



**LAWRENCE LIVERMORE NATIONAL LABORATORY**  
**GENERAL PROVISIONS FOR FIXED PRICE DESIGN-BUILD**  
**CONSTRUCTION SUBCONTRACTS**

**CLAUSE 1 - SUBCONTRACTS WITH LLNS TEAM MEMBERS AND AFFILIATES**

- A. As used in this clause:
1. Team Member means any of the following entities: Bechtel National, Inc.; The Regents of the University of California; BWXT Government Group, Inc.; URS Corporation, an AECOM Company; Battelle Memorial Institute; GEM Technology International Corporation; Professional Project Services, Inc. (Pro2Serve); and Texas A&M University System.
  2. Team Member Affiliate means any person or entity which is an affiliate of any Team Member. The term affiliate is defined at FAR 2.101.
- B. Because of restrictions in the contract between DOE/NNSA and Lawrence Livermore National Security, LLC (hereinafter "LLNS") concerning the payment of fee or profit when subcontracting with any Team Member or any Team Member Affiliate, as well as Organizational Conflict of Interest concerns, neither the Subcontractor nor any tier of its lower tier subcontractors or suppliers may enter into a subcontract with any Team Member or any Team Member Affiliate to provide goods or services under this Subcontract without the advance written approval of the Contract Analyst.
- C. The Subcontractor shall include the substance of this clause in all of its lower tier subcontracts and purchase orders.

**CLAUSE 2 - COST PRINCIPLES APPLICABLE TO CHANGE ORDER ADJUSTMENTS**

The Subcontractor shall estimate all costs used for change order price adjustments at any tier consistent with the contract cost principles and procedures for construction contracts in Part 31 of the Federal Acquisition Regulation (48 CFR Part 31), as supplemented or modified by the Department of Energy Acquisition Regulation Part 931 (48 CFR Part 931) in effect as of the date of signature-execution of this Subcontract.

**CLAUSE 3 - PERFORMANCE AND PAYMENT BONDS**

- A. Upon the execution of this Subcontract the Subcontractor shall furnish to LLNS the following bonds, unless otherwise provided in the Subcontract:
1. A Performance Bond, guaranteeing the faithful performance of this Subcontract, and
  2. A Payment Bond, guaranteeing the payment of claims of material suppliers and others.
- The Subcontractor shall furnish said bonds in the forms identified in the Subcontract and with sureties approved by LLNS. The Subcontractor shall pay all bond premiums.
- B. The penal amount of the Performance Bond and the Payment Bond shall be 100 percent of the Subcontract price.
- C. LLNS shall approve any surety company which, at the time of execution of this Subcontract, is listed in the latest published U.S. Treasury Department list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies."
- D. The Subcontractor shall promptly furnish additional security if LLNS determines such additional security is necessary to protect the interest of LLNS and the U.S. Government, and of persons supplying labor or materials under this Subcontract.

**CLAUSE 4 - LIENS AND CLAIMS FOR LABOR OR MATERIALS**

- A. The Subcontractor shall, at any time upon request of LLNS, submit a sworn statement setting forth the work performed or material furnished by its lower-tier subcontractors and suppliers, and the amount due to become due to each, and that before final payment called for hereunder, the Subcontractor will, if requested, submit to LLNS a complete set of vouchers showing what payments have been made for material and labor used in connection with the work under this Subcontract.
- B. The Subcontractor shall promptly notify LLNS in writing of any claims, demands, causes of action, or suits arising out of or related to the furnishing of material or labor in connection with the work under this Subcontract brought to its attention. The Subcontractor shall forward with notification copies of all pertinent papers received by the Subcontractor with respect to any such claims, demands, causes of action, or suits, and, at the request of LLNS, shall do all things and execute and deliver all appropriate documents and assignments in favor of LLNS or the U.S. Government of all the Subcontractor's rights and claims growing out of such asserted claims, as will enable LLNS and the U.S. Government to protect their respective interests by litigation or otherwise.
- C. Neither the final payment nor any part of any retained percentage shall become due until the Subcontractor, if required, delivers to LLNS a complete release of all liens arising out of this Subcontract, or receipts in full in lieu thereof, as LLNS may require, and, if required in either case, an affidavit that as far as it has knowledge or information, the releases and receipts include all the labor and material for which a lien could be filed; but the Subcontractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to LLNS to indemnify it against any claim by lien

or otherwise. If any lien or claim remains unsatisfied after all payments are made, the Subcontractor shall refund to LLNS all amounts that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

- D. Any lower-tier subcontractor or supplier or anyone else having any claim against the Subcontractor for or on account of work done or material furnished for the performance of the work provided for hereunder, may give written notice of said claim and the amount thereof to LLNS, who may, but shall not be obliged to, thereupon withhold from payments due or to become due thereafter to the Subcontractor an amount equal to such claims until such claims are adjusted and paid. The provisions of this clause shall not lessen or diminish, but shall be in addition to, the right or duty of LLNS to withhold any payments under the provisions of this Subcontract or the laws of the State of California respecting the withholding of sums due to the Subcontractor.

