



University of California
Lawrence Berkeley National Laboratory

GENERAL PROVISIONS FOR FIXED PRICE CONSTRUCTION

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CLAUSE 1 – DEFINITIONS

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

- "Government" means the United States Government;
- "DOE" means the U. S. Department of Energy;
- "University" means The Regents of the University of California, acting through the LBNL;
- "LBNL" means the Lawrence Berkeley National Laboratory;
- "Patent Counsel" means the DOE Patent Counsel.
- "Subcontract" means this Subcontract with the University;
- The term "Subcontractor" means the party who has entered into this Subcontract with the University;
- The lower case term "subcontractor" means the Subcontractor's subcontractor(s).

CLAUSE 2 – SCOPE OF SUBCONTRACT

The scope of the Subcontract shall be limited to the acquisition of fixed price construction.

The Subcontract is entered into as a subcontract under the University's Prime Contract No. DE-AC02-05CH11231 with the Government, represented by the DOE, for management and operation of the LBNL and the performance of certain research and development work.

CLAUSE 3 – PAYMENT BOND

(Applicable if the Subcontract amount is over \$25,000.)

Upon the execution of this Subcontract the Subcontractor shall furnish to the University a Payment Bond, guaranteeing the payment of claims of mechanics, material men, and others. Said bond shall be in the forms hereto attached and with sureties approved by the University. The premium upon such bond shall be paid by the Subcontractor.

The penal amount of the Payment Bond shall be 100% of the original subcontract price and, if the subcontract price increases, an additional amount equal to 100% of the increase.

CLAUSE 4 – PERFORMANCE BOND

(Applicable if the Subcontract amount is \$100,000 or more.)

Upon the execution of this Subcontract the Subcontractor shall furnish to the University a Performance Bond, guaranteeing the faithful performance of this Subcontract. Said bond shall be in the forms hereto attached and with sureties approved by the University. The premium upon such bond shall be paid by the Subcontractor.

The penal amount of the Performance Bond shall be one hundred percent (100%) of the original subcontract price and, if the subcontract price increases, an additional amount equal to 100% of the increase.

CLAUSE 5 – SURETY ACCEPTANCE

The University shall approve any surety company which, at the time of execution of this Subcontract, is listed in the latest published U.S. Treasury Department list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies".

The Subcontractor shall promptly furnish additional security as may be required from time to time to protect the interest of the University and the Government and of persons supplying labor or materials under this Subcontract, if:

1. Any surety upon any bond furnished in connection with this Subcontract becomes unacceptable to the University; or
2. Any such surety fails to furnish reports as to its financial condition as required from time to time by the University.

CLAUSE 6 – INSURANCE - WORK ON A GOVERNMENT INSTALLATION

The Subcontractor shall, at its own expense, provide and maintain during the entire performance of this Subcontract, at least the kinds and minimum amounts of insurance required elsewhere in the Subcontract.

Before commencing work under this Subcontract, the Subcontractor shall certify to the University in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the University or Government's interest shall not be effective (1) for such period as the laws of the State in which this Subcontract is to be performed prescribe, or (2) until 30 days after the insurer or the Subcontractor gives written notice to the University, whichever period is longer.

The Subcontractor shall insert the substance of this clause, including this paragraph in subcontracts under this Subcontract that require work on a Government installation and shall require the subcontractors to provide and maintain the insurance required elsewhere in this Subcontract. The Subcontractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the University upon request.

CLAUSE 7 – ASSUMPTION OF RISK

(Applicable to Subcontracts under \$200,000)

Subcontractor shall and does hereby assume all risk and responsibility for damage to any materials used or work done in connection with the work from any cause or causes whatsoever, including fire, earthquake and storm, prior to the completion and acceptance of the work, and shall at Subcontractor's own cost and expense, repair and/or replace any work or materials damaged or destroyed. Since no form of property insurance is to be carried by University or Government, it will be the

responsibility of Subcontractor to provide its own protection in this respect, and the cost of such protection shall be deemed to be included in the Subcontract price. This clause shall have no applications to public liability for a nuclear incident as defined in the Atomic Energy Act of 1954, as amended, to the extent the Subcontractor is indemnified under said law.

CLAUSE 8 – ASSIGNMENTS

The administration of this Subcontract is assignable by the University to the Government or a successor-in-interest to the University.

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

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

CLAUSE 9 – DISPUTES AND CLAIMS

(a) Submittal Of Claim

1. Except as otherwise provided in the Subcontract, any dispute between the Subcontractor and the University arising out of this Subcontract, or its breach, which is not informally disposed of by agreement shall be promptly submitted by the Subcontractor to the University as a claim. The term "claim," as used in this clause, shall mean a written request for adjustment or interpretation of Subcontract terms, payment of compensation, extension of time, or other relief with respect to the terms of the Subcontract submitted by the Subcontractor to the University with adequate supporting data and including a demand for a decision by the University. The term "Adequate supporting data," as used in this clause, shall mean a detailed statement of the basis and supporting reasons for the asserted entitlement and an itemized breakdown of any adjustment or compensation sought.

