

## **GENERAL TERMS AND CONDITIONS**

### ***For Fixed Price Construction Subcontracts***

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#### **1. DEFINITIONS**

The primary defined terms used in this Subcontract are as follows, with other defined terms included throughout the Subcontract:

- a. “Beneficial Use” shall mean the point at which all phases of work, scopes of work, and parts or portions of the Project for which the Buyer and/or SLAC intends to use may be used for those intended purposes. “Substantial Completion” shall have the same meaning as “Beneficial Use” hereunder.
- b. “Buyer” means the Board of Trustees of the Leland Stanford Jr. University (“University”), or any duly authorized representative thereof, acting through SLAC National Accelerator Laboratory (“SLAC”), under its Management and Operating Contract with the United States Department of Energy (“DOE”).

- c. "Change Order" shall mean a mutually executed instrument, signed by the Buyer or its Subcontract Administrator (or both), and the Subcontractor, indicating their express written agreement upon any change in the Contract Documents, including any change in the Work, the amount of adjustment to the Contract Sum (if any) and extent of adjustment to the Contract Time (if any).
- d. "Final Completion" shall mean the date on which the Subcontractor has (a) completed all requirements for Substantial Completion and remaining Work such that all Work is complete; (b) obtained permanent occupancy permits, where applicable; (c) submitted any final Change Orders and a final invoice or application for payment; (d) submitted final closeout documents, including record documents and operation and maintenance manuals and as-built drawings to the Buyer, where applicable; (e) submitted all warranties; (f) discontinued or changed over and removed any temporary facilities and services from the site; and (g) advised the Buyer on coordination of shifting insurance coverages, including proof of extended coverages (as required).
- e. "Field Construction Manager (FCM)" shall mean the individual specifically designated by the Buyer to monitor the technical performance of the Subcontractor and all Sub-Subcontractors, to assure compliance with the technical specifications of the contract.
- f. "Government" shall mean the United States of America.
- g. "Micro-Purchase Threshold" shall mean the threshold defined in FAR 2.101, as updated from time to time.
- h. "Procurement Specialist" or "Subcontract Administrator" shall mean Buyer's designated contracting officer with the authority to bind Buyer. Unless otherwise expressly provided herein, no other Buyer personnel or agents have such authority.
- i. "Project Manager (PM)" shall mean the individual specifically designated by the Buyer to monitor the Subcontractor's performance to assure timely compliance with Subcontract requirements including reports to the Subcontract Administrator.
- j. "Simplified Acquisition Threshold" shall mean the threshold defined in FAR 2.101, as updated from time to time.
- k. "Subcontractor" shall mean the entity (whether an individual person or firm) supplying equipment, materials, labor, supplies, or services under this Subcontract. The terms "Seller," "Vendor," and "Supplier" shall have the same meaning as "Subcontractor" herein.
- l. "Subcontractor's Representative" shall mean the Subcontractor's primary point of contact (or the primary point of contact for the Seller, Vendor, or Supplier, as the case may be) designated as responsible to Buyer for the Work under this Subcontract. Such representative shall have the legal authority to bind the Subcontractor (or the Seller, Vendor, or Supplier, as the case may be).
- m. The term "Sub-Subcontract" includes lower-tier subcontracts and purchase orders related to the Work or this Subcontract.
- n. "Sub-Subcontractor" shall mean any lower tier subcontractors, vendors, or suppliers of the Subcontractor, including those engaged through purchase order or work order.
- o. "Technical Representative" or "Service Manager," if applicable under the terms of this Subcontract, shall be the Buyer's designated representative(s) and agent(s) for all technical inquiries and oversight, and such representative(s) shall have the authority to provide clarifying instruction or grant approvals in the manner defined in the Subcontract. Such Technical Representative(s) and/or Service Manager(s) shall not have authority to modify or amend any terms of this Subcontract, nor any other Contract Documents, nor to commit Buyer funds that are related in any way to the Project.
- p. "Work" shall mean the entire scope of work, and all work appurtenant thereto, arising under, related to, or reasonably inferable in relation to this Subcontract.

The Subcontractor and any Sub-Subcontractors shall be required to meet any technical standards cited in the Contract Documents (defined in Article 2). Nothing in the Contract Documents or referenced standards shall be construed to establish a contractual relationship between the Buyer or DOE and any Sub-Subcontractor, or to relieve the Subcontractor of full responsibility for compliance with all requirements of the Subcontract.

## **2. ORDER OF PRECEDENCE**

- a. Any conflict or inconsistency in the Subcontract shall be resolved in accordance with the following order of precedence for the following documents (hereinafter, "Contract Documents"):
  - i. The terms of the Subcontract, including, without limitation, these general terms and conditions and any sections attached hereto and/or mutually executed modifications.
  - ii. The terms of a specific Purchase Order, or Task Order, including any special terms and conditions thereto.
  - iii. Any written specifications or Statement of Work.
  - iv. Any other attachments and exhibits referenced in this Subcontract. If provided, Division 1 shall take precedence over provisions of other Divisions, specifications, Statements of Work, or other attachments.
  - v. Large scale drawings (such as detail drawings)
  - vi. Small scale drawings (such as plan and elevation views).
  - vii. The Subcontractor's signed and final proposal, only for interpretation of the Work under this Subcontract.

### **3. BUYER MONITORING OF THE WORK**

- a. The Subcontractor is solely responsible for performing the Work herein in a manner fully compliant with all Contract Documents, and in accordance with all applicable laws, regulations, ordinances, and government orders. As an aid to assessing, accepting, and approving the Subcontractor's performance, the Work under this Subcontract is subject to monitoring and quality assurance surveillance by the Subcontract Administrator, including any Field Construction Manager (FCM) and/or Project Manager (PM).
- b. The Subcontract Administrator, including any FCM or PM, may provide such technical guidance to the Subcontractor as may be appropriate and reasonable to assure compliance with all specifications, technical requirements, and other obligations of the Subcontract.
- c. Back Charge for Extraordinary Monitoring. The Buyer, through the Subcontract Administrator or others, may monitor compliance with Subcontract requirements for its own benefit. Monitoring is performed by Subcontract Administrator, the FCM, the PM, or another representative such as safety personnel, inspection and testing vendors, or security personnel.
  - i. In the event that the Subcontractor's performance is not in accordance with the Subcontract or applicable laws and regulations, the Buyer may incur increased costs to verify that corrections have been made by the Subcontractor and compliance is achieved ("Extraordinary Monitoring"). The Buyer, at its election, may recover costs of this Extraordinary Monitoring by reducing the amount of the Subcontract price as set forth below, in addition to any other remedies available.
  - ii. Isolated noncompliance: Upon a single occurrence of noncompliance, as reasonably determined by the Buyer or Subcontract Administrator, with a Subcontract requirement or applicable law or regulation, and the initiation of Extraordinary Monitoring, the FCM or designee and the Subcontractor's on-site representative shall agree on the correction to be made and the schedule for the correction.

If agreement is not reached, the PM or designee and the Subcontractor's on-site representative shall immediately contact the Subcontract Administrator for resolution. Each time the PM or designee checks for compliance, a back charge will apply if compliance has not been achieved, and a revised schedule for correction shall be established. If the PM or designee and the Subcontractor's on-site representative do not agree on the status of compliance, they shall immediately contact the Subcontract Administrator for resolution.
  - iii. Continuing, repetitive, or multiple noncompliance: In the event of continuing, repetitive, or multiple noncompliance, and the initiation of Extraordinary Monitoring, as reasonably determined by the Buyer or Subcontract Administrator, back charges shall apply during each instance where the PM or designee takes action to obtain compliance, including but not limited to assignment of a full-time Buyer inspector to the project. If the PM or designee and the Subcontractor's on-site representative do not agree on the status of the work, they shall immediately contact the Subcontract Administrator for resolution.
  - iv. Back charges for extraordinary monitoring shall be at the rate of \$250 per hour for a minimum of one hour per incident. Any monetary adjustment by the Buyer for extra monitoring is independent of that which may be otherwise charged against the Subcontractor by any external regulatory or oversight agencies.

### **4. SITE INVESTIGATION, REPRESENTATIONS, AND SPECIFICATIONS**

- a. The Subcontractor acknowledges that it has confirmed by diligent physical inspection and satisfied itself as to the nature and location of the Work; the general and local conditions attendant to the Work, particularly those bearing upon work hazards and safety, transportation, disposal, handling and storage of materials, utility locations, underground conditions, availability of labor, water, electric power, roads, and uncertainties of weather, and similar physical conditions at the site; the conformation and conditions of the ground; the character of equipment and facilities needed preliminary to and during the prosecution of the Work; and all other matters upon which information is reasonably obtainable and which can in any way affect the Work or the cost thereof under this Subcontract. The Subcontractor further acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, as well as from information presented by the drawings and specifications made a part of this Subcontract. Any information furnished by the Buyer, or any Buyer exploratory work performed prior to the Subcontractor's Work, shall be for informational purposes only, and the Subcontractor shall have no right to rely upon such information for its accuracy or veracity independent of the Subcontractor's diligent physical investigation.
- b. Any failure by the Subcontractor to acquaint itself with all of the available information will not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing the Work. The Buyer assumes no responsibility for any understanding or representations made by any of its officers or agents during or prior to the execution of this Subcontract, except those expressly stated in the Subcontract.
- c. Should the Contract Documents and Subcontractor's reasonable inspection in accordance with Paragraph A not adequately convey the actual physical or operating conditions expected to be encountered in the execution of the Work of this Subcontract, it shall be the responsibility of the Subcontractor to so advise the Buyer. Such advice shall be in writing and shall be submitted to the Buyer in sufficient time prior to the scheduled completion of the Work so that a revision to drawings or specifications may be made, if necessary. If there are any potential variations to the Work resulting from conditions not determinable from the Subcontractor's diligent physical inspection, or not otherwise available in the Contract Documents or through information provided to the Subcontractor, then the Subcontractor shall immediately inform the Buyer in writing of all required changes based on those conditions, with a detailed explanation of the needed revisions based on the current scope of Work and examination or physical inspection of the site. The Subcontractor shall not proceed with the Work until written instructions are received from the Buyer. Notwithstanding the foregoing, if during the course of the Work, Subcontractor encounters a health or safety hazard that was not apparent through prior physical inspection, the Contract Documents, or information provided to the Subcontractor, the Subcontractor

shall immediately notify the Buyer FCM or equivalent through the quickest communication method possible and resolve the imminent hazard. Written notification to Buyer may occur following resolution of such hazard.

- d. Subject to the foregoing paragraphs, the Subcontractor shall not be entitled to any claim for time or money for any undiscovered condition on the site that reasonably should have been discovered through examination of the foregoing or diligent physical inspection of the site. A failure by the Subcontractor to adhere to any of the provisions set forth above shall constitute a complete and absolute waiver of any claims related to different or unforeseen conditions.

## **5. GENERAL SCOPE OF WORK**

Except as otherwise indicated in the Contract Documents, the Subcontractor shall furnish all labor, materials, tools, equipment, incidentals, and submittals necessary to prepare for and perform the Work. Where standards are not specified, the Subcontractor shall perform the Work in accordance with all applicable laws and regulations, and the best general practice and industry standards, and shall provide materials and workmanship of the first highest quality. Where the Contract Documents do not provide complete details, the Subcontractor shall submit a Request for Information (RFI), or provide a submittal to the Buyer for approval, clearly showing the details of the planned method for meeting the Subcontract requirement ("Submittal").