#### **CLAUSE 5 - PERMITS, RESPONSIBILITIES, AND ASSUMPTION OF RISK**

The Subcontractor shall, without additional expense to LLNS, be responsible for obtaining any necessary licenses for itself and its lower-tier subcontractors, and coordinate with LLNS prior to obtaining permits for work required by this Subcontract either on or off Federal property. The Subcontractor is further responsible for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Subcontractor shall be responsible for all damages to persons or property that occur as a result of the Subcontractor's fault or negligence. The Subcontractor assumes all risk and responsibility for damage to any materials used or work done in connection with the work from any cause or causes whatsoever, including fire, earthquake and storm, prior to the completion and acceptance of the work, and shall at Subcontractor's own cost and expense, repair and/or replace any work or materials damaged or destroyed. Since no form of property insurance is carried by LLNS, it will be the responsibility of Subcontractor to provide its own protection in this respect, and the cost of such protection is deemed to be included in the Subcontract price.

#### **CLAUSE 6 - RESPONSIBILITY FOR EXPORT CONTROLS**

- A. The Subcontractor shall comply with all applicable U.S. export control laws and regulations in the performance of this Subcontract and the distribution and use of resulting work products. The Subcontractor shall be responsible for obtaining the appropriate licenses or other approvals for exports of commodities, technology, and software, unless an exemption or exception applies. The Subcontractor shall also be responsible for obtaining the appropriate licenses or other approvals before utilizing a foreign person in the performance of this Subcontract, including instances where the work is to be performed at the Lawrence Livermore National Laboratory (LLNL), where the foreign person will have access to any information, technology, or software subject to export control.
- B. LLNS complies with all applicable United States Government export control laws and regulations and shall not use or transfer technology and/or items procured from the Subcontractor in contravention of such laws and regulations. All goods that LLNS procures under the Prime Contract belongs to DOE/NNSA and the United States Government. The goods being procured under this Subcontract are intended for use in support of the Prime Contract with DOE for the purposes of meeting LLNS' national security mission for NNSA. This clause serves as notice to LLNS' mission and export control compliance and shall be considered an appropriate end-user statement to the Subcontractor for export controls and compliance purposes. The Subcontractor shall not request a representative of LLNS to provide any additional end-use statements or certifications relative to the goods procured under this Subcontract.
- C. The Subcontractor shall ensure the provisions of this clause apply to its subcontractors.

#### **CLAUSE 7 - ENVIRONMENTALLY AFFIRMATIVE PROCUREMENT PROGRAM REQUIREMENTS**

- A. In the performance of this Subcontract, the Subcontractor shall comply with the requirements of Executive Order 13423, Executive Order 13514, and the United States Department of Energy Affirmative Procurement Program Guidance. This guidance includes requirements concerning the use of sustainable environmental practices, including the acquisition of environmentally preferable, energy efficient, water-efficient, recycled content, and biobased products.. This guidance is available on the Internet..
- B. In complying with the above requirements, the Subcontractor shall coordinate its activities with the LLNS Contract Analyst. The Subcontractor shall immediately advise the LLNS Contract Analyst if it is unable to procure required products identified in Paragraph A above because the product is not available (i) competitively within a reasonable time, (ii) at a reasonable price, or, (iii) within the performance requirements.
- C. The Subcontractor shall prepare and submit reports, at the end of the federal fiscal year, on matters related to the acquisition by the Subcontractor of items with recovered/recycled content, as designated in EPA's Comprehensive Procurement Guidelines. The reports shall be submitted to the LLNS Contract Analyst in a manner and at a time or times acceptable to both parties.

#### **CLAUSE 8 - QUALITY OF MATERIALS AND SUPPLIES**

- A. Any materials or supplies furnished or used by the Subcontractor shall as a minimum: (1) conform to the requirements of this Subcontract and be as warranted; (2) be new and not be of such age or so deteriorated as to impair their usefulness or

safety; and (3) not contain any counterfeit/suspect items. The Subcontractor shall not furnish reconditioned materials or supplies unless specified in the Subcontract or approved by the LLNS Contract Analyst. The Subcontractor shall warrant any reconditioned items the same as new items.

