

**FERMI RESEARCH ALLIANCE, LLC
GENERAL TERMS AND CONDITIONS FOR
TIME AND MATERIALS OR LABOR-HOUR SUBCONTRACTS AT SURF
(Non-R&D Work)**

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CLAUSE 1 - GENERAL PROVISIONS

1.1 DEFINITIONS

As used throughout this Subcontract, the following terms have the meanings set forth below:

“CFR” means the U.S. Code of Federal Regulations.

“Commercial product,” “commercial service,” and “commercially available off-the-shelf (COTS) item” have the meanings contained in Federal Acquisition Regulation, FAR, 2.101, Definitions.

“DEAR” means the Department of Energy Acquisition Regulation.

“DOE” means the United States Department of Energy or any duly authorized representative thereof.

“FRA” means Fermi Research Alliance, LLC, acting as operator and manager of the Fermi National Accelerator Laboratory under United States Department of Energy Prime Contract No. DE-AC02-07CH11359, and includes any successor to that Prime Contract or any duly authorized representatives thereof. FRA is the contracting entity for this Subcontract.

“FAR” means the Federal Acquisition Regulation.

“Fermilab” means the physical site and property that is the Fermi National Accelerator Laboratory.

“FRA Procurement Representative” shall mean the person in charge of administering this Subcontract for FRA or his or her written designee.

“Government” means the Government of the United States acting through the United States Department of Energy or its successor.

“SDSTA” means the South Dakota Science & Technology Authority, created by the South Dakota legislature, and operator of the Sanford Underground Research Facility.

“SURF” means the Sanford Underground Research Facility, located in Lead, South Dakota, and which is the Far Site for the Long Baseline Neutrino Facility (LBNF) project of the Fermi National Accelerator Laboratory.

“Subcontract” means this Subcontract between FRA and the Subcontractor. “Sub-subcontracts” means the Subcontractor’s subcontracts. Except as otherwise provided in this Subcontract, “sub-subcontracts” includes purchase orders under this Subcontract.

“Subcontractor” means the party that has entered into this Subcontract with FRA. The lower case “subcontractor” means sub-subcontractors.

When an article, provision, or clause in this Subcontract uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless:

- 1) The solicitation, or amended solicitation, provides a different definition;
- 2) The contracting parties agree to a different definition in the Subcontract;

- 3) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
- 4) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.

When a solicitation provision or contract clause uses a word or term that is defined in the Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9), the word or term has the same meaning as the definition in 48 CFR 902.101 or the definition in the part, subpart, or section of 48 CFR chapter 9 where the provision or clause is prescribed in effect at the time the solicitation was issued, unless an exception in 1.1 applies.

1.2 SCOPE OF SUBCONTRACT (SERVICES)

The scope of this Subcontract is to provide services as set forth in the Subcontract, Statement of Work, and incorporated documents.

This Subcontract is entered into under FRA's Prime Contract No. DE-AC02-07CH11359 with DOE for the operation and management of the Fermi National Accelerator Laboratory.

1.3 INDEPENDENT CONTRACTOR

The Subcontractor is, and shall act as, an independent Subcontractor and the Subcontractor shall not be or act as the agent, employee or servant of FRA or the Government. Without limiting the generality of the foregoing, it is understood and agreed that:

- 1) All persons employed by the Subcontractor in the performance of this agreement shall be employees of the Subcontractor and not employees of FRA or the Government,
- 2) This Subcontract does not create a joint employer relationship for FRA or the Government; and
- 3) The Subcontractor shall not enter into any contract with a third party which purports to obligate or bind FRA or the Government.

1.4 ASSIGNMENT

Neither this Subcontract nor any interest therein nor claim thereunder shall be assigned or transferred by the Subcontractor except as expressly authorized in writing by FRA. Subcontractor shall inform FRA of the transfer of Seller's assets, rights, obligations and/or liabilities under this Agreement to a separate legal entity and submit written proof of such transfer. Subcontractor also shall inform FRA of a corporate name change and submit documents as proof of such a change. The parties must enter into and execute a Novation Agreement or Name Change Agreement for assignment by Subcontractor to be effective. FRA may assign, without Subcontractor's consent, the whole or any part of this Subcontract to the Government or its designee or to a successor contractor for operation and management of the Fermi National Accelerator Laboratory, and in such event this Subcontract shall continue in full force and effect.

1.5 ACCEPTANCE OF SUBCONTRACT

The Subcontractor's written acceptance of this Subcontract or the performance of any portion of this Subcontract shall constitute the Subcontractor's unqualified acceptance of this Subcontract and all the Subcontract's terms and conditions. Any alterations made to the documents comprising this Subcontract or any conditions imposed by the Subcontractor upon its written acceptance of this Subcontract are not

accepted, shall only constitute a proposal for modification of the Subcontract, and shall have no effect on the validity or the Subcontractor's acceptance of this Subcontract and its terms and conditions, anything to the contrary notwithstanding.

CLAUSE 2 - PAYMENT (TIME-AND-MATERIALS OR LABOR-HOUR)

[REF. FAR 52.232-7 PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (NOV 2021)]

2.1 FRA will pay the Subcontractor as follows upon the submission of invoices or vouchers approved by the FRA's Procurement Representative:

(a) Hourly rate.

(1) Hourly rate means the rate(s) prescribed in the Subcontract for payment for labor that meets the labor category qualifications of a labor category specified in the Subcontract that are-

(i) Performed by the Subcontractor;

(ii) Performed by the sub-subcontractors; or

(iii) Transferred between divisions, subsidiaries, or affiliates of the Subcontractor under a common control.