## **6. GOVERNMENT-FURNISHED PROPERTY**

- a. In connection with its Work under this Subcontract, the Subcontractor may be furnished by the Buyer certain government-owned property (hereinafter referred to as Government-Furnished Property or "GFP") for installation by the Subcontractor or its Sub-Subcontractor in accordance with the Contract Documents. The schedules set forth in this Subcontract presume that the GFP will be delivered with sufficient time to enable Subcontractor to meet said schedules. In the event that such GFP is not delivered timely, the Buyer shall, upon written request by the Subcontractor, determine if any unreasonable and unforeseeable delay has occurred, and if so, the Buyer may grant a reasonable extension of time. Neither the Buyer nor the Government shall be liable to the Subcontractor for any damages of any kind or character for such delays.
- b. Title to any such GFP shall remain with the Government and shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall any such property, or any part thereof, be or become a fixture or lose its identity as Government property by reason of affixation to any realty. The Subcontractor shall maintain adequate property control records of such property consistent with DEAR 970.5245-1 and as may be prescribed by the Government or the Buyer, and the Subcontractor shall mark or cause all such property to be clearly marked (if not already marked) to show that it is property of the Government.
- c. GFP under this Subcontract shall only be used for the performance of the Work of this Subcontract.
- d. The Subcontractor shall, in accordance with sound industry practice and DEAR 970.5245-1, protect and preserve such GFP until completion by the Subcontractor of all Work required by this Subcontract. Should any repair or replacement of any such property become necessary during the term of this Subcontract other than by reason of the negligence or fault of the Subcontractor, the same shall be made by the Subcontractor with the approval of and for the account of the Buyer and the title thereto shall vest in the Government and any delay to Final Completion upon the critical path of the schedule occasioned thereby shall be considered an excusable (but non-compensable) delay.
- e. Unless otherwise provided in this Subcontract, the Subcontractor assumes the risk of and shall be responsible for any loss of or damage to the GFP in its possession except for reasonable wear and tear, or due to causes unrelated to the Subcontractor's fault or negligence.
- f. The Government and the Buyer shall at all times have access to the premises wherein any GFP is located.
- g. Upon Final Completion, the Subcontractor shall submit, in a form acceptable to the Buyer, inventory schedules covering all items of GFP utilized in the performance of this Subcontract (including any resulting scrap).

## **7. PERMITS, LICENSES, RESPONSIBILITIES**

- a. The Subcontractor shall have and maintain, and shall require that all Sub-Subcontractors have and maintain, appropriate licenses and certifications issued by the relevant Trade Associations or Regulatory Agencies in order to perform the Work under this Subcontract. Except as otherwise directed by the Buyer or Subcontract Administrator, and without any cost to the Buyer, the Subcontractor also shall be responsible for obtaining any other necessary licenses and permits, and for complying with applicable federal, state, and municipal laws, codes, and regulations in connection with performing the Work.

## **8. SUBMITTALS REQUIRED**

- a. The purpose of Submittals is to provide the Buyer with the opportunity to check for conformance with the requirements of the Subcontract, and for selection among alternatives contemplated by the Subcontractor. The submission, review, or approval of any such Submittals shall not result in a no change to the Subcontract price, performance period, or any other requirement of the Contract Documents.
- b. If the Submittal relates to any proposed change in the Subcontract price, performance period, or other requirement of the Subcontract, the Subcontractor must promptly notify the Subcontract Administrator in writing, pursuant to Article 30 and separately from the Submittal, and obtain written authorization prior to incurring any delay, or additional costs, or using materials or methods that might not conform to the requirements of the Contract Documents. The Subcontract Administrator, through its PM, is authorized to make evaluation of Submittals and elements of Work required by this Subcontract under such Submittals. However, only the Subcontract Administrator shall have authority to approve Submittals.
- c. By submission of a Submittal for (i) a product "equal" to one specified, (ii) a product substitution, (iii) a design prepared by the Subcontractor, or (iv) a method proposed by the Subcontractor, the Subcontractor represents that it has reviewed the submitted item

for full compatibility with all requirements of the Contract Documents, and further represents that the item submitted is in fact fully compatible with all requirements of the Contract Documents. The Buyer will review the Submittal for general conformance with the design concept only. Approval of the Submittal does not reduce the Subcontractor's full responsibility for meeting all requirements of the Contract Documents. Any variance between the specified requirement and the item actually furnished remains the sole responsibility of the Subcontractor. In the event that an approved item is subsequently determined not to conform to a requirement of the Contract Documents, the Subcontractor shall be responsible for all costs of corrections to attain conformance, irrespective of whether the Buyer discovers or notifies the Subcontractor of the non-conformance. If a specified product is found to be unavailable, the Subcontractor may request that the Buyer specify an alternate, in which case the Buyer will be responsible for specifying a suitable alternate that is compatible with the Subcontract.

d. SUBMITTALS REQUIRED PRIOR TO NOTICE TO PROCEED AND KICK-OFF MEETING

A "kick-off meeting," if applicable to the project, shall be held to confirm review and acceptance of all project documentation required. The following documents, in addition to any forms or documents required by the request for proposal or solicitation, at minimum, shall be required for the kick-off meeting (or equivalent) and for Buyer to issue a notification letter (hereinafter, "Notice to Proceed" or "NTP") to the Subcontractor stating the date on which the Subcontractor can mobilize on the premises to commence the Work. The NTP date marks the beginning of the performance time under the Contract Documents:

- i. Evidence of Performance and Payment bonds from Subcontractor in accordance with the Contract Documents.
- ii. Approved certificates of insurance as provided in Article 26 below
- iii. Project schedule in the specified format and approved by the PM.
- iv. "Statement and Acknowledgment" Standard Form (SF 1413) for all known Sub-Subcontractors.
- v. A copy of the Subcontractor's licenses and permits, and copies of all known Sub-Subcontractors licenses or permits, where applicable.
- vi. Schedule of Values acceptable to the Subcontract Administrator, if requested.
- vii. Issue for Construction set of Statement of Work, Specifications and Drawings

e. SUBMITTALS REQUIRED DURING ON-SITE CONSTRUCTION

- i. Weekly certified payrolls to be submitted online, as specified by the Buyer or Subcontract Administrator.
- ii. Each invoice must be certified in writing by Subcontractor and accompanied by the following:
  - a. Invoice showing unique invoice number, Buyer Subcontractor number, amount billed and retainage.
  - b. Any pricing breakdown as required by the Buyer or Subcontract Administrator, including, without limitation, Sub-Subcontractors bids, invoices, take-offs, or other detail requested by the Subcontract Administrator.

f. OTHER SUBMITTALS REQUIRED DURING ON-SITE WORK

The Subcontractor shall update and resubmit the Submittal list whenever new Submittals are requested during progress of the Work.

- i. The Subcontractor shall update and resubmit the lists of Sub-Subcontractors when known and provide an updated SF 1413 Form.
- ii. Work Safety Health documentation for Subcontractor and all Sub-subcontractors.
- iii. As required by Division 1 Specifications.
- iv. Conditional lien releases for Subcontractor and each Sub-Subcontractor shall be delivered with each application for payment, and unconditional lien releases shall be promptly provided after receipt of payment.
- v. Subcontractor shall incorporate the provisions of this Paragraph F, and require compliance therewith, for each of its Sub-Subcontractors of any tier.

g. SUBMITTALS REQUIRED PRIOR TO FINAL PAYMENT

- i. Final Inspection Report (signed by Subcontractor) as provided in Subcontract Award and completion of the Work as specified in Division 1.
- ii. Certified Payroll Log and Final Certified Payrolls via the online system as designated by Buyer.
- iii. Return of Identification (ID) badges, Dosimeter Badges (if any) and keys (if any). The Buyer may, at its discretion, require a certification from the Subcontractor that it, and all of its Sub-Subcontractors, have complied with this requirement and have reported to the Subcontract Administrator any missing ID badges, dosimeters, or keys.
- iv. Final Invoice.
- v. Unconditional Lien Release and Waiver, and other documentation required by the Buyer or the Subcontract Administrator, upon issuance of Final Payment.

#### **9. SUBCONTRACTOR AND SUB-SUBCONTRACTOR PERSONNEL**

- a. Subcontractor personnel shall be reasonably continuous over the length of the job; personnel shall not be rotated for the convenience of the Subcontractor.
- b. The Buyer and Subcontract Administrator shall be provided with a method to contact Subcontractor's management at any time (twenty-four hours a day, seven days a week), and said management shall be empowered with the ability to initiate and enforce changes pursuant to the terms of the Contract Documents.
- c. All Subcontractor employees performing the Work under this Subcontract shall have that level of education, experience, physical competence, and training requisite for the skillful, workmanlike, efficient and safe carrying out of their Subcontract tasks and shall carry out all tasks in such a manner.
- d. The Subcontractor is required to provide employees who are trained and experienced in performing the Work required under the conditions existing for this project, including environmental protection, safety, and health requirements.
- e. The Buyer or Subcontract Administrator may, in writing, require that Subcontractor remove any employee of Subcontractor or Sub-Subcontractor from performing Work under this Subcontract. Subcontractor agrees to promptly comply with such requests.
- f. Only persons who are eligible to work in the United States of America (U.S. citizens, green card holders, or those with the appropriate visa) may be employed to work at this site. Subcontractors and their employees must show government-issued identification to gain access to this site, and persons who are unable to provide proper I.D. will not be permitted to enter Buyer premises.
- g. In the event that non-English speaking workers are utilized, the Subcontractor and all Sub-Subcontractors shall, at all times when Work activity is on-going, have a designated worker who is bilingual in English and the language of those workers on site, to interpret any work instructions, requirements of the Contract Documents, legal regulations, or safety orders.

#### **10. LIST OF SUB-SUBCONTRACTORS**

At the request of the Buyer or Subcontract Administrator, the Subcontractor shall notify the Buyer, in writing, of the names of all Sub-Subcontractors, together with a summary of the extent and character of the work to be done by each Sub-Subcontractor.

#### **11. TIME IS OF THE ESSENCE**

The Subcontractor shall prosecute the Work diligently with such forces as the Subcontractor determines are necessary to complete the Work of this Subcontract within the contract time. If the Buyer determines that the Subcontractor is not progressing in accordance with the accepted schedule from the Subcontractor, the Subcontractor shall submit a written plan for recovery of the progress necessary to complete the Work within the contract time for the Subcontract Administrator's approval. Resulting additional costs for overtime, night shifts, or holiday work, or other means necessary to recover the schedule are solely the responsibility of the Subcontractor.

#### **12. WORK HOURS AND HOLIDAYS**

- a. The Subcontractor will be permitted to work in the work areas, and delivery of materials may be made, during normal working hours (6:00 a.m. to 6:00 p.m. Monday through Friday, unless otherwise indicated in the Contract Documents) and, when authorized in advance by the Subcontract Administrator, after hours, on holidays, or weekends.
- b. Buyer holidays:

New Year's Day	Independence Day
Martin Luther King's Birthday Holiday	Labor Day Holiday
President's Birthday Holiday	Thanksgiving: Thursday & Friday
Memorial Day Holiday	Christmas - two days

Additionally, Buyer is usually shut down during the period between Christmas and New Year's Day.

- c. Unless required by law, no extra payment will be allowed for extra expense incurred by the Subcontractor for its employees working holidays.

#### **13. COOPERATION WITH OTHER SUBCONTRACTORS AND BUYER PERSONNEL**

- a. Other construction subcontracts may have been or may be awarded in this locality, such that the work covered by them will be in progress during the time of the Work covered by this Subcontract. All Subcontractors shall have equal rights to use the haul roads, grounds, utilities, etc., and shall coordinate their activities which may be in conflict so as to cause a minimum of interference.
- b. Buyer personnel may be working in or occupying the area within and adjacent to the Subcontractor's work area. The Subcontractor shall cooperate with others in the scheduling of Work to avoid undue inconveniences to all concerned. The Subcontractor shall not commit or permit any act which will interfere with the performance of work by any other Subcontractor or by Buyer employees.
- c. The Subcontractor shall fully cooperate with such other Subcontractors and Buyer employees and carefully fit its own work to such additional work as may be directed by the Buyer or Subcontract Administrator. Furthermore, the Subcontractor shall cooperate and coordinate its Work with any separate consultants, contractors, subcontractors, or suppliers of the Buyer and shall ensure that all Sub-Subcontractors cooperate and coordinate their work with any such separate or independent contractors.
- d. The Subcontractor shall confine activity to the areas designated. Other Buyer areas shall not be visited without specific permission and under no circumstances will the Subcontractor's personnel cause interruption of normal Buyer activities in other areas.