- B. LLNS will not accept any work involving the furnishing or use of materials or supplies, found by LLNS to not meet the minimum requirements of paragraph A, above; to be reconditioned; or to constitute suspect/counterfeit items, notwithstanding any inspection or acceptance of delivery by LLNS, unless such condition is specifically approved in writing by the LLNS Contract Analyst. The Subcontractor shall promptly replace such items at its expense with conforming items.
- C. LLNS will impound any suspect/counterfeit items furnished or used under this Subcontract and may provide such items to the appropriate authorities for investigation. LLNS 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 knowingly misrepresented by the Subcontract, supplier, distributor, or manufacturer. Types of known suspect/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 9 - USE AND RELEASE RESTRICTIONS FOR PROTECTED INFORMATION**

- A. The Subcontractor shall not reference LLNS in any news releases, advertisements, marketing materials, websites, or any other public releases of information concerning this Subcontract without the prior written consent of the LLNS Contract Analyst.
- B. While in the performance of this Subcontract, the Subcontractor may be exposed to information that qualifies as confidential, proprietary or business sensitive, Official Use Only, Export Controlled, Unclassified Controlled Information (UCI), Unclassified Nuclear Controlled Information (UCNI) as well as Personally Identifiable Information (PII) defined as information that is associated with any individual (who is an employee, independent contractor, visitor or guest at LLNL), collectively referred herein as "Protected Information."
- C. In the event the Subcontractor receives or is exposed to Protected Information in performance of this Subcontract, the Subcontractor shall: (1) safeguard Protected Information in accordance with the appropriate procedures applicable to the type of Protected Information that are designed to protect against any unauthorized use, publication or disclosure of such information, (2) restrict access to Protected Information to only those individuals or entities needing such access to perform as required under this Subcontract, (3) refrain from using Protected Information except for the purposes for which such information was originally disclosed, (4) encrypt any electronic information when at rest in accordance with Federal Information Processing Standard (FIPS) 140-2 Level 1 or higher, and (5) provide immediate written notice to the LLNS Contract Analyst in the event of any unauthorized use, publication, or disclosure of Protected Information.
- D. The Subcontractor agrees, upon cancellation, expiration, or earlier termination of this Subcontract, or upon the written request of LLNS, whichever is earlier, to promptly deliver to LLNS (or, at LLNS' option, to destroy) all tangible or electronic copies of Protected Information described above which is in the possession of Subcontractor at the time of the cancellation, expiration or earlier termination. Notwithstanding the foregoing, the Subcontractor's obligations with respect to Protected Information shall continue in full force and effect and survive the cancellation, expiration, or earlier termination of this Subcontract.
- E. This Clause does not amend or otherwise modify in any manner the rights and responsibilities of LLNS and/or the Seller as otherwise provided in FAR 52.227-14.
- F. This Clause governs the use and disclosure obligations related to Protected Information disclosed between the Seller and LLNS after the effective date of this Purchase Order. To the extent that prior to the effective date of this Purchase Order, the Seller and LLNS have entered into a Non-Disclosure Agreement (NDA) (or similar document), the NDA shall not govern the use and/or disclosure of Protected Information which is first disclosed or exchanged between or among LLNS and the Seller after the effective date of the Purchase Order.
- G. Nothing in this Clause is intended to prevent Subcontractor's employees from disclosing proprietary/confidential information to report fraud, waste, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information. To the extent that prior contracts with LLNS prohibited Subcontractor employees from disclosing proprietary/confidential information to report, fraud, waste or abuse to designated investigative or law enforcement representations of a Federal department or agency authorized to receive such

information, such prior contracts are no longer in effect, but only to the extent that they prohibited Subcontractor employees from making such disclosures to the designated officials.

#### **CLAUSE 10 - NON-WAIVER OF DEFAULT**

Any failure by LLNS to strictly enforce performance of any of the terms or conditions of this Subcontract does not constitute a waiver of such terms or conditions and does not affect or impair such terms or conditions in any way nor the right of LLNS to avail itself of such remedies for any breach or breaches of such terms or conditions.

#### **CLAUSE 11 - ASSIGNMENTS**

- A. LLNS may assign this Subcontract to the U.S. Government or its designee(s).
- 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 LLNS.