(2) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Subcontract by the number of direct labor hours performed.

(3) The hourly rates shall be paid for all labor performed on the Subcontract that meets the labor qualifications specified in the Subcontract. Labor hours incurred to perform tasks for which labor qualifications were specified in the Subcontract will not be paid to the extent the work is performed by employees that do not meet the qualifications specified in the Subcontract, unless specifically authorized by the FRA Procurement Representative.

(4) The hourly rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis.

(5) The Subcontractor shall substantiate invoices or vouchers (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment and by-

(i) Individual daily job timekeeping records;

(ii) Records that verify the employees meet the qualifications for the labor categories specified in the Subcontract; or

(iii) Other substantiation approved by the FRA Procurement Representative.

(6) Unless the Subcontract prescribes otherwise, the hourly rates in the Subcontract shall not be varied by virtue of the Subcontractor having performed work on an overtime basis. If no overtime rates are provided in the Subcontract and overtime work is approved in advance by FRA, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this Subcontract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by FRA.

(b) Materials.

(1) For the purposes of this clause-

(i) Direct materials means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(ii) Materials means-

(A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the Subcontractor under a common control;

(B) Sub-subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;

(C) Other direct costs (e.g., incidental services for which there is not a labor category specified in the Subcontract, travel, computer usage charges, etc.); and

(D) Applicable indirect costs.

(2) If the Subcontractor furnishes its own materials that meet the definition of a commercial product or commercial service in Federal Acquisition Regulation (FAR) 2.101, the price to be paid for such materials shall not exceed the Subcontractor's established catalog or market price, adjusted to reflect the-

(i) Quantities being acquired; and

(ii) Actual cost of any modifications necessary because of Subcontract requirements.

(3) Except as provided for in paragraph (b)(2) of this clause, FRA will reimburse the Subcontractor for allowable cost of materials provided the Subcontractor-

(i) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(ii) Ordinarily makes these payments within 30 days of the submission of the Subcontractor's payment request to FRA and such payment is in accordance with the terms and conditions of the agreement or invoice.

(4) Payment for materials is subject to the Allowable Cost and Payment clause incorporated into this Subcontract below (FAR 52.216-7). The FRA Procurement Representative will determine allowable costs of materials in accordance with FAR subpart 31.2 in effect on the date of this Subcontract.

(5) The Subcontractor may include allocable indirect costs and other direct costs to the extent they are-

(i) Comprised only of costs that are clearly excluded from the hourly rate;

(ii) Allocated in accordance with the Subcontractor's written or established accounting practices; and

(iii) Indirect costs are not applied to sub-subcontracts that are paid at the hourly rates.

(6) To the extent able, the Subcontractor shall-

(i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Subcontractor shall promptly notify the FRA Procurement Representative and give the reasons. The Subcontractor shall give credit to FRA for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Subcontractor, or would have accrued except for the fault or neglect of the Subcontractor. The Subcontractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Subcontractor, or lost through fault of FRA.

(7) Except as provided for in FAR 31.205-26(e) and (f), FRA will not pay profit or fee to the Subcontractor on materials.

(8) If the Subcontractor enters into any sub-subcontract that requires consent under the terms of this Subcontract, without obtaining such consent, FRA is not required to reimburse the Subcontractor for any costs incurred under the sub-subcontract prior to the date the Subcontractor obtains the required consent. Any reimbursement of sub-subcontract costs incurred prior to the date the consent was obtained shall be at the sole discretion of FRA.

2.2 Once each month the Subcontractor may submit to FRA invoices or vouchers in such form and detail and supported by such documents as provided below. Within 30 days after receipt of each invoice or voucher FRA shall, subject to the provisions of this Subcontract, make payment thereon as approved by FRA. FRA shall have the right, in the event of a breach by Subcontractor of any provision of this Subcontract, to withhold amounts for losses or damages resulting or threatened as a result of such breach, provided any amounts not in dispute are timely paid. Subcontractor shall not stop, slow or suspend performance of its services on account of a good faith dispute between FRA and Subcontractor as to the appropriate sum due and payable to Subcontractor under this Subcontract.

In connection with any discount offered, time will be computed from the date the correct invoice or voucher is received at the office specified by FRA. Payment is made, for discount purposes, when the check is mailed or electronic payment is initiated.

2.3 Subcontractor shall maintain detailed, complete, and accurate accounting records satisfactory to FRA. At any time prior to final settlement under this Subcontract, representatives of FRA or its designees will have access to and the right to audit Subcontractor's invoices, vouchers, statement of cost, books and records to determine the correctness and propriety of payments made under this Subcontract. Each payment theretofore made shall be subject to adjustment for amounts included in the related invoice or voucher on the basis of such audit. Any payment may be reduced for overpayments, or increased for under payments, on preceding invoices or vouchers. The Subcontractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Subcontractor or any assignee under this Subcontract shall be paid by the Subcontractor to FRA, to the extent that they are properly allocable to costs for which the Subcontractor has been reimbursed by FRA under this Subcontract. Reasonable expenses

incurred by the Subcontractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by FRA.

- 2.4 Claims for payment shall be accompanied by such supporting documents and justification as FRA shall require and shall be made in writing to FRA within thirty (30) days' of discovering the claim.

CLAUSE 3 - STANDARD OF PERFORMANCE (SERVICES)

Subcontractor shall perform the services in a professional, skillful and competent manner in accordance with the standards of care and quality practiced by reputable and recognized subcontractors with national experience in performing similar services for projects of similar size, scope and complexity in a similar location.

