOE under this Agreement, each of the following:

(a) The facility responsible for the failure;

(b) A statement of the facts and circumstances giving rise to the failure;

(c) A statement of any administrative action taken at the relevant facility, or a statement of why such measures were determined to be inappropriate;

(d) A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and

(e) The total dollar amount of the stipulated penalty assessed for the particular failure.

11.4 Stipulated penalties assessed pursuant to CERCLA and this Part shall be payable to the Federal Hazardous Substances Response Trust Fund from funds authorized and appropriated for that specific purpose.

11.5 In no event shall this Part give rise to a CERCLA stipulated penalty in excess of the amount set forth in Section 109 of CERCLA, 42 U.S.C. § 9609.

11.6 This Part shall not affect U.S. DOE's ability to obtain an extension of a timetable and deadline or schedule pursuant to Part XIII.

11.7 Nothing in this Agreement shall be construed to render any officer or employee of U.S. DOE personally liable for the payment of any stipulated penalty assessed pursuant to this Part.

11.8 In the event that current and applicable law respecting fines and penalties changes, the Parties agree to meet and negotiate whether modifications to this Part are appropriate. The dispute process in Part IX shall not apply to this issue.

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XII. TARGET DATES AND DEADLINES

12.1 A summary of enforceable deadlines is set forth in Appendix A of the Action Plan as Table A.1.

12.2 Within twenty-one (21) days of issuance of the ROD for each OU requiring remedial action, U.S. DOE shall submit a RD/RA SOW, subject to dispute within thirty (30) days of submittal under Paragraph 9.2 (a) (2). The RD/RA SOW shall identify, and establish target dates for submittal of, remedial design secondary documents and deadlines for submittal of the drafts of the RD/RA Work Plan (primary documents identified in Paragraph 8.5 (e) and (f)). The RA Work Plan shall identify, and establish target dates for submittal of, RA secondary documents. The draft of the RA Report (a primary document identified in Paragraph 8.5 (g)) shall be submitted within sixty (60) days of the final inspection. The draft of the Operations and Maintenance Report (a primary document identified in Paragraph 8 (h)) shall be submitted within ninety (90) days of the completion of operations and maintenance activities.

12.3 The deadlines set forth in this Part may be extended pursuant to Part XIII. The Parties recognize that one possible basis for extension of the deadlines for completion of the RI/FS Reports is the identification of significant new Site conditions during the performance of the RI.

XIII. EXTENSIONS

13.1 Either a timetable and deadline or a schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by U.S. DOE shall be submitted to the Project Managers in writing and shall specify:

(a) The timetable and deadline or the schedule that is sought to be extended;

(b) The length of the extension sought;

(c) The good cause(s) for the extension; and

(d) Any related timetable and deadline or schedule that would be affected if the extension were granted.

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13.2 Good cause exists for an extension when sought in regard to:

(a) An event of Force Majeure;

(b) A delay caused by another Party's failure to meet any requirement of this Agreement;

(c) A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;

(d) A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; and

(e) Any other event or series of events mutually agreed to by the Parties as constituting good cause, including delays that result from compliance with other federal laws.

13.3 Absent agreement of the Parties with respect to the existence of good cause, U.S. DOE may seek and obtain a determination through Part IX.

13.4 Within seven (7) days of receipt of a request for an extension of a timetable and deadline or a schedule, U.S. EPA and IDHW shall advise U.S. DOE in writing of their respective positions on the request. Any failure by U.S. EPA or IDHW to respond within the seven (7) day period shall be deemed to constitute concurrence in the request for extension. If U.S. EPA or IDHW does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

13.5 If there is consensus among the Parties that the requested extension is warranted, U.S. DOE shall extend the affected timetable and deadline or schedule accordingly. If there is no consensus among the Parties as to whether all or part of the requested extension is warranted, the timetable and deadline or schedule shall not be extended except in accordance with a determination resulting from the dispute resolution process.

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13.6 Within seven (7) days of receipt of a statement of nonconcurrence with the requested extension, U.S. DOE may invoke dispute resolution under Part IX.

13.7 A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected timetable and deadline or schedule until a decision is reached on whether the requested extension shall be approved. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original timetable, deadline, or schedule. Following the grant of an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to compel compliance with the timetable and deadline or schedule as most recently extended.

XIV. RECOVERY OF EXPENSES

A. U.S. EPA Expense

14.1 U.S. EPA shall take all necessary steps and make efforts to obtain timely funding to meet its obligations under this Agreement. Notwithstanding any other provision of this Agreement, in the event that U.S. EPA, in consultation with U.S. DOE and IDHW, determines that sufficient funds have not been appropriated to meet any post Fiscal Year 1992 commitments established by this Agreement, U.S. EPA may terminate this Agreement by written notice to U.S. DOE and IDHW.