#### **CLAUSE 12 - DISPUTES AND CLAIMS**

- A. All disputes arising under or relating to this Subcontract shall be resolved under this clause.
- B. Definitions
  - 1. "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties, seeking as a matter of right, with adequate supporting data, the payment of money in a sum certain, the adjustment or interpretation of subcontract terms or other relief arising under or relating to this subcontract. However, a written demand or written assertion by the Subcontractor seeking the payment of money exceeding \$100,000 is not a claim until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by complying with the submission and certification of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
  - 2. "Adequate supporting data," as used in this clause, means a detailed statement of the basis and supporting reasons for the asserted entitlement and an itemized breakdown of any adjustment or compensation sought.
- C. Submittal of Claim
  - 1. A claim by the Subcontractor shall be made in writing, unless otherwise stated in this subcontract, submitted within 30 calendar days of the act, event or order giving raise to the claim, submitted to LLNS for a written decision.
  - 2. The Subcontractor shall provide the certification specified in paragraph (C)(2)(iii) of this clause when submitting any claim exceeding \$100,000. The certification may be executed by any person duly authorized to bind the Subcontractor with respect to the claim.
  - 3. The certification shall state as follows: "I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the Subcontract compensation for which the Subcontractor believes LLNS is liable."
- D. Decision of LLNS
  - 1. For Subcontractor claims of \$100,000 or less, LLNS must render a decision within 60 business days of the date a claim is received. For Subcontractor-certified claims over \$100,000, LLNS must decide the claim within 60 business days of the date a claim is received or notify the Subcontractor in writing of the date by which the decision will be made. If a decision is not issued on any claim within 60 business days or unless the Subcontractor is otherwise notified of a new date (as permitted for claims exceeding \$100,000), a claim shall be considered to have been denied. Until LLNS issues a final decision denying Subcontractor's claim, no demand for litigation before a California State Court or arbitration on a disputed claim may be made.
  - 2. LLNS' decision denying a Subcontractor's claim shall be final unless the Subcontractor timely notifies LLNS that it either intends to file a claim before a California State Court or intends to arbitrate, by certified mail, return receipt requested, or any other method that provides evidence of receipt.
    - a. For claims less than \$100,000, the Subcontractor must either notify LLNS that it intends to arbitrate within 30 calendar days or that it intends to file a claim before a California State Court within 90 calendar days from the date the Subcontractor's claim is denied.
    - b. For claims exceeding \$100,000, the subcontractor must either notify LLNS that that it intends to arbitrate with 90 calendar days or that it intends to file a claim before a California State Court within 240 calendar days from the date the Subcontractor's claim is denied.
- E. Arbitration
  - 1. Timely notice of an intention to arbitrate shall be a prerequisite to a demand for arbitration. Any written demand for arbitration must be mailed or otherwise furnished to the San Francisco Office of the American Arbitration Association

(AAA), at 417 Montgomery Street, San Francisco, CA 94104-1113. A copy of the demand for arbitration shall be furnished to LLNS.

2. The demand shall (a) contain a statement setting forth the nature of the claim, a copy of LLNS' decision, and a copy of this clause; and (b) identify this Subcontract by title and number, state the amount involved, if any, and the remedy sought. The demand shall be filed together with the appropriate filing fee, as provided in the AAA Construction Industry Arbitration Rules that are effective on the date of this Subcontract.

#### F. Litigation

1. Timely notice of an intention to litigation shall be a prerequisite to litigation before a California State Court. Such an election shall constitute an irrevocable waiver of the right to arbitrate. The parties hereby elect the Superior Court of the State of California for the County in which the Subcontract was to be performed as the exclusive forum for such litigation.
2. If a party to this Subcontract has demanded arbitration, the other party to this Subcontract shall have seven business days from the date of its receipt of the demand notice to AAA in which to file an answering statement of a notice of intention to litigate the decision in lieu of arbitrating it. If the other party does not deliver a written notice of intention to litigate within the seven day period, by certified mail, return receipt requested, or any other method that provides evidence of receipt, that party shall be deemed to have consented to arbitration and to have irrevocably waived the right to litigate the LLNS decision.

#### G. Claims Excluded

The procedures and remedies provided in this clause shall not apply to:

1. any claim for or dispute about penalties or forfeitures prescribed by these GENERAL PROVISIONS or by statute or regulation which another State or Federal agency is specifically authorized to administer, settle or determine;
2. any claim for or respecting personal injury or death or reimbursement or other compensation arising out of or resulting from liability for personal injury or death;
3. any claim or dispute involving fraud and misrepresentation;
4. any claim or dispute relating to stop payment requests, stop notices, or the procedures authorized by the *LIENS AND CLAIMS FOR LABOR OR MATERIALS* clause of these GENERAL PROVISIONS;
5. any claim related to the approval, refusal to approve, or substitution of subcontractors, regardless of tier, and suppliers; or
6. any claim based on or involving noncompliance with or violation of any applicable health, safety or environmental regulations, statutes or provision(s).

#### H. Continuance of Performance

The Subcontractor shall proceed diligently with performance of this subcontract, pending final resolution of any claim, arbitration, litigation (before a California State Court), appeal or action arising under the subcontract, and comply with any decision of LLNS.

