BERKELEY LAB

University of California
Lawrence Berkeley National Laboratory

GENERAL PROVISIONS FOR COMMERCIAL SUPPLIES AND SERVICES

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CLAUSE 1 – DEFINITIONS

As used herein, the following terms shall have the indicated meanings:

- "CFR" means the U.S. Code of Federal Regulations.
- "DEAR" means the DOE Acquisition Regulation.
- "DOE" means the U.S. Department of Energy.
- "FAR" means the Federal Acquisition Regulation.
- "Government" means the United States Government.
- "LBNL" means the Lawrence Berkeley National Laboratory.
- "Ordered Item" or "item" or "services" means the supplies or services subcontracted for under this Subcontract.
- "Subcontract" means the subcontract or agreement between the University and the Subcontractor which includes these General Provisions.
- "Subcontractor" means the party who has entered into the Subcontract with the University, as identified in the Subcontract.
- The lower-case term "subcontractor" means the Subcontractor's lower-tier subcontractor(s).
- "University" means The Regents of the University of California, acting through the LBNL.

CLAUSE 2 – SCOPE OF SUBCONTRACT

The scope of this Subcontract is limited to the acquisition of commercial products or commercial components, as those terms are defined in FAR 2.101, including services meeting the commercial services definition, and shall not include any construction or research work.

To the maximum practicable extent the Subcontractor and its subcontractors at all tiers shall incorporate, commercial products, commercial services, or nondevelopmental items, as defined in FAR 2.101, as components of items to be supplied under the Subcontract.

The Subcontract is entered into under the University's Prime Contract No. DE-AC02-05CH11231 with DOE for management and operation of LBNL.

The University is committed to doing business in a socially responsible, sustainable, and ethical manner, consistent with the University's mission, values, and principles. As such, the University expects Subcontractors performing work for the University under this Subcontract to provide goods and services in a manner consistent with the University's Stewardship Values including trust and respect.

CLAUSE 3 – ACCEPTANCE OF SUBCONTRACT

The Subcontractor's written acceptance of this Subcontract or the performance of any portion of this Subcontract shall constitute the Subcontractor's unqualified acceptance of this Subcontract and all of the Subcontract's terms and conditions. Any alterations made to the documents comprising this Subcontract or any conditions imposed by the Subcontractor upon its written acceptance of this Subcontract are not accepted, shall constitute a proposal for modification of the Subcontract only, and shall have no effect on the validity or the Subcontractor's acceptance of this Subcontract and its terms and conditions, anything to the contrary notwithstanding.

CLAUSE 4 – TITLE AND RISK OF LOSS

Unless otherwise provided in the Subcontract, title to items purchased under the Subcontract shall pass directly to the Government, and the risk of loss or damage to the items shall remain with the Subcontractor and shall pass to the University, upon completion of delivery and unloading at the delivery point.

However, if the Subcontract requires formal acceptance of any items by the University, then title to such items shall pass directly to the Government upon such formal acceptance; and the title and risk of loss or damage to non-conforming items shall remain with the Subcontractor until acceptance of the items by the University as conforming.

CLAUSE 5 – PACKAGING INSTRUCTIONS

The Subcontractor shall suitably package items for shipment to prevent damage during handling and shipping. Any damage resulting from improper packaging, containerizing, or lack thereof shall be the liability of the Subcontractor, anything to the contrary notwithstanding. The Subcontractor shall indicate the University Subcontract number on each container or package. An itemized packing list shall be affixed to the outermost cover of each container or package.

The University encourages the use of biodegradable packaging materials. The Subcontractor is requested to use every reasonable effort to use biodegradable packaging materials for shipments to the University.

CLAUSE 6 – INSPECTION

The University reserves the right to inspect all and every part of the items and services furnished under the Subcontract, during and after completion of performance. The University shall not be obligated to inspect the items or services, and neither the inspection nor the lack of inspection by the University shall relieve the Subcontractor of its responsibility for providing the items and services in accordance with the terms and conditions of the Subcontract. The inspection of or payment for an item or service under the Subcontract, either wholly or in part, shall not be construed as an acceptance.

If any item or service or any part thereof is not in accordance with the terms and conditions of the Subcontract, the University shall notify the Subcontractor that the item or service is rejected. Thereupon, the Subcontractor shall, at its own expense, take the necessary corrective action. The University shall reject, or revoke its acceptance of, an item or service: (1) within a reasonable time after a defect is discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item or service, unless the change is due to a defect in the item or service.

CLAUSE 7 – INVOICES

The Subcontractor shall submit its invoice at the time of final shipment or completion, unless otherwise provided in the Subcontract. All invoices shall comply with the invoice requirements specified in the Subcontract.

Failure to comply with any of these requirements may result in a delay in payment of the invoices.

CLAUSE 8 – PAYMENT

Unless otherwise provided in the Subcontract, payment shall be due 30 days after receipt of a properly prepared and submitted invoice, for Items delivered and accepted or services performed and accepted. Any offered discount may be taken if payment is made within the discount period indicated by the Subcontractor. Payments may be made electronically or by check, at the University's option, and shall be deemed to have been made as of the date the electronic payment was made or the check was mailed.

