



LAWRENCE LIVERMORE NATIONAL LABORATORY
GENERAL PROVISIONS FOR TIME & MATERIALS 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 - TECHNICAL DIRECTION AND CHANGES

- A. Performance of the work under this Subcontract shall be subject to the technical direction of the LLNS Technical Representative identified in the Subcontract. The Subcontractor shall promptly proceed with the performance of technical direction of the nature prescribed by this article issued by the LLNS Technical Representative.
- B. The term "technical direction" is defined to include directions to the Subcontractor within the Scope of Work of the Subcontract which: (1) clarify the desired work emphasis between work areas or tasks; (2) direct the pursuit of certain lines of inquiry; (3) assist in the interpretation of drawings, specifications, or technical portions of the work description; or (4) fill in details necessary to perform and complete the Scope of Work. All technical direction must be issued in writing by the LLNS Technical Representative.
- C. The LLNS Technical Representative is not authorized to issue any technical direction which would: (1) constitute an assignment of work outside the general scope of the work covered by this Subcontract; (2) change the description of the work to be performed or any applicable drawings, designs, and specifications; (3) change the time or place of performance; the method of shipment or packaging, or the place of inspection, delivery or acceptance; (4) increase the estimated cost for performance of the work, the fixed fee, or the time required for performance of the work; (5) change any expressed term or condition of the Subcontract; or (6) unreasonably interfere with the Subcontractor's ability to perform and complete the work.

Any such technical direction must first be authorized by a written change order to this Subcontract issued by the LLNS Contract Analyst, as provided in the clause of the GENERAL PROVISIONS entitled *CHANGES-TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS*.

- D. If the LLNS Technical Representative issues technical direction that falls within one of the types described in Paragraph C, above, the Subcontractor shall not act on such technical direction and shall promptly notify the LLNS Contract Analyst.
- E. Upon receipt of a notification from the Subcontractor, the LLNS Contract Analyst shall promptly advise the Subcontractor either: (1) the technical direction is within the general scope of the Subcontract and does not constitute a change under the *CHANGES-TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS* clause and to act on such technical direction; or (2) the technical direction is not within the general scope of the Subcontract or would constitute a change under the *CHANGES-TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS* clause, and not act on such technical direction unless and until the LLNS Contract Analyst issues a written change order.

CLAUSE 3 - APPROVAL OF TECHNICAL DATA

- A. If this Subcontract requires the Subcontractor to furnish any drawings, specifications, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance or test data, or other technical data for approval by LLNS prior to Subcontractor performance, the approval of the data by LLNS does not relieve the Subcontractor from responsibility for any errors or omissions in such data or from responsibility for complying with the requirements of this Subcontract, except as specified below. Any work done prior to such approval is at the Subcontractor's risk.
- B. If the data includes any variations from the Subcontract requirements, the Subcontractor shall describe such variations in

writing at the time of submission of the data. If LLNS approves any such variation(s), such approval will only be communicated via a change order to the Subcontract issued by the LLNS Contract Analyst.

- C. Unless otherwise specified, LLNS requires a period of 10 business days from date of receipt to review and approve the data. If LLNS does not approve the data within the allotted time period, the parties will establish a new time period for review and approval of the data and, if necessary, the delivery schedule or completion date will be equitably adjusted.

CLAUSE 4 - 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 5 - SUSTAINABLE ACQUISITION

- A. In the performance of this Subcontract, the Subcontractor shall utilize environmentally preferable products and services and recovered material as defined in 48 CFR 2.101 and 11.301, i.e., products and services that have a lesser or reduced effect on human health and the environment, including those that are energy efficient (ENERGY STAR or FEMP-designated), water efficient, bio- based, environmentally preferable, EPEAT registered, non-ozone depleting, and less toxic, to the maximum extent possible without conflicting with the technical requirements of the Subcontract or jeopardizing the intended end use of the items or services to be furnished under this Subcontract.
- B. To the extent practicable, the minimum content standard for high speed copier paper, offset paper forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock used in performing this Subcontract shall be no less than 30 percent post-consumer material.
- C. The Subcontractor shall notify the LLNS Contract Analyst in writing if an "EPA-designated item," as defined in 48 CFR 23.401, used in performing this Subcontract does not contain at least the percentage of recovered material required by any applicable specification of this Subcontract. Such notice must include a detailed written justification for such failure, on the basis that the item is not available competitively within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price.