#### I. Rules of Arbitration

1. Except as otherwise provided in this clause, arbitration shall be in accordance with the AAA Construction Industry Arbitration Rules in effect on the date the arbitration is initiated, as modified by this clause. The arbitration shall be de novo. The award rendered by the arbitrator(s) shall be final.
2. The following additional modifications are made to the AAA rules:
  - a. The arbitrator(s) shall be neutral and appointed by the AAA.
  - b. If the arbitration panel is composed of three arbitrators, one shall be an attorney. If a single arbitrator hears the claim, the single arbitrator need not be an attorney.
  - c. A claim involving less than \$25,000 shall be heard by a single arbitrator. A claim involving \$25,000 or more shall be heard by three arbitrators.
  - d. The parties shall have the discovery rights and follow the procedures provided in California Code Civil Procedure Section 1283.05. The provisions of subparagraph (e) of Section 1283.05 shall not be applicable.
  - e. The arbitrator(s) may employ expert technical advisor(s) for claims of extraordinary technical complexity with the consent of the parties to this Subcontract. If the arbitrator(s) utilizes an expert technical advisor, such expert technical advisor shall only communicate with the arbitrator(s) on the merits of the claim in writing, with copies served on all parties, or orally on the record in the presence of or after due notice to the parties, except as otherwise consented to in writing by all parties. All evidence, opinions or other information which an expert technical advisor testifies to or furnishes shall be subject to cross-examination and pertinent objections. Either party may object for cause to the use of a particular individual as an expert technical

advisor. If such objection is not timely made, it shall be deemed waived. The parties shall share the expense for such expert technical advisor(s) on a pro rata basis.

- f. If more than one demand for arbitration is made by a party to this Subcontract with respect to concurrent claims referred to LLNS, all such concurrent claims shall be consolidated into a single arbitration hearing unless the parties to this Subcontract otherwise agree.
- g. The Subcontractor's performance bond surety for the project, a lower-tier subcontractor or supplier to the Subcontractor, and the Architect may be permitted to join in and be bound by the arbitration if required by the terms of their respective contracts with the Subcontractor or LLNS. Such joinder shall not be required if it unduly delays or complicates the expeditious resolution of the claim unless a failure to order joinder would be likely to produce inconsistent decisions from separate proceedings among the Subcontractor and LLNS. Any such joinder will be limited to issues raised by the Subcontractor and LLNS directly concerning the claim.
- h. Unless the parties otherwise agreed, the arbitration shall be in the San Francisco Bay Area.
- i. The arbitrator(s) shall issue subpoenas for the attendance of witnesses and for the production of documents and other evidence in accordance with California Code of Civil Procedure Section 1282.6. Witnesses shall be entitled to receive fees and mileage as provided in California Code of Civil Procedure Section 1283.2.
- j. The arbitrator(s) shall decide the claim in accordance with the applicable substantive law of California, except that clauses based upon federal regulations will be interpreted in accordance with applicable federal decisions. An award, including an award of costs and fees, is beyond the power of the arbitrator(s) if the award is based on an error of law. The award shall include a determination of all the questions submitted to the arbitrator(s) the decision of which is necessary to determine the claim, and a summary of the evidence and the reasons, factual and legal, for the decision. The award shall be in writing and signed by either the sole arbitrator or by at least a majority if there is more than one. The arbitrator(s) shall have no authority to add to, subtract from, modify, change, alter or ignore in any way the provisions of this Subcontract or expressly written modification or supplemental agreement thereto, or to extend its duration, unless all the parties hereto have expressly agreed, in writing, to give the arbitrator(s) specific authority to do so.
- k. Each party to the arbitration shall pay its pro rata share of the arbitrator(s), together with other expenses of the arbitration incurred or approved by the arbitrator(s), not including counsel fees or witness fees or other expenses incurred by a party for its own benefit.

#### **CLAUSE 13 - NOTICES**

The Subcontractor shall immediately notify the LLNS Contract Analyst in writing of (1) any third party action, including any proceeding before an administrative agency, filed against the Subcontractor arising out of the performance of this Subcontract; (2) any third party claim against the Subcontractor, the cost and expense of which may be allowable under the terms of this Subcontract; (3) any proceedings related to bankruptcy the Subcontractor enters into; and (4) any circumstances whatsoever that the Subcontractor becomes aware of during the performance of the Subcontract which may jeopardize its fulfillment of the agreed performance of all or any portion of the Subcontract.

#### **CLAUSE 14 - CLAUSES INCORPORATED BY REFERENCE**

The FAR and DEAR clauses listed below are incorporated by reference as a part of these GENERAL PROVISIONS with the same force and effect as if they were set forth herein in full text, and apply as prescribed below. The referenced FAR and DEAR clauses are respectively located in Title 48, Chapters 1 and 9 of the Code of Federal Regulations.