2. If the total amount of the compensation sought exceeds \$100,000, the Subcontractor shall certify, at the time of submission as the claim, as follows:

"I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the Subcontract compensation for which the Subcontractor believes the University is liable.

(b) Decision of University

1. The University shall review the facts pertinent to the claim and render a written decision. A copy of the decision shall be furnished to the Subcontractor by certified mail, return receipt requested, or any other method that provides evidence of receipt.

2. The University shall use its best efforts to issue a written decision on a claim within thirty (30) days after receipt of the claim. If a decision is not issued within the stipulated period, the University shall notify the Subcontractor of the time within which the decision will be made. This time period shall depend on the size and complexity of the claim and the adequacy of the Subcontractor's supporting data and other relevant factors. If a decision is not issued on any claim within ninety (90) days after the University's receipt of the claim, the claim shall be considered to have been denied.

(c) Arbitration

1. The decision of the University on any claim may be arbitrated by the Subcontractor. Any written demand for arbitration must be mailed or otherwise furnished to the San Francisco Office of the American Arbitration Association, 417 Montgomery Street, San

Francisco, CA 94104-1113. A copy of the demand for arbitration shall be furnished to the University.

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

3. No demand for arbitration on a dispute may be made unless the Subcontractor has submitted a claim to the University and until (i) the University has issued a written decision, or (ii) ninety (90) days after the date of the University's receipt of a claim, if a decision has not been issued by that date.

4. Timely notice of an intention to arbitrate shall be a prerequisite to an effective election to arbitrate. Except as otherwise provided in this clause, the decision of the University shall be final and conclusive unless the Subcontractor delivers to the University a written notice of the intention to arbitrate, by certified mail, return receipt requested, or any other method that provides evidence of receipt, within:

- thirty (30) days from the date the Subcontractor receives the University's decision on a claim; or
- one hundred eighty (180) days after the date of the University's receipt of a claim, if a decision has not been issued by that date.

(d) Rules of Arbitration

Except as otherwise provided in this clause, arbitration shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated, as modified by this clause. The arbitration shall be de novo. The award rendered by the arbitrator(s) shall be final.

The following additional modifications are made to the AAA rules:

- The arbitrator(s) shall be neutral and appointed by the AAA.
- If the arbitration panel is composed of three arbitrators, one shall be an attorney. If a single arbitrator hears the claim, the single arbitrator need not be an attorney.
- A claim involving less than \$25,000 shall be heard by a single arbitrator. A claim involving \$25,000 or more shall be heard by three arbitrators.
- The parties shall have the discovery rights and follow the procedures provided in California Code Civil Procedure section 1283.05. The provisions of subparagraph (e) of section 1283.05 shall not be applicable to such discovery.
- The arbitrator(s) may employ expert technical advisor(s) for claims of extraordinary technical complexity with the consent of the parties to this Subcontract. If the arbitrator(s) utilizes an expert technical advisor, such expert technical advisor shall only communicate with the arbitrator(s) on the merits of the claim in writing, with copies served on all parties, or orally on the record in the presence of or after due notice to the parties, except as otherwise consented to in writing by all parties. All evidence, opinions or other information which an expert technical advisor testifies to or furnishes shall be subject to cross-examination and pertinent objections. Either party may object for cause to the use of a particular individual as an expert technical advisor. If such objection is not timely made, it shall be deemed waived. The parties shall share the expense for such expert technical advisor(s) on a pro rata basis.
- If more than one demand for arbitration is made by a party to this Subcontract with respect to concurrent claims referred to the University, all such concurrent claims shall be consolidated into a single arbitration hearing unless the parties to this Subcontract otherwise agree.
- The Subcontractor's performance bond surety for the project, a Subcontractor or supplier to the Subcontractor, and the Architect may be permitted to join in and be bound by the arbitration if required by the terms of their respective contracts with the Subcontractor or the University. Such joinder shall not be required if it unduly delays or complicates the expeditious resolution of the claim unless a failure to order joinder would be likely to produce inconsistent decisions from separate proceedings among the Subcontractor and University. Any

such joinder will be limited to issues raised by the Subcontractor and University directly concerning the claim.