CLAUSE 4 - LICENSES AND PERMITS

The Subcontractor shall maintain all applicable licenses and permits in good standing with the appropriate jurisdiction or governing body throughout the term of this Subcontract. Subcontractor shall immediately notify FRA of any change in the good standing status of its licenses or permits. Failure by the Subcontractor to maintain applicable licenses in good standing or permits is cause for immediate termination of this Subcontract by FRA.

CLAUSE 5 - CHANGES AND MODIFICATIONS

5.1 CHANGES (TIME-AND-MATERIALS OR LABOR-HOUR)

[REF. FAR 52.243-3 CHANGES - Time-and-Materials or Labor-Hours (SEP 2000)]

(a) FRA may, at any time, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Subcontract, in any one or more of the following::

- 1) Description of services to be performed;
- 2) Time of performance of services (i.e., hours of the day, days of the week, etc.); or
- 3) Place of performance of the services.
- 4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for FRA or the Government in accordance with the drawings, designs, or specifications.
- 5) Method of shipment or packing of supplies.
- 6) Place of delivery.
- 7) Amount of FRA or Government-furnished property.

Except as provided in this clause, no order, statement, or conduct of FRA shall be treated as a change under this clause or entitle the Subcontractor to an equitable adjustment.

(b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this Subcontract, whether or not changed by the

order, or otherwise affects any other terms and conditions of this Subcontract, FRA will make an equitable adjustment in any one or more of the following and will modify the Subcontract accordingly:

- 1) Ceiling price.
- 2) Hourly rates.
- 3) Delivery schedule.
- 4) Other affected terms.

The Subcontractor must assert its right to an equitable adjustment under this clause, within 30 days after receipt of a written change order and submit a proposal for equitable adjustment supported by all documentation required by FRA to analyze the request. The Subcontractor shall perform the services in accordance with the changes ordered by FRA upon receipt of the written change order.

(c) No claim by the Subcontractor for an equitable adjustment based on changes made by FRA shall be allowed if asserted after final payment under this Subcontract. Adjustments to Subcontract price and time for performance shall be memorialized in a Supplemental Agreement or Subcontract Modification. Each Supplemental Agreement or Subcontract Modification shall constitute a final settlement of all matters relating to the change in the work which is the subject of the change order, including but not limited to, all adjustments to the Subcontract price and time for performance, if any, included with that change order.

(d) No course of conduct or dealing between the parties, no express or implied acceptance of alterations or additions to the work and no claim that FRA has been unjustly enriched by an alteration or addition to the work, whether there is any unjust enrichment, shall be the basis of any claim for adjustment in compensation due the Subcontractor or in connection with the work or for adjustment in any time period provided for under the Subcontract. Moreover, the Subcontractor hereby waives and forfeits all claims that any work, services or other activities were performed pursuant to any contract or other agreement separate from the Subcontract. Subcontractor shall not receive any additional compensation or any adjustment in the Subcontract price or time of performance in connection with any work, services or other activities of the Subcontractor pertaining to the work unless such work, services or other activities is authorized in a change order or a written directive, as more specifically described in this section.

(e) Failure to agree to any adjustment will be a dispute under the Disputes clause. However, nothing in this clause excuses the Subcontractor from proceeding with the Subcontract as changed.

5.2 MODIFICATION PROPOSALS - PRICE BREAKDOWN

The Subcontractor, in connection with any proposal made for a Subcontract modification, shall furnish a price breakdown, itemized as required by FRA. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, sub-subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for sub-subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefore shall also be furnished. The justification shall be furnished by the date specified by FRA.

When costs are a factor in any determination of a Subcontract price adjustment under any clause of this Subcontract, such costs shall be in accordance with the contract cost principles and procedures in Subpart 31.2 of the FAR and Subpart 931.2 of the DEAR in effect on the date of this subcontract.

CLAUSE 6 - INDEMNIFICATION AND LIABILITIES

6.1 INDEMNIFICATION

FRA Related Entities: To the extent permitted by law, the Subcontractor shall indemnify and hold harmless FRA, The University of Chicago, Universities Research Association, Inc., and the United States Government, their officers, agents, servants, and employees from any and all liability for losses, expenses, damages, demands, and claims, and shall defend any claim, 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 attorneys' fees, in connection with or resulting from such claim, suit, or action that arise in whole or in part from:

- 1) Subcontractor's breach of any term or provision of the subcontract documents, or
- 2) any negligent or willful act or omission of the Subcontractor, its employees, agents, of subcontractors, material suppliers, or anyone for whose acts they may be liable, regardless of whether such liability, claim, damage, loss, penalty, forfeiture, fine, or suit is caused in part by a party indemnified hereunder.

SURF Related Entities: To the extent permitted by law, the Subcontractor agrees to hold harmless and indemnify SDSTA, the State of South Dakota, and their officers and employees from and against any and all actions, suits, damages, liability or other proceedings which may arise as a result of the negligence, misconduct, error or omission of any officer, agent, subconsultant or employee of the Subcontractors, but only to the extent of such negligence, misconduct, error or omission. This section does not require the Subcontractor to indemnify SDSTA or the State of South Dakota, or their officers, agents or employees from claims or liability to the extent such claims or liability arise from the acts or omissions of SDSTA, the State of South Dakota or their officers, agents or employees.

The obligations of the Subcontractor under this Clause regarding liability and indemnification will survive the final completion or termination of this Subcontract.