B. IDHW Expense

14.2 U.S. DOE shall reimburse IDHW for costs of response action directly related to implementation of this Agreement, pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, and not inconsistent with the NCP, in accordance with the following provisions:

(a) A separate grant shall be the specific mechanism for transfer of funds between U.S. DOE and IDHW for payment of the costs referred to herein;

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(b) On an annual basis, and in accordance with 10 C.F.R. Parts 600 and 1024: (1) IDHW shall submit, in a timely fashion and in writing, to U.S. DOE a grant application including a proposed Scope of Work and estimates of costs to be incurred relating to CERCLA response actions, as defined herein, to be performed under this Agreement by IDHW for the upcoming year, and (2) subsequent to negotiation between U.S. DOE and IDHW, U.S. DOE shall make a grant award;

(c) In the event that U.S. DOE contends that any costs incurred were not directly related to the implementation of this Agreement, or were incurred in a manner inconsistent with CERCLA, the NCP, or the grant award, U.S. DOE may challenge the costs allowable under the grant to IDHW. If unresolved, IDHW's demand, and U.S. DOE's challenge, may be resolved through the appeals procedures set forth in 10 C.F.R. Part 600 and 10 C.F.R. Part 1024;

(d) Subject to Paragraph 14.3, U.S. DOE shall not be responsible under the terms of this Agreement for reimbursing IDHW for any costs actually incurred in excess of the maximum U.S. DOE obligation as defined in the grant award; and

(e) IDHW's performance of its obligations under this Agreement shall be excused if its justifiable response costs as defined herein are not paid as required by this Part.

14.3 IDHW reserves any rights it may have to recover costs for matters not covered by this Agreement, or costs not reimbursed by U.S. DOE pursuant to Paragraph 14.2 after exhaustion of the appeals procedures described in Paragraph 14.2 (c). In any judicial proceeding in which IDHW seeks to recover such costs, nothing in this Agreement shall create an independent right to recover costs, nor create a presumption, nor constitute an admission or agreement by U.S. DOE, that U.S. DOE is liable for costs which are incurred by the State of Idaho or that such costs constitute or do not constitute recoverable costs.

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XV. ADDITIONAL WORK

15.1 In the event that additional work, or modification to work, including remedial investigatory work, engineering evaluation, and changes to operable units is necessary to accomplish the objectives of this Agreement, notification and description of such additional work or modification to work shall be provided to U.S. DOE. U.S. DOE will evaluate the request and notify the requesting Party within thirty (30) days of receipt of such request of its intent and ability to perform such work, including the impact such additional work will have on budgets and schedules. If U.S. DOE does not agree that such additional work is required by this Agreement or if U.S. DOE asserts such additional work is otherwise inappropriate, the matter shall be resolved in accordance with the dispute resolution procedures of this Agreement, as appropriate. Field modifications, as set forth in the Action Plan, are not subject to this Part.

15.2 Any additional work or modification to work determined to be necessary by U.S. DOE shall be proposed by U.S. DOE and will be subject to review in accordance with the appropriate dispute resolution procedures of this Agreement, as appropriate, prior to initiation.

15.3 If, during implementation of any additional work or modification to work, U.S. DOE determines that the work will adversely affect work schedules or will require significant revisions to an approved schedule, the U.S. EPA and IDHW Project Managers shall be immediately notified of the situation followed by a brief written explanation within seven (7) days of the initial notification. Requests for extension of deadlines or schedule(s) shall be evaluated in accordance with Part XIII.

15.4 Any additional work accomplished pursuant to this Part shall be reflected in a written amendment to this Agreement as provided for in Part XXX.

XVI. QUALITY ASSURANCE

16.1 All response work performed pursuant to this Agreement shall be done under the direction and supervision of, or in consultation with, as necessary, a qualified engineer, hydrogeolo-

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gist, or other expert, with experience and expertise in hazardous waste management, and hazardous waste site investigation, cleanup, and monitoring.

16.2 Throughout all sample collection, transportation, and analyses activities conducted in connection with this Agreement, U.S. DOE shall use procedures for quality assurance, and for quality control, and for chain–of–custody in accordance with approved U.S. EPA methods, including "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," QAMS–005/80, "Data Quality Objective Guidance," U.S. EPA 1540/687/003 and 004, and subsequent amendments to such guidelines. All Parties shall require each laboratory it uses to perform analyses according to approved U.S. EPA methods. Each laboratory shall be required to participate in a quality assurance/ quality control program equivalent to that which is followed by U.S. EPA and which is consistent with U.S. EPA document QAMS–005/80. As part of each RI/FS Work Plan, U.S. DOE shall submit a Quality Assurance Project Plan ("QAPP") to U.S. EPA and IDHW for approval prior to use and in accordance with the Action Plan. In general, U.S. EPA and IDHW shall follow the QAPP requirements specified in this Paragraph.

