ORGANIZATIONAL CONFLICTS OF INTEREST

(a) *Purpose.* The purpose of this clause is to ensure that the Subcontractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this subcontract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this subcontract.

(b) *Scope.* The restrictions described herein shall apply to performance or participation by the Subcontractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Subcontractor") in the activities covered by this clause as a subcontractor, sub-subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) *Use of Subcontractor's Work Product.*

(i) The Subcontractor shall be ineligible to participate in any capacity in Fermilab or Department of Energy subcontracts, sub-subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the Subcontractor's performance of work under this subcontract without the express approval of Fermilab or the Department of Energy. Furthermore, unless so directed in writing by Fermilab, the Subcontractor shall not perform any advisory and assistance services work under this subcontract on any of its products or services or the products or services of another firm if the Subcontractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Subcontractor from competing for follow-on subcontracts for advisory and assistance services.

(ii) If, under this subcontract, the Subcontractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Subcontractor shall be ineligible to perform or participate in any capacity in any subcontratual effort which is based on such statement of work or specifications. The Subcontractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by Fermilab, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the Subcontractor from offering or selling its standard commercial items to Fermilab or the Government.

(2) *Access to and Use of Information.*

(i) If the Subcontractor, in the performance of this subcontract, obtains access to information, such as Fermilab or Department of Energy plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Subcontractor agrees that without prior written approval of Fermilab or the Department of Energy it shall not:

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for Fermilab or the Department of Energy based on such information for a period of six (6) months after either the completion of this subcontract or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to Fermilab or the Government which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by Fermilab or the Department of Energy.

(ii) In addition, the Subcontractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this subcontract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The Subcontractor may use technical data it first produces under this subcontract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent rights in data, and security provisions of this subcontract.

(c) *Disclosure After Award.*

(1) The Subcontractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this subcontract, occur during the performance of this subcontract, it shall make an immediate and full disclosure of such changes in writing to Fermilab. Such disclosure may include a description of any action which the Subcontractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. Fermilab may, however, terminate the subcontract for convenience if it deems such termination to be in the best interest of Fermilab or the Government.

(2) In the event that the Subcontractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to Fermilab, Fermilab may terminate this contract for default.

(d) *Remedies.* For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this subcontract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, Fermilab may terminate the subcontract for default, disqualify the Subcontractor from subsequent related subcontractual efforts, and pursue such other remedies as may be permitted by law or this subcontract.

(e) *Waiver.* Requests for waiver under this clause shall be directed in writing to Fermilab and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of Fermilab and the Government, Fermilab may grant such a waiver in writing.

(f) *Sub-subcontracts.*

(1) The Subcontractor shall include a clause substantially similar to this clause, including this paragraph (f), in sub-subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving the performance of advisory and assistance services as that term is defined at FAR 2.101. The terms "subcontract," "Subcontractor," and "Fermilab" shall be appropriately modified to preserve Fermilab's rights.

(2) Prior to the award under this subcontract of any such sub-subcontracts for advisory and assistance services, the Subcontractor shall obtain from the proposed sub-subcontractor or consultant the disclosure required by DEAR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interests is identified, the Subcontractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Subcontractor. If the conflict cannot be avoided or neutralized, the Subcontractor must obtain the approval of Fermilab prior to entering into the sub-subcontract.