Information on electronic payments is available at

https://cfo.lbl.gov/services/accounts-payable/po-supplier-forms/.

CLAUSE 9 – QUALITY OF MATERIALS AND SUPPLIES

(a) The Ordered Item(s), including any materials and supplies furnished by the Subcontractor in performance of any services, shall as a minimum: (1) conform to the requirements of this Subcontract and be as warranted; (2) be new and not of such age or so deteriorated as to impair their usefulness or safety; and (3) not contain any counterfeit or suspect materials, parts, or components. The furnishing of reconditioned items must be specified in the Subcontract or approved by the University Procurement Representative, and shall be warranted the same as new items.

(b) The University will not accept any Ordered Items, including any services involving the furnishing of materials or supplies, that do not meet these minimum requirements, notwithstanding any inspection or acceptance of delivery by the University, unless such condition is specifically approved in writing by the University Procurement Representative. The Subcontractor shall promptly replace such items with conforming items at its expense.

(c) The University may impound any suspect/counterfeit items furnished or used under this Subcontract and provide such items to the appropriate authorities for investigation. The University reserves the right to withhold payment for the suspect/counterfeit items pending the results of any such investigation.

(d) A suspect item is any material, part, or component that visual inspection, testing, or other information indicates may not conform to established Government or industry-accepted specifications or national consensus standards. A counterfeit item is a suspect item that is a copy or substitute made without legal right or authority or whose material, performance, or characteristics are misrepresented by the Subcontractor, supplier, distributor, or manufacturer. Types of known suspect or counterfeit items include, but are not limited to: fasteners, circuit breakers, valves, piping components, electrical devices, plate, bar, shapes, and channel members. Such items may be falsely labeled as a different class of part, or be used or refurbished parts that are falsely represented as new parts.

CLAUSE 10 – WARRANTY

Subcontractor warrants that Ordered Item(s) will be merchantable and fit for use for the particular purpose described in the Subcontract, will be as specified in the descriptions or specifications of this Subcontract, and will be free from defects in workmanship, material, and Subcontractor's design or engineering contributions. The Subcontractor shall correct any warranty nonconformance discovered within one year after acceptance or initial use of the items or services.

Except as otherwise provided by an express warranty, the Subcontractor shall not be liable to the University for any consequential damages resulting from any defect or deficiencies in accepted Ordered Item(s).

CLAUSE 11 – FORCED, CONVICT, AND INDENTURED LABOR

(a) By signing or accepting this Subcontract, the Subcontractor hereby certifies that no equipment, materials, supplies, or services furnished to the University pursuant to this Subcontract will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction.

(b) If the Subcontractor subcontracts with the University and knew or should have known that the equipment, materials, supplies, or services furnished to the University were produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction, any or all of the following sanctions may be imposed:

(1) The Subcontract may be voided at the option of the University.

(2) The Subcontractor may be removed from consideration for University contracts or subcontracts for a period not to exceed 360 days.

CLAUSE 12 – LAWS, REGULATIONS, AND DOE DIRECTIVES

All delivered items and all services performed under this Subcontract shall be in compliance with all applicable federal, state, and local laws, ordinances, statutes, codes, rules, and regulations (including DOE regulations), including, but not limited to, those relating to wages, hours, employment, discrimination, immigration, and safety (including OSHA) The Subcontractor shall also comply with the Contractor Requirements Document (CRD) of any DOE Directive referenced within the Subcontract or these General Provisions.

Except as otherwise directed in writing by the University Representative, the Subcontractor shall procure all necessary permits or licenses required for the performance of work under this Subcontract.

CLAUSE 13 – CHANGES

Unless specifically stated in a clause or provision (e.g. Termination, Option to Extend Services, etc.), changes to the terms and conditions of this Subcontract may be made only by written agreement of the parties.

If any such change causes an increase or decrease in the cost of, or the time required for, performance of the Subcontract, the University Procurement Representative shall make an agreed-upon equitable adjustment in the Subcontract price, delivery schedule, or both, by a written modification to the Subcontract. Any price adjustment shall be consistent with FAR 31.2, *Contracts with Commercial Organizations*, (48 CFR 31.2), as supplemented by DEAR 931.2 (48 CFR 931.2), in effect as of the date of award of this Subcontract. The University reserves the right to review the Subcontractor's records to verify that a price adjustment conforms to this requirement.

CLAUSE 14 – NOTIFICATIONS

(a) Subcontractor shall immediately notify the University Procurement Representative in writing of: (1) any action, including any proceeding before an administrative agency, filed against the Subcontractor arising out of the performance of this Subcontract; and (2) any claim made against the Subcontractor, the cost of which is reimbursable hereunder.

Subcontractor shall immediately (as soon as possible, but in no event more than 24 hours) notify the University Technical Representative by telephone and in writing after becoming aware of any accident, or incident involving the Subcontractor's employees, agents, contractors, lower-tier subcontractors relating to the services provided under this subcontract, or any accident, or incident involving the University's employees, agents, contractors, sub-contractors that the Subcontractor is aware of in relation to the services provided under this Subcontract.