CLAUSE 6 - 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 materials or supplies 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.

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 7 - PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR SUBCONTRACTS

LLNS will pay the Subcontractor as follows upon the submission of invoices approved by the LLNS Contract Analyst or designee:

A. Labor Rates

1. LLNS will pay the Subcontractor for labor at the labor rates prescribed in the Subcontract. The labor rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. The amounts shall be computed by multiplying the appropriate labor rates in the Subcontract by the number of direct labor hours performed.
2. The labor rates shall be paid for all labor that meets the qualifications for the specified labor categories. Labor hours will not be paid to the extent the work is performed by personnel that do not meet the qualifications for the specified labor categories, unless specifically authorized by the LLNS Contract Analyst.
3. The labor rates in the Subcontract shall apply to work performed on an overtime basis unless otherwise specified in the Subcontract. If overtime is authorized in advance by the LLNS Contract Analyst, overtime rates shall be established in the Subcontract. The premium portion of the overtime rates shall be payable only to the extent the actual overtime work performed is approved by the LLNS Contract Analyst.

B. Materials

1. For the purposes of this clause:
 - (a) Materials means: (1) direct materials; (2) lower-tier subcontracts for supplies and services for which there is not a labor category specified in the Subcontract; and (3) other direct costs (e.g., travel, computer usage charges, and other such incidental services for which there is not a labor category specified in the Subcontract).
 - (b) Direct materials means those materials that are directly incorporated into the end product or that are consumed directly in connection with the furnishing of the end product or service, including supplies transferred between divisions, subsidiaries, or affiliates of the Subcontractor under a common control.
2. If the Subcontractor furnishes its own materials that meet the definition of commercial item in FAR 2.101, the price to be paid for such materials shall not exceed the Subcontractor's established catalog or market price, adjusted to reflect the quantities being acquired; and the actual cost of any modifications necessary because of Subcontract requirements.
3. Except as provided in Paragraph B.2 of this clause, LLNS will reimburse the Subcontractor for materials in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the effective date of the Subcontract, provided the Subcontractor has paid for the materials or will pay for the materials within 30 business days of submission of the Subcontractor's invoice to LLNS, per the terms of a contract or invoice for the materials. Reimbursement for travel expenses will be in accordance with the *Travel Expense Rules for Sellers/Subcontractors*, if included in the Subcontract. Profit or fee shall not be payable on materials except as provided for in FAR 31.205-26(e) and (f).
4. If the Subcontract stipulates that an indirect costs charge may to be applied to the cost of the materials, such indirect costs charge shall only apply to the extent it is: (a) comprised of costs that are clearly excluded from the labor rates; and (b) allocated in accordance with the Subcontractor's written or established accounting practices, and approved by LLNS Contract Analyst. Such indirect costs charge shall not be applied to lower-tier subcontracts that are paid at the labor rates prescribed in the Subcontract.
5. To the extent able, the Subcontractor shall (a) obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and (b) take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of such benefits, the Subcontractor shall promptly notify the LLNS Contract Analyst and give the reasons. The Subcontractor shall give credit to LLNS for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Subcontractor, or would have accrued except for the fault or neglect of the Subcontractor.

C. Total Cost

It is estimated that the total cost to LLNS for the performance of the Subcontract will not exceed the ceiling price set forth in the Subcontract, and the Subcontractor agrees to use its best efforts to perform the work specified in the Subcontract and all obligations under the Subcontract within such ceiling price. If at any time during performing the Subcontract, the Subcontractor has reason to believe that the total cost to LLNS for performance of the Subcontract will be greater or substantially less than the then stated ceiling price, the Subcontractor shall so notify the LLNS Contract Analyst, giving a revised estimate of the total price for performing the Subcontract, with supporting reasons and documentation.