XVII. REPORTING

17.1 U.S. DOE shall submit to IDHW and U.S. EPA monthly written progress reports which describe the actions which U.S. DOE has taken during the previous month to implement the requirements of this Agreement. Progress reports, similar in content to the May 1990 COCA Report, shall also describe the activities scheduled to be taken during the upcoming three (3) months. Progress reports shall be submitted by the twenty–fifth (25th) day of each month following the effective date of this Agreement. The progress reports shall also include a detailed statement of how the requirements and time schedules set out in the attachments to this Agreement are being met, identify any anticipated delays in

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meeting time schedules, include the reason(s) for the delay, actions taken to prevent or mitigate the delay, and identify any potential problems that may result in a departure from the requirements and time schedules.

XVIII. NOTICE TO THE PARTIES

18.1 All Parties shall transmit primary and secondary documents, comments, and all notices required herein by U.S. Mail, next day mail (i.e., express mail), hand delivery, or facsimile followed by mailing of originals. Time limitations shall commence upon receipt.

18.2 Notice to the individual Parties shall be provided under this Agreement to the Parties, unless otherwise provided, at the following addresses:

(a) **For U.S. DOE:**

INEL IAG Project Manager
U.S. Department of Energy
Idaho Field Office
785 DOE Place
Idaho Falls, Idaho 83401–1562
(208) 526–1148

(b) **For U.S. EPA:**

INEL IAG Project Manager
Region 10
U.S. Environmental Protection Agency
1200 Sixth Avenue, HW–112
Seattle, Washington 98101
(206) 553–7261

(c) **For the State of Idaho:**

INEL IAG Project Manager
Division of Environmental Quality
1410 North Hilton Street
Boise, Idaho 83706
(208) 334–5879

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18.3 U.S. DOE shall submit six (6) copies of all documents and notices to U.S. EPA and IDHW. Where practicable, all submittals shall be two-sided copies on recycled paper.

XIX. SAMPLING AND DATA/DOCUMENT AVAILABILITY

19.1 The Parties intend to make available to each other quality assured results of sampling, tests, or other data generated by any Party, or on their behalf, with respect to the implementation of this Agreement within seventy-five (75) days of collection. Quality assured data or results shall be submitted as they become available but no later than one hundred and twenty (120) days after collection.

19.2 Non-quality assured data results received by U.S. DOE will, upon request, be made available to U.S. EPA or IDHW at INEL. Neither U.S. EPA nor IDHW will duplicate or remove these records, information, or data, unless U.S. EPA or IDHW provide written assurance that U.S. EPA or IDHW will treat the non-quality assured data as confidential and not disclose the data pending completion of quality assurance or expiration of the one hundred and twenty (120) day period provided for completing quality assurance.

19.3 To the extent that non-quality assured data are made available to, or reviewed by, U.S. EPA or IDHW prior to the one hundred and twenty (120) day period established in Paragraph 19.1, such data so disclosed:

(a) shall not form the basis for agency action; provided, however, that U.S. EPA or IDHW may request that U.S. DOE accelerate completion of quality assurance procedures regarding specific data; and

(b) shall be held in confidence and shall not be further disclosed except with the consent of U.S. DOE or as may be mandatory under applicable law. Prior to any mandatory further disclosure under this paragraph, U.S. EPA and IDHW shall consult and coordinate with U.S. DOE; provided,

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however, that U.S. EPA shall, upon U.S. DOE's request, promptly transfer responsibility for responding to a request for such data to U.S. DOE as provided in 40 C.F.R. 2.111 (d)(2).

19.4 At the request of either the IDHW or U.S. EPA Project Manager, U.S. DOE shall allow split or duplicate samples to be taken by IDHW or U.S. EPA during sample collection conducted during the implementation of this Agreement. U.S. DOE shall have the opportunity to take split samples when U.S. EPA or IDHW undertakes such activity pursuant to this Agreement. The Project Managers shall notify the other respective Project Managers not less than fourteen (14) business days in advance of any well drilling, sample collection, or other monitoring activity conducted pursuant to this Agreement. The fourteen (14) day notification can be waived upon mutual agreement among the Project Managers for U.S. DOE, U.S. EPA, and IDHW.

19.5 If preliminary analysis indicates a potential imminent and substantial endangerment to the public health, all Project Managers shall be immediately notified.

XX. RETENTION OF RECORDS AND ADMINISTRATIVE RECORD

20.1 U.S. DOE will establish and maintain databases for compilation of site–wide validated and quality assured technical decision–level data that will be considered or relied upon in selection of response actions. The data will be maintained at a U.S. DOE–designated storage location(s) and summarized in the administrative record file, located at the INEL Technical Library in Idaho Falls, Idaho. U.S. DOE will provide U.S. EPA and IDHW with access to the data pursuant to Part XIX of the Agreement. Hard copies of the electronically maintained data will be available to U.S. EPA, IDHW, and members of the public upon request.