- Unless the parties otherwise agree the locale for the arbitration shall be the San Francisco Bay area.
- The arbitrator(s) shall issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of documents and other evidence in accordance with California Code of Civil Procedure section 1282.6. Witnesses shall be entitled to receive fees and mileage as provided in Code of Civil Procedure section 1283.2.
- The arbitrator(s) shall decide the claim in accordance with the applicable substantive law of California, except that clauses based upon federal regulations will be interpreted in accordance with applicable federal decisions. An award, including an award of costs and fees, is beyond the power of the arbitrator(s) if the award is based on an error of law. The award shall include a determination of all the questions submitted to the arbitrator(s) the decision of which is necessary to determine the claim, and a summary of the evidence and the reasons, factual and legal, for the decision. The award shall be in writing and signed by either the sole arbitrator or by at least a majority if there be more than one. The arbitrator(s) shall have no authority to add to, subtract from, modify, change, alter or ignore in any way the provisions of this Subcontract or expressly written modification or supplemental agreement thereto, or to extend its duration, unless all the parties hereto have expressly agreed, in writing, to give the arbitrator(s) specific authority to do so.
- Each party to the arbitration shall pay its pro rata share of the arbitrator(s), together with other expenses of the arbitration incurred or approved by the arbitrator(s), not including counsel fees or witness fees or other expenses incurred by a party for its own benefit.

(e) Litigation

1. The Subcontractor may elect to litigate the University's decision on, or denial of, a claim if the amount of the claim is \$100,000 or more. Such an election shall constitute an irrevocable waiver of the right to arbitrate.

2. No demand for litigation on a dispute may be made unless the Subcontractor has submitted a claim exceeding \$100,000 to the University and until (i) the University has issued a written decision, or (ii) the one hundred eighty (180) days after the date of the University's receipt of a claim exceeding \$100,000, if a decision has not been issued by that date.

3. Timely notice of an intention to litigate a claim shall be a prerequisite to an effective election to litigate. Except as otherwise provided in this clause, the decision of the University on a claim shall be final and conclusive unless the Subcontractor delivers to the University a written notice of the intention to litigate, by certified mail, return receipt requested, or any other method that provides evidence of receipt, within:

- ninety (90) days from the date the Subcontractor receives the University's decision on a claim; or
- two hundred forty (240) days after the date of the University's receipt of a claim exceeding \$100,000, if a decision has not been issued by that date.

4. The parties hereby elect the Superior Court of the State of California for the County in which the Subcontract was to be performed as the exclusive forum for such litigation.

5. If the University's decision involves a claim of \$100,000 or more, and a party to this Subcontract has demanded arbitration, the other party to this Subcontract shall have seven (7) days from the date of its receipt of the notice of such filing from the AAA within which to file an answering statement of a notice of intention to litigate the decision in lieu of arbitrating it. If the other party does not deliver a written notice of intention to litigate within the seven (7) day period, by certified mail, return receipt requested, or any other method that provides evidence of receipt, that party shall be deemed to have consented to arbitration and to have irrevocably waived the right to litigate the University's decision. If no answering statement is filed

within the seven (7) day period, it shall be considered as a denial of the claim.

(f) Claims Excluded

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

- any claim for or dispute about penalties or forfeitures prescribed by these General Provisions or by statute or regulation which another State or Federal agency is specifically authorized to administer, settle or determine;
- any claim for or respecting personal injury or death or reimbursement or other compensation arising out of or resulting from liability for personal injury or death;
- any claim or dispute involving fraud and misrepresentation;
- any claim or dispute relating to stop payment requests or stop notices or the procedures authorized by the clause entitled "Liens And Payments Withheld For Labor And Materials;"
- any claim related to the approval, refusal to approve, or substitution of subcontractors, regardless of tier, and supplies or;
- any claim based on or involving noncompliance with or violation of any applicable health, safety or environmental regulations, statutes or provision(s).

(g) Continuance of Performance

Pending any University decision on a dispute or claim, award by the arbitrator(s), or a final adjudication by the courts, the Subcontractor shall proceed diligently with the performance of this Subcontract and in accordance with the University's decision, and the University shall pay for such performance in accordance with the payment terms of this Subcontract, unless the parties to this Subcontract otherwise agree in writing.

CLAUSE 10 – NON WAIVER OF DEFAULT

Any failure by the University at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Subcontract shall not constitute a waiver of such terms or conditions and shall not affect or impair such terms or conditions in any way nor the right of University at any time to avail itself of such remedies as it may have for any breach of breaches of such terms or conditions.

CLAUSE 11 – ENVIRONMENT, SAFETY, AND HEALTH

The Subcontractor shall take all reasonable precautions in the performance of the work under this Subcontract to protect the environment, and the safety and health of employees and of members of the public and shall comply with all applicable environmental, safety and health regulations and requirements (including reporting requirements) of the University and DOE.

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

CLAUSE 12 – ACCIDENT PREVENTION PROGRAM REQUIREMENTS

The Subcontractor shall submit seven (7) copies of the following to the University for approval prior to start of any construction work. Items 1 through 4 shall be submitted separately on company letterhead, and not combined into a single document.