D. Ceiling Price

LLNS will not be obligated to pay the Subcontractor any amount in excess of the ceiling price stated in the Subcontract, and the Subcontractor shall not be obligated to continue performance if to do so would exceed the ceiling price, unless and until the LLNS Contract Analyst issues a written unilateral Modification to the Subcontract specifically increasing the ceiling price. When and to the extent that the ceiling price has been increased, any hours expended and material costs incurred by the Subcontractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

E. Invoices

1. Invoices may be submitted to the LLNL office specified in the Subcontract once each month (or at more frequent intervals if stipulated in the Subcontract or approved by the LLNS Contract Analyst). All invoices must identify in sufficient detail the work performed and tasks accomplished, the effort expended by labor category, the materials used, and other direct expenses incurred, and substantially comply with the requirements of the attached T&M INVOICE FORM & INSTRUCTIONS. All invoices for labor shall be accompanied by individual daily job timekeeping records, labor distribution report, or other substantiation approved by the LLNS Contract Analyst. The Subcontractor shall maintain records which support all invoiced costs, including records evidencing actual payment, and provide them to LLNS upon request.
2. Invoices requesting reimbursement for property acquired by the Subcontractor shall include either a completed copy of the PROPERTY IDENTIFICATION LIST form included with the Subcontract if the property costs \$5,000 or more or is "attractive property" as defined in the form, or a certification that the acquired property for which reimbursement is being requested does not include any of the reportable types of property.

F. Payments

1. LLNS will make interim payments by the 30th day after receipt of a substantiated invoice, or as otherwise provided in the Subcontract, unless an audit or other review is required to ensure compliance with the terms and conditions of the Subcontract.
2. LLNS may unilaterally withhold up to five percent of the amounts payable to the Subcontractor for labor until a reserve is set aside in an amount that the LLNS Contract Analyst considers necessary to protect LLNS' interests, but the total amount withheld for the Subcontract shall not exceed \$50,000. The amounts withheld may be retained until the Subcontractor executes and delivers an Assignment and Release as required by Paragraph H of this clause.
3. LLNS will make final payment under the Subcontract after: (a) receipt and approval of the Subcontractor's invoice designated as the "final invoice", with supporting documentation; (b) an Assignment and Release as required by Paragraph H; and (c) upon compliance by the Subcontractor with all the terms and conditions of the Subcontract, including, without limitation, those related to patents, property, and security. The final invoice, with supporting documentation, shall be submitted by the Subcontractor as soon as practicable following completion of the work under the Subcontract, but in no event later than one year from the date of completion or such longer period as the LLNS Contract Analyst may approve in writing.
4. Payments are subject to (1) LLNS' acceptance of the work based on the requirements of the Subcontract and a high professional standard of quality; (2) receipt and LLNS acceptance of any required deliverables; and (3) applicable credits, tax withholds, retentions, offsets, rebates, and refunds. Payments shall not be subject to the Prompt Payment Act or any late payment interest or charges.
5. If the Subcontractor enters into any lower-tier subcontract that requires consent under the *SUBCONTRACTS* clause of these GENERAL PROVISIONS (FAR 52.244-2) without obtaining such consent, LLNS shall not be required to reimburse the Subcontractor for any costs incurred under the lower-tier subcontract prior to the date the Subcontractor obtains the required consent, and any such reimbursement shall be at the sole discretion of LLNS.

G. Audit

At any time before final payment under the Subcontract, LLNS may perform an audit of the invoices and supporting documentation. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by LLNS not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments.