20.2 U.S. DOE shall preserve for a minimum of ten (10) years after termination of this Agreement all of the records in its possession, or in the possession of its contractors, related to sampling, analysis, investigations, and monitoring conducted in accordance with this Agreement. After this ten (10) year period, U.S. DOE shall notify U.S. EPA and IDHW at least forty–five (45) days prior to

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destruction or disposal of any such records. Upon request, U.S. DOE shall make such records or true copies available, to the other Parties.

20.3 U.S. DOE agrees it shall establish and maintain an Administrative Record and Index at the INEL Technical Library in Idaho Falls, Idaho, in accordance with Section 113(k) of CERCLA, 42 U.S.C. § 9613(k), and current and future U.S. EPA policy and guidance on administrative records for selection of CERCLA response actions. U.S. DOE will provide a periodically updated Index and a copy of each document placed in the administrative record to U.S. EPA and IDHW.

XXI. ACCESS

21.1 Consistent with applicable security requirements and necessary safety precautions, but without limitation on any authority conferred on either agency by law, U.S. EPA, IDHW, or their authorized representatives, shall have authority to enter INEL at all reasonable time(s) with or without prior notification for the purposes of carrying out the terms of this Agreement.

21.2 U.S. DOE will identify an individual as a point of contact for access to each facility at INEL. With respect to matters concerning access at the Naval Reactors Facility ("NRF"), the Manager, Naval Reactors, Idaho Branch Office of U.S. DOE, will be the point of contact. With respect to matters concerning access at the Argonne National Laboratory–West ("ANL–W"), the Director, Argonne Area Office–West, will be the point of contact.

21.3 The stated reasons for any denial of access shall be immediately provided in writing, handwritten or otherwise.

21.4 To the extent that this Agreement requires access to property not owned and controlled by U.S. DOE, U.S. DOE shall exercise its authorities to obtain written access agreements pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). U.S. DOE shall use its best efforts to obtain signed access agreements for itself, its authorized representatives, and U.S. EPA and IDHW and their authorized representatives, from the present owners or lessees in advance of the date such activities are

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scheduled to commence. U.S. DOE shall provide U.S. EPA and IDHW with copies of such agreements. With respect to non–U.S. DOE property upon which monitoring wells, pumping wells, treatment facilities, or other response actions are to be located, U.S. DOE shall use its best efforts to obtain access agreements that provide that no conveyance of title, easement, or other interest in the property shall be consummated without provisions for the continued operation of such wells, treatment facilities, or other response actions on the property; and provide that the owners of any property where monitoring wells, pumping wells, treatment facilities, or other response actions are located shall notify U.S. DOE, IDHW, and U.S. EPA by certified mail, at least thirty (30) days prior to any conveyance, of the property owner's intent to convey any interest in the property and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement.

XXII. FIVE–YEAR REVIEW

22.1 Consistent with Section 121(c) of CERCLA, 42 U.S.C. § 9621 (c), and in accordance with this Agreement, U.S. DOE agrees that U.S. EPA may review response action(s) for OUs that allow hazardous substances to remain on–site, no less often than every five (5) years after the initiation of the final response action for such OU to assure that human health and the environment are being protected by the response action being implemented. If upon such review it is the judgment of U.S. EPA, after consultation with IDHW, that additional action or modification of the response action is appropriate in accordance with Sections 104, 106, and 120 of CERCLA, 42 U.S.C. §§ 9604, 9606, and 9620, U.S. EPA and IDHW may require U.S. DOE to implement such Additional Work pursuant to Part XV.

XXIII. TRANSFER OF PROPERTY

23.1 Conveyance of title, easement, or other interest in the real property subject to this Agreement shall be in accordance with Section 120 (h) of CERCLA, 42 U.S.C. § 9620 (h), and any applicable requirements of RCRA or HWMA.

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XXIV. PUBLIC PARTICIPATION

24.1 The Parties agree that this Agreement and any subsequent proposed response action alternative(s) at INEL arising out of this Agreement shall comply with the administrative record and public participation requirements of CERCLA, including Sections 113 (k) and 117 of CERCLA, 42 U.S.C. §§ 9613 (k) and 9617, U.S. EPA guidance on public participation and administrative records, and, where appropriate, public participation requirements of HWMA.

24.2 U.S. DOE has developed a draft comprehensive Community Relations Plan ("CRP") which responds to the need for an interactive relationship with all interested community elements, both on and off INEL, regarding activities and elements of work undertaken by U.S. DOE at INEL under this Agreement. The final CRP shall be implemented in a manner consistent with Section 117 of CERCLA, 42 U.S.C. § 9617, U.S. EPA guidelines set forth in U.S. EPA's Community Relations Handbook, and any modifications thereto, and, where appropriate, public participation requirements of HWMA.

24.3 Where appropriate, U.S. DOE intends to coordinate any applicable NEPA review with the public participation requirements of this Agreement.