The term “incident” means an occurrence that can or will cause an interruption of service, or an act that potentially violates an explicit or implied security or safety policy.

The term "accident" means an unforeseeable and unexpected turn of events that causes loss in value, injury, or increased liabilities. The event is not deliberately caused and is not inevitable, or a sudden, unforeseen or unexpected event causing harm to a person.

(b) Subcontractor agrees to notify the University of any government tax, fee or charge levied or purported to be levied on or collected from the Subcontractor in connection with this Subcontract which the Subcontractor has reason to believe may be inapplicable or invalid, and which would be reimbursable or the University has claimed an exemption hereunder. Subcontractor also agrees to refrain from paying any such tax, fee, or charge, unless otherwise authorized by the University, and to take such steps as may be required by the University to cause such tax, fee, or charge to be paid under protest and, if so directed by the University, to cause to be assigned to the University or its designee any and all rights to the abatement or refund of any such tax, fee, or charge, and to permit the University or its designee to join with the Subcontractor in any proceedings for the recovery thereof or to sue for recovery in the Subcontractor's name.

(c) If, at any time during the performance of this Subcontract, the Subcontractor becomes aware of any circumstances which may jeopardize its performance of all or any portion of the Subcontract, it shall immediately notify the University Procurement Representative in writing of such circumstances, and the Subcontractor shall take whatever action is reasonably necessary to resolve such circumstances within the shortest possible time.

CLAUSE 15 – ASSIGNMENTS

(a) This Subcontract may be assigned by the University to the Government or a successor-in-interest for management and operation of LBNL.

(b) Except as to assignment of payment due hereunder, the Subcontractor shall have no right, power or authority to sell, mortgage, transfer or assign this Subcontract, any portion hereof, any interest herein or any claim hereunder, nor allow or permit any other party or parties to have any interest in or use any part of the rights or obligations granted hereunder for any purpose whatsoever without the prior written consent of the University.

(c) Neither this Subcontract nor any interest created thereby or any claim here under shall pass by operation of law or otherwise to any trustee or receiver in bankruptcy or to any other receiver or assignee for the benefit of creditors, or to any other party or parties, except as expressly authorized by the University. The breach of the foregoing prohibition, whether voluntary, or by operation of law, by any process or proceeding of any court or by attachment, execution, proceeding in reorganization, composition, insolvency, or bankruptcy, whether voluntary or involuntary, shall be cause for default under this Subcontract.

CLAUSE 16 – DISPUTES

Except as otherwise provided in this Subcontract, any non-routine claim under this Subcontract not resolved in the ordinary course of business shall be referred in writing to the University Procurement Representative and the executive management of the Subcontractor with the authority to settle the dispute, within 30 days of the act, event, or order giving rise to the claim. The representatives of the parties, or their designees, shall then attempt in good faith to resolve the dispute by negotiations. All negotiations shall be confidential and shall be treated as compromise and settlement negotiations, for the purposes of application of rules of evidence. Pending resolution of the dispute, the Subcontractor shall proceed diligently with the performance of the Subcontract, in accordance with its terms and conditions.

Any unresolved dispute with a value under $100,000 relating to the Subcontract (whether contract, tort, or both), or the breach of the Subcontract may be arbitrated by and in accordance with the then existing commercial arbitration rules of the American Arbitration Association (AAA). Judgment on the award rendered by the arbitrator may be entered in any court in Alameda County, CA having jurisdiction.

If arbitration is selected, the following modifications are made to the AAA rules: (1) the arbitrator shall be neutral and appointed by the AAA; (2) the location for all arbitrations shall be in Alameda County; and (3) each party to the arbitration shall pay its pro rata share of the arbitrator's fees not including counsel fees or witness fees or other expenses incurred by a party for its own benefit.

The parties shall consider the use of a form of alternate disputes resolution (ADR), including non-binding mediation and binding arbitration, for any unresolved dispute with a value of $100,000 or more. In the event that ADR fails or is not used for such disputes, the parties may thereafter pursue any remedy they may have, at law or in equity, in a court of competent jurisdiction, in accordance with the clause of these General Provisions entitled *Governing Law and Venue*.

CLAUSE 17 – BANKRUPTCY

If the Subcontractor enters into any proceeding related to bankruptcy, it shall give written notice to the University Procurement Representative via certified mail within five days of initiation of the proceeding. The notification shall include the date on which the proceeding was filed, the identity and location of the court, and a listing of the LBNL purchase orders, subcontracts, or agreements affected.

CLAUSE 18 – EXCUSABLE DELAYS

The Subcontractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Subcontractor and without its fault or negligence, which include by way of illustration, but not limitation, acts of God or the public enemy, acts of the federal, state or local government in either its sovereign or contractual capacity, fires, flood, epidemics and quarantines, civil disobedience, strikes, lock-outs, freight embargoes, inclement weather, delays of common carriers, or any other condition beyond the Subcontractor's reasonable control. The Subcontractor shall notify the University in writing as soon as reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give the University written notice of the cessation of such occurrence.

A Subcontractor invoking this provision shall have the burden of proving that such occurrence(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the University may reasonably request. After receipt of such notification, the University may elect either to cancel the Subcontract or to extend the time for performance as reasonably necessary.