H. Assignment and Release

The Subcontractor, and any assignees under an assignment of the Subcontract, shall execute and deliver, as a condition precedent to final payment under the Subcontract, in form and substance satisfactory to the LLNS Contract Analyst or a designee, an assignment to LLNS of refunds, rebates, credits, or other amounts (including interest, if any) arising out of the performance of the said Subcontract and due to LLNS, together with all rights of action accrued or which may thereafter accrue; and a release discharging LLNS, its officers, agents, and employees of and from all liabilities, obligations, and claims, and demands arising out of or under the Subcontract, subject only to the following exceptions:

1. Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Subcontractor.
2. Claims, together with reasonable incidental expenses, based upon the liabilities of the Subcontractor to third parties arising out of performing the Subcontract, that are not known to the Subcontractor on the date of the execution of the release, and of which the Subcontractor gives notice in writing to the LLNS Contract Analyst not more than six years after the date of the release or the date of any notice to the Subcontractor that LLNS is prepared to make final payment, whichever is earlier.
3. Claims for reimbursement of costs (other than expenses of the Subcontractor by reason of its indemnification of LLNS or the U.S. Government against patent liability), including reasonable incidental expenses, incurred by the Subcontractor under the terms of the Subcontract relating to patents.

CLAUSE 8 - PRICING OF ADJUSTMENTS

When costs are a factor in any determination of a Subcontract price adjustment pursuant to the "Changes" clause or any other provision of this Subcontract, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR Part 31), as supplemented or modified by DEAR Part 931(48 CFR Part 931) then in effect. LLNS reserves the right to review the Subcontractor's records to verify that such price adjustments conform to these requirements. The review may be performed by LLNS personnel or a designee.

CLAUSE 9 - COST ACCOUNTING STANDARDS (CAS) LIABILITY

(Applicable if the Subcontract is subject to full or modified CAS)

If the Subcontract is subject to either FAR 52.230-2 or FAR 52.230-6, notwithstanding the provisions of the clause, or of any other provision of this Subcontract, the Subcontractor shall be liable to the U.S. Government for any increased costs, and interest thereon, resulting from any failure of the Subcontractor or of a lower-tier subcontractor, with respect to activities carried on at the site of the work, to comply with applicable cost accounting standards or to follow any practices disclosed pursuant to the requirements of such clause.

CLAUSE 10 - INSPECTION

- A. LLNS reserves the right to inspect and test all materials furnished and services performed under this Subcontract, to the extent practicable, at all places and times, including the period of performance, and in any event before acceptance. LLNS may also inspect the plant or plants of the Subcontractor or any subcontractor engaged in Subcontract performance. LLNS shall perform the inspections and tests in a manner that will not unduly delay the work. LLNS shall reject performance or revoke its acceptance within a reasonable time after a defect is discovered or should have been discovered and before any substantial change occurs in the condition of the materials furnished or services performed, unless the change is due to a defect therein.
- B. If any materials or services are not in accordance with the terms and conditions of the Subcontract, LLNS shall notify the Subcontractor that the materials or services are rejected. Thereupon, the Subcontractor shall, at its own expense, take the necessary corrective action.
- C. The Subcontractor shall provide and maintain an inspection system acceptable to LLNS covering the material, fabricating methods, work, and services under this Subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to LLNS during Subcontract performance and for as long afterwards as the Subcontract requires.
- D. If LLNS performs inspection or test on the premises of the Subcontractor or a subcontractor, the Subcontractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- E. LLNS is not obligated to inspect the materials furnished and services performed, and neither the inspection nor the lack of inspection by LLNS shall relieve the Subcontractor of its responsibility for providing the materials and services in accordance with the terms and conditions of the Subcontract. The inspection or use of or payment for any materials or services under the Subcontract, either wholly or in part, may not be construed as an acceptance.

CLAUSE 11 - WARRANTY

- A. The Subcontractor warrants that the supplies and services furnished under this Subcontract shall be: (1) free from defects in workmanship, material, and Subcontractor's design or engineering contributions; and (2) of the most suitable grade and exactly as specified in the descriptions and specifications of this Subcontract and the affirmations and promises

made by the Subcontractor in its proposal. The Subcontractor further warrants that the data and documentation provided by the Subcontractor or its suppliers shall be complete and accurate, and may be relied upon by LLNS.

- B. The Subcontractor shall correct any nonconformance with this warranty discovered within one year after formal acceptance or initial use of the supplies and services. Such corrective action shall be at the Subcontractor's expense, including any related transportation costs. The limited warranty period shall not apply in the case of latent defects, specific failure to comply with the terms of this Subcontract, or fraud or such gross mistakes as amount to fraud.