6.2 ASSUMPTION OF RISK UNTIL FINAL ACCEPTANCE

The Subcontractor assumes all risks and responsibility for damage to its work and materials from fire, earthquake, storm, or other causes prior to the completion and final acceptance of the work by FRA. The Subcontractor shall, at its own expense, repair and/or replace any work or materials damaged or destroyed. Subcontractor (i) acknowledges and agrees that operations will be ongoing at Fermilab during performance of the Subcontractor's work, and (ii) agrees to perform Subcontractor's work in such a manner so as to (a) not interfere with such operations or inconvenience FRA's employees or agents at Fermilab and (b) cooperate and coordinate the Subcontract work with others at Fermilab as directed by FRA.

6.3 THEFT

Necessary precautions for safeguarding material and equipment relating to this Subcontract or on the Fermilab site will be the responsibility of the Subcontractor. In addition, the Subcontractor shall immediately notify the FRA Procurement Representative of any theft, providing the following information:

Name and phone number of person making report.

Description of missing property; i.e., make and color (if available), model number, serial number and value. Indicate ownership, if Government, furnish Government Identification No.

Date and time theft took place or was discovered.

Date and time property was last known to be in proper place.

Any other information which might be pertinent.

6.4 **WARRANTY (NON-PROFESSIONAL SERVICES)**

(a) *Definitions. Acceptance*, as used in this clause, means the act of an authorized representative of FRA by which FRA or the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract.

(b) Notwithstanding inspection and acceptance by FRA or any provision concerning the conclusiveness thereof, the Subcontractor warrants that all services performed under this Subcontract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. FRA shall give written notice of any defect or nonconformance to the Subcontractor that shall state either (1) that the Subcontractor shall correct or reperform any defective or nonconforming services, or (2) that FRA does not require correction or reperformance.

(c) If the Subcontractor is required to correct or reperform, it shall be at no cost to FRA or the Government, and any services corrected or reperfomed by the Subcontractor shall be subject to this clause to the same extent as work initially performed. If the Subcontractor fails or refuses to correct or reperform, FRA may, by contract or otherwise, correct or replace with similar services and charge to the Subcontractor the cost occasioned to FRA or the Government thereby, or make an equitable adjustment in the Subcontract price.

(d) If FRA does not require correction or reperformance, FRA shall make an equitable adjustment in the Subcontract price.

6.4 **SUSPECT/COUNTERFEIT PARTS**

Notwithstanding any other provisions of this agreement, the Subcontractor warrants that all materials and items provided to FRA shall be genuine, new, and unused unless otherwise specified in writing by FRA. Subcontractor further warrants that all materials or items used by the Subcontractor during performance of work at Fermi National Accelerator Laboratory include all genuine, original, and new components, or are otherwise suitable and fit for the intended purpose. Subcontractor's warranty extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied or delivered to Fermilab.

Subcontractor shall indemnify Fermi Research Alliance, LLC, and the U.S. Department of Energy, their respective agents, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts that are not genuine, original, or unused, or not otherwise suitable and fit for the intended purpose. This includes but is not limited to materials that are defective, suspect, or counterfeit; materials that have been provided under false pretenses; and materials or items that are materially altered, damaged, deteriorated, degraded, or result in product failure.

Types of material, parts, and components known to have been misrepresented include but are not limited to fasteners; hoisting, rigging and lifting equipment; cranes; hoists; valves; pipe and fittings; electrical equipment and devices; plate, bar shapes, channel members, and other heat treated materials and structural items; welding rod and electrodes; and computer memory modules.

Because falsification of information or documentation may constitute criminal conduct, the Subcontractor acknowledges and agrees that FRA may reject and retain such information or items at no cost, and identify, segregate, and report such information or activities to relevant Department of Energy Officials.

CLAUSE 7 - TERMINATION AND NON-WAIVER OF DEFAULTS

7.1 **TERMINATION**

FRA may terminate this Subcontract in accordance with the FAR clauses relating to Termination for Convenience of the Government or Default that are incorporated by reference into these General Terms and Conditions, at the Clause titled, Special Government Flow Down Provisions.

In addition, FRA may terminate this Subcontract for any material default by the Subcontractor relating to any Subcontract article, clause, or requirement, including but not limited to the environmental, safety, and health requirements.

7.2 NON-WAIVER OF DEFAULTS

Any failure by FRA 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, or the right of FRA at any time to avail itself of such remedies as it may have for any breach or breaches of such terms or conditions.

The rights and remedies of FRA in this clause are in addition to any other rights and remedies provided by law under this Subcontract.

CLAUSE 8 - LAWS AND REGULATIONS; DISPUTES; APPLICABLE LAW

8.1 LAWS AND REGULATIONS

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

8.2 DISPUTES

The parties agree to cooperate in resolving any claims, controversies or disputes that may arise out of or relate to this Subcontract, the breach thereof, or the Subcontract Work, (collectively, "Dispute" or "Disputes"). The parties are committed to resolving any Disputes in an amicable, professional and expeditious manner so as to avoid any unnecessary costs or delays to the Work.

Continuance of Work: The parties expressly agree and acknowledge that Work will not be stopped or slowed in any way during the pendency of any Dispute. Subcontractor shall continue to prosecute the Work pending final resolution or determination thereof, unless requested by FRA to suspend Subcontract Work, provided that FRA continues to pay Subcontractor as provided herein for all Subcontract Work not subject to a Dispute.

Step Negotiations: FRA and Subcontractor will first attempt to resolve Disputes at the field level through discussions between FRA's Project Manager and the Subcontractor's Project Manager. If a Dispute cannot be resolved at the field level, upon the request of either party, the Dispute shall be directed to FRA's Procurement Manager and Subcontractor's Executive Corporate Representative (collectively "Senior Representatives") who shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such Dispute. Prior to any meetings between the parties, the parties will exchange relevant information that will assist the parties in resolving their Dispute.