1. A descriptive outline of an accident prevention program. The University will provide either a pre-job checklist or a Safety Accident Prevention and Fire Prevention Plan that can serve as the descriptive outline.

2. A report of its injury, accident, fire, and property damage experience, including motor vehicle, for the previous two (2) years.
3. Detailed site-specific safety/work plans. Examples of areas to be covered are:
 - Fire protection systems.
 - Industrial Safety : Fall protection, scaffolding, trenching and/or shoring, etc.
 - Industrial Hygiene: Confined spaces; radiological and asbestos-containing materials handling; use of chemicals, oils, solvents, paints, epoxies, adhesives, binders, and gases.
 - Environmental Protection: Washdown/spilling/release of water or liquids to storm or sanitary sewer systems; abrasive blasting; generation of hazardous wastes.
4. The name and qualifications of the job site management official assigned responsibility for the Subcontractor's safety, accident prevention, and fire protection program.

This information will be reviewed for completeness and compliance with the federal Occupational Safety and Health Act (OSHA) and University safety requirements. The University's written authorization to proceed with construction may be deferred until the University receives and approves an acceptable safety program, including required site-specific safety/work plans.

CLAUSE 13 – CHANGE ORDER ADJUSTMENTS

Price adjustments resulting from change orders issued pursuant to *CHANGES* clause not covered by unit price or alternate bids shall be determined in accordance with the following pricing formula:

1. For change order work performed by the Subcontractor and/or its affiliates, the pricing shall be based on the estimated direct cost for labor, payroll taxes and fringe benefits, materials, supplies, sales taxes, applicable insurance, and transportation, plus a fixed mark-up rate of 15% (overhead and profit) of such direct costs, to which shall be added any related bond costs. Such estimated direct costs shall be consistent with the contract cost principles and procedures for construction contracts in Part 31 of the Federal Acquisition Regulation (48 CFR Part 31), as supplemented or modified by DEAR Part 931 (48 CFR Part 931) in effect on the date of this Subcontract .
2. For change order work performed by a first-tier subcontractor of the Subcontractor, the pricing shall be based on the estimated direct costs plus the fixed mark-up rate of 15%, (overhead and profit) as established in paragraph 1. above, to which the Subcontractor may add 5% plus any related bond and direct insurance charges.
3. For change order work performed by a second tier and/or lower-tier subcontractor(s), the pricing shall be based on the estimated direct costs plus the fixed mark-up rate of 15%, (overhead and profit) as established in paragraph 1. above, to which the higher-tier subcontractor(s) may add a fixed mark-up rate of 5%, (overhead and profit) and the Subcontractor may add a fixed mark-up rate of 5% (overhead and profit) plus any related bond and direct insurance charges. No increases for overhead and profit shall be allowed above the fixed mark-up rates herein provided, regardless of the number of subcontractors involved.

For reductions or omissions not covered by unit prices or alternate bids, the Subcontractor agrees that the University shall be credited with the estimated cost of the labor, materials, supplies, transportation, payroll taxes, sales taxes, insurance, bond costs, overhead and profit that would have been incurred in connection with the reduced or omitted work, and that such estimated costs shall be consistent with the contract cost principles and procedures for construction contracts in Part 31 of the Federal Acquisition Regulation (48 CFR Part 31), as supplemented or modified by DEAR Part 931 (48 CFR Part 931) in effect on the date of this Subcontract.

Claims for change order work that involve adjustments in time for performance of the work must include justification for the requested time adjustment. The Subcontractor shall provide a critical path network showing the effect of the proposed change on the schedule, or shall provide a revised logical bar chart schedule and analysis of the proposed change to the critical path of the schedule. Requests for time extensions will not be considered without the appropriate schedule justification.

The University may require change order accounting whenever the estimated cost of a change or series of related changes exceeds \$25,000. The Subcontractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs, both changed and not changed, allocable to the change. The subcontractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the University or the matter is conclusively resolved.

CLAUSE 14 – CHANGE ORDER CLAIM DOCUMENTATION PROCEDURE

(a) Instructions

The information listed below is required to be submitted by the Subcontractor with any proposal for additive or deductive changes or modifications to the Subcontract. Previously submitted information used to substantiate a prior proposal is not required to be resubmitted with the new proposal, provided the information is explicitly referenced and identified. Higher tier subcontractors are responsible for performing cost/price analysis on their lower tier subcontractors. In the event the higher tier subcontractor is unable to perform the required cost/price analyses, the higher tier subcontractor shall ensure that all lower tier subcontractor proposals include the required submission information identified below. Proposals that do not include, as a minimum, the required information listed below, will be returned for re-submission. Construction delays resulting from incomplete or improper change order or claim proposals shall be the responsibility of the submitting Subcontractor.