#### **14. NOTICE OF LABOR DISPUTES**

Whenever an actual or potential unforeseen and unavoidable (a) industry-wide labor dispute or (b) nation-wide material shortage for specific materials are either delaying, or threatening to delay, the performance of the Work, then the Subcontractor shall immediately notify the Buyer in writing. Such notice shall include all relevant information concerning the dispute and its background, the trades affected by such industry-wide labor dispute(s), the estimated impact on the critical path of the Work, and the steps that Subcontractor is taking to remediate and minimize the effects of such potential delays. Such delays may entitle Subcontractor or the affected Sub-Subcontractor to an excusable time extension, without any additional compensation, to the extent such delays will prolong Final Completion by impacting the critical path of the schedule. Provided, however, that any failure by Subcontractor to immediately provide notice to the Buyer and Subcontract Administrator as set forth in this Article 14 shall constitute a complete and absolute waiver of any claim by the Subcontractor or Sub-Subcontractor(s) for extra time or additional compensation related to such delays.

#### **15. ENVIRONMENTAL, SAFETY, AND HEALTH PROTECTION – CODES AND STANDARDS**

- a. All Work performed by the Subcontractor and its Sub-Subcontractors shall be in accordance with the applicable federal, state, and local environmental laws, codes, standards, and regulations, including those described in this Article.
- b. The Subcontractor and its Sub-Subcontractors shall also perform Work in accordance with the following Buyer-specific requirements, which are largely consistent with applicable regulatory requirements: (1) [SLAC's Injury and Illness Prevention Program](#) (IIPP), including those regulations and standards listed within ; (2) [SLAC's ES&H Manual Chapter 42 "Subcontractor Safety"](#); and (3) any additional safety and environmental requirements, codes, standards, and regulations detailed in the specifications, statement of work, or Division 1.
- c. With regard to safety and health regulations, Buyer has adopted the California Division of Occupational Safety and Health (Cal/OSHA) general industry and construction safety orders as found in Title 8 of the California Code of Regulations. However, government enforcement of safety and health compliance is under the jurisdiction of the federal Department of Energy.
- d. All codes, standards, and referenced specifications in the Contract Documents shall mean latest edition, including supplements when such exists, unless otherwise stated. Where differences exist in the levels of protection prescribed in applicable codes, standards, and referenced specifications, the level which provides the greatest protection to the Buyer shall govern, unless otherwise stated. Any variances from the codes and standards noted by the Subcontractor in the specifications and drawings shall be brought to the Subcontract Administrator's attention immediately by notification in writing.
- e. The Government, the State of California, and local jurisdictions may have the authority to fine the Buyer, the Subcontractor, and Sub-Subcontractors for failure to comply with applicable health and environmental laws. The Buyer reserves the right to pass these fines onto the Subcontractor if the non-compliance results from its failure to comply with applicable laws and standards.

#### **16. ENVIRONMENTAL PROTECTION REQUIREMENTS**

- a. All personnel and equipment necessary for the protection of the environment in performance of the Subcontract shall be the responsibility of and shall be provided by the Subcontractor. Failure to maintain adequate measures to ensure protection of the environment as required by applicable laws and Buyer standards may result in Termination for Default, and assessment of clean-up costs.
- b. Materials, processes and activities that the Subcontractor proposes to employ that are governed by the Clean Air Act must conform to requirements specified by the Bay Area Air Quality Management District (BAAQMD). Refer to BAAQMD regulations and Division 1 Specifications for details on the relevant materials.
- c. All on-site activities shall include Best Management Practices (BMPs), required by the Clean Water Act, to prevent the introduction of hazardous and non-hazardous materials into stormwater or conveyances that transport stormwater off-site to streams and the Bay. Refer to the Division 1 Specifications for required BMPs.
- d. Hazardous waste management shall be coordinated with Buyer's Waste Management Group.
- e. Subcontractors and their Sub-Subcontractors shall not bring radioactive materials or radiation generating devices on Buyer premises without prior express approval from the Subcontract Administrator and designated representatives from the Buyer's Radiation Protection Department. Examples of such radioactive materials and radiation generating devices are available at: <http://www-group.slac.stanford.edu/esh/rp/RPmaterialTC.pdf>.
- f. All Work shall be performed in a manner consistent with Buyer's Environment, Safety and Health Policy available at: [http://www-group.slac.stanford.edu/esh/about\\_esh/eshpolicy.htm](http://www-group.slac.stanford.edu/esh/about_esh/eshpolicy.htm).

#### **17. INJURY AND ILLNESS PREVENTION PROGRAM IMPLEMENTATION**

- a. Subcontractor is responsible for safe working practices and shall ensure the safety of their personnel, Sub-Subcontractor personnel, Buyer personnel, other personnel and visitors, Buyer and Government property, and private property in the performance of the Subcontract. Subcontractor and its Sub-Subcontractors shall comply with all applicable safety and health laws, standards, and regulations.
- b. Subcontractor shall implement and require its personnel and Sub-Subcontractors to implement [SLAC's Injury and Illness Prevention Program](#) (IIPP), or their own equivalent as defined in Article 19(B)(1). Subcontractor shall implement, and require its personnel and Sub-Subcontractors to implement SLAC ES&H Manual [Chapters 2](#) and [42](#). Subcontractor shall implement, and require its personnel and Sub-Subcontractors to implement, [Work Planning and Control](#) (WPC) to ensure that the overall project and each defined work activity conforms to Buyer's WPC program. The WPC process elements shall include the following steps: (a) Define scope; (b) Analyze hazards; (c) Identify and implement controls; (d) Perform the Work within controls; (e) Provide feedback and

improvement. Additionally, the WPC process shall include the proper authorization and release of all Work on a daily basis by the FCM and the Subcontractor. More details can be found in the Division 1 Specifications concerning planning and documentation requirements. Subcontractor shall consult with the Buyer as needed to understand and implement these WPC process elements.

- i. An [Injury and Illness Prevention Program \(IIPP\)](#), in compliance with the [variance to the DOE Worker Safety and Health Program](#) regulation Title 10, Part 851 of the U.S. Code of Federal Regulations ([10 CFR 851](#)), (approved by DOE), which allows the Subcontractor to follow applicable California Department of Labor Codes, which includes Title 8 California Occupational Safety and Health Administration's ([Cal/OSHA](#)) safety and health regulations including an [IIPP](#) in lieu of specified provisions in 10 CFR 851, Subparts B and C, and Appendix A; except however, the IIPP must also address the DOE requirements from 10 CFR 851 identified in the [SLAC Subcontractor IIPP Requirements to Meet DOE Requirements](#) document. All other Subparts and standards of 10 CFR 851 remain applicable.
- c. The Subcontractor shall establish processes to ensure hazards are identified and abated routinely. All workers shall be encouraged to engage in the hazard identification and control process and speak up when they have a concern.
- d. The Subcontractor shall ensure that its employees and Sub-Subcontractor employees understand that they may decline work or stop others from performing Work if it might create an "imminent danger," or when a worker does not believe there is sufficient time to abate a hazard through the standard means in the performance of the task. An "imminent danger" situation is defined as one that could result in serious injury, death, or significant environmental or property damage. A process shall be established for employees to communicate to their supervisor and work together to mitigate imminent dangers.
- e. All personnel and equipment necessary for the IIPP implementation shall be the responsibility of and shall be provided by the Subcontractor to assure public safety and properly guard against personal injury or property damage. Examples include: Flaggers, signs, barricades, fences, lights, fire extinguishers, and similar precautions.
- f. The Subcontractors and Sub-Subcontractors shall fully cooperate in Buyer and DOE incident investigations in accordance with the contractor requirements of DOE Order 225.1B, titled Accident Investigations. Subcontractor and Sub-Subcontractor personnel shall be made available for interviews; equipment shall be made available for inspection, measurement and testing; work planning and training documentation shall be provided to Buyer and DOE upon request.
- g. Failure by Subcontractor or any Sub-Subcontractor to maintain adequate measures to ensure safe working practices and safety as required by applicable laws and Buyer standards may result in Termination for Default.

#### **18. NOISE CONTROL**

- a. The Subcontractor and all Sub-Subcontractors shall make use of latest techniques for abatement of construction noise. All construction equipment shall be contained in sound reducing enclosures when necessary and shall be fitted with mufflers as required so that the noise level within 3 feet of the equipment does not exceed levels recommended by EPA for construction sites in occupied areas. The Subcontractor shall use pneumatic or electric tools designed for quiet operation.
- b. Portable music or sound players/devices are prohibited in any work area.

#### **19. SANITARY CONDITIONS**

- a. Supply of drinking water shall be adequate and clean. The source shall be approved by the FCM, Field Safety Representative, or other designated Buyer personnel.
- b. Unless otherwise specified in Division 1, toilet facilities are not available; the Subcontractor shall furnish and maintain one (1) temporary chemical toilet for every thirty (30) persons or less employed on the site, at locations approved by the FCM, Field Safety Representative, or other designated Buyer personnel.
- c. Except to the extent provided by law, pets are not permitted on-site.

#### **20. ENVIRONMENTAL, SAFETY, AND HEALTH COMPLIANCE, OVERSIGHT, AND ENFORCEMENT**

- a. All Buyer employees, agents, and subcontractors, and DOE employees and agents, have the authority and responsibility to identify and stop any activity creating an imminent danger as defined in Article 19. If directed to stop an activity creating an imminent danger, the Subcontractor shall comply, and immediately contact the FCM for further direction.
- b. The Subcontractor is required to effectively address environmental, safety, and health compliance concerns on a continual basis. The Subcontractor shall immediately correct environmental, safety, and health non-compliances and hazards upon the request of the FCM, PM, or Subcontract Administrator. Further, the FCM, PM, or Subcontract Administrator may, at their discretion, issue a written notice of violation if the Work is found to be non-compliant with the applicable environmental, safety, and health laws and Buyer standards. DOE staff are also authorized to inspect construction projects, communicate deficiencies to Buyer management, and request work be stopped due to imminent danger or regulatory violations.
- c. If a notice of violation is not adequately addressed in the time specified in the notice, or if at any time the Subcontractor or its Sub-Subcontractor's activities present an imminent danger or violate applicable environmental, safety and health laws and standards, the Subcontract Administrator, FCM, or PM may issue a written stop work order until the dangerous or non-compliant activities are remedied at the Subcontractor's expense. The Subcontractor shall be required to recover the schedule at its expense, and may be required to reimburse the Buyer for extraordinary monitoring as described in this Subcontract. The Subcontractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage resulting from its non-compliance with environmental, safety, or health related requirements.



## **21. RETURN OF BUYER BADGES, KEYS, AND DOSIMETERS**

Loss of Buyer badges, keys, and dosimeters present significant security risks and replacement costs for the Buyer. Subcontractor must track ID badges, keys, and dosimeters received by its employees and Sub-Subcontractors, and notify the Buyer Field Construction Manager, Project Manager and Security of any missing badges, keys, or dosimeters prior to closeout. Further, in addition to any other remedies available under this Subcontract, the Buyer may charge, at its discretion, a penalty of \$50 per ID badge or key, or \$500 per dosimeter, not returned to the Buyer Security Office within five (5) days of the completion of the Subcontractor and Sub-Subcontractors' performance. Such penalties shall be deducted from the final payment.

