

Argonne National Laboratory Prime Contract**Part I. Section H. Special Contract Requirements**

Last revised: September 29, 1999

Clause H.33 - Cap On Liability

- (a) The Parties have agreed that the Contractor's liability for certain obligations it has assumed under this contract shall be limited as set forth in paragraph (b) below. These limitations or caps shall only apply to the obligations the Contractor has assumed pursuant to Clause I.91 (h) with respect to failure to exercise prudent business judgment only, Clause I.91 (j)(2) with respect to unallowable punitive damages, Clause H.12 and Clause I.84 (f)(1)(i)(C), and shall apply on a cumulative per period basis. In addition, the determination of which cap will apply will be based on a determination by the Contracting Officer of the period in which the Contractor's act or failure to act was the proximate cause of the liability assumed by the Contractor pursuant to the provisions of the Clauses enumerated above. Provided, further that in the event the Contractor's act or failure to act overlaps more than one period, then the applicable cap will be the cap for the last period in which the Contractor's act or failure to act occurred. Provided, however, that if the last act or failure to act occurs after September 30, 2004, (if this contract is further extended) then the cap for the period October 1, 2003 through September 30, 2004 shall apply. Finally the caps set forth in paragraph (b) below shall only apply if the Contractor establishes that willful misconduct or lack of good faith on the part of its managerial personnel as defined in Clause H.1 was not a contributing factor with regard to liabilities it has incurred under Clause I.91 (h) or (j)(2) and Clause H.12.
- (b) The liability cap for each period of this contract extension will be as stated in subparagraphs (1) through (5) below. Except as otherwise provided in paragraph (a) above, and notwithstanding any other provision of this contract to the contrary, if the cap is reached for any period, as set forth in subparagraphs (1) through (5) below, the Contractor shall have no further responsibility for the costs of the liabilities it has assumed pursuant to Clause I.91 (h) with respect to failure to exercise prudent business judgment only, Clause I.91 (j)(2) with respect to unallowable punitive damages, Clause H.12, and Clause I.84 (f)(1)(i)(C), and all costs in excess of the cap for the applicable period for said liabilities shall be borne by the Government.
- (1) October 1, 1999 through September 30, 2000: \$3,000,000.
 - (2) October 1, 2000 through September 30, 2001: \$3,090,000.
 - (3) October 1, 2001 through September 30, 2002: \$3,180,000.
 - (4) October 1, 2002 through September 30, 2003: \$3,270,000.
 - (5) October 1, 2003 through September 30, 2004: \$3,360,000.