XXV. DURATION/TERMINATION

25.1 Upon satisfactory completion of the response action phase as described in the Action Plan for a given OU or WAG, U.S. DOE may request and the Lead Agency shall issue a Notice of Completion to U.S. DOE for that OU or WAG. At the discretion of the Lead Agency, a Notice of Completion may be issued for completion of a portion of the response action for an OU or WAG.

25.2 This Agreement shall terminate when U.S. DOE has satisfactorily completed all work pursuant to this Agreement and the Action Plan, or when the Parties unanimously agree to termination.

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25.3 Upon completion of all remedial action for the INEL Site, U.S. DOE may request, in writing, a determination from U.S. EPA that it is appropriate to delete INEL from the NPL. Upon receipt of this submission from U.S. DOE, U.S. EPA, after consultation with IDHW, shall apply the factors outlined in 40 CFR § 300.425 and determine whether all appropriate response action has been implemented at the Site, and whether any potential threat to public health or the environment remains.

25.4 If U.S. EPA determines, after consultation with IDHW, that no further response is appropriate and that the Site should be deleted from the NPL, U.S. EPA will initiate steps to delete the Site from the NPL, consistent with CERCLA, as amended, and the NCP.

25.5 If U.S. EPA determines, after consultation with IDHW, that deletion from the NPL is not warranted, U.S. EPA shall so notify U.S. DOE, in writing, and provide specific reasons for the determination. U.S. DOE shall take appropriate steps to correct any deficiencies noted and may subsequently resubmit for U.S. EPA's reconsideration U.S. DOE's request for deletion in accordance with the provisions of this Part.

XXVI. CLASSIFIED AND CONFIDENTIAL INFORMATION

26.1 Notwithstanding any provision of this Agreement, all requirements of the Atomic Energy Act of 1954, as amended, and all Executive Orders concerning the handling of unclassified controlled nuclear information, naval nuclear propulsion information, restricted data, and national security information, including "need to know" requirements, shall be applicable to any access to information or facilities, or public dissemination of information, covered under the provisions of this Agreement. In addition, those data, documents, records, or files which could otherwise be withheld pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, or the Privacy Act of 1972, 5 U.S.C. § 552 (a), unless expressly authorized for release by the originating Party, shall be handled in accordance with those provisions of law and any implementing regulation. Upon submission to IDHW, U.S. DOE shall identify any materials determined by U.S. DOE to be exempt from public disclosure pursuant to FOIA, and, unless

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expressly authorized by U.S. DOE, such materials shall be exempt from public disclosure by IDHW pursuant to I.C. § 9–340 (1). Transmittal of information or data determined by U.S. DOE to be exempt from disclosure shall not be deemed a waiver by U.S. DOE of any rights, benefit, or privilege associated with the information.

26.2 Any Party may assert on its own behalf or on behalf of an authorized representative, a confidentiality claim or privilege covering all or any part of the information requested by this Agreement, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and State law. Analytical data shall not be claimed as confidential. Parties are not required to provide legally privileged information. At the time any information is furnished which is claimed to be confidential, all Parties shall afford it the maximum protection allowed by law. If no claim of confidentiality accompanies the information, it may be made available to the public without further notice.

XXVII. FORCE MAJEURE

27.1 A Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in, or prevents the performance of, any obligation under this Agreement, including, but not limited to:

(a) acts of God, fire, war, insurrection, civil disturbance, or explosion;

(b) unanticipated breakage or accident to machinery, equipment, or lines of pipe despite reasonably diligent maintenance;

(c) adverse weather conditions that could not be reasonably anticipated, or unusual delay in transportation;

(d) restraint by court order or order of public authority;

(e) inability to obtain, consistent with statutory requirements and after exercise of reasonable diligence, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority other than U.S. DOE;

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(f) delays caused by compliance with applicable statutes or regulations governing contracting, procurement, or acquisition procedures, despite the exercise of reasonable diligence; and

(g) insufficient availability of appropriated funds, if U.S. DOE shall have made timely request for such funds as part of the budgetary process as set forth in Part XXVIII of this Agreement.

27.2 A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. A Force Majeure shall not include increased costs or expenses of response actions, whether or not anticipated at the time such response actions were initiated.

27.3 U.S. DOE and IDHW agree that Paragraph 27.1 (g) does not create any presumption that such event arises from causes beyond the control of a Party. IDHW specifically reserves the right to withhold its concurrence to any extension which is based on such event pursuant to the terms of Part XIII, or to contend that such event does not constitute Force Majeure in any action to enforce this Agreement.

XXVIII. FUNDING

28.1 It is the expectation of the Parties that all obligations of U.S. DOE arising under this Agreement will be fully funded through Congressional appropriations. Consistent with Congressional limitations on future funding, U.S. DOE shall take all necessary steps and use its best efforts to obtain timely funding to meet its obligations under this Agreement, including, but not limited to, the submission of timely budget requests.