CLAUSE 19 – TERMINATION

The University may terminate this Subcontract for convenience in whole or in part, at any time, by written notice to the Subcontractor, stating the extent and effective date of the termination.

In the event of a termination for convenience by the University, the Subcontractor shall be paid, subject to the terms and conditions of the Subcontract, a portion of the Subcontract price reflecting the portion of the Subcontract performed and accepted prior to the termination, plus a reasonable amount for direct charges resulting from the termination and not otherwise recoverable by the Subcontractor, which the Subcontractor can substantiate to the satisfaction of the University; provided, however, that the total thereof shall not cause the total Subcontract price to be exceeded. The Subcontractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

If a default occurs under the Subcontract, and if within 30 calendar days after the non-defaulting party has given the defaulting party notice of the event of default the defaulting party has not cured the default or, if the default cannot be reasonably cured within such time period, if the defaulting party has not commenced to cure the default within such time period, diligently continued to pursue such cure, and completed it within 45 days after such notice, the non-defaulting party may, at its option, terminate the Subcontract at any time thereafter upon written notice to the defaulting party. In the event of a termination for default, the non-defaulting party may thereafter pursue any remedy they may have, at law or in equity, in a court of competent jurisdiction, in accordance with the provision of these General Provisions entitled *GOVERNING LAW AND VENUE*.

In the event the Subcontractor's business status indicated in the Subcontract or the Subcontractor's proposal is not accurate and current, in accordance with applicable Federal laws, executive orders, and regulations, the University may cancel this Subcontract, without further obligation.

CLAUSE 20 – INDEMNIFICATION

(a) Liens. The Subcontractor agrees that, at any time upon the request of the University, it will submit a sworn statement setting forth the services performed or goods furnished by lower-tier subcontractors and the amount due and to become due to each, and that before the final payment called for hereunder, it will, if requested, submit to the University a complete set of vouchers showing what payments have been made for goods and labor used in connection with the work called for hereunder.

(b) Indemnify, Defend and Hold Harmless.

(1) The Subcontractor shall indemnify, defend and hold harmless the University and the Government from all claims, demands, causes of action, or suits, of whatever nature, arising out of the services, labor, and goods furnished by the Subcontractor or its lower-tier subcontractors under the Subcontract, and from all laborers', material providers', and mechanics' liens upon the real property upon which the work is located or any other property of the University or the Government; and

(2) Promptly notify the University, in writing, of any such claims, demands, causes of action, or suits brought to its attention. The Subcontractor shall forward with such notification copies of all pertinent papers received by the Subcontractor with respect to any such claims, demands, causes of action, suits, or liens and, at the request of the University, shall do all things and execute and deliver all appropriate documents and assignments in favor of the University or the Government of all the Subcontractor's rights and claims growing out of such asserted claims as will enable the University and the Government to protect their respective interests by litigation or other means. The final payment shall not be made until the Subcontractor, if required, shall deliver to the University a complete release of all liens arising out of the Subcontract or receipts in full in lieu thereof, as the University may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts include all the labor and goods for which a lien could be filed; but the Subcontractor may, if any lower-tier subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the University to indemnify it against any claim by lien or other means. If any lien or claim remains unsatisfied after all payments are made, the Subcontractor shall refund to the University all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

CLAUSE 21 – WORK ON UNIVERSITY OR GOVERNMENT PREMISES

(Applicable to Subcontracts involving Subcontractor's performance at LBNL, LBNL managed, or Government-owned sites or facilities, or for transportation.)

(a) Clean Up. The Subcontractor shall at all times keep University or Government premises and adjoining premises where the work is performed free from accumulations of waste material or rubbish caused by its work or the work of any of its lower-tier subcontractors; and shall remove all such waste material and rubbish at the completion of the work and shall leave the work area "broom clean" or its equivalent, unless more exactly specified. If the waste material and rubbish is not promptly removed as herein required, the University may remove the rubbish and charge the cost to the Subcontractor.

(b) Employees.

(1) The Subcontractor shall not employ for the work any unfit person or anyone not skilled in the work assigned to the person and shall devote only its best qualified personnel to work under the Subcontract. Should the University deem anyone employed on the work incompetent or unfit for duty and so inform the Subcontractor, the Subcontractor shall remove such person from the work under the Subcontract, and that person shall not again, without written permission of the University, be assigned to work under the Subcontract.

(2) It is understood that if employees of the University perform any acts for the purpose of discharging the responsibility undertaken by the Subcontractor hereunder at the request of the Subcontractor, such employees of the University while performing such acts shall be considered the agents and servants of the Subcontractor subject to the exclusive control of the Subcontractor.

(c) Environment, Safety, and Health.

(1) The Subcontractor shall take all reasonable precautions in the performance of the work under this Subcontract to protect the health and safety of employees and members of the public, to minimize danger from all hazards to life and property, and to prevent injury to any of its employees or other persons; and shall comply with all applicable environmental, safety, health, and fire protection regulations and requirements, including those of the University and DOE (including reporting requirements).