(b) General Submittals

All proposals for additive or deductive changes or modifications to the Subcontract must include the following:

1. A summary of all costs by cost element.
2. Identification, description, and submittal of all rate agreements utilized.
3. Identification and submittal of cost or pricing data which are based on verifiable factual information.
4. Documentation and explanation of the estimating process used, including the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data.

(c) Materials

Proposals involving materials must include the following:

1. An explanation of the basis for the kinds, quantities and cost of all material elements proposed.
2. A priced bill of material for the entire proposal showing part number/description, unit cost, quantity required, extended cost, basis for the proposed price (quotation, prior buy, similar item, etc.) and the rationale for the proposed price, unless an alternate method of estimating material costs has been accepted by the University.
3. A summary by class of material (subcontracts, purchase parts, raw materials, etc.) showing base material costs and any factors applied (i.e. escalation, attrition, usage variance, etc.) and the basis for the development and application of these factors.
4. Specific subcontract effort to be performed and identification of each subcontractor. For each subcontract change, provide a listing by source, item, quantity, and price, including the results of review of subcontract proposals. Where the required data or reviews have not been made available, provide the reasons for the omission.
5. Identification of any inter organizational transfers. Provide complete supporting data and basis for these transfers.

(d) Direct Labor

Proposals involving direct labor must include the following:

1. Identification of labor hours by Task by labor category/skill mix.
2. Identification of rate agreement. In the absence of a labor rate agreement, provide a component breakdown of each labor rate by category. Identify any adjustment factors to these rates including the effect of union agreements, insurance adjustments, etc.

(e) Other Job Site Costs

Proposals involving other job site costs must include a list all other costs by category/element (utilities, equipment rental, supervision, etc.) and provide supporting schedules and rationale for the amount proposed for each category element.

(f) Markups

Proposals involving markups must reflect the allowable percentages, in accordance with the *CHANGE ORDER ADJUSTMENTS* clause.

CLAUSE 15 – LIENS AND CLAIMS FOR LABOR OR MATERIALS

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

The Subcontractor shall:

1. Indemnify and save harmless the University and the Government from all claims, demands, causes of action, or suits, of whatever nature, arising out of the services, labor and materials furnished by the Subcontractor or its subcontractors under this Subcontract, and from all laborers', material men's and mechanics' liens upon the real property upon which the work is located or any other property of the University or the Government.
2. Promptly notify the University in writing of any such claims, demands, causes of action, or suits brought to its attention. The Subcontractor shall forward with notification copies of all pertinent papers received by the Subcontractor with respect to any such claims, demands, causes of action, or suits, and, at the request of the University, shall do all things and execute and deliver all appropriate documents and assignments in favor of the University or the Government of all the Subcontractor's rights and claims growing out of such asserted claims, as will enable the University and the Government to protect their respective interests by litigation or otherwise.

Neither the final payment nor any part of the retained percentage shall become due until the Subcontractor, if required, delivers to the University a complete release of all liens arising out of this Subcontract, or receipts in full in lieu thereof, as the University may require, and, if required in either case, an affidavit that as far as it has knowledge or information, the releases and receipts include all the labor and material for which a lien could be filed; but the Subcontractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the University to indemnify it against any claim by lien or otherwise. If any lien or claim remains unsatisfied after all payments are made, the Subcontractor shall refund to the University all amounts that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

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

CLAUSE 16 – ALL-RISK INSURANCE REQUIREMENTS

(Applicable to Subcontracts over \$200,000.)

(a) Coverage Requirements

1. The Subcontractor shall, at its own expense, provide and maintain all-risk insurance, insuring all work done and materials supplied in connection with work done in performance of this Subcontract against loss or damage resulting from all risks of physical loss or damage, including but not limited to fire and associated perils, vandalism and malicious mischief, earthquake, and flood if the

location of the work has been delineated in a flood hazard boundary map issued by the Department of Housing and Urban Development, and/or other causes.

2. The word "flood," as used in this clause, shall have the same definition as used in the National Flood Insurance Act, which is "a general and temporary condition of partial or complete inundation of normally dry land areas from (1) the overflow of streams, rivers or other inland water, or (2) abnormally high tidal water or rising coastal waters resulting from severe storms, hurricanes or tsunamis (destructive sea wave caused by an underwater earthquake)".

3. Should the work involve solely alteration work, earthquake and flood insurance is not required for the existing structure value, but is required for the alteration work if such work exceeds \$500,000. Should the work involve both alteration work and new construction, earthquake and flood insurance, if applicable, is required on the new construction and for the alteration work if such work exceeds \$500,000, but is not required for the existing structure.