28.2 The purpose of this Paragraph is to assure that the Parties adequately communicate and exchange information about funding concerns that affect the implementation of the Agreement.

(a) U.S. EPA, U.S. DOE, and IDHW Project Managers shall meet periodically throughout each Fiscal Year ("FY") to discuss projects being funded in the current FY, the status of the

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current year projects, and events causing or expected to cause significant changes to any activity necessary to meet target dates, deadlines, and any other requirements under this Agreement. U.S. DOE shall provide information for these meetings that shows, to the extent possible, projected and actual costs of accomplishing such activities.

(b) U.S. EPA and IDHW may comment annually on U.S. DOE–ID cost estimates for the corresponding activities established under this Agreement for each budget year. U.S. DOE–ID will consider any comments received and include those comments along with these cost estimates in submittals sent from U.S. DOE–ID to U.S. DOE–HQ for the relevant budget year.

(c) In or about June of each year, U.S. DOE shall provide U.S. EPA and IDHW with current five–year planning cost estimates based upon revision to U.S. DOE's Five–Year Plan. These estimates will be based on the Activity Data Sheets ("ADS") level. This submission shall include a correlation of relevant ADS with activities required under the Agreement.

(d) U.S. DOE will provide to U.S. EPA and IDHW a copy of the President's Budget Request to Congress and sections of the U.S. DOE Congressional Budget Request pertaining to the Environmental Restoration and Waste Management Program. After the President has submitted the budget to Congress, U.S. DOE shall notify U.S. EPA and IDHW in a timely manner of any differences between the estimates submitted in accordance with Paragraph 28.2 (b) above and the actual dollars that were included in the President's budget submission to Congress.

(e) Whenever U.S. DOE proposes a reprogramming, requests a supplemental appropriation, or intends to transfer funds in a manner that is likely to or will affect the ability of U.S. DOE to conduct activities required under this Agreement, U.S. DOE shall notify U.S. EPA and IDHW of its plans and, prior to such a transfer of funds or the submittal of the reprogramming or supplemental appropriation request to Congress, shall consult with them about the effect that such an action is likely to or will have on the activities required under the Agreement.

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28.3 In accordance with Section 120 (e) (5) (B) of CERCLA, 42 U.S.C. § 9620(a)(5)(B), U.S. DOE shall include in its annual report to Congress the specific cost estimates and budgetary proposals associated with the implementation of this Agreement.

28.4 No provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti–Deficiency Act, 31 U.S.C. § 1341. In cases where payment or obligation of funds would constitute a violation of the Anti–Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted. U.S. EPA and U.S. DOE agree that any requirement for the payment or obligation of funds by U.S. DOE established by the terms of this Agreement shall be subject to the availability of appropriated funds.

28.5 After appropriations have been received from Congress, U.S. DOE, U.S. EPA, and IDHW Project Managers will review the level of available appropriated funds and the most recent estimated cost of conducting activities required under the Agreement. If funding is requested as described in this Part, and if appropriated funds are not available to fulfill U.S. DOE's obligations under this Agreement, the Parties shall attempt to agree upon appropriate adjustments to the dates that require the payment or obligation of such funds. Subject to the terms of this Agreement, if no agreement on appropriate adjustments can be reached, U.S. EPA and IDHW reserve the right to initiate any other action which would be appropriate absent this Agreement. Initiation of any such actions shall not release the Parties from their other obligations under this Agreement. Acceptance of this paragraph, however, does not constitute a waiver by U.S. DOE that its obligations under this Agreement are subject to the provisions of the Anti–Deficiency Act, 31 U.S.C. § 1341. In any action by U.S. EPA or IDHW to enforce any provision of this Agreement, U.S. DOE may raise as a defense that its failure or delay was caused by the unavailability of appropriated funds.

28.6 If appropriated funds are available to U.S. DOE's Office of Environmental Restoration [or other relevant U.S. DOE office to the extent they are responsible for implementing this

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Agreement], to fulfill U.S. DOE's obligations under this Agreement, U.S. DOE shall obligate the funds in amounts sufficient to support the requirements specified in the Agreement unless otherwise directed by Congress or the President, or unless those requirements are modified in accordance with provisions of this Agreement.

28.7 The participation by U.S. EPA and IDHW under this Part is limited solely to the aforementioned and is in no way to be construed to allow U.S. EPA and IDHW to become involved with the internal U.S. DOE budget process, nor to become involved in the Federal budget process as it proceeds from U.S. DOE to the Office of Management and Budget and ultimately to Congress through the President's submittal. Nothing herein shall affect U.S. DOE's authority over its budgets and funding level submissions.