## **22. HISTORICAL AND SCIENTIFIC SPECIMENS**

All articles of historical or scientific value, including but not limited to fossils and archaeological artifacts which may be uncovered by the Subcontractor during the progress of the Work, shall become the property of the Buyer. The article and area shall be secured and work in the immediate area shall be stopped, as appropriate, and the finding shall be reported immediately to the Field Construction Manager. The Buyer will determine the method of removal, where necessary, and the final disposition thereof.

## **23. INSPECTION AND ACCEPTANCE**

- a. Except as otherwise provided in this Subcontract, inspection and test by the Buyer of material and workmanship required by the Subcontract shall be made at reasonable times and at the site of the Work, unless the Buyer determines that such inspection or test of material which is to be incorporated in the Work shall be made at the place of production, manufacture, or shipment of such material. To the extent specified by the Buyer at the time of determining to make off-site inspection or test, such inspection or test shall be conclusive as to whether the material involved conforms to the Subcontract requirements. Such off-site inspection or test shall not relieve the Subcontractor of responsibility for damages to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Buyer after acceptance of the completed Work under the terms of Paragraph F.
- b. The Subcontractor shall, without charge, promptly replace any material or correct any workmanship found by the Buyer not to conform to the Subcontract requirements, unless the Buyer consents to accept such materials or workmanship with an appropriate adjustment in Subcontract price. The Subcontractor shall promptly segregate and remove rejected material from Buyer or Buyer premises at its own expense.
- c. If the Subcontractor does not promptly replace rejected material or correct rejected workmanship, the Buyer (1) may, by separate subcontract with a third-party or otherwise, replace such material or correct such workmanship and dispose of such rejected material, and charge the cost thereof to the Subcontractor, or (2) may terminate the Subcontractor's right to proceed in accordance with Article 36 titled "Termination for Default- Damages for Delay-Time Extensions."
- d. The Subcontractor shall furnish promptly, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspection or test as may be required by the Buyer. All inspection or test by the Buyer shall be performed in such manner as not to unduly delay the Work. Special, full-size, and performance tests shall be performed as described in Contract Documents. The Subcontractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time agreed for the inspection.
- e. Should it be considered necessary or advisable by the Buyer at any time before acceptance of the entire Work to make an examination of Work already completed by removing or tearing out same, the Subcontractor shall, on request, promptly furnish all necessary facilities, labor, and material. If such Work is found to be defective or non-conforming in any material respect, due to the fault of the Subcontractor or its Sub-Subcontractors, it shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such Work is found to meet the requirements of the Subcontract, an equitable adjustment shall be made in the Subcontract price to compensate the Subcontractor for the additional services involved in such examination and reconstruction; and, if completion of the Work has been delayed thereby, it shall, in addition, be granted a suitable extension of time.
- f. Unless otherwise provided in this Subcontract, acceptance by the Buyer shall be made as promptly as practicable after Final Completion and inspection of all Work required by this Subcontract. Provided, however, that no completed Work shall be deemed to meet the requirements of the Contract Documents, and Final Completion shall not be achieved, unless and until all Work has been inspected and accepted by the Subcontract Administrator. Acceptance shall be final and conclusive except as regards latent defects, errors, omissions, fraud, or gross negligence or under any warranty or guarantee, or as otherwise allowed under law or equity.
- g. The PM or FCM may agree to accept work as completed for the purposes of making progress or milestone payments only, if such payments are contemplated under the Subcontract. Final invoice approval authority rests with the Subcontract Administrator. Acceptance for the purposes of making progress or milestone payments shall not be deemed final acceptance such that the risk of loss or assumption of risk transfers to the Buyer under Article 27 titled "Assumption Of Risk Until Final Acceptance."

## **24. MATERIALS ACCESS**

- a. Access to the work site for delivery of materials and equipment shall be directed by the Buyer, and shall be either through the SLAC Main Gate at 2575 Sand Hill Road, Menlo Park, CA, or through the SLAC Alpine Gate located off of Alpine Road in Menlo Park, CA.
- b. No material deliveries will be accepted by the Buyer on behalf of Subcontractors. All deliveries shall be properly labeled or identified as follows:  
  
(Subcontractor)  
(Jobsite Location)  
2575 Sand Hill Road  
Menlo Park, CA 94025

## **25. PREPARATIONS, STORAGE, AND ANCILLARY OPERATIONS**

- a. Except as otherwise indicated in the Technical Specifications, the Subcontractor shall deactivate, remove, relocate, store, protect, reinstall, reactivate, and return to original condition all furnishings, equipment, other property, and landscaping, and otherwise prepare for the Work, including but not limited to utility shutdowns and disconnections, systems draining and purging, rigging, removal and storage of all furnishings, equipment, other property and landscaping, utility reconnection and startup, systems charging and startup, and replacement and refurbishment of property to original condition.
- b. Warehouse, shop, tool storage, office facilities and stockpile areas may be provided by the Subcontractor at its own expense. The Subcontractor may, in locations on the site to be designated by the Buyer, erect structures, install utilities, and establish storage areas as may be necessary to perform the Work under the Subcontract. The Subcontractor is responsible for the safekeeping of all its materials, tools, and equipment. All of the above structures and facilities shall remain the property of the Subcontractor, and, unless otherwise authorized by the Buyer, shall be removed from the site of the Work at the Subcontractor's expense upon completion of the Work or when directed by the Buyer. After such removal, the sites thereof shall be cleaned up and restored to the satisfaction of the Buyer and in compliance with applicable law.
- c. Only materials, appliances, and plant to be used for the performance of the Work may be stored in stockpile areas or in warehouses and shop facilities (whether erected by the Subcontractor or not) located on Buyer-controlled land. If the Subcontractor abandons the performance of the Work or if the Subcontractor's right to proceed is terminated pursuant to Article 36 titled "Termination for Default-Damages for Delay-Time Extensions", the Subcontractor shall hold and save the Buyer, the Government, and their officers and agents free and harmless from any liability of any nature or kind arising from the Buyer's entry into such stockpile areas, warehouses, or shop facilities and from the Buyer's taking possession of and utilizing such materials, appliances, and plant in completing the Work.
- d. No unauthorized or unwarranted entry upon or passage through, or storage or disposal of materials shall be made upon Buyer premises. The Subcontractor shall be liable for any and all damage caused by it to such Buyer premises, including all removal or restoration costs.
- e. The Subcontractor shall use only established roadways or it may construct and use such temporary roadways only as may be authorized by the Buyer. Where materials are transported in the prosecution of the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicles or prescribed by any federal, state, or local law regulations. When it is necessary to cross curbing or sidewalks, operate heavily loaded vehicles over developed areas, or operate track-type vehicles on surfaced streets, sidewalks or developed areas, protection against damage shall be provided by the Subcontractor and any damaged roads, curbing, sidewalks or developed areas shall be repaired by, or at the expense of, the Subcontractor.

## **26. INDEMNIFICATION AND INSURANCE**

- a. To the fullest extent permitted by California law, the Subcontractor and its Sub-Subcontractors of any tier (jointly and severally, "Indemnitor") shall indemnify, defend, and hold harmless the Board of Trustees of the Leland University Junior University, the Government, the Buyer, and their respective trustees, officers, directors, faculty, employees, representatives, students, volunteers, agents, and subcontractors of any kind or character (jointly and severally, "Indemnitee") from, for, and against all claims, demands, penalties, damages, losses and expenses, including but not limited to attorneys' and experts' fees, costs or penalties of any kind, actual or alleged, including, but not limited to, personal injury, death or property damage (including but not limited to the Work itself), to the extent caused or contributed to by: (i) the negligent or wrongful acts or omissions of Indemnitor, its employees, agents, or subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, (ii) the failure of such person or entities to perform in accordance with the Contract Documents regardless of whether or not such claim, demand, penalty, damage, loss or expense is caused in part by a party indemnified hereunder. This agreement and obligation of Indemnitor shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein. This indemnity obligation shall extend to any failure or alleged failure by Subcontractor or Sub-Subcontractors to comply with any provision of law, any failure or alleged failure to timely and properly fulfill all of its obligations under the Contract Documents in strict accordance with their terms, and without limitation, any stop payment notice actions or liens, including liens by the California Department of Labor Standards Enforcement.
- b. In claims against any person or entity indemnified under this Article 26 by an employee of Indemnitor, or anyone for whose acts they may be liable, the indemnification obligation under this Article 26 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Indemnitor under workers' compensation acts, disability benefit acts or other employee benefit acts.
- c. Provided, however, that nothing contained in this Article 26 purports or should be understood to provide for indemnity of an Indemnitee for its sole negligence, active negligence, or willful conduct. To the extent applicable law would otherwise void or limit any indemnity or insurance provision under this Subcontract, then such provision is hereby deemed modified to be enforceable to the fullest extent allowed under such law. This Article 26 and each of its subparts shall survive Final Completion, acceptance, termination, or expiration of this Subcontract.
- d. The Buyer will promptly notify Subcontractor of any claim and will cooperate with Subcontractor in the defense of the claim. Indemnitor will, at its own expense, provide attorneys reasonably acceptable to Buyer to defend against any claim with respect to which Indemnitor has agreed to indemnify Buyer under this Article 26. Subcontractor may enter into settlement on behalf of Buyer without admission of fault. Subcontractor's indemnity will be primary and will not be deemed excess coverage to any insurance or self-insurance Buyer may have covering a claim. Subcontractor's indemnity will not be limited by the amount of Subcontractor's insurance.
- e. Subcontractor shall secure and maintain in effect at all times during the performance of the Work under this Subcontract the coverages of insurance, set forth below, which shall be maintained with companies, underwriters or underwriting firms under forms of policies

satisfactory to the Buyer. The Subcontractor shall furnish to the Buyer concurrently with the execution of this Subcontract and prior to commencing any performance thereof, one (1) electronic copy of a Certificate of Insurance substantiating the said coverages and endorsements described below. The types and levels of required insurance are as follows:

i. Automobile Liability as follows:

Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired vehicles with a combined single limit not less than one million dollars (\$1,000,000.00) per occurrence.

ii. Comprehensive General Liability:

a. Subcontracts of less than \$100,000: insurance limits not less than \$2,000,000 per occurrence.

b. Subcontracts of \$100,000 and over but less than \$1,000,000: insurance limits not less than \$3,000,000 per occurrence.

c. Subcontracts of \$1,000,000 and over: insurance limits not less than \$5,000,000 per occurrence.

d. Subcontracts of \$25,000 and over requiring design by Subcontractor: Professional Errors and Omissions Insurance in the amount not less than \$1,000,000 per claim.

e. Subcontracts of \$50,000 and over: Subcontractor shall purchase and maintain at its cost Builder's All Risk Insurance covering physical damage to the Work being performed under this Subcontract in a form acceptable to the Buyer and to the full value of the Work at the time of loss or damage. Such insurance shall be endorsed to provide that the Buyer and the Subcontractor's Sub-Subcontractors of any tier are additional insureds. Subcontractor shall have the Builder's All Risk Insurer waive all rights of subrogation against the Buyer and DOE. The maintenance of Builder's All Risk Insurance shall not in any way relieve the Subcontractor of responsibility for the Work as set forth in Article 29 titled "Assumption of Risk Until Final Acceptance." A Certificate of Insurance substantiating the said coverage and endorsement shall be provided to the Buyer before any Work under this Subcontract begins.

iii. Worker's Compensation Insurance: To the extent required under the Labor Code of California and Employer's Liability with limits of not less than \$1,000,000 per person; \$1,000,000 per accident.

f. Subcontractor shall provide the following endorsements to its Comprehensive General Liability policy and/or ensure that the Comprehensive General Liability insurance policy is amended, if needed, to include the following:

i. An endorsement naming the Buyer, its trustees, officers, employees, faculty, students, volunteers, and agents and DOE as additional insureds under said Comprehensive General Liability policies with respect to liability arising out of or in any way connected with the performance of the Subcontract and stating that said policies are primary as to any loss to which the insurance coverage provided thereby is applicable without right of contribution from any insurance otherwise maintained by the Buyer or DOE.

ii. A cross liability or severability of interest clause.

iii. A clause waiving subrogation.

iv. Inclusion of contractual liability insurance and a statement nullifying any clause in such insurance policies excluding liability assumed under contract.

g. A written notice shall be given to the Subcontract Administrator at least thirty (30) days prior to cancellation or material change in the form of any policy provided hereunder.

h. The Subcontractor, by its signature to this Subcontract, warrants that all of the insurance required by this Agreement is currently in effect and will be maintained throughout the period of this Subcontract, except that the minimum coverage specified above must not be encumbered by other claims during the period of performance by more than ten percent (10%) of the coverage specified.

i. Before permitting any Sub-Subcontractors other than vendors of standard commercial materials and supplies to perform any Work under this Subcontract, the Subcontractor shall require that such Sub-Subcontractor furnish the Subcontractor satisfactory evidence that it has taken out and maintains appropriate insurance similar to the above.

j. Notwithstanding any other paragraph in this Article 26, the Subcontractor agrees that Subcontractor, its Sub-Subcontractors, employees, laborers, suppliers or consultants of any tier, and anyone under their control, shall not be entitled to any change in contract time or additional compensation, nor any damages for delay, for actual or alleged impacts related to (i) COVID-19 (SARS-CoV-2); (ii) material escalation costs; or (iii) supply chain constraints, which are known, expected, or reasonably foreseeable as of the date of this Subcontract.