CLAUSE 12 – SCIENTIFIC INTEGRITY

The Subcontractor should follow DOE Order 411.2 including without limitation the following.

1. When expressing opinions on policy matters to the public and media, Subcontractor and its personnel must make it clear when they are expressing their personal views, rather than those of LLNS, the Department of Energy (DOE) or the U.S. Government.
2. The Subcontractor may not suppress or alter scientific or technological findings, nor intimidate or coerce its personnel, subcontractors, or others to alter or censor scientific or technological findings or conclusions. The Subcontractor must also not suppress or alter the social media posts of personnel that express scientific and technical opinions or related policy opinions.
3. The Subcontractor must provide its personnel an opportunity to review, prior to publication or release, any public communication that substantially relies on their research or is related under their name.
4. Subcontractor may not publicly represent LLNS, DOE, or the U.S. Government's position or policies without advance written approval from DOE.

CLAUSE 13 – 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 the Protected Information in accordance with the appropriate procedures available 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 such Protected Information to only those individuals or entities needing such access to perform as required under this Subcontract, (3) refrain from using such 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 such 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 the 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 14 - 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 has 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 15 - DISPUTES

- A. Except as otherwise provided in the Subcontract, any claim for an equitable adjustment under the Subcontract not resolved in the ordinary course of business shall be referred in writing to the LLNS Contract Analyst within 30 calendar 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.
- B. 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 at LLNS' discretion 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.
- C. Any dispute arbitrated under this Subcontract shall be subject to the following modifications to the AAA rules: (1) the arbitrator shall be neutral and appointed by the AAA; (2) the location for all arbitration proceedings 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.
- D. 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 *CLAUSE 22, GOVERNING LAW AND VENUE* of these **GENERAL PROVISIONS**.

CLAUSE 15 - 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 16 - 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 17 - 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, 52.227-3, and 52.227-14, and DEAR clauses 952.227-11, 952.227-13, 952.227-14, 970.5227-4, 970.5227-5, 970.5232-3, and 970.5245-1, in which clauses "Government" means the U. S. Government and "Contracting Officer" means the DOE/NNSA Contracting Officer for Prime Contract DE-AC52-07NA27344 with LLNS. 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.
DEAR 952.209-72 & ALT I	ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009), with ALTERNATE I. Applies if the Subcontract involves advisory and assistance services, as defined in FAR 2.101.
FAR 52.211-17	DELIVERY OF EXCESS QUANTITIES (SEP 1989)
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 52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (MAY 2014). Applies if the Subcontract involves the use of laborers or mechanics.
FAR 52.222-21	PROHIBITION OF SEGREGATED FACILITIES (APR 2015)
FAR 52.222-26	EQUAL OPPORTUNITY (APR 2015) (NOTE: Download the EEO Poster at: https://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm)
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 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)
FAR 52.227-3	PATENT INDEMNITY (APR 1984). Applies if the Subcontract is not for research, development, or demonstration (RD&D) work.
DEAR 970.5227-8	REFUND OF ROYALTIES (AUG 2002). Applies if "royalties" are paid under the Subcontract by the Subcontractor or any 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>)
DEAR 952.227-14	RIGHTS IN DATA-GENERAL ALTERNATE VI (FEB 1998) Applies if the Subcontractor is other than a domestic small business or non-profit organization.
FAR 52.227-23	RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987) Applies if the Subcontract is based upon a technical proposal.
FAR 52.242-15	STOP-WORK ORDER (AUG 1989), with ALTERNATE I (APR 1984)
FAR 52.243-3	CHANGES – TIME-AND-MATERIALS OR LABOR-HOURS (SEP 2000)
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 52.244-5	COMPETITION IN SUBCONTRACTING (DEC 1996)
FAR 52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS (FEB 2016)
DEAR 970.5245-1	PROPERTY (JAN 2013)
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 52.249-6	TERMINATION (COST REIMBURSEMENT) (MAY 2004), with ALTERNATE IV (SEP 1996)
FAR 52.249-14	EXCUSABLE DELAYS (APR 1984)
DEAR 970.5232-3	ACCOUNTS, RECORDS, AND INSPECTION (DEC 2012), Paragraphs (a) through (h), excluding paragraph (d).