(2) The Subcontractor shall immediately take action to correct any noncompliance with the requirements of this clause. In the event that the Subcontractor fails to comply with said regulations or requirements of the University or the DOE, the University may, without prejudice to any other legal or contractual rights of the University, issue a stop-work order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the University. The Subcontractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

CLAUSE 22 – WORKER SAFETY AND HEALTH

(Applicable if the Subcontract involves performance at an LBNL site.)

The Subcontractor and its lower-tier subcontractors performing work at an LBNL worksite are subject to the DOE *Worker Safety and Health Program* regulation of Title 10, Part 851 of the U.S. Code of Federal Regulations (10 CFR 851), and shall perform the work in compliance with the *LBNL Health and Safety Manual*, available at http://ehs.lbl.gov/pub3000, which implements the requirements of 10 CFR 851, and in compliance with their Cal/OSHA mandated Injury and Illness Prevention Plan (IIPP) or equivalent and all other LBNL safety procedures and policies communicated to the Subcontractor. The Subcontractor is responsible for ensuring that its lower-tier subcontractors comply with these requirements. Violations of these requirements may subject the Subcontractor and its lower-tier subcontractors to civil penalties.

The Subcontractor shall ensure that all workers requiring unescorted/ badged access to an LBNL site complete the *General Employee Radiological Training* (GERT). The on-line training is available at https://training.lbl.gov/ehs/training/webcourses/EHS0470/.

The Subcontractor shall ensure that all workers know that smoking at LBNL is only permitted in designated smoking areas.

CLAUSE 23 – INJURY REPORTING

(Applicable if the Subcontract involves performance by ten or more Subcontractor employees at LBNL sites.)

(a) Subcontractor shall report all injuries to Subcontractor's employees that qualify for inclusion on Subcontractor's Cal-OSHA log to the University within 10 days of occurrence of the injury. Subcontractor shall furnish a copy of its supplemental injury report form (OSHA form 301 or equivalent) for each such case. This report shall be emailed to injury-review@lbl.gov. In addition, serious injuries resulting in death (including any death occurring 30 days following a work-related incident) or in-patient hospitalization and all amputations and all losses of an eye shall be reported by telephone immediately to the LBNL Health Services, (510) 486-6266.

(b) Subcontractor shall report to the University the hours worked by Subcontractor's employees on the LBNL Site on a quarterly basis. For each quarter, the hours worked shall be reported in writing no later than the 10th day of the month following the end of the quarter (i.e. January 10th, April 10th, July 10th, October 10th). This report shall be emailed to injury-review@lbl.gov.

CLAUSE 24 – RELEASE OF INFORMATION AND PUBLICATION

(a) The Subcontractor agrees that information regarding this Subcontract, any data developed or obtained, and the name of the University, the Lawrence Berkeley National Laboratory (LBNL), or the Government shall not be disclosed in any publications, news releases, advertising, speeches, technical papers, photographs, and other releases of information without prior written approval from the University Procurement Representative.

(b) The Subcontractor shall closely coordinate with the University's Technical Representative regarding any proposed scientific, technical or professional publication of the results of the work performed or any data developed under this Subcontract. The Subcontractor shall provide the University an opportunity to review any proposed manuscripts describing, in whole or in part, the results of the work performed or any data developed under this Subcontract at least forty-five (45) days prior to their submission for publication. The University will review the proposed publication and provide comments. A response shall be provided to the Subcontractor within forty-five (45) days; otherwise, the Subcontractor may assume that the University has no comments. The Subcontractor agrees to address any concerns or issues identified by the University prior to submission for publication.

(c) Subcontractor shall acknowledge the University and Government sponsorship of the work as appropriate, and shall include a statement that such sponsorship does not constitute endorsement by the University or the Government of the views expressed in the publication.

CLAUSE 25 –EXPORT CONTROL AND NOTIFICATION

(a) If any of the ordered items (including data, software, or services) are export controlled under the International Traffic in Arms Regulations (22 CFR sections 120-130, aka "ITAR"); the Export Administration Regulations (15 CFR sections 730-744, aka "EAR"); the Nuclear Related Regulations (10 CFR 110 and 10 CFR 810); the Foreign Assets Control Regulations (31 CFR section 500-599, aka "OFAC"); or if sourced internationally, i.e., controlled under a country's equivalent dual use or military strategic goods list, then the Subcontractor agrees to provide the Procurement Representative with written notification of the export controlled status prior to shipment or transfer to the University. The notification must specifically identify the export-controlled item(s) and its export classification. The University reserves the right to cancel or modify any part of the Subcontract that includes export-controlled items, data, software, or services prior to accepting delivery. Subcontractor agrees to comply with this notification provision. Subcontractor understands that materials and information resulting from the performance of this Subcontract may be subject to export control laws and that Subcontractor is responsible for compliance with such laws.

(b) Subcontractor shall indemnify the University and the Government for all export enforcement mitigation costs, fines, or penalties incurred by the University, specifically arising from Subcontractor's failure to comply with this notification provision and the University's reliance on the Subcontractor's representation as provided.