As used in the clauses, the term "contract" means the Subcontract; the term "Contractor" means the entity (hereinafter "Subcontractor") who entered into the Subcontract with LLNS; the term "subcontractor" means the Subcontractor's subcontractor, the term "Government" means LLNS and the term "Contracting Officer" means LLNS Contract Analyst, except in FAR clauses 52.227-1, 52.227-1 Alternate I, 52.227-4, 52.227-14, and DEAR clause 952.227-11, 952.227-13, 970.5227-5, and 970.5232-3, in which clauses the term "Government" remains unchanged and "Contracting Officer" means the DOE/NNSA Contracting Officer for Prime Contract DE-AC52-07NA27344 with LLNS. As used in FAR clause 52.245-1 with respect to title, the term "Government" remains unchanged. As used in DEAR clauses 970.5227-8 and 970.5232-3, the term "DOE" means DOE/NNSA or LLNS.

The modifications of these clause terms are intended to appropriately identify the parties and establish their contractual and administrative reporting relationship, and do not apply to the extent they would affect the U.S. Government's rights. The Subcontractor shall include the listed clauses in its subcontracts at any tier, to the extent applicable.

#### **APPLICABLE TO ALL SUBCONTRACTS:**

FAR 52.203-10

PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)

DEAR 952.203-70	WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (Dec 2000). Applies if the Subcontract involves any work at a LLNS controlled site or at DOE owned or leased sites.
FAR 52.215-15	PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2010) Applies if cost or pricing data or pre- or post-award cost determinations subject to FAR Part 31 are required.
FAR 52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2014)
FAR 52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)
FAR 52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (MAY 2014)
FAR 52.222-21	PROHIBITION OF SEGREGATED FACILITIES (APR 2015)
FAR 52.222-26	EQUAL OPPORTUNITY (APR 2015) (Note: Download the EEO Poster at: <a href="https://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm">https://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm</a> )
FAR 52.222-50	COMBATING TRAFFICKING IN PERSONS (MAR 2015)
FAR 52.223-3	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997), with ALTERNATE I (JUL 1995). Applies if the Subcontract involves delivery of hazardous materials.
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 52.225-9	BUY AMERICAN ACT-CONSTRUCTION MATERIALS (MAY 2014)
FAR 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)
FAR 52.227-3	PATENT INDEMNITY (APR 1984). Applies to non-construction work.
DEAR 970.5227-8	REFUND OF ROYALTIES (AUG 2002). Applies if "royalties" are paid under the Subcontract by the Subcontractor or a lower-tier subcontractor.
FAR 52.227-14	RIGHTS IN DATA-GENERAL (MAY 2014), with ALTERNATES II, III, & V and Paragraphs (a) & (d)(3) per DEAR 927.409 (DEC 2000) (Also see the <i>LIMITED RIGHTS DATA DISCLOSURE RESTRICTIONS</i> clause, below.)
FAR 52.227-16	ADDITIONAL DATA REQUIREMENTS (JUN 1987)
FAR 52.227-23	RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987). Applies if the PO is based upon a technical proposal.
FAR 52.229-3	FEDERAL, STATE, AND LOCAL TAXES (FEB 2013)
FAR 52.236-2	DIFFERING SITE CONDITIONS (APR 1984)
FAR 52.236-3	SITE INVESTIGATIONS AND CONDITIONS AFFECTING THE WORK (APR 1984)
FAR 52.236-5	MATERIALS AND WORKMANSHIP (APR 1984)
FAR 52.236-23	RESPONSIBILITY OF THE ARCHITECT-ENGINEER CONTRACTOR (APR 1984)
FAR 52.236-24	WORK OVERSIGHT IN ARCHITECT-ENGINEER CONTRACTS (APR 1984)
FAR 52.236-25	REQUIREMENTS FOR REGISTRATION OF DESIGNERS (JUN 2003)
FAR 52.242-14	SUSPENSION OF WORK (APR 1984)
FAR 52.243-4	CHANGES (JUN 2007)
FAR 52.244-2	SUBCONTRACTS (OCT 2010). Paragraph (d) insert is: "Any subcontract or purchase order for supplies or services exceeding \$100,000 that are not a "commercial item" (as defined by FAR 2.101) or for any work at a LLNS-controlled site."
FAR 52.244-4	SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (ARCHITECT-ENGINEER SERVICES) (AUG 1998)
FAR 52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS (FEB 2016)
FAR 52.245-1	GOVERNMENT PROPERTY (APR 2012), with ALTERNATE I. Applies if any Government property is furnished or the Subcontractor acquires property for use that is titled in the Government.
FAR 52.246-12	INSPECTION OF CONSTRUCTION (AUG 1996)
FAR 52.246-21	WARRANTY OF CONSTRUCTION (MAR 1994), with ALTERNATE I (APR 1984). Any on-site warranty work performed by the Subcontractor shall be subject to all applicable Subcontract requirements including, without limitation, those pertaining to safety, security and insurance.
FAR 52.247-63	PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003). Applies if the Subcontract involves international air transportation.
FAR 52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006). Applies if the Subcontract involves ocean transportation of supplies other than "commercial items", except as described in paragraph (e)(4) of the clause.