XXIX. CREATION OF DANGER/EMERGENCY ACTION

29.1 In the event U.S. EPA or IDHW determine that activities conducted pursuant to this Agreement, or any other circumstances or activities, are creating an imminent and substantial endangerment to the health or welfare of the people at INEL, or in the surrounding area, or to the environment, either U.S. EPA or IDHW may require or order U.S. DOE to stop further implementation of this Agreement for twenty–four (24) hours or, upon agreement of the Parties, such period of time as needed to abate the danger. Any unilateral work stoppage for longer than twenty–four (24) hours requires the concurrence of the appropriate Lead Agency DRC representative.

29.2 In the event U.S. DOE determines that activities undertaken in furtherance of this Agreement or any other circumstances or activities at INEL are creating an imminent and substantial endangerment to the health or welfare of people at INEL, or in the surrounding areas, or to the environment, U.S. DOE may stop implementation of this Agreement for such periods of time necessary for the Lead Agency to evaluate the situation and determine whether U.S. DOE should proceed with implementa-

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tion of the Agreement or whether the work stoppage should be continued until the danger is abated. U.S. DOE shall notify the Project Managers as soon as possible, but not later than twenty–four (24) hours after such stoppage of work, and provide the Lead Agency with documentation of its analysis in reaching this determination. If the Lead Agency disagrees with U.S. DOE's determination, it may require U.S. DOE to resume implementation of this Agreement.

29.3 If the Lead Agency concurs in the work stoppage by U.S. DOE, or if U.S. EPA or IDHW require or order a work stoppage, U.S. DOE's obligations shall be suspended and the time periods for performance of that work, as well as the time period for any other work dependent upon the work which was stopped, shall be extended, pursuant to Part XIII, or such period of time as U.S. EPA and IDHW determines is reasonable under the circumstances. Any disagreements pursuant to this Part shall be resolved through the dispute resolution procedures in Part IX by referral directly to the DRC committee.

29.4 U.S. DOE shall prepare and provide U.S. EPA and IDHW Project Managers a copy of the documentation required in Paragraph 29.2 immediately, but no later than ten (10) working days after stoppage of work.

XXX. AMENDMENT OF AGREEMENT

30.1 Except as provided in Paragraph 30.2, this Agreement may only be amended by unanimous agreement of the Parties or upon completion of Dispute Resolution, as applicable.

30.2 Amendments pursuant to Parts VIII(D), (E), and (G), XIII, XV, XVI, and XIX may be made by the unanimous agreement of the Project Managers.

30.3 Any such amendment shall be in writing, shall become effective on the date it is signed by all the Parties, and shall be incorporated into, and modify, this Agreement.

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XXXI. RESERVATION OF RIGHTS

31.1 The Parties have determined that the activities to be performed under this Agreement are in the public interest. U.S. EPA and IDHW agree that compliance with this Agreement shall stand in lieu of any administrative and judicial remedies against U.S. DOE which are available to U.S. EPA and IDHW regarding releases or threatened releases of hazardous substances at INEL which are the subject of the activities performed by U.S. DOE under this Agreement.

31.2 Nothing in this Agreement shall preclude U.S. EPA or IDHW from exercising any administrative or judicial remedies available to them under the following circumstances:

(a) In the event or upon the discovery of a violation of, or noncompliance with, any provision of RCRA or HWMA, including any discharge or release of hazardous waste which is not addressed by this Agreement; or

(b) Upon discovery of new information regarding hazardous substances, including but not limited to, information regarding releases of hazardous substances to the environment which is not addressed by this Agreement; or

(c) Upon U.S. EPA's or IDHW's determination, after dispute resolution, that a proposed remedy will not be protective of human health and the environment under CERCLA. If IDHW exercises its rights under this subparagraph, it shall withdraw from the Agreement with respect to the ROD at issue within sixty (60) days following the effective date of the ROD.

31.3 In the event of a judicial dispute concerning IDHW authority over any hazardous substance at a WAG, IDHW shall continue in the lead role as provided herein as to the issues in dispute except in exceptional circumstances as determined jointly by U.S. EPA and IDHW. As to the issues under judicial dispute, U.S. EPA shall select the remedy during the pendency of the judicial dispute or in the event of a judicial decision limiting IDHW's authority to do so.

31.4 Neither U.S. EPA nor IDHW shall be held out as a Party to any contract entered into by U.S. DOE to implement the requirements of this Agreement.

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31.5 This Agreement shall not be construed to limit in any way the right provided by law to the public or any citizen to obtain information about the work to be performed under this Agreement or to sue or intervene in any action to enforce state or federal law.

31.6 Except as provided herein, U.S. DOE is not released from any liability which it may have pursuant to any provisions of state and federal law. U.S. DOE is not released from any claim for liability for destruction or loss of natural resources.