CLAUSE 26 – ELECTRICAL DEVICE CERTIFICATION REQUIREMENT

(a) The Subcontractor's purchases of any electrical equipment greater than or equal to 50 volts, inclusive of components, conductors, and other items used in the performance of this subcontract, that are listed as Supplier Acquired Property in the subcontract that are of the type requiring testing by a Nationally Recognized Testing Laboratory (NRTL) recognized by the Occupational Safety and Health Administration (OSHA) shall be NRTL listed, labeled, and certified in accordance with Part 1910, Occupational Safety and Health Standards, of Title 29 of the Code of Federal Regulations (29 CFR 1910).

(b) The Subcontractor shall notify the University prior to placing an order, in writing, of any item to be purchased for use under this subcontract that does not meet these requirements.

(c) Information on required NRTL testing is available at OSHA/NRTL websites.

CLAUSE 27 – ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

This Subcontract shall consist of the Subcontract document (including any signature page and schedule of articles), these General Provisions, and any other referenced or incorporated clauses, provisions, and documents, which is the entire agreement between the parties concerning the subject matter hereof and supersedes all prior proposals, representations, negotiations, or agreements, whether written or oral.

Any inconsistencies in the terms and conditions comprising the Subcontract shall be resolved by giving precedence in the following order: (a) the Subcontract document; (b) these General Provisions, including the FAR and DEAR clauses listed in the clause entitled *Clauses Incorporated by Reference*; (c) any specifications; (d) other documents listed in the Subcontract Article entitled *Incorporated Documents*, if any, in the order in which they are listed; and (e) any other referenced or incorporated clauses, provisions, and documents.

CLAUSE 28 – DOCUMENTS OF SUBCONTRACTOR

The provisions of any quotation or other documents of the Subcontractor referenced in or incorporated as a part of this Subcontract are referenced or incorporated only for the purpose of further describing the Ordered Item(s) and the price and/or the delivery thereof, and any terms and conditions contained in such referenced or incorporated documents shall not apply unless specified otherwise in the Subcontract.

CLAUSE 29 – GOVERNING LAW AND VENUE

The Subcontract shall be interpreted in accordance with the substantive and procedural laws of the State of California. Any action at law or judicial proceeding instituted by either party pertaining to the Subcontract shall be instituted in the State of California in the Superior Court of Alameda County.

CLAUSE 30 – AUDIT AND RECORDS-NEGOTIATION

(a) If this is a flexibly priced Subcontract, in accordance with the definition in FAR Part 30.001 Definitions, whose total value is over the simplified acquisition threshold, as defined in FAR Part 2, the Subcontractor shall maintain, and the University, or an authorized representative of the University, or the U.S. Government, shall have the right to examine and audit all records and other evidence sufficient to properly reflect all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. "Records" includes books, documents, accounting procedures and practices, and other data.

(b) For Subcontracts with a total value more than $2M the University, or an authorized representative of the University, or the U.S. Government, shall have the right to examine and audit all of the Subcontractor's records, including computations and projections, related to-

(1) The proposal for the Subcontract, or modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the Subcontract, or modification; or

(4) Performance of the Subcontract or modification.

(c) The Subcontractor shall not create or maintain any record that the Subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(d) The Subcontractor shall make available at its office at all reasonable times the records, materials, and other evidence described above, for examination, audit, or reproduction, until 6 years after final payment under this Subcontract.

(e) If this contract is completely or partially terminated, the Subcontractor shall make available the records relating to the work terminated until 6 years after any resulting final termination settlement; and the Subcontractor shall make available records relating to litigation or the settlement of claims arising under or relating to this contract until such litigation or claims are finally resolved.

(f) For cost-reimbursement contracts with State and local Governments, educational institutions, and other nonprofit organizations, the provisions of the OMB Uniform Guidance at 2 CFR part 200, subpart F apply to this Subcontract.

CLAUSE 31 – CLAUSES INCORPORATED BY REFERENCE

The FAR and DEAR clauses listed below, which are located in Chapters 1 and 9 of CFR Title 48 and available at https://www.ecfr.gov/current/title-48 are hereby incorporated by reference as a part of these General Provisions, as prescribed below. The Subcontractor shall include the listed clauses in its subcontracts at any tier, to the extent applicable.

As used in the clauses, the term "contract" shall mean this Subcontract; the term "Contractor" shall mean the entity (hereinafter "Subcontractor") who entered into this Subcontract with the University; the term "subcontractor" shall mean the Subcontractor's subcontractor; and the terms "Government" and "Contracting Officer" shall mean the University, except in FAR clauses 52.227-1, 52.227-2, 52.227-3, 52.227-14 and 52.227-19, and DEAR 970.5227-5 in which clauses "Government" shall mean the U.S. Government and "Contracting Officer" shall mean the DOE Contracting Officer for Prime Contract DE-AC02-05CH11231 with the University. As used in FAR 52.245-1, the terms "Government" and "Contracting Officer" shall mean the University, except with respect to title.

As used in DEAR clauses 952.227-9, the term "DOE" shall mean DOE and the University. The Subcontractor shall include the listed clauses in its subcontracts at any tier, to the extent applicable.

For clauses that reference a "DEVIATION" see clause text in Prime Contract DE-AC02-05CH11231 with the University.