(b) Conditions of Coverage

1. The all-risk insurance shall (a) include a provision designating the University and the Department of Energy (DOE) as "**additional insureds**" on all of the required insurance, by certificate, endorsement, or otherwise; (b) include a provision that the policies are primary and shall not participate with nor are excess over any other valid and collective insurance; (c) include a waiver of subrogation in favor of the University and Government; and (d) provide for deductible amounts not exceeding 5% of the insurable values of work of Subcontractor for the perils of all risks of physical loss or damage, including but not limited to fire and associated peril, vandalism and malicious mischief, earthquake, and flood. In the event of an insured loss or damage, the Subcontractor agrees to pay to the University, upon demand, an amount equal to the deductible amount.

2. The all-risk insurance policies obtained by the Subcontractor insuring work done or materials supplied under provisions of this clause shall specifically provide that the proceeds of said policy or policies shall be payable to the Subcontractor and the University, as their interests may appear, and that in the case of an act of God as defined by the California Government Code, Section 4151, the proceeds of said policy or policies shall be payable to the University, to indemnify the University and Government for any damage to the work caused by such act of God, if the University elects to terminate the Subcontract.

3. The policies evidencing the required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the University's or Government's interest shall not be effective (a) for such period as the laws of the State in which this Subcontract is to be performed prescribe, or (b) until 30 days after the insurer or the Subcontractor gives written notice to the University, whichever period is longer.

4. Said policy or policies shall be kept in full force and effect by the Subcontractor during the entire performance of this Subcontract until final acceptance of the completed work by the University. Such insurance, at all times during progress of work to be done in compliance with provisions of this Subcontract, shall be carried in an amount equal to the full insurable value of the portion of the work and building done.

(c) Insurers & Policies

The all-risk insurance shall be obtained from an insurance carrier or carriers approved by the University, under an insurance policy or policies satisfactory to the University in form and substance.

(d) University May Insure for Subcontractor

In case of the breach of any provision of this clause, the University may, at its option, take out and maintain such all-risk insurance in the name of the Subcontractor or any subcontractor, as the University may deem appropriate, and may deduct the cost of obtaining and maintaining such insurance from any sums which may be found or become due the Subcontractor under this Subcontract.

(e) Certificates of Insurance

Prior to commencement of the work, the Subcontractor shall issue to the University a certificate or certificates of insurance substantiating and covering the policies required under this clause, specifically

addressing the *Conditions of Coverage* set forth above. The certificate or certificates of insurance shall be submitted on a form acceptable to the University and shall show all companies affording coverage. The certificate shall show the name of the Subcontractor exactly in the manner which it is licensed by the Contractors State License Board.

CLAUSE 17 – BUY AMERICAN ACT

The FAR clause 52.225-9, *BUY AMERICAN ACT – CONSTRUCTION MATERIALS* (included by reference below) requires that only domestic construction material be used in the performance of this Subcontract.

The use of any non-domestic materials under this Subcontract must be approved by the University prior to installation. Unapproved, non-domestic materials delivered to the project site shall be immediately removed from the site by the Subcontractor at the Subcontractor's expense. If non-conforming materials are installed, the Subcontractor shall remove the non-conforming material from the work and replace the material with approved domestic material, at the Subcontractor's expense. If the cost of removal is prohibitive, as determined by the University, and the non-conforming material otherwise meets the requirements of the specifications, the cost of the non-conforming material shall be deducted from the Subcontract amount. The Subcontractor shall not have an option in this matter.

CLAUSE 18 – FORCED, CONVICT, AND INDENTURED LABOR

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

(b) Any Subcontractor subcontracting with the University who knew or should have known that the foreign-made equipment, materials, or supplies furnished to the University were produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction, when entering into a subcontract pursuant to the above, may have any or all of the following sanctions imposed:

(1) The subcontract under which the prohibited equipment, materials, or supplies were provided may be voided at the option of the University.

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

CLAUSE 19 – SUPERINTENDENCE BY SUBCONTRACTOR

At all times during performance of this contract and until the work is completed and accepted, the Subcontractor shall directly superintend the work or assign and have on the worksite a competent superintendent and any necessary assistants, each of whom must be satisfactory to the University. The superintendent shall not be changed except with the consent of the University, unless the superintendent proves to be unsatisfactory to the subcontractor or ceases to be in its employ. The superintendent shall have the authority to act for the Subcontractor in the Subcontractor's absence; and all notices, directions, and instructions given to the superintendent shall be as binding as if given to the Subcontractor.

The Subcontractor shall give efficient supervision of the work, using its best skill and attention. It shall carefully study and compare all drawings, specifications and other instructions and shall at once report to the University any error, inconsistency or omission which it may discover.

CLAUSE 20 – RELEASE OF INFORMATION

The subcontractor agrees that information regarding this Subcontract and the name of the University, LBNL, or the Government shall not be used, in any publications, news releases, advertising, speeches, technical papers, photographs and other releases of information, without prior written approval from the University's Procurement Specialist.