APPLICABLE IF THE SUBCONTRACT EXCEEDS \$2,500:

FAR 52.222-41	SERVICE CONTRACT LABOR STANDARDS (MAY 2014). Applies if the Subcontract is principally for the furnishing of services through the use of "service employees" and an exemption under FAR 22.1003-4 does not apply.
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FAR 52.222-55 ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS (DEC 2014). Applies if the Subcontract is subject to the Service Contract Act of 1965.

APPLICABLE IF THE SUBCONTRACT EXCEEDS \$3,000:

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

FAR 52.225-1 BUY AMERICAN ACT-SUPPLIES (MAY 2014)

APPLICABLE IF THE SUBCONTRACT EXCEEDS \$3,500

FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015). Applies if the Subcontract is for construction or services in the United States, excluding commercial services purchased with a commercially available off-the-shelf (COTS) item or a COTS item with minor modifications. 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 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)

APPLICABLE IF THE SUBCONTRACT EXCEEDS \$15,000:

FAR 52.222-20 CONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT EXCEEDING \$15,000 (MAY 2014). Applies if the Subcontract is for the manufacture or furnishing of materials,

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)

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 52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS-PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS (MAY 2014). Applies if FAR Clause 52.222-41 applies

FAR 52.222-44 FAIR LABOR STANDARDS ACT AND SERVICES CONTRACT LABOR STANDARDS-PRICE ADJUSTMENT (MAY 2014). Applies if FAR Clause 52.222-41 applies and the PO is not for multiple years and does not include options to renew.

APPLICABLE IF THE SUBCONTRACT EXCEEDS \$500,000:

DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997). Applies unless the Subcontract is for "commercial items", as defined by FAR 2.101.

DEAR 970.5226-2 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000). Applies unless the Subcontract is for "commercial items", as defined by FAR 2.101.

APPLICABLE IF THE SUBCONTRACT EXCEEDS \$650,000:

FAR 52.219-16 LIQUIDATED DAMAGES – SUBCONTRACTING PLAN (JAN1999). Applies if FAR 52.219-9 applies.

APPLICABLE IF THE SUBCONTRACT EXCEEDS \$700,000

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 52.242-5 PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (JAN 2017). Applies unless the Subcontractor is a small business or there are no subcontracting possibilities.

APPLICABLE IF THE PO 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)
FAR 52.230-2	COST ACCOUNTING STANDARDS (OCT 2015), excluding Paragraph (b). Applies if the Subcontractor is subject to full CAS-coverage per 48 CFR Chapter 99, Subpart 9903.201-2 (FAR Appendix B).
FAR 52.230-3	DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (OCT 2015). Applies if the Subcontractor is eligible for and elects to use modified CAS-coverage per 48 CFR Chapter 99, Subpart 9903.201-2 (FAR Appendix B).
FAR 52.230-6	ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2010)

APPLICABLE IF THE PO EXCEEDS \$5,500,000:

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

APPLICABLE IF THE SUBCONTRACT INDICATES IT IS FOR RESEARCH, DEVELOPMENT, OR DEMONSTRATION (RD&D) WORK OR DESIGN WORK INVOLVING NON-STANDARD TYPES OF CONSTRUCTION:

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 also 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 at 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 at FAR 27.301.
FAR 52.227-16	ADDITIONAL DATA REQUIREMENTS (JUN 1987)
DEAR 952.235-71	RESEARCH MISCONDUCT (JUL 2005)

CLAUSE 18 - 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 19 - RETENTION OF RECORDS

All records in the possession of the Subcontractor related to 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 20 - LAWS AND REGULATIONS

The Subcontractor shall perform all work and provide all goods in accordance with all applicable laws, 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 21 - 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 22 - 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 23 - 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)