THE FOLLOWING CLAUSES APPLY TO ALL SUBCONTRACTS:

DEAR 952.203-70	WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000). Applies if the Subcontract involves any work at a DOE owned or leased site.
DEAR 952.204-71	SENSITIVE FOREIGN NATIONS CONTROLS (MAR 2011). Applies when Subcontract involves making any unclassified information about nuclear technology available to sensitive foreign nations.
DEAR 952.204-77	COMPUTER SECURITY (AUG 2006). Applies if the Subcontractor has access to any computers owned, leased or operated by or on behalf of the University or DOE.
DEAR 970.5204-2	LAWS, REGULATIONS AND DOE DIRECTIVES (DEC 2000) (DEVIATION) References in this clause to "Appendix I", "Appendix I/List A" or "Appendix B" are replaced with "these General Provisions" and the words "Contract", "Contractor" and "Contracting Officer" are replaced with "Subcontract", "Subcontractor" and "University Procurement Representative", respectively.
FAR 52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS (NOV 2023)
FAR 52.203-19	PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017)
FAR 52.204-21	BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (NOV 2021) as prescribed by Subsection (c) in 52.204-21. Does not apply to purchases of COTS items as defined in FAR 2.101.
FAR 52.204-23	PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (DEC 2023)
FAR 52.204-25	PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2021). Exclude paragraph (b)(2).
FAR 52.222-21	PROHIBITION OF SEGREGATED FACILITIES (APR 2015)

FAR 52.222-26	EQUAL OPPORTUNITY (SEP 2016) (Note: Download the required *Know Your Rights* Poster at: https://webapps.dol.gov/elaws/firststep/poster_direct.htm?p_eeo=1&_ga=2.162302842.738766324.1605452866-895731500.1605452866
FAR 52.222-50	COMBATING TRAFFICKING IN PERSONS (NOV 2021).
FAR 52.222-55	MINIMUM WAGES UNDER EXECUTIVE ORDER 14026 (JAN 2022). Only applies when FAR 52.222-6 or 52.222-41 is applicable.
FAR 52.222-62	PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706 (JAN 2022) (E.O. 13706). Only applies when FAR 52.222-6 or 52.222-41 is applicable.
FAR 52.223-2	REPORTING OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (MAY 2024)
FAR 52.223-3	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (FEB 2021), with ALTERNATE I (JUL 1995). Applies only if the Subcontract involves the delivery or on-site use of any hazardous materials.
FAR 52.223-11	OZONE-DEPLETING SUBSTANCES AND HIGH GLOBAL WARMING POTENTIAL HYDROFLUOROCARBONS (MAY 2024). Applies as prescribed in FAR 23.109(d)(1).
FAR 52.223-12	MAINTENANCE, SERVICE, REPAIR OR DISPOSAL OF REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 2024). Applies as prescribed in FAR 23.109(d)(2).
FAR 52.223-20	AEROSOLS (MAY 2024)
FAR 52.223-21	FOAMS (MAY 2024)
FAR 52.223-23	SUSTAINABLE PRODUCTS AND SERVICES (MAY 2024)
FAR 52.224-3	PRIVACY TRAINING (JAN 2017). Applies when Subcontractor's employees will (1) have access to a system of records; (2) create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or (3) design, develop, maintain, or operate a system of records.
DEAR 970.5225-1	COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS (NOV 2015)
FAR 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2021)
FAR 52.225-26	CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS OUTSIDE THE UNITED STATES (OCT 2016)
DEAR 952.227-9	REFUND OF ROYALTIES (MAR 1995). Applies if "royalties" greater than $250.00 are reported during negotiation of the Subcontract.
FAR 52.227-14	RIGHTS IN DATA-GENERAL (MAY 2014), with ALTERNATE I (DEC 2007) AND V (DEC 2007) and ALTERNATE VIII of DEAR 952.227-14 (Text for ALT VIII is made available in the LBNL GENERAL PROVISIONS PATENT AND DATA RIGHTS CLAUSES (12/22/22) at: http://procurement.lbl.gov/welcome-to-procurement-property/become-a-supplier/general-provisions/. Applies if any data, including technical data or computer software will be produced, furnished, acquired, or delivered under this Subcontract. If delivery of Limited Rights Data is required, then ALTERNATE II (DEC 2007) shall apply, with the following disclosure purposes added to the end of paragraph (a) of the Limited Rights Notice: 1. Use (except for manufacture) by support services contractors or subcontractors; 2. Evaluation by non-government evaluators; 3. Use (except for manufacture) by other contractors or subcontractors participating in the Government's program of which the specific subcontract is a part; 4. Emergency repair or overhaul work; and 5. Release to a foreign government, or its instrumentalities, if required to serve the interests of the U.S. Government, for information or evaluation or for emergency repair or overhaul work. If delivery of Restricted Computer Software is required, then ALTERNATE III (DEC 2007) shall apply.
FAR 52.227-19	COMMERCIAL COMPUTER SOFTWARE LICENSE (DEC 2007). Applies if the Subcontract involves the acquisition of commercial computer software (other than from GSA's Multiple Award Schedule contracts).
FAR 52.232-39	UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS (JUN 2013)
FAR 52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (MAR 2023)
DEAR 970.5223-4	WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010). Applies if the Subcontract involves any of the hazardous activities stipulated in 10 CFR 707.2.
FAR 52.242-15	STOP-WORK ORDER (AUG 1989)
FAR 52.244-6	SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (OCT 2022) Applies for subcontracts for commercial products or commercial services.
FAR 52.245-1	GOVERNMENT PROPERTY (SEP 2021). ALTERNATE I applies if no certified cost or pricing data is submitted and Subcontract is not cost reimbursement.
FAR 52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S.- FLAG COMMERCIAL VESSELS (NOV 2021). Applies as prescribed in FAR 47.507.
DEAR 952.247-70	FOREIGN TRAVEL (JUN 2010)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS $2,500:

FAR 52.222-41	SERVICE CONTRACT LABOR STANDARDS (AUG 2018). Applies as prescribed in FAR 22.1006(a).

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS $3,500:

FAR 52.222-54	EMPLOYMENT ELIGIBILITY VERIFICATION (MAY 2022). Applies if the Subcontract is for construction or services performed in the U.S., except for commercial services that are part of the purchase of a 'commercially available off-the-shelf' (COTS) item, or a COTS item with minor modifications, normally provided for that COTS item and performed by the COTS provider.

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS $10,000:

FAR 52.222-40	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010) Applies for subcontracts for commercial products or services, if performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496.

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT IS FOR $15,000 OR MORE

FAR 52.222-36	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUN 2020)
FAR 52.225-1	BUY AMERICAN ACT–SUPPLIES (OCT 2022) MODIFIED BY DEAR 970.2570-1
FAR 52.226-8	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (MAY 2024)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT IS FOR $150,000 OR MORE:

FAR 52.222-35	EQUAL OPPORTUNITY FOR VETERANS (JUN 2020) Unless exempt per FAR 22.1310(a)
FAR 52.222-37	EMPLOYMENT REPORTS ON VETERANS (JUN 2020) Unless exempt per FAR 22.1310(a)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS $200,000:

FAR 52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 2020)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS $350,000:

FAR 52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUN 2020), with ALTERNATE I (NOV 2021)
FAR 52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014) Applies as prescribed in FAR 3.104-9(b).
FAR 52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (FEB 2024). The Subcontractor must flow down this requirement to lower-tier subcontractors when the Subcontract is greater than the threshold specified in FAR 19.708(a) on the date of Subcontract award. This requirement does not apply if the Subcontractor is a small business.
FAR 52.222-43	FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS-PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (AUG 2018) Applies if FAR 52.222-41 is applicable and the Subcontract is for multiple years or has an option to renew.
FAR 52.222-44	FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS - PRICE ADJUSTMENT (MAY 2014) Applies if FAR clause 52.222-41 is applicable and FAR clause 52.222-43 does not apply.
FAR 52.227-1	AUTHORIZATION AND CONSENT (JUN 2020)
FAR 52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (JUN 2020).
FAR 52.227-3	PATENT INDEMNITY (APR 1984)
FAR 52.229-3	FEDERAL, STATE AND LOCAL TAXES (FEB 2013)
FAR 52.246-2	INSPECTION OF SUPPLIES – FIXED-PRICE (AUG 1996). As prescribed in FAR 46.302.
FAR 52.246-4	INSPECTION OF SERVICES – FIXED PRICE (AUG 1996) Applies when services or supplies with services are provided.
DEAR 952.209-72	ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009), WITH ALTERNATE I. Applies when any advisory & assistance services, as defined in FAR 2.101, are provided. The period of eligibility shall be five years.
DEAR 970.5227-5	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2000) (DEVIATION AL 2021-04)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT IS FOR $500,000 OR MORE:

FAR 52.204-14	SERVICE CONTRACT REPORTING REQUIREMENTS (OCT 2016)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS $7,500,000:

FAR 52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (NOV 2021). Applies if the Subcontract has a performance period of more than 120 days. All disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the DOE Inspector General, with a copy to the Contracting Officer.

THE DOE ORDERS (CONTRACTOR REQUIREMENTS DOCUMENTS ONLY) BELOW APPLY TO ALL SUBCONTRACTS. They can be found at http://www.directives.doe.gov/ :

DOE O 221.1B	REPORTING FRAUD, WASTE AND ABUSE TO THE OFFICE OF INSPECTOR GENERAL (CRD only) (9/27/16). Applies when Subcontract exceeds $5.5 million and lasts more than 120 days.
DOE O 221.2A	COOPERATION WITH THE OFFICE OF INSPECTOR GENERAL (CRD only) (2/25/08)
DOE O 414.1D Admin Chg 2 (LtdChg)	QUALITY ASSURANCE (CRD only) (9/15/20)
DOE O 442.1B	DEPARTMENT OF ENERGY EMPLOYEE CONCERNS PROGRAM (CRD only) (1/31/19)
DOE O 550.1 Chg 1 (LtdChg)	OFFICIAL TRAVEL (CRD only) (12/13/19)

END OF GENERAL PROVISIONS