Mediation: If the Dispute is not resolved through negotiations between the Senior Representatives, the parties will submit the matter to mediation.

Binding Dispute Resolution: At the sole option and decision of FRA, all Disputes not resolved by Step Negotiations or Mediation shall be decided by confidential, binding arbitration, administered jointly by the parties to the arbitration and otherwise in accordance with the Commercial Arbitration Rules and Mediation Procedures of the AAA then in effect, before the Arbitrator. Execution of this Subcontract represents Subcontractor's express consent and agreement to arbitrate Disputes if so chosen by FRA. Notice of demand for arbitration must be filed in writing with the other parties to the arbitration. If FRA does not elect arbitration, the parties shall proceed to litigation. In no event may the demand for arbitration be made after institution of legal or equitable proceedings based on the Dispute would be barred by the applicable statute of limitations.

Each party shall produce all documents relevant to the Dispute. Each party shall be entitled to depose no more than six (6) fact witnesses for no longer than six (6) hours each. Each party shall be entitled to depose any and all retained expert opinion witnesses for no longer than six (6) hours each. All discovery disputes shall be decided by the Arbitrator. The Arbitrator may modify these discovery limitations for good cause shown.

The Arbitrator shall have authority to order specific performance, including, without limitation, interim injunctive relief prior to the Dispute being resolved and any final injunctive relief warranted. The Arbitrator shall have the authority to decide all issues concerning the fulfillment of any condition precedent to the arbitrability of a claim or defense; the amount of damages to be awarded, if any; and the arbitrability of the issues presented as well as to resolve all Disputes, including, without limitation, all federal, state, and local statutory claims. The Arbitrator is not empowered to award damages in excess of compensatory damages such as punitive damages.

The award of the Arbitrator shall be enforceable in any court of competent jurisdiction, and each party consents and submits to the jurisdiction of such court for purposes of such action.

Joinder of Parties: At either party's option, third parties may be joined in any of the dispute resolution processes listed above, by consolidation, joinder, or otherwise, who are subject to a valid alternative dispute resolution agreement with the party seeking joinder of such third party.

8.3 APPLICABLE LAW

To the extent that Federal law does not exist and state law could become applicable to this Subcontract, the law of Illinois shall apply.

CLAUSE 9 - RELEASE OF INFORMATION

The Subcontractor agrees that information regarding this Subcontract, any data developed or obtained in the course of performing this Subcontract, and the name of FRA, Fermi National Accelerator Laboratory, Fermilab, the United States Government, or the United States Department of Energy shall not be disclosed in any publications, news releases, advertising, speeches, technical papers, photographs, and other releases of information without prior written approval from the FRA Procurement Representative.

CLAUSE 10 - NOTIFICATIONS

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

If, at any time during the performance of this Subcontract, the Subcontractor becomes aware of any circumstances which may jeopardize its performance of all or any portion of the Subcontract, it shall immediately notify the FRA Procurement Representative in writing of such circumstances, and the

Subcontractor shall take whatever action is reasonably necessary to resolve such circumstances within the shortest possible time.

CLAUSE 11 - ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

This Subcontract shall consist of the Subcontract document (including any signature page), Purchase Order (if applicable), these General Terms and Conditions and any other referenced or incorporated clauses, provisions, and documents. Together, they are the entire agreement between the parties concerning the subject matter and they supersede 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 Terms and Conditions including the FAR and DEAR clauses incorporated by reference; (c) any specifications or drawings; (d) other documents listed in the Subcontract as Incorporated Documents, if any, in the order in which they are listed; and (e) any other referenced or incorporated clauses, provisions, or documents.

CLAUSE 12 - SITE AND FACILITIES ACCESS

SURF Site or Facility Access: The Subcontractor and lower-tier subcontractors shall comply with all SDSTA requirements for access to the SURF site and facilities.

Acknowledgment of Risk. Subcontractor is advised that all natural persons who enter the underground property at the SURF site are required to declare that they have investigated and been advised on the risks associated with going underground. All persons entering the underground property will be required to sign an Acknowledgement of Risk as required by SDSTA.

Release, Agreement Not to Sue and Waiver (the "Release"). Subcontractor is advised that all natural persons who enter or conduct work or activities directly related to the underground property at the SURF site must agree to release, discharge and not sue SDSTA, the State of South Dakota, other Homestake entities identified in the Release and their respective officers and employees from and against any and all actions, suits, damages, liability or other proceedings. The required form of Release will be provided by SDSTA.

Fermilab Site or Facility Access: All Subcontractor and lower-tier subcontractor employees requiring access to any Fermilab facility or sites, including on-site or remote access to Fermilab/FRA computer systems, are subject to applicable DOE and FRA site access requirements and restrictions, including but not limited to all environmental, health, safety, security, and personnel requirements. Any questions should be directed to either the subcontract designated Technical Representative or the FRA Procurement Representative.

- (a) The Subcontractor shall not assign foreign national (non-U.S. citizen) employees or other personnel to work at any Fermilab facility or site, including through on-site or remote access to Fermilab/FRA computer systems, who were born in, are citizens of, are employed or sponsored by or represent a government, company, institution, or other organization based in a country on the Department of State's List of State Sponsors of Terrorism (<https://www.state.gov/state-sponsors-of-terrorism/>) without prior written approval from DOE Headquarters. Terrorist-sponsoring countries may be updated from time to time by the State Department. Requests for access must be submitted to the FRA Procurement Representative at least 180 days in advance to allow time for approval from the DOE.
- (b) FRA also is required by DOE to document all foreign national employees who were born in, are citizens of, are employed or sponsored by or represent a government, company, institution or

organization based in, a sensitive country and who require access to a Fermilab facility or site, including either on-site or remote access to Fermilab/FRA computer systems. To obtain site access, the Subcontractor must provide the place of birth and citizenship for all foreign national employees/personnel working on this subcontract who may access a Fermilab facility or site, including on-site or remote access to Fermilab/FRA computer systems. Employees/personnel from specific sensitive countries may need additional processing and/or be subject to specific restrictions as required by DOE Order 142.3B.