CLAUSE 21 – NOTICES - INABILITY TO PERFORM; LITIGATION AND CLAIMS

The Subcontractor shall immediately notify the University in writing of (1) any action, including any proceeding before an administrative agency, filed against the Subcontractor arising out of the performance of this Subcontract, and (2) any claim against the Subcontractor, the cost and expense of which is allowable under the terms of this Subcontract.

If, at any time during the performance of this Subcontract, the Subcontractor becomes aware of any circumstances whatsoever which may jeopardize its fulfillment of the agreed performance of all or any portion of the Subcontract, it shall immediately notify the University's Procurement Specialist in writing of such circumstances, and the Subcontractor shall take whatever action is necessary to cure such defect within the shortest possible time.

CLAUSE 22 – LIABILITY FOR INJURY TO PERSONS AND DAMAGE TO PROPERTY

The Subcontractor assumes the entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any personal injury (including death), and/or damage or destruction or alleged damage to or destruction of property, sustained, or alleged to have been sustained, in connection with or arising out of the performance of the work by the Subcontractor, its agents, servants, employees, subcontractors and consultants, save and except that the Subcontractor, its agents, servants, employees, subcontractors and consultants shall not be liable for the sole negligence of the University. The Subcontractor shall indemnify and hold harmless the University and the Government, their officers, agents, servants, and employees from any and all liability for such losses, expenses, damages, demands, and claims, and shall defend any suit or action brought against any or all of them based on any alleged personal injury or property damage, and shall pay any damages, costs and expenses, including attorney's fees, in connection with or resulting from such suit or action. This clause shall have no application to public liability for a nuclear incident as defined in the Atomic Energy Act of 1954, as amended, to the extent the Subcontractor is indemnified under said law.

CLAUSE 23 – LAWS AND REGULATIONS

The Subcontractor and its employees and subcontractors shall at all times comply with all applicable state and federal laws, ordinances, statutes, codes, rules, and regulations, including, but not limited to, those relating to wages, hours, employment discrimination, immigration, and safety (including OSHA).

CLAUSE 24 – ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

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

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

CLAUSE 25 – CLAUSES INCORPORATED BY REFERENCE

The FAR and 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 University's Purchase Order or Subcontract (hereinafter "Subcontract") as prescribed below. As used in the clauses, the term "contract" shall mean the Subcontract; the term "Contractor" shall mean the entity (hereinafter "Subcontractor") who entered into the Subcontract with the University; the term "subcontractor" shall mean the Subcontractor's subcontractor; and the terms "Government" and "Contracting Officer" shall mean the University, except in FAR clauses 52.214-26, 52.227-1, 52.227-2, 52.227-4, and 52.227-14, and DEAR clause 970.5232-3, in which clauses "Government" shall mean the U. S. Government and "Contracting

Officer" shall mean the DOE Contracting Officer for Prime Contract DE-AC02-05CH11231 with the University. As used in FAR clause 52.245-1, the terms "Government" and "Contracting Officer" shall mean the University, except with respect to title. As used in DEAR clauses 952.227-9 and 970.5232-3, the term "DOE" shall mean DOE and the University. The Subcontractor shall include the listed clauses in its subcontracts at any tier, to the extent applicable.

instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

FAR 52.232-5

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (SEP 2002)

THE FOLLOWING CLAUSES APPLY TO ALL SUBCONTRACTS:

FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

FAR 52.222-6 DAVIS-BACON ACT (JUL 2005) See the applicable Wage Determination which is included in the Subcontract documents.

FAR 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)

FAR 52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)

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) (JUL 2005)

FAR 52.222-12 CONTRACT TERMINATION – DEBARMENT (FEB 1988)

FAR 52.222-13 COMPLIANCE WITH DAVIS BACON AND RELATED ACT REGULATIONS (FEB 1988)

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

FAR 52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)

FAR 52.222-26 EQUAL OPPORTUNITY (MAR 2007)
Note: Download the EEO Poster at:
<http://www.dol.gov/esa/ofccp/regs/compliance/posters/ofccpost.htm>

FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (APR 2006)

FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997), with Alternate I (JUL 1995). Applies if the Subcontract involves the delivery or on-site use of any hazardous materials.