## **27. ASSUMPTION OF RISK UNTIL FINAL COMPLETION & ACCEPTANCE**

The Subcontractor shall and does hereby assume all risks and responsibility for damage to its Work and materials from fire, earthquake, storm and/or other causes prior to Final Completion, and acceptance of the Work pursuant to Article 25 titled "Inspection and Acceptance," and the Subcontractor shall repair and/or replace any Work or materials damaged or destroyed at its sole cost and expense.

## **28. BONDS AND OTHER SECURITY**

a. MILLER ACT BONDS. On subcontract awards, and promptly after all modifications thereto, of \$150,000.00 or more, the Subcontractor must obtain and maintain performance and payment bonds as required by the Miller Act, 40 USC sections 3131-3133. The Subcontract Administrator must also require bonds on contract awards of greater than \$25,000 and less than \$150,000.00 using two or more of the payment protections at 48 C.F.R. 28.102-1(b), which the Subcontract Administrator may select at his/her

discretion. Failure to furnish Miller Act Bonds prior to undertaking performance of this Subcontract will be grounds for Termination for Default, and the Subcontractor will be liable for any excess re-procurement costs incurred by the Buyer. The required forms are SF 25 Performance Bond and SF 25-A Payment Bond.

- b. The Subcontract Administrator may, in his/her discretion, require such other bonds and security as may be deemed appropriate. Should such additional bonding or security be required after the time of subcontractor bidding, an equitable adjustment to the Contract sum shall be executed to compensate the Subcontractor for any additional costs of this additional security.
- c. If any surety upon any bond furnished in connection with this Subcontract becomes unacceptable to the Buyer, the Subcontractor shall promptly furnish such additional security as may be required by the Buyer from time to time to protect the interest of the Buyer and of persons supplying labor or materials in the prosecution of the Work contemplated by this Subcontract.
- d. Irrevocable Letter of Credit (ILC). Pursuant to FAR 52.228-14, any person or subcontractor required to furnish a bond has the option to furnish a bond secured by an ILC in an amount equal to the penal sum required to be secured (see FAR 28.204). A separate ILC is required for each bond, and the expiration of each bond must conform to the period for which financial security is required as specified in FAR 52.228-14.

## 29. **WARRANTY**

- a. All workmanship, equipment and materials furnished by the Subcontractor hereunder shall be guaranteed for a period of at least one (1) year from the date of final acceptance thereof against all defects that might render the Work unsatisfactory to the intended purposes. Defective materials and workmanship will be replaced at the earliest practicable date by the Subcontractor without additional cost to the Buyer or the Government. The guarantee is as follows:

“We hereby guarantee that the work which we have furnished to the Board of Trustees of the Leland Stanford Junior University at the SLAC National Accelerator Laboratory site has been done in accordance with the drawings and specifications, and that the equipment, as installed, will fulfill the requirements of the guarantee included in the Subcontract. We further warrant that all items and materials delivered are genuine, new, and unused, and do not contain any suspect or counterfeit materials that have been provided under false pretenses. We agree to repair or replace, including removal and reinstallation as necessary any and all of our equipment, materials or work, together with any other adjacent work which may be displaced by so doing, that may prove to be defective in its workmanship or material, or contain suspect or counterfeit parts, within a period of one (1) year from the date of acceptance of the above named installation by the authorized representative of the said Board of Trustees of the Leland Stanford Junior University, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of our failure to comply with the above-mentioned conditions within thirty (30) days after being notified in writing by the authorized representative of the Leland Stanford Junior University or the United States Department of Energy, we do hereby authorize the Leland Stanford Junior University or the United States Department of Energy, to proceed to have the said defects repaired or replaced and made good at our expense, and we will honor and pay the costs and charges therefore upon demand.”

## 30. **CHANGES**

- a. The Buyer may, through its designated Subcontract Administrator, at any time, without notice to the sureties, by a clear and unequivocal written order that is designated or indicated to be a Change Order, make any change in the Work within the general scope of the Subcontract, including but not limited to changes:
  - i. In the specifications (including drawings and designs);
  - ii. In the method or manner of performance of the Work;
  - iii. In the GFP or Buyer-furnished facilities, equipment, materials, services or site; or
  - iv. Directing acceleration, extension, or suspension of the performance of the Work, or any portion thereof.
- b. No additional work shall begin, and no additional costs or time shall be incurred, without Buyer's prior written approval and agreement on the (1) scope of the change or additional work; (2) amount of adjustment, if any, for the costs of such work; and (3) extent of the adjustment, if any, in the time or schedule for such work.
- c. An executed Change Order, regardless of whether it increases or decreases the costs or time under this Subcontract, shall be conclusively presumed to constitute full and complete compensation to the Subcontractor and its Sub-Subcontractors for all costs, expenses and damages incurred or sustained by the Subcontractor and its Sub-Subcontractors due to such change or increase or decrease in the costs or time under this Subcontract. All changes in the Work shall be performed under applicable conditions of the Contract Documents.
- d. If any other written order (which terms as used in this Paragraph B shall include direction, instruction, interpretation, or determination) from the Subcontract Administrator causes any such change, then it may be treated as a Change Order under this Article 30, but only upon mutual execution by the Subcontractor and Buyer, and only provided that the Subcontractor gives the Subcontract Administrator written notice within 20 working days. Such request shall state the date, circumstances, and source of the order and that the Subcontractor regards the order as a Change Order.
- e. No verbal order, oral statement, or conduct of any representative of the Buyer shall be treated as a change under this Article or entitle the Subcontractor to an equitable adjustment hereunder.
- f. The Buyer, through its Subcontract Administrator, FCM, or PM, may issue Construction Change Directives. A Construction Change Directive is a written order signed by the Buyer, directing a change in the Work prior to agreement on adjustment, if any, for extra time or additional compensation. The Buyer may, by Construction Change Directive and without invalidating this Subcontract, order

changes in the Work within the general scope of the Subcontract consisting of additions, deletions, or other revisions. A Construction Change Directive may be used in the absence of total agreement on the terms of a Change Order. The Buyer's use of a Construction Change Directive does not, however, constitute the Buyer's agreement that such directive constitutes a change in the Work, or that Subcontractor shall be entitled to extra time or additional compensation (if any) thereunder.

Notwithstanding the preceding Paragraph, the Subcontract Administrator, FCM or PM shall only have the authority to issue a Field Change Order if, in the judgment of the Subcontract Administrator, FCM or PM, there is insufficient time to negotiate a change required in the drawings or specifications, and a significant delay (over 24 hours), safety hazard, or demobilization would occur if the Field Change Order is not immediately issued. In such case, the Subcontract Administrator, FCM or PM and the Subcontractor shall agree, in writing, on a worst case "Not-to-Exceed" amount for each proposed change under the Field Change Order. The Subcontract Administrator, FCM or PM shall not issue a Field Change Order exceeding their authority as established by Contract Documents. The Field Change Order shall also set forth the details and direct the commencement of the work necessary to address the urgent need. The Subcontractor shall be solely responsible for tracking costs, including Sub-Subcontractor costs, associated with any Field Change Orders or Construction Change Directives, and the Subcontractor shall promptly notify Buyer when it reaches 80% of the "Not-to-Exceed" amount, if applicable.

- g. If the Subcontractor adds a reservation of rights to any Change Order, Construction Change Directive, Change Order proposal, Application for Payment or any other document that might alter or modify the terms of the Contract Documents, and such reservation of rights has not been initiated by the Buyer, then all amounts and all work therein shall be considered disputed and not due or payable unless and until costs are re-negotiated or the reservation is withdrawn or changed in a manner satisfactory to and, in all cases, initiated by the Buyer. If the Buyer makes payment for a disputed Change Order or an Application for Payment that contains a reservation of rights that has not been initiated by the Buyer, and if the Subcontractor or its Sub-Subcontractor negotiates such payment despite a claimed reservation of rights, then such reservation of rights shall be deemed waived, withdrawn, and of no effect.
- h. If any change under this Article causes an increase or decrease in the Subcontractor's cost of, or the time required for, the performance of any part of the Work under this Subcontract, whether or not changed by any order, an equitable adjustment shall be made and the Subcontract modified in writing accordingly. PROVIDED, however, that except for claims based on defective specifications, no claim for any change under Paragraph B above shall be allowed for any costs incurred more than 20 days before the Subcontractor gives written notice as therein required: AND PROVIDED FURTHER, that in the case of defective specification for which the Buyer is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Subcontractor in attempting to comply with such defective specifications.
- i. If the Subcontractor intends to assert a claim for an equitable adjustment under this Article, then the Subcontractor must submit a written statement setting forth the general nature and monetary extent of such claim, along with a written narrative explaining the factual basis for such claim, within 30 days after receipt of a written Change Order or Construction Change Directive under this Article 30. Failure by the Subcontractor to strictly adhere to this Paragraph shall constitute a complete and absolute waiver of any claim by the Subcontractor or its Sub-Subcontractor(s) for extra time or additional compensation related to such Change Order or Constructive Change Directive.
- j. No claim by the Subcontractor for an equitable adjustment hereunder shall be allowed if asserted after Final Payment under this Subcontract.
- k. Nothing contained in this Article 30 shall excuse the Subcontractor or its Sub-Subcontractors from executing the Work and proceeding with the requirements of any direction hereunder and in accordance with the Contract Documents.
- l. Unauthorized Changes
  - i. Except as otherwise provided in Article 30, all changes must be approved and directed in advance by written field order or subcontract modification, signed by the Buyer or Subcontract Administrator. The Subcontractor is not authorized or obligated to incur additional costs without such advance written direction, and does so only at the Subcontractor's sole risk.
  - ii. If the Buyer should determine that ratification of an otherwise unauthorized change is appropriate, the Subcontractor's recovery of costs in any event will be limited to the lesser of the value of the work to the Buyer or the actual direct costs reasonably incurred, and will exclude indirect costs such as overhead and profit.
  - iii. In the event that the Not-to-Exceed amount for a change authorized by an unpriced Field Change Order is exceeded, the amount over and above the Not-to-Exceed amount shall be at the Subcontractor's own expense.

