

Performance Guarantee

FOR VALUE RECEIVED, and in consideration of, and in order to induce the U.S. Department of Energy (the "Government") to enter into Contract No. DE-AC02-98CH10886 relating to the management and operation of the Brookhaven National Laboratory (the "Contract") effective as of November 17, 1997, by and between the Government and Brookhaven Sciences Associates (hereinafter called "Contractor"), the undersigned, The Research Foundation of State University of New York (hereinafter called "Guarantor"), a Private Not-for-Profit Educational Corporation, with its principal place of business at State University Plaza, Albany, NY 12246, hereby unconditionally guarantees to the Government (a) the full and prompt payment and performance of all obligations, accrued and executory, which Contractor presently or hereafter may have to the Government under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to the Government, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred subject to any and all limitations on liability provided to Contractor under the Contract. Guarantor agrees that Contractor shall have the full right, without any notice to or consent from the Guarantor, to make any and all modifications or amendments to the Contract without affecting, impairing or discharging, in whole or in part, the liability of Guarantor hereunder.

Guarantor hereby expressly waives all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agrees that the Guaranty shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger or consolidation of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt arrangement or receivership proceedings by or against Contractor, or the adjudication of Contractor as a bankrupt, or (iii) the assertion by the Government against Contractor of any of the Government's rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Contractor, or existing in the Government's favor in law, equity or bankruptcy.

Guarantor further agrees that its liability under the Guaranty shall be continuing, absolute, primary, and direct, and that the Government shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Contractor, or otherwise (and shall not be required to first commence any action or obtain any judgment against Contractor) before enforcing this Guaranty against Guarantor, and that Guarantor will, upon demand, pay the Government any amount, the payment of which is guaranteed hereunder and the

payment of which by Contractor is in default under the Contract or under any other documents or instruments executed by Contractor as aforesaid, and that Guarantor will, upon demand, perform or cause to be performed all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

Guarantor further warrants and represents to the Government that the execution and delivery of this Guaranty is not in contravention of Guarantor's Articles of Organization, Charter, by-laws, and applicable laws; and that the execution, delivery, and performance of this Guaranty will not result in breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party of by or under which it is bound.

Guarantor has read and consents to the signing of Contract and acknowledges the references to Guarantor herein.

Notwithstanding anything to the contrary contained herein, the liability of Guarantor hereunder shall be subject to and limited by the applicable provisions of the Contract. No express or implied provision, warranty, representation or term of this Guarantee is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this agreement.

IN WITNESS THEREOF, Guarantor has caused this Guaranty to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on 31 October 1997

THE RESEARCH FOUNDATION OF
STATE UNIVERSITY OF NEW YORK

BY: Shil S. Habicht

TITLE: Operations Manager RF

Government any amount, the payment of which is guaranteed hereunder and the payment of which by Contractor is in default under the Contract or under any other documents or instruments executed by Contractor as aforesaid, and that Guarantor will, upon demand, perform or cause to be performed all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

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In Witness Whereof, Guarantor has caused this Guaranty to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on 10/31/97.

BATTELLE MEMORIAL INSTITUTE

BY: 

TITLE: Senior Vice President, General
Counsel, and Secretary



SHARI L. DEAN
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES MARCH 15, 2000

10/31/97