FAR 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) (APR 2012), with ALTERNATE I (SEP 1996)

FAR 52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)

DEAR 970.5232-3 ACCOUNTS, RECORDS, AND INSPECTION (DEC 2012), Paragraphs (a) through (h), excluding Paragraph (d). Applies if costs are a factor in determining the amount payable to the Subcontractor.

**APPLICABLE IF THE SUBCONTRACT EXCEEDS \$2,000:**

FAR 52.222-6 CONSTRUCTION WAGE RATE REQUIREMENTS (MAY 2014) (Note: Download the Davis-Bacon Poster (WH-1321) at: <https://www.dol.gov/whd/programs/dbra/wh1321.htm>)

FAR 52.222-7 WITHHOLDING OF FUNDS (MAY 2014)

FAR 52.222-8 PAYROLLS AND BASIC RECORDS (MAY 2014)

FAR 52.222-9 APPRENTICES AND TRAINEES (JUL 2005)

FAR 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

FAR 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (MAY 2014)

FAR 52.222-12 CONTRACT TERMINATION - DEBARMENT (MAY 2014)

FAR 52.222-13 COMPLIANCE WITH CONSTRUCTION WAGE RATE REQUIREMENTS AND RELATED REGULATIONS (MAY 2014)

FAR 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

FAR 52.222-15 CERTIFICATION OF ELIGIBILITY (MAY 2014)

**APPLICABLE IF THE SUBCONTRACT EXCEEDS \$3,000:**

FAR 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)

**APPLICABLE IF THE SUBCONTRACT EXCEEDS \$3,500**

FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015). The Subcontractor is responsible for ensuring appropriate lower-tier subcontractors enroll as a Federal Contractor in the E-Verify system.

**APPLICABLE IF THE SUBCONTRACT EXCEEDS \$10,000:**

FAR 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (APR 2015)

FAR 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)

**APPLICABLE IF THE SUBCONTRACT EXCEEDS \$15,000:**

FAR 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUL 2014)

**APPLICABLE IF THE PO EXCEEDS \$35,000:**

FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (OCT 2015)

**APPLICABLE IF THE SUBCONTRACT EXCEEDS \$100,000:**

FAR 52.227-1 AUTHORIZATION AND CONSENT (DEC 2007)

FAR 52.227-4 PATENT INDEMNITY-CONSTRUCTION CONTRACTS (DEC 2007)

DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)

**APPLICABLE IF THE SUBCONTRACT EXCEEDS \$150,000:**

FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)

FAR 52.203-7 ANTI-KICKBACK PROCEDURES (MAY 2014), excluding Paragraph (c)(1).

FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)

FAR 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENTS TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (APR 2014)

FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (OCT 2015)

FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS (FEB 2016)



**APPLICABLE IF THE SUBCONTRACT EXCEEDS \$500,000:**

- DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997). Applies if the Subcontract is not for "commercial items."
- DEAR 970.5226-2 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000)

**APPLICABLE IF THE SUBCONTRACT EXCEEDS \$750,000:**

- FAR 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (AUG 2011)
- FAR 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 2010)

**APPLICABLE IF THE SUBCONTRACT EXCEEDS \$1,500,000:**

- FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2017). Applies unless the Subcontractor is a small business or there are no subcontracting possibilities.
- FAR 52.219-16 LIQUIDATED DAMAGES – SUBCONTRACTING PLAN (JAN 1999). Applies if FAR 52.219-9 applies.
- FAR 52.242-5 PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (JAN 2017). Applies unless the Subcontractor is a small business or there are no subcontracting possibilities.

**APPLICABLE IF THE SUBCONTRACT EXCEEDS \$5,500,000:**

- FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (OCT 2015), if the period of performance exceeds 120 days.