CLAUSE 13 - ENVIRONMENT, SAFETY & HEALTH (ES&H)

The Subcontractor shall take all reasonable precautions in the performance of this Subcontract to protect the health and safety of employees, sub-subcontractor employees, FRA employees, and members of the public, to minimize danger from all hazards to life and property, and to prevent injury to any employees or other persons. The safety of all persons employed by the Subcontractor and its subcontractors on the Fermilab site, or other Government premises, or any other person who enters on the sites or premises for reasons relating to this Subcontract, shall be the sole responsibility of the Subcontractor.

The Subcontractor shall comply with all applicable environmental, safety, health, and fire protection laws, regulations, orders, and requirements (including reporting requirements), including those of DOE. The Subcontractor shall comply with FRA's environmental, safety, and health requirements for any work performed at the Fermilab site, including the requirements set forth in 10 CFR 851 Worker Safety and Health Program.

The Subcontractor shall immediately take action to correct any noncompliance with the environmental, safety, and health requirements of this Subcontract. If the Subcontractor fails to comply with the environment, safety, and health requirements, FRA may, without waiver of any other legal or contractual rights or remedies, issue a stop-work order that stops all or any part of the work under this Subcontract. Thereafter, a start order for resumption of any or all work may be issued at the discretion of FRA. The Subcontractor may not make any claim for an extension of time or for compensation or damages in connection with any work stoppage under this provision.

CLAUSE 14 - STOP-WORK ORDER (FAR 52.242-15 (AUG 1989))

FRA may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all, or any part, of the work called for by this Subcontract contract for a period of 90 days after the order is delivered to the Subcontractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, FRA shall either:

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of FRA, clause of this contract.

If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume work. FRA shall make an equitable adjustment in the delivery schedule or Subcontract price, or both, and the Subcontract shall be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this Subcontract; and

(2) The Subcontractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if FRA decides the facts justify the action, FRA may receive and act upon the claim submitted at any time before final payment under this Subcontract.

If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of FRA, FRA shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

If a stop-work order is not canceled and the work covered by the order is terminated for default, FRA shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

CLAUSE 15 - INSURANCE

Insurance requirements for this Subcontract, if any, are established by FRA as the contracting entity. Before undertaking any work under this Subcontract, the Subcontractor shall, except as otherwise approved by FRA, comply with the Insurance Requirements Exhibit if included with this Subcontract, which are based upon levels of risk, and provide the applicable certificates of insurance as set out in the Insurance Requirements Exhibit.

The Subcontractor shall indemnify FRA for any expense incurred or loss suffered by FRA for the failure of the Subcontractor to comply with the provisions of this clause or the Insurance Requirements for this Subcontract.

CLAUSE 16 - SERVICE CONTRACT LABOR STANDARDS

This Subcontract is subject to the Service Contract Labor Standards statute (41 U.S.C. chapter 67) and the related FAR provisions that are incorporated by reference in the Clause titled Special Government Flow Down Provisions, unless the Subcontract is performed by employees in bona fide executive, administrative, or professional capacity (as excluded from the definition of service employees in the Service Contract Labor Standards statute) or it is subject to another exclusion or exemption by the Secretary of Labor or in the Service Contract Labor Standards statute (41 U.S.C. § 6702, as interpreted in 29 CFR Part 4, Subpart C).

CLAUSE 17 - TRAVEL UNDER TIME-AND-MATERIALS OR LABOR-HOUR SUBCONTRACTS

In connection with furnishing the services under this Subcontract, it may be necessary for Subcontractor personnel to make authorized trips from time to time in support of the Statement of Work. Travel expenses and time spent during travel may be paid for by FRA in accordance with the following rules:

- (a) Travel required by subcontractor personnel for performance of services at a location away from the subcontractor personnel's regular, customary work location must be approved by the appropriate FRA personnel.
 1. In no case will labor hours and costs related to such travel be a direct charge under the Subcontract unless it has been approved by FRA.
 2. Any foreign travel charged directly shall be subject to the prior approval of the Laboratory FRA and the DOE, regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of the United States and its territories and possessions, Puerto Rico and Northern Mariana.

- i. Requests for approval, if required, shall be submitted in accordance with DOE procedures prior to the planned departure date and when applicable, include a notification and other requirements respecting proposed sensitive foreign national travel.
 - ii. Transportation of personnel or property outside of the United States, the District of Columbia, the Commonwealth of Puerto Rico and possessions of the United States should be on a U. S. Flag air carrier to the extent that service by these carriers is available. In situations where it is not, a "Statement of Unavailability of U.S. Flag Air Carriers" shall be included on vouchers indicating that a U.S. flag carrier was not available or the specific reasons should be given as to why it was necessary to use foreign flag air carrier service.
- (b) Labor hours shall not be charged for Subcontractor personnel's time to commute to their regular, customary work location or other offices maintained by Subcontractor. Labor hours may be charged for travel to locations other than the personnel's regular, customary work location or other Subcontractor office, including but not limited to:
- 1. traveling from home to a customer's workplace in emergency situations;
 - 2. travel that is all in a day's work;
 - 3. traveling from home to a special one-day assignment in another city;
 - 4. overnight travel away from home community; and
 - 5. traveling away from home community in a private vehicle.