FAR 52.225-9 BUY AMERICAN ACT – CONSTRUCTION MATERIALS (JAN 2005)

FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)

DEAR 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS (APR 1994) (See list at: www.lbl.gov/ufva)

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

FAR 52.227-14 RIGHTS IN DATA-GENERAL (DEC 2007), with Alternate V, and DEAR 927.409 paragraphs (a) and (d)(3).
Applies if any "data" will be produced, furnished, or acquired under the Subcontract.
If delivery of Restricted Computer Software is required, then Alternate III shall apply.
If delivery of Limited Rights Data is required, then Alternate II shall apply, with the following five purposes added at the end of paragraph (a) of the clause:

1. Evaluation by non-government evaluators;
2. Use (except for manufacture) by other contractors participating in the Government's program of which the specific subcontracts is a part, for information and use in connection with the work performed under each subcontracts;
3. Emergency repair or overhaul work; and
4. Release to a foreign government, or

FAR 52.236-2

DIFFERING SITE CONDITIONS (APR 1984)

FAR 52.236-3

SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)

FAR 52.236-5

MATERIAL AND WORKMANSHIP (APR 1984)

FAR 52.236-7

PERMITS AND RESPONSIBILITIES (NOV 1991)

FAR 52.236-8

OTHER CONTRACTS (APR 1984)

FAR 52.236-9

PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)

FAR 52.236-10

OPERATIONS AND STORAGE AREAS (APR 1984)

FAR 52.236-11

USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)

FAR 52.236-12

CLEANING UP (APR 1984)

FAR 52.236-13

ACCIDENT PREVENTION (NOV 1991)

FAR 52.236-14

AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)

FAR 52.236-15

SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)

FAR 52.236-17

LAYOUT OF WORK (APR 1984)

FAR 52.236-21

SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997)

FAR 52.242-14

SUSPENSION OF WORK (APR 1984)

FAR 52.243-5

CHANGES AND CHANGED CONDITIONS (APR 1984)

FAR 52.244-2

SUBCONTRACTS (JUN 2007), with Alternate I (JUN 2007). Paragraph (e) insert regarding consent is: "Any subcontract or purchase order exceeding \$100,000 for supplies or services that are not a "commercial item" as defined in FAR 2.101 or for any work at an LBNL-controlled site."

FAR 52.244-6

SUBCONTRACTS FOR COMMERCIAL ITEMS (MAR 2007)

FAR 52.245-1

GOVERNMENT PROPERTY (JUN 2007)

FAR 52.246-12

INSPECTION OF CONSTRUCTION (AUG 1996)

FAR 52.246-21

WARRANTY OF CONSTRUCTION (MAR 1994) with Alternate I (APR 1984).

FAR 52.247-64

PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006), if the Subcontract involves ocean transportation of supplies other than "commercial items".

FAR 52.249-2

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) (MAY 2004) with Alternate I (SEP 1996).

FAR 52.249-10

DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)

DEAR 952.227-9

REFUND OF ROYALTIES (FEB 1995), if "royalties" are paid under the Subcontract by the Subcontractor, or by a subcontractor at any tier.

DEAR 952.227-82

RIGHTS TO PROPOSAL (APR 1984), if the Subcontract is based on a technical proposal.

DEAR 952.203-70

WHISTLEBLOWER PROTECTION OF SUBCONTRACTOR EMPLOYEES (DEC 2000) if the Subcontract involves any work at a

DOE-owned or leased facility.
DEAR 970.5223-2 AFFIRMATIVE PROCUREMENT PROGRAM
(MAR 2003)

FAR 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS
CONCERNING PAYMENT OF UNION DUES
OR FEES (DEC 2004)
Note: Download the "Beck" Poster at:
<http://www.dol.gov/esa/olms/regs/compliance/posterpg.htm>

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

FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
FAR 52.222-23 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION (FEB 1999)
FAR 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)
FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)
FAR 52.227-1 AUTHORIZATION AND CONSENT (DEC 2007)
FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)
FAR 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (APR 2003)
FAR 52.243-4 CHANGES (AUG 1987)
FAR 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003), if the Subcontract involves international air transportation.

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT IS FOR \$25,000 OR MORE:

FAR 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006), if the subcontract value is \$100,000 or greater.
FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006), if the subcontract value is \$100,000 or greater.
DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000), if the Subcontract involves any of the hazardous activities stipulated in 10 CFR 707.2

DEAR 970.5223-1 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION
DEAR 970.5232-3 ACCOUNTS, RECORDS, AND INSPECTION (JUN 2007)

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

FAR 52.214-26 AUDIT AND RECORDS – SEALED BIDDING (OCT 1997), if the Subcontract resulted from a Sealed Bid Proposal
DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)
DEAR 970.5226-2 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$100,000:

FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006). Use Alternate I (OCT 1995) if the Subcontract is for "commercial items".
FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995), unless the Subcontract is for "commercial items", excluding paragraph (c)(1)
FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007)
FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)
FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (JUL 2005), if the Subcontract involves mechanics or laborers and is for other than "commercial items".
FAR 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006). Applies if the Subcontract value is \$100,000 or greater.
FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006), if the Subcontract value is \$100,000 or greater.

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$650,000:

FAR 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS (OCT 1997)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$1,000,000:

FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (NOV 2007) with Alternate I (OCT 2001), unless the Subcontractor is a small business or there are no subcontracting possibilities.

END OF GENERAL PROVISIONS