### **31. JUSTIFICATION FOR PRICING CHANGES OR PROPOSED MODIFICATIONS**

- a. The Subcontractor shall furnish an itemized price breakdown in conjunction with any alleged change, Change, Field Change Order, or any proposed modification of the Subcontract price or performance period. The purpose of the breakdown is to permit independent verification and analysis of all elements of cost. Upon request, the Subcontractor shall specifically identify cost data sources, such as standards handbooks, and provide copies of estimate sheets, time sheets, and material/equipment quotes/invoices.
  - i. A formal presentation format is not required; legible copies of estimate sheets, from which totals and subtotals cited in the proposal for modification were derived, may be acceptable as a basis for evaluation of the proposal.
  - ii. AS A MINIMUM, every lump sum amount included in the proposal MUST be clearly cross-referenced to an ATTACHED BREAKOUT of that lump sum into material quantities, unit prices, labor categories, hours and rates, rate calculations, taxes, freight, and all other severable elements of cost, as detailed below. The Subcontractor shall provide all estimates, quotes and other calculations used to prepare the proposal by the Subcontractor and all Sub-Subcontractors.



- iii. The Subcontractor shall allow Sub-Subcontractors to provide details directly to the Buyer in order to avoid conflicts related to proprietary information. Proposal information may include a statement that the information is considered proprietary and is to be used only for the purpose of evaluating the proposal. Any amount claimed for Sub-Subcontracts shall be supported by a similar price breakdown.
- b. Submission of a cost proposal constitutes representation of the following:
  - i. The proposed direct costs are based on a reasonable estimate or actual amounts of direct costs, and cover all work involved to accomplish the proposed change, whether deleted, added, or changed; and
  - ii. The proposed Overhead Rate is the lesser of:
    - a. The maximum rate specified in "INDIRECT COSTS" (D.1, below), or
    - b. The actual Overhead rate incurred by the Subcontractor in its last fiscal year, where:
      - (1) Overhead Base costs and Overhead Pool costs are strictly separated in the Subcontractors accounting system;
      - (2) The proposed Overhead Rate is applied to Overhead Base costs only; and
      - (3) The proposed Overhead Rate Pool excludes any and all costs proposed as direct costs, costs not allocable to this project, and costs not allowable under the Code of Federal Regulations.
- c. FOR EACH TASK or other severable element of work, the proposal shall show all calculations in the level of detail actually used by each tier to develop the proposal as follows:
  - i. Labor
    - a. Identify by title each labor category proposed or used.
    - b. Show the hours proposed or used for each labor category for each task.
    - c. Show the actual direct labor rate (base labor, excluding fringes) paid or to be paid by the Subcontractor to the employee for each labor category.
    - d. Show the actual direct labor burden for EACH hourly rate, including but not limited to the following elements:
      - (1) Workers' Compensation Insurance
      - (2) Commercial General Liability Insurance
      - (3) State Unemployment
      - (4) Federal Unemployment
      - (5) Federal Social Security
      - (6) State Disability Insurance
      - (7) Employer Training Tax
      - (8) Fringe Benefits (Vacation, Holidays, and Health & Welfare).
      - (9) Any other elements and calculations used to develop the proposed labor rates and cost.
  - ii. Materials - List all materials and show:
    - a. Quantities and unit prices.
    - b. Sales tax (paid to the supplier or to an independent carrier) as a separate item.
    - c. Any freight or delivery charge (paid to the supplier or to an independent carrier) as a separate item.
    - d. Any other calculations used to develop the material cost proposal.
  - iii. Equipment - List all equipment and show:
    - a. Quantities, time periods, and rate per time period.
    - b. If owned equipment, details of rate calculation, or documentation of comparable rental rates.
    - c. Rental Sales tax (paid to the supplier) as a separate item.
    - d. Any freight or delivery charge (paid to the supplier or to an independent carrier) as a separate item.
    - e. Any other calculations used to develop the equipment cost proposal.
  - iv. Other Direct Costs in complete detail (see limitations on Overhead, below, when other costs are charged direct).
- d. INDIRECT COSTS

- i. Show Overhead as a separate item. For changes under \$25,000, and for changes over \$25,000 absent acceptable evidence (audits by independent agencies or submission of actual cost experience with list of accounts) that other rates are appropriate, the following upper limits and definitions shall apply to Overhead applied to direct labor and direct labor burden:
  - a. Not to exceed 15% for tier providing direct labor, providing that the following costs are included in Overhead:
    - (1) Home Office Overhead (G&A)
    - (2) Project Management
    - (3) Field Overhead
    - (4) Supervision
    - (5) Proposal preparation
    - (6) Material handling
    - (7) Consumable tools and materials
    - (8) Incidental costs (trucks, tools, etc.)
    - (9) All other costs except for direct employee wages and burden for non-supervisory non- management employees.
  - b. Not to exceed 10% for tier providing direct labor, when Supervision and/or Project Management are charged as direct costs.
  - c. Not to exceed 5% for tier providing direct labor, when Supervision and/or Project Management and any or all of Items (7), (8), or (9) in "a" above are charged as direct cost.
  - d. Not to exceed 5% for materials or subcontracted work, except that 10% will be allowed on materials maintained in stock. Additionally, no assessment of overhead or profit will be allowed for bond and or insurance increases. Both of these items are considered as overhead costs.
- ii. Show Profit as a separate item.
  - a. For the tier performing the work, profit shall not exceed 5% for completed work, and shall not exceed 10% for uncompleted work, depending on the level of completion and degree of cost risk.
  - b. For higher tiers profit shall not exceed 5% on subcontracted work.
- e. TIME EXTENSIONS

If the proposal for modification includes a request for time extension, a rationale therefore shall be furnished and shall specify the projected critical path impact.

### **32. USE OR POSSESSION PRIOR TO COMPLETION**

The Buyer shall have the right to take possession of or use any completed or partially completed part of the Work. Such possession or use shall not be deemed an acceptance of any Work not completed in accordance with the Subcontract until the Project can be used for its Beneficial Use. If such prior possession or use by the Buyer delays the progress of the Work or causes additional expense to the Subcontractor, an equitable adjustment in the subcontract price and/or the time of completion will be made and the Subcontract shall be modified in writing accordingly.

### **33. TERMINATION FOR THE CONVENIENCE OF THE BUYER**

The Buyer may, by written notice, at any time and for any or no reason, terminate this Subcontract in whole or in part when the Buyer determines (at its sole discretion) that such termination would be in the best interest of the Buyer, or upon termination of the Contract between DOE and the Buyer. Upon such written notice of termination, the Subcontractor shall immediately cease all operations as directed by the Buyer in such notice, and the Subcontractor shall take all actions as directed and which may otherwise be necessary to protect and preserve the Project and the Work, and it shall terminate or assign (at the Buyer's sole option) all existing subcontracts, purchase orders, work orders, or agreements for the Project. If this Subcontract is terminated for convenience, the Subcontractor shall be compensated in accordance with Part 49 of the Federal Acquisition Regulations (FAR) and FAR 52.249-2 in effect on this Subcontract's date, the applicable provisions of which are hereby incorporated by reference and given effect as if set forth in full herein. Subject to the foregoing, the Subcontractor hereby waives and relinquishes all other claims for payment and damages, including but not limited to anticipated or lost profits, arising from or associated with such termination.

### **34. TERMINATION FOR DEFAULT DAMAGES FOR DELAY TIME EXTENSIONS**

- a. If the Subcontractor refuses or fails to prosecute the Work, or any separate part thereof, with such diligence as will ensure its completion within the time specified in this Subcontract, or any extension thereof, or fails to complete said Work within such time or in accordance with the material terms of the Subcontract, the Buyer may, by written notice to the Subcontractor, terminate its right to proceed with the Work or any part of the Work. In such event the Buyer may take over the Work and prosecute the same to completion, by assignment of Subcontractor's lower-tier agreements, by third-party subcontract, or otherwise, at Buyer's sole discretion, and Buyer may take possession of, and utilize in completing the Work, such materials, equipment, appliances, or other portions of the site or the Work related thereto. Whether or not the Subcontractor's right to proceed with the Work is terminated, the Subcontractor and its sureties shall be liable for any damage to the Buyer or the Government resulting from Subcontractor's refusal or failure to complete Work within the specified time or in accordance with the terms of the Contract Documents.

- b. Any breach of the applicable rules or regulations under this Subcontract, including the environment-safety-health articles or socio-economic provisions, whether or not expressly set forth herein, including but not limited to the “Davis-Bacon Act,” “Contract Work Hours and Safety Standards Act - Overtime Compensation,” “Apprentices and Trainees,” “Payrolls and Basic Records,” “Compliance with Copeland Act Requirements,” “Compliance with Davis-Bacon and Related Act Requirements,” and “Certification of Eligibility,” as such names may be amended from time to time, shall be presumptive grounds for termination of this Subcontract, and for potential debarment as a Subcontractor or a Sub-Subcontractor as provided in 29 CFR 5.6.
- c. The Subcontractor’s right to proceed shall not be terminated under this Article if:
  - i. The delay in the completion of the Work or failure to comply with other material Subcontract requirements arises from unavoidable and unforeseeable causes, which are both beyond the control of the Subcontractor and without the fault or negligence of the Subcontractor or its Sub-Subcontractors, including acts of God, acts of the public enemy, acts solely attributable to the Government in either its sovereign or contractual capacity, acts solely attributable to the Buyer, acts solely attributable to another contractor in the performance of a contract with the Government or the Buyer, fires, floods, epidemics, quarantine restrictions, strikes, nationwide freight embargoes, or delays of Sub-Subcontractors or suppliers arising from unforeseeable and unavoidable causes beyond their control and without the fault or negligence of either the Subcontractor or such Sub-Subcontractors; and
  - ii. The Subcontractor shall, within 10 days from the beginning of any such delay (unless the Buyer grants a further period of time), notify the Buyer in writing of the causes of delay or inability to comply with material Subcontract requirements and provide a written narrative of the facts giving rise to such delays, the actions which the Subcontractor shall immediately undertake to mitigate such delays, and the expected impact to the time for completion of the Work under this Subcontract. The Buyer shall determine the extent of the delay and extend the time for completing the Work when, in its sole judgment, the facts justify such an extension; and the Buyer’s findings under this Paragraph shall be deemed final and conclusive on the parties.
- d. If, after notice of termination of the Subcontractor’s right to proceed under the provisions of this Article, it is determined for any reason that the Subcontractor was not in default under the provisions of this Article, or that the delay or material breach was excusable under the provisions of this Article, the rights and obligations of the parties shall be the same as if notice of termination had been issued pursuant to the Article of this Subcontract providing for “Termination for Convenience.”
- e. The rights and remedies of the Buyer and the Government provided in this Article are in addition to any other rights and remedies provided by law or otherwise under this Subcontract.