Notwithstanding the foregoing, labor hours spent during travel to locations within the same metropolitan area as the personnel's regular, customary work location shall be adjusted to deduct the personnel's customary time to commute to its regular, customary work location.

- (c) As full reimbursement for transportation, lodging, meals, and incidental expenses incurred by subcontractor personnel in connection with travel authorized in accordance with paragraph (a), above, the Subcontractor shall be reimbursed its allowable travel costs. Allowable travel costs will be determined in accordance with the Federal Acquisition Regulation (FAR) 31.205-46 Travel Costs in effect as of the date of this Subcontract. Consistent with FAR 31.205-46, FRA requires a receipt for each expenditure of \$75.00 or more in order to be reimbursed.

CLAUSE 18 - SPECIAL GOVERNMENT FLOW DOWN PROVISIONS

The Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses listed below are incorporated by reference into this Subcontract, with the same force and effect as if they were written out in full verbatim text. The full texts of the clauses are located in Chapters 1 and 9 of Title 48 of the Code of Federal Regulations and are available at <https://www.gpo.gov/fdsys/> or <https://www.acquisition.gov>.

The threshold categories below are additive, meaning that the clauses listed for each threshold level apply to any Subcontract within that or any higher threshold level of applicability.

As used in these incorporated clauses, the following terms will have the meanings listed below:

"Contract" shall mean this Subcontract

"Contractor" shall mean the Subcontractor

"Subcontractor" in lower case shall mean the Subcontractor's subcontractors (i.e., lower tier subcontractors)

"Government" and "Contracting Officer" shall mean FRA, except as specifically noted below

The Subcontractor shall include the listed provisions in its subcontracts, at any tier, to the extent applicable to the type of work and Subcontractor status. The version of the provision in force at the time of execution of this Subcontract or any sub-subcontracts shall control.

THE FOLLOWING CLAUSES APPLY REGARDLESS OF SUBCONTRACT VALUE

- FAR 52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017)
- FAR 52.204-9 PERSONAL IDENTITY VERIFICATION OF SUBCONTRACTOR PERSONNEL (JAN 2011)
- FAR 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (NOV 2021)
Applies if subcontractor has federal contract information residing in or transiting through its information system.
- FAR 52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (DEC 2023)
- FAR 52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2021)
Excluding paragraph (b)(2)
- FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (FEB 2024)
Applies if the Subcontract involves any further subcontracting opportunities.
- FAR 52.222-1 NOTICE OF LABOR DISPUTES (FEB 1997)
- FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015)
- FAR 52.222-26 EQUAL OPPORTUNITY (SEPT 2016)
NOTE: DOWNLOAD THE EEO POSTER AT:
<https://www.dol.gov/ofccp/regs/compliance/posters/pdf/eeopost.pdf>
- FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (NOV 2021)
- FAR 52.222-55 MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (NOV 2020)
- FAR 52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA DESIGNATED ITEMS (MAY 2008)
- FAR 52.223-15 ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS (MAY 2020)
- FAR 52.223-17 AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (AUG 2018)
- FAR 52.223-18 ENCOURAGING POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (JUN 2020)
Applies to driving on Fermilab site or DOE owned or leased property
- FAR 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)

FAR 52.224-2 PRIVACY ACT (APR 1984)

FAR 52.224-3 PRIVACY TRAINING (JAN 2017)

Applies if subcontractor employees have access to a Privacy Act system of records; or design, develop, maintain, or operate a Privacy Act system of records; or create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information

FAR 52.225-1 BUY AMERICAN ACT – SUPPLIES (NOV 2021)

FAR 52.225-8 DUTY-FREE ENTRY (OCT 2010)

FAR 52.225-13 RESTRICTION 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 ALTERNATE V (DEC 2007) and DEAR 927.409(d)(3), and substituting paragraph (a) with DEAR 927.409(a).

Applies if any “data” will be produced, furnished, or acquired under the Subcontract

If delivery of Limited Rights Data (as defined in FAR 52.227-14(a)) is required, then ALTERNATE II applies, with the following disclosure purposes added to the end of paragraph (a) of the Limited Rights Notice:

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

If delivery of Restricted Computer Software (as defined in FAR 52.227-14(a)) is required, then ALTERNATE III applies

FAR 52.227-16 ADDITIONAL DATA REQUIREMENTS (JUN 1987)

FAR 52.227-23 RIGHTS TO PROPOSAL DATA (JUN 1987)

Applies if the Subcontract is based on a technical proposal

FAR 52.216-7 ALLOWABLE COST AND PAYMENT (AUG 2018)

Applies in conjunction with Clause 2 – Payments, but only to the portion of the Subcontract that provides for reimbursement of materials

FAR 52.232-20 LIMITATION OF COST (APR 1984)

FAR 52.232-22 LIMITATION OF FUNDS (APR 1984)

FAR 52.232-39 UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS (JUNE 2013)

FAR 52.232-40 PROVIDING ACCELERATED PAYMENT TO SMALL BUSINESS SUBCONTRACTORS (NOV 2021)

FAR 52.242-14 SUSPENSION OF WORK (APR 1984)

Applies if the Subcontract involves an architect or engineer.