31.7 This Agreement shall not transfer U.S. EPA's authorities as prohibited by Section 120 (g) of CERCLA, 42 U.S.C. § 9620 (g), or in any way authorize a physically inconsistent response action, as prohibited by Section 122 (e) (6) of CERCLA, 42 U.S.C. w 122 (e) (6), or provide for review inconsistent with Section 113 (h) of CERCLA, 42 U.S.C. w 9613 (h), subject to exhaustion of rights under Part IX.

31.8 IDHW reserves the right under HWMA to enforce permit requirements, including corrective action. IDHW agrees to exhaust its rights under Part IX prior to taking any action to enforce the permit corrective action requirements.

31.9 In the event of any administrative or judicial action by U.S. EPA or IDHW under this Part, all Parties reserve all rights, claims, and defenses available under law, including the right to contest the legal enforceability of State corrective action or other requirements against U.S. DOE.

XXXII. RELATIONSHIP TO U.S. DOE'S FIVE–YEAR PLAN

32.1 U.S. DOE is preparing an Environmental Restoration and Waste Management Five–Year Plan (the "Five–Year Plan") to identify, integrate, and prioritize U.S. DOE's compliance and cleanup activities at all U.S. DOE nuclear facilities and sites. The Five–Year Plan will assist U.S. DOE in addressing environmental requirements at its facilities and sites and in developing and supporting its budget requests. U.S. DOE will update the Five–Year Plan on an annual basis.

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32.2 The terms of the Five–Year Plan shall be consistent with the provisions of this Agreement, including all requirements and schedules contained herein; U.S. DOE's Five–Year Plan shall be drafted and updated in a manner that ensures that the provisions of this Agreement are incorporated into the U.S. DOE planning and budget process. Nothing in the Five–Year Plan shall be construed to affect the provisions of this Agreement.

32.3 U.S. DOE is developing a national prioritization system for inclusion in the Five–Year Plan. U.S. DOE's application of its national prioritization system may indicate to U.S. DOE that amendment or modification of the provisions and/or schedules established by this Agreement is appropriate. In that event, U.S. DOE may request, in writing, amendment or modification of this Agreement, including deadlines established herein. Where the Parties are unable to reach agreement on a requested amendment or modification, U.S. DOE may invoke the dispute resolution provisions of this Agreement. Pending resolution of any such dispute, the provisions and deadlines in effect pursuant to this Agreement shall remain in effect and enforceable in accordance with the terms of this Agreement. Any amendment or modification of this Agreement will be incorporated, as appropriate, in the annual update to U.S. DOE's Five–Year Plan.

XXXIII. SEVERABILITY

33.1 If any provision of this Agreement is ruled invalid, illegal, or unconstitutional, the remainder of the Agreement shall not be affected by such ruling.

XXXIV. EFFECTIVE DATE

34.1 This Agreement is effective upon signature by all Parties.

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Signature sheet for the foregoing Federal Facility Agreement and Consent Order for the Idaho National Engineering Laboratory among the U.S. Environmental Protection Agency, the U.S. Department of Energy, and the Idaho Department of Health and Welfare.

EFFECTIVE this 9th day of December, 1991.

FOR THE UNITED STATES DEPARTMENT OF ENERGY:

Augustine A Pitrolo — 12/9/91
AUGUSTINE A. PITROLO — Date
U.S. Department of Energy
Idaho Field Office

Theron M. Bradley — Dec 9, 1991
THERON M. BRADLEY — Date
Manager, Naval Reactors Idaho Branch Office
U.S. Department of Energy

REPRESENTED BY: Brett Bowhan, Esq.
Dean Monroe, Esq.
Debra Wilcox, Esq.

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Signature sheet for the foregoing Federal Facility Agreement and Consent Order for the Idaho National Engineering Laboratory among the U.S. Environmental Protection Agency, the U.S. Department of Energy, and the Idaho Department of Health and Welfare.

EFFECTIVE this 9th day of December, 1991.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Dana A Rasmussen — 12/9/91

DANA A. RASMUSSEN — Date
Regional Administrator, Region 10
U.S. Environmental Protection Agency

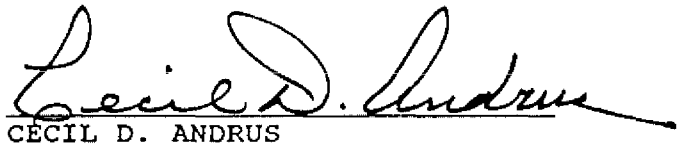
REPRESENTED BY: Monica Kirk, Esq.

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Signature sheet for the foregoing Federal Facility Agreement and Consent Order for the Idaho National Engineering Laboratory among the U.S. Environmental Protection Agency, the U.S. Department of Energy, and the Idaho Department of Health and Welfare.

EFFECTIVE this 9th day of December, 1991.

FOR THE IDAHO DEPARTMENT OF HEALTH AND WELFARE:



12-9-91

CECIL D. ANDRUS
Governor
State of Idaho

Date

REPRESENTED BY: Curt Fransen, Esq.

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