**APPLICABLE IF THE SUBCONTRACT INDICATES IT IS FOR RESEARCH, DEVELOPMENT, OR DEMONSTRATION WORK OR NON-STANDARD DESIGN WORK:**

- DEAR 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002) PARAGRAPH (a), in place of Clause FAR 52.227-1. Applies if the Subcontract exceeds \$100,000.
- FAR 52.227-10 FILING OF PATENT APPLICATIONS-CLASSIFIED SUBJECT MATTER (DEC 2007). Applies if the Subcontract involves classified information.
- DEAR 952.227-11 PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SHORT FORM) (FEB 1995). Applies if the Subcontractor is a Domestic Small Business or Non-Profit Organization, as defined in FAR 27.301.
- DEAR 952.227-13 PATENT RIGHTS - ACQUISITION BY THE GOVERNMENT (SEP 1997). Applies if the Subcontractor is not a Domestic Small Business or Non-Profit Organization, as defined in FAR 27.301.
- FAR 52.227-16 ADDITIONAL DATA REQUIREMENTS (JUN 1987)
- DEAR 952.235-71 RESEARCH MISCONDUCT (JUL 2005)

**APPLICABLE IF THE SUBCONTRACT INVOLVES CLASSIFIED INFORMATION OR UNESCORTED ACCESS TO "LIMITED" SECURITY AREAS:**

- DEAR 952.204-2 SECURITY (MAR 2011)
- DEAR 952.204-70 CLASSIFICATION / DECLASSIFICATION (SEP 1997)
- DEAR 952.204-73 FACILITY CLEARANCE (MAR 2011)
- DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010).

**CLAUSE 15 - LIMITED RIGHTS DATA DISCLOSURE RESTRICTIONS**

Generally, delivery of Limited Rights Data or Restricted Computer Software, as defined in FAR 52.227-14 (a), should not be necessary. If any Limited Rights Data will be furnished or delivered by the Subcontractor or a lower-tier subcontractor pursuant to paragraph (g) of the FAR 52.227-14 *RIGHTS IN DATA – GENERAL* clause of these GENERAL PROVISIONS, LLNS may disclose the data for the following purposes, which disclosure purposes shall be inserted in the Limited Rights Notice to be affixed to the data:

- A. This "Limited Rights Data" may be disclosed for evaluation purposes under the restriction that the "Limited Rights Data" be retained in confidence and not be further disclosed;
- B. This "Limited Rights Data" may be disclosed to other contractors participating in the Government's program of which this Subcontract is a part for information or use in connection with the work performed under their contracts and under the restriction that the "Limited Rights Data" be retained in confidence and not be further disclosed; and
- C. This "Limited Rights Data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "Limited Rights Data" be retained in confidence and not be further disclosed.

**CLAUSE 16 - RETENTION OF RECORDS**

All records in the possession of the Subcontractor related to any costs that are a factor in determining the amount payable to the Subcontractor under this Subcontract, including all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Subcontractor in connection with the work under this Subcontract, other applicable credits, and fee accruals under this Subcontract, shall be preserved by the Subcontractor for a period of six years after final payment under this Subcontract or otherwise disposed of in such manner as may be agreed upon by LLNS and the Subcontractor.

**CLAUSE 17 - LAWS AND REGULATIONS**

The Subcontractor shall perform all work and provide all goods in accordance with all applicable laws, ordinances, statutes, codes, rules, regulations, and executive orders, including, but not limited to, those relating to wages, hours, employment discrimination, immigration, safety (including those pertaining to worker safety and health), export control, and environmental protection.

**CLAUSE 18 - REPORTING FRAUD, WASTE, ABUSE AND OTHER SIGNIFICANT PROBLEMS**

This Subcontract shall be subject to the Department of Energy Orders DOE O 221.1A, *Reporting Fraud, Waste and Abuse to the Office of Inspector General* and DOE O 221.2A, *Cooperation with the Office of Inspector General*. The Subcontractor shall encourage, support and require its employees to report any fraud, waste and abuse to an appropriate authority such as the DOE Office of the Inspector General. The Subcontractor shall require its employees to provide interviews and briefings and provide affidavits or sworn statements if required by an employee of the Office of Inspector General. The Subcontractor shall not retaliate against such employees.

**CLAUSE 19 - GOVERNING LAW AND VENUE**

This Subcontract shall be interpreted in accordance with the substantive and procedural laws of the State of California, except for the FAR and DEAR clauses incorporated by reference which shall be interpreted in accordance with the substantive law of federal government contracts. 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 (or in the Superior Court of San Joaquin County if the underlying action occurred at LLNL's Site 300).

**CLAUSE 20 - ORDER OF PRECEDENCE**

The parties shall resolve any inconsistencies in the documents comprising the Subcontract by giving precedence in the following order: (a) the Subcontract document; (b) these GENERAL PROVISIONS; (c) other referenced documents, exhibits, and attachments; and (d) any referenced specification or statement of work.

(END OF GENERAL PROVISIONS)