### **35. PAYMENTS TO SUBCONTRACTOR AND WITHHOLDING OF FUNDS**

- a. The Buyer may pay the Subcontract price as hereinafter provided.
- b. The Buyer will make progress payments monthly as the Work proceeds, or at more frequent intervals as determined by the Buyer on estimates approved by the Buyer. If requested by the Buyer, the Subcontractor shall furnish a breakdown of the total subcontract price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Buyer, at its discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Subcontractor at locations other than the site may also be taken into consideration (1) if such consideration is specifically authorized by the Subcontract, and (2) if the Subcontractor furnishes satisfactory evidence that it has acquired title to such material and that it will be utilized on the Work covered by this Subcontract.
- c. In making such progress payments, there shall be retained 10 percent (10%) of the estimated amount until Final Completion and acceptance of the Work. However, if the Buyer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, it may authorize such payment to be made in full without retention of a percentage. Also, whenever the Work is substantially complete for its “Beneficial Use” as defined herein, the Buyer shall retain an amount it considers adequate for protection of the Buyer and, at its discretion, may release to the Subcontractor all or a portion of any excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the Subcontract, on which the price is stated separately in the Subcontract, payment may be made therefore without retention of a percentage.
- d. All material and Work covered by progress payments made shall thereupon become the sole property of the Government, but this provision shall not be construed as relieving the Subcontractor from the sole responsibility for all material and Work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Buyer to require the fulfillment of all the terms of the Subcontract.
- e. Upon Final Completion, the amount due the Subcontractor under this Subcontract shall be paid upon the presentation of a properly executed invoice and after the Subcontractor shall have furnished the Buyer with a release of all claims against the Buyer and the Government, arising by virtue of this Subcontract, other than claims in stated amounts as may specifically be excepted by the Subcontractor from the operation of the release. If the Subcontractor’s claim to amounts payable under the Subcontract has been assigned, a release may also be required of the assignee. If in its judgement it is necessary to protect the interest of the Buyer and the DOE, the Buyer reserves the right and may obtain releases in favor of the Buyer from any Sub-Subcontractor as a condition of payment to the Subcontractor for either or both progress payments and final payment to the Subcontractor.
- f. Prior to Substantial Completion of the Work, either the Buyer or Subcontract Administrator, or both, at their sole option, may withhold payment from the Subcontractor, in whole or in part, to the extent reasonably necessary to protect the Buyer from loss for which the Subcontractor is responsible, including loss resulting from any of the following reasons: (i) defective Work not remedied; (ii) third party claims or reasonable evidence indicating such claims might be asserted; (iii) failure to make payments properly to Sub-Subcontractors of any tier; (iv) reasonable evidence that the Work cannot be completed for the unpaid balance of the Subcontract (including any modifications); (v) potential damage to the Buyer or Government; (vi) reasonable evidence that the Work will not be

completed within the Subcontract schedule (including any agreed time extensions), and that the unpaid balance would not be adequate to cover damages for the anticipated delay; (vii) unsatisfactory prosecution of the Work, including but not limited to failure to carry out the Work in accordance with the Contract Documents; (viii) delay by the Subcontractor or its Sub-Subcontractor(s) of any tier, or their failure to comply with the schedule requirements; (ix) failure to submit affidavits pertaining to wages paid as required by law; (x) failure to comply with any applicable rules or regulations; or (xi) failure to properly submit any documents required by the Subcontract Administrator or under the Contract Documents, or as required by any federal rules or regulations.

### **36. CONFIDENTIALITY AND RELEASE OF INFORMATION**

- a. Except as required by law, no public release of any information, or confirmation or denial of same, with respect to the performance of Work relating to this Subcontract or the subject matter hereof, will be made by Subcontractor or its Sub-Subcontractors without the prior approval of the Buyer. The Subcontractor and its Sub-Subcontractors shall not use or exploit "Stanford," "Stanford University," "SLAC," or any other trademark or logo owned by the Buyer or the Government, nor any attendant goodwill, in whatever shape or form, without the prior written consent of the Subcontract Administrator.
- b. Subcontractor and its Sub-Subcontractors shall not reproduce or disclose any information, knowledge, or data of the Buyer that the Subcontractor or its Sub-Subcontractors receive or have access to in connection with this Subcontract when such information, knowledge, or data is marked (or in the Subcontractor's assessment should be marked) as "confidential," "proprietary," "trade secret," "for official use only," or otherwise so expressly designated by the Buyer, the Government, or third-party contractors.
- c. Subcontractor and its Sub-Subcontractors shall have appropriate agreements or policies to ensure express compliance with the provisions set forth under this Article 36.

### **37. ASSIGNMENT**

- a. The Subcontractor may not assign — whether by agreement, change of control, merger, or otherwise — the performance of this Subcontract, or any part thereof, without the written consent of the Buyer. Any assignment of accounts or other contract rights under this Subcontract shall not be effective until the Buyer receives written notice from the Subcontractor identifying the specific contract rights so assigned; FURTHER, the Buyer reserves the right to demand that the assignee furnish reasonable proof that the assignment has been made before making payments to the assignee.
- b. The Buyer may assign this Subcontract, including any and all rights thereunder, to the Government. The Buyer shall provide the Subcontractor written notice of such assignment, and Subcontractor agrees to recognize the assignment and thereupon look to the Government for all payments due or to become due under this Subcontract.

### **38. DISPUTES**

- a. Informal Resolution
  - i. The Subcontractor shall timely inform the Subcontract Administrator of any claim, controversy, or dispute arising out of or connected with this Subcontract.
  - ii. The parties shall attempt to resolve any dispute, controversy, or claim arising out of related to this Contract in good faith, by direct, informal negotiations. Pending resolution of such dispute, claim, or controversy, the Subcontractor and its Sub-Subcontractors shall proceed diligently with the performance of the Work, in accordance with the Contract Documents.
  - iii. If the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by a third-party mediator selected using and applying the American Arbitration Association's Construction Industry Mediation Procedures in effect at that time. This mediation procedure can be invoked at any time not later than 120 days after the Subcontract Administrator receives written notice of a dispute. Each party shall bear its own expenses and the parties shall share the cost of third-party mediator equally. If requested by both parties in writing, the neutral third party may offer a nonbinding opinion as to a possible settlement. All discussions with the neutral third party mediator shall be confidential and subject to all legal protections related thereto.
- b. Formal Resolution
  - i. If a dispute, controversy, or claim is not resolved under the procedures above, or if under exceptional circumstances both parties agree to waive the mediation requirement above, then such dispute shall be subject to litigation in a court having jurisdiction thereof. Each party shall bear its own costs and expenses related to such litigation, absent a contrary rule or statute, and absent a finding that the non-prevailing party's position was unreasonable or frivolous such that it must reimburse costs and fees of the prevailing party in addition to any award amount.
  - ii. Nothing in this Article shall grant the Subcontractor by implication any statutory rights or remedies not expressly set forth in this Subcontract, or rights or remedies that exceed those rights and remedies that could be afforded by a court with jurisdiction.
- c. Governing Law and Venue
  - i. Any substantive issue of law shall be determined in accordance with the body of applicable Federal law. If there is no applicable Federal law, then the laws of the State of California shall apply without respect to choice of law principles.

### **39. AFFIRMATION AND AGREEMENT**

- a. **THE SUBCONTRACTOR HEREBY STATES, AFFIRMS AND AGREES THAT**, with respect to all Work which is the subject of this Subcontract:

- i. All labor employed thereon or in connection therewith and all payroll taxes and charges (such as Withholding Taxes, Social Security Taxes, and Workmen's Compensation, Disability and Unemployment Taxes and/or Insurance Premiums) shall have been paid in full by the Subcontractor upon completion of the Work; and
  - ii. The Subcontractor hereby certifies that it is in compliance with all applicable federal, state, and local labor laws and regulations.
  - iii. All materials, tools, equipment, supplies and services furnished and used upon or in connection with said Work shall have been paid for in full; and all legally applicable sales, use, excise and similar taxes on or in connection with the same shall have been fully paid as of the date of subcontract completion.
  - iv. The SLAC National Accelerator Laboratory is a Federally Funded Research and Development Center, owned by the U.S. Department of Energy, and operated by the University on behalf of the DOE. The Subcontract concerns construction work for facilities that are owned by or operated on behalf of the Government and are exempt from the application of state lien laws or stop payment provisions.
  - v. The Subcontractor does hereby remise, release, and forever discharge the Buyer, University, and Government and their officers, agents and employees, and all lands, improvements chattels and other real and personal property connected with or a part of said project, from any and all liabilities, obligations, claims, demands, liens and claims of lien whatsoever under or arising out of said Subcontract and/or said Work and which it now has or hereafter might or could have, except those disputes or claims submitted in writing to the Subcontract Administrator and still outstanding as of the date of final payment, as noted on the "Final Release" form.
  - vi. The Subcontractor will, at its sole cost and expense, forever defend and hold harmless the Buyer and the Government from any and all claims, liabilities, obligations and demands and will defend against and obtain the discharge of any and all liens and claims and claims of liens of others arising out of or in connection with said Work, including, without limitation, those claimed or asserted by any employee, supplier, or subcontractor of the undersigned, (or by any employee or supplier of any Sub-Subcontractor of the undersigned) or by any governmental agency or insurance carrier.
  - vii. Contracts for Materials, Supplies, Articles, and Equipment. If this Subcontract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$15,000.00 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S. 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.
- b. In the event that any of the Work performed by the undersigned on said project (including the materials used or incorporated therein and the workmanship thereof) is the subject of any guaranty or warranty by the undersigned, neither the giving of this release and waiver of lien by the undersigned nor its acceptance by the Buyer shall operate in any way to reduce or modify such guaranty or warranty or to release the undersigned there from. The undersigned further agrees that if it hereafter performs any labor or furnishes any materials, tools, equipment, supplies or services pursuant to such guaranty or warranty, it will fully pay for the same, will pay any and all legally applicable taxes and charges in connection therewith and will release, remise, discharge, defend and hold harmless the Buyer and the Government and their officers, agents and employees and the said lands, improvements, chattels and other real and personal property from any and all claims, liabilities, obligations, demands, liens and claims of lien arising in connection therewith all in like manner and to the same extent as is herein provided with respect to labor, materials, etc., heretofore furnished.

#### **40. EXPORT CONTROLS**

Subcontractor shall comply with all applicable export control laws of the United States and any other applicable laws, including, without limitation, the U.S. Export Administration Regulations administered by the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") and the U.S. International Traffic in Arms regulations administered by the U.S. State Department's Directorate of Defense Trade Controls (collectively, "U.S. Export Control Laws"). Further, Subcontractor agrees that it shall not provide, deliver, or display any information, materials, or products subject to U.S. Export Control Laws unless it provides written notice of the same at least five (5) business days prior to the delivery or display to legal counsel for the Buyer. Subcontractor also agrees to mark any such information, materials, or products, when delivered or displayed, as EAR-controlled or as ITAR-controlled, as appropriate.

#### **41. SITE SECURITY AND SENSITIVE FOREIGN NATIONS SITE ACCESS**

- a. All Subcontractor and Sub-Subcontractor employees and agents coming on-site must display a valid driver's license if operating a vehicle, or otherwise provide valid government-issued identification.
- b. All Subcontractors and Sub-Subcontractor employees and agents regularly performing work on-site must comply with Buyer site access control, badging, training, and emergency protocols.
- c. All operations of the Subcontractor, Sub-Subcontractors, and their employees and agents, shall take place during times specified in the Written Specifications or Statement of Work and be confined to areas defined in the Written Specifications or Statement of Work, or as otherwise authorized or approved by the Buyer. Noncompliance may result in revocation of access privileges.
- d. Subcontractor employees, agents, and Sub-Subcontractors shall access Buyer computers and networks only when such access is reasonably necessary in performing the Subcontract, or otherwise as expressly authorized by the Subcontract Administrator. If such access is permitted, Subcontractor employees, agents, and Sub-Subcontractors must comply with Buyer cybersecurity policies and standards governing the use of Buyer computers and networks.



- e. With the exclusion of GFP furnished to the Subcontractor and Subcontractor's property used in the performance of the Subcontract, all other property on-site belongs to the Buyer or the Government and shall not be removed without express written authorization from the Subcontract Administrator.
- f. Unless otherwise specified in Division 1, all Subcontractor and Sub-Subcontract employees and agents coming on-site must park in areas designated by the Subcontract Administrator or the Buyer Security Office.
- g. In accordance with the Department of Energy Acquisition Regulation 952.204-71 "Sensitive Foreign Nations Controls (Mar 2011)" and the current version of the DOE Order governing Unclassified Foreign Visits and Assignments (DOE Order 142.3A), specific approval requirements for certain non-U.S. Persons ("U.S. Persons" = U.S. citizens and Permanent Residents) working at SLAC National Accelerator Laboratory have been established for Subcontractors and must be flowed down to Sub-Subcontractors. In accordance with these controls, non-U.S. Person Subcontractor and Sub-Subcontractor employees performing any effort under this purchase order/subcontract on-site shall be subject to the requirement for the completion and submittal of an online registration form: [http://www-group.slac.stanford.edu/esh/security/badge\\_subcontractor.htm](http://www-group.slac.stanford.edu/esh/security/badge_subcontractor.htm), and may be subject to additional access restrictions pursuant to the DOE Order governing Unclassified Foreign Visits and Assignments.

#### **42. THIRD PARTIES**

Nothing contained in this Subcontract shall create or give to third parties any claim or right of action against the Buyer or DOE.

#### **43. FEDERAL CONTRACT CLAUSES INCORPORATED BY REFERENCE**

The Federal Acquisition Regulation ("FAR") and Department of Energy Acquisition Regulation ("DEAR") clauses listed below, which are located in Chapters 1 and 9, respectively, of Title 48 of the Code of Federal Regulations, are incorporated by this reference as a part of the Subcontract as prescribed below. As used in the clauses, the term "contract" shall mean the Subcontract; the term "Contractor" shall mean the entity ("Subcontractor" or "Seller") who entered into the Subcontract with the Buyer; the term "subcontractor" shall mean the Subcontractor/Seller's subcontractor; and the terms "Government" and "Contracting Officer" shall mean the Buyer, except in FAR clauses 52.227-1, 52.227-3, 52.227-14, and FAR 52.227-19 in which clauses "Government" shall mean the U. S. Government and "Contracting Officer" shall mean the DOE Contracting Officer for Prime Contract DE-AC02-76SF00515 with the Buyer. The Seller shall include the listed clauses in its subcontracts at any tier, to the extent applicable.

FAR 52.203-19	PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017)
FAR 52.204-21	BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (NOV 2021)
FAR 52.204-23	PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (NOV 2021)
FAR 52.204-25	PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2021)
FAR 52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS-OVERTIME COMPENSATION (MAY 2018), if the Subcontract involves mechanics or laborers
FAR 52.222-21	PROHIBITION OF SEGREGATED FACILITIES (APR 2015), if the Subcontract is subject to the Equal Opportunity clause
FAR 52.222-26	EQUAL OPPORTUNITY (SEPT 2016) (NOTE: DOWNLOAD THE EEO POSTER AT: <a href="http://www.dol.gov/ofccp/regs/compliance/posters/pdf/eeopost.pdf">http://www.dol.gov/ofccp/regs/compliance/posters/pdf/eeopost.pdf</a> )
FAR 52.222-50	COMBATING TRAFFICKING IN PERSONS (NOV 2021)
FAR 52.222-55	MINIMUM WAGE FOR CONTRACTOR WORKERS UNDER EXECUTIVE ORDER 14026 (JAN 2022), if the Subcontract is subject to the Service Contract Labor Standards statute (41 U.S.C. chapter 67) or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31), and is to be performed in whole or in part in the United States
FAR 52.222-62	PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706 (JAN 2022), if the Subcontract is subject to the Service Contract Labor Standards statute (41 U.S.C. chapter 67) or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31), and is to be performed in whole or in part in the United States
FAR 52.223-2	AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICES AND CONSTRUCTION CONTRACTS (SEP 2013)
FAR 52.223-3	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (FEB 2021), ALT. I (JUL 1995), if the Subcontract will require the delivery of hazardous materials as defined in FAR 23.301
FAR 52.223-5	POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (MAY 2011), ALT. I (MAY 2011)
FAR 52.223-11	OZONE-DEPLETING SUBSTANCES AND HIGH GLOBAL WARMING POTENTIAL
FAR 52.223-12	HYDROFLUORCARBONS (JUN 2016), if the Subcontract involves delivery or use of such substances MAINTENANCE, SERVICE, REPAIR, OR DISPOSAL OF REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (JUN 2016), if the Subcontract involves the maintenance, service, repair, or disposal of such equipment
FAR 52.223-13	ACQUISITION OF EPEAT® REGISTERED IMAGING EQUIPMENT (JUN 2014), if the Subcontract involves delivery or use of such equipment at Buyer's or a Federally controlled facility
FAR 52.223-14	ACQUISITION OF EPEAT® REGISTERED TELEVISIONS (JUN 2014), if the Subcontract involves delivery or use of such equipment at Buyer's or a Federally controlled facility

FAR 52.223-15	ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (MAY 2020), if the Subcontract involves delivery or use of such equipment at Buyer's or a Federally controlled facility
FAR 52.223-16	ACQUISITION OF EPEAT®-REGISTERED PERSONAL COMPUTER PRODUCTS (OCT 2015) ALT. I (JUN 2014), if the Subcontract involves delivery or use of such equipment at Buyer's or a Federally controlled facility
FAR 52.223-17	AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (AUG 2018), unless the Subcontract will not involve the use of EPA-designated items
FAR 52.223-20	AEROSOLS (JUN 2016)
FAR 52.223-21	FORMS (JUNE 2016)
FAR 52.225-9	BUY AMERICAN ACT – CONSTRUCTION MATERIALS (NOV 2021)
FAR 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2021)
FAR 52.227-3	PATENT INDEMNITY (APR 1984)
FAR 52.227-14	RIGHTS IN DATA – GENERAL (MAY 2014), WITH ALT. I (DEC 2007) and V (DEC 2007), AND DEAR 927.409 952.227-14 (ALT. VIII) applies if any data, including technical data or computer software, will be produced, furnished, acquired, or delivered under this Subcontract.

If delivery of limited rights data is required, then add Alternate II (DEC 2007) with the following disclosure purposes to be added at the end of paragraph (a) of the limited rights notice:

1. Use (except for manufacture) by support services contractors or subcontractors;
2. Evaluation by non-government evaluators;
3. Use (except for manufacture) by other contractors or subcontractors participating in the Government's program of which the specific subcontract is a part;
4. Emergency repair or overhaul work; and
5. Release to a foreign government, or its instrumentalities, if required to serve the interests of the U.S.

Government, for information or evaluation or for emergency repair or overhaul work.

If delivery of restricted computer software is required, then FAR 52.227-14 (MAY 2014) with ALT. III (DEC 2007) shall apply.

FAR 52.230-2	COST ACCOUNTING STANDARDS (JUN 2020)
FAR 52.232-39	UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS (JUN 2013)
FAR 52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (NOV 2021), if the Subcontract is with a small business concern
FAR 52.244-6	SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (NOV 2021)
FAR 52.247-63	PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003), if the Subcontract involves international air transportation.
FAR 52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006)
DEAR 952.203-70	WHISTLEBLOWER PROTECTION OF CONTRACTOR EMPLOYEES (DEC 2000)
DEAR 952.217-70	ACQUISITION OF REAL PROPERTY (MAR 2011)
DEAR 952.250-70	NUCLEAR HAZARDS INDEMNITY AGREEMENT (OCT 2005), if the Subcontract involves the potential for public liabilities, but not if the Subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170c. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for activities under the Subcontract
DEAR 970.5204-2	LAW, REGULATIONS AND DOE DIRECTIVES (DEVIATION FOR RWG) (AUG 2016)
DEAR 970.5222-1	COLLECTIVE BARGAINING AGREEMENTS - MANAGEMENT AND OPERATING CONTRACTS (DEC 2000), if the Subcontract is for protective services or other services performed on the DOE-owned site which will affect the continuity of operation of the facility
DEAR 970.5227-8	REFUND OF ROYALTIES (AUG 2002), if "royalties" as defined in that clause are paid under the Subcontract by the Subcontractor, or by a Subcontractor at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds \$250
DEAR 970.5223-1	INTEGRATION OF ENVIRONMENT SAFETY AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000) (DEVIATION for RWG) (AUG 2016), if the Subcontract involves complex or hazardous work on site at a DOE-owned or -leased facility
DEAR 970.5232-3	ACCOUNTS, RECORDS, AND INSPECTION (DEC 2010) (Deviation) (a)-(h), applicable if costs incurred are a factor in determining the amount payable to the Subcontractor
DEAR 970.5244-1	CONTRACTOR PURCHASING SYSTEM (AUG 2016)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT IS FOR \$2,000 OR MORE:

FAR 52.222-5	CONSTRUCTION WAGE RATE REQUIREMENTS—SECONDARY SITE OF THE WORK (MAY 2014)
FAR 52.222-6	CONSTRUCTION WAGE RATE REQUIREMENTS (AUG 2018)
FAR 52.222-7	WITHHOLDING OF FUNDS (MAY 2014)
FAR 52.222-8	PAYROLLS AND BASIC RECORDS (JUL 2021)
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)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT IS FOR \$3,500 OR MORE:

FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (MAY 2022)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS THE MICRO-PURCHASE THRESHOLD:

FAR 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (JUN 2020)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT IS FOR \$10,000 OR MORE:

FAR 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010), if the Subcontract will be wholly or partially performed in the U.S.

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT IS IN EXCESS OF \$15,000:

FAR 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUL 2020)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT IS FOR \$25,000 OR MORE:

DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010), if the Subcontract is subject to the provisions of 10 CFR 707

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT IS FOR \$30,000 OR MORE:

FAR 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUN 2020)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT IS FOR \$35,000 OR MORE:

FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (NOV 2021)

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

FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUN 2020), excepting para (c)(1)  
 FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 2020)  
 FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (JUN 2020), if the Subcontract is valued at or above the threshold specified in FAR 22.1303(a)  
 FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS (JUN 2020), if the Subcontract is valued at or above the threshold specified in FAR 22.1303(a)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS THE SIMPLIFIED ACQUISITION THRESHOLD:

FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUN 2020), ALT. I (OCT 1995)  
 FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)  
 FAR 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (JUN 2020)  
 FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2018)  
 FAR 52.225-8 DUTY-FREE ENTRY (OCT 2010)  
 FAR 52.227-1 AUTHORIZATION AND CONSENT (JUN 2020)  
 DEAR 970.5223-7 SUSTAINABLE ACQUISITION PROGRAM (OCT 2010), ALT. I FOR CONSTRUCTION CONTRACTS AND SUBCONTRACTS (OCT 2010), in first-tier subcontracts  
 DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2000)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$500,000:

DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$750,000:

FAR 52.215-11	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS (AUG 2011), if cost or pricing data is required
FAR 52.215-12	SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (JUN 2020), ALT. (AUG 2020), if cost or pricing data is required
FAR 52.215-13	SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS (JUN 2020), ALT. (AUG 2020), if cost or pricing data is required

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS \$1,500,000:

FAR 52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN (NOV 2021), unless the Subcontractor is a small business or there are no subcontracting possibilities
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THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$6 MILLION

FAR 52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (NOV 2021), if the Subcontract has a performance period of more than 120 days
FAR 52.203-14	DISPLAY OF HOTLINE POSTER(S) (NOV 2021)

**44. FLOW-DOWN OF SUBCONTRACT PROVISIONS**

The Subcontractor shall insert in any Sub-Subcontracts the Articles incorporated by reference under Article 43, "Federal Contract Clauses Incorporated By Reference" and any other Articles in the remainder of this Subcontract, if any of the following conditions are met: (1) a flowdown is expressly required by the Buyer; (2) a flowdown is required by such Articles; (3) a flowdown is appropriate for the Subcontractor to meet its requirements under the Subcontract. The Subcontractor shall also flowdown an Article requiring the Sub-Subcontractors to include such necessary Articles in any Sub-Subcontracts.

***(END OF TERMS AND CONDITIONS FOR FIXED PRICE CONSTRUCTION)***