- FAR 52.243-6 CHANGE ORDER ACCOUNTING (APR 1984)
- FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (FEB 2024)
Applies to Subcontractor's sub-subcontracts for commercial products or commercial services
- FAR 52.245-1 GOVERNMENT PROPERTY (JAN 2017)
Applies if government property is furnished for performance of work under this Subcontract
ALT I applies if subcontract does not require submission of certified cost or pricing data
- FAR 52.245-9 USE AND CHARGES (APR 2012)
Applies if government property is furnished for performance of work under this Subcontract
- FAR 52.246-6 INSPECTION – TIME-AND-MATERIAL AND LABOR-HOUR (MAY 2021)
- FAR 52.246-26 REPORTING NONCONFORMING ITEMS (NOV 2021)
Applies as prescribed in FAR 46.317 to items subject to higher-level quality standards as set out in FAR 52.246-11. Not applicable in subcontracts for commercial products or commercial services
- FAR 52.247-63 PREFERENCE FOR U.S. FLAG AIR CARRIERS (JUN 2003)
- FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS (NOV 2021)
- FAR 52.249-6 TERMINATION (COST-REIMBURSEMENT) (MAY 2004), with ALTERNATE IV (SEP 1996)
- FAR 52.249-14 EXCUSABLE DELAYS (APR 1984)
- DEAR 927.303(c) FACILITIES LICENSE (DEC 2000)
Per DEAR 927.303(c), the following applies to subcontracts for the design, construction, or operation of a Government-owned research, development, demonstration or production facility:
- Facilities License.* In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this Subcontract, the Subcontractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Subcontractor at any time through completion of this Subcontract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, title to, any rights or patents herein licensed.
- DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR SUBCONTRACTOR EMPLOYEES (DEC 2000)
Applies if the Subcontract involves any work at the Fermilab site or DOE-owned or leased property
- DEAR 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS (MAR 2011)
Applies if any nuclear technology information will be made available to foreign nationals of sensitive foreign nations
- DEAR 952.204-77 COMPUTER SECURITY (AUG 2006)

Applies if Subcontractor has access to any computers owned, leased, or operated by or on behalf of FRA or DOE

DEAR 952.227-11 PATENT RIGHTS – RETENTION BY CONTRACTOR (SHORT FORM) (MAR 1995)
Applies to agreements with small business for experimental, developmental, or research work

Per the [Department of Energy Determination of Exceptional Circumstances under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies \(S&E DEC\)](#) issued on June 7, 2021, the following paragraph is added to DEAR 952.227-11 as paragraph (m):

(m) *U.S. Competitiveness.* Notwithstanding 48 CFR 970.5227-3(f) U.S. Industrial Competitiveness, for all work subject to the S&E DEC, the Contractor agrees that any products embodying any subject invention or produced through the use of any subject invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of DOE that it is not commercially feasible. In the event DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., alternative binding commitments to provide an overall net benefit to the U.S. economy. The Contractor agrees that it will not license, assign, or otherwise transfer any subject invention to any entity, at any tier, unless that entity agrees to these same requirements. In the event that the Contractor or other such entity receiving rights in the Subject Invention undergoes a change in ownership amounting to a controlling interest, the Contractor or other such entity receiving rights shall ensure continual compliance with the requirements of this paragraph (m) and shall inform DOE, in writing, of the change in ownership within 6 months of the change. The Contractor and any successor assignee will convey to DOE, upon written request from DOE, title to any subject invention, upon a breach of this paragraph. The Contractor will include this paragraph in all subawards/contracts, regardless of tier, for experimental, developmental or research work.

In addition, the following item (4) is added to paragraph (d): "or upon a breach of paragraph (m) U.S. Competitiveness of this clause."

DEAR 952.227-13 PATENT RIGHTS – ACQUISITION BY THE GOVERNMENT (SEP 1997)
Applies to agreements with non-small business for experimental, developmental, or research work

Per the [Department of Energy Determination of Exceptional Circumstances under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies \(S&E DEC\)](#) issued on June 7, 2021, the following paragraph is added to DEAR 952.227-13 as paragraph (n):

(n) *U. S. Competitiveness.* Notwithstanding 48 CFR 970.5227-3(f) U.S. Industrial Competitiveness, for all work subject to the S&E DEC, the Contractor agrees that any products embodying any subject invention or produced through the use of any subject invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of DOE that it is not commercially feasible. In the event DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., alternative binding commitments to provide an overall net benefit to the U.S. economy. The Contractor agrees that it will not license, assign, or otherwise transfer any subject invention to any entity, at any tier, unless that entity agrees to these same requirements. In the event that the Contractor or other such entity receiving rights in the Subject Invention undergoes a change in ownership amounting to a controlling interest, the Contractor or other such entity receiving rights shall ensure continual compliance with the requirements of this paragraph (n) and shall inform DOE, in writing, of the change in ownership within 6 months of the change. The Contractor and any successor assignee will convey to DOE, upon written request from DOE, title to any subject invention, upon a breach of this paragraph.

The Contractor will include this paragraph in all subawards/contracts, regardless of tier, for experimental, developmental or research work.

In addition, the following is added to the first sentence of paragraph (d)(1): "or upon a breach of paragraph (n) U.S. Competitiveness of this clause."

DEAR 952.247-70 FOREIGN TRAVEL (JUN 2010)

DEAR 970.5208-1 PRINTING (DEC 2000)
Applies if the Subcontract requires printing

DEAR 970.5222-1 COLLECTIVE BARGAINING AGREEMENTS – MANAGEMENT AND OPERATING CONTRACTS (DEC 2000)
Applies if the Subcontract is for protective services or other services that affect continuity of operation of the Fermilab facility

DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010)
Applies if the Subcontract involves work at Fermilab site or on DOE-owned or leased property

DEAR 970.5232-3 ACCOUNTS, RECORDS, AND INSPECTION (DEC 2010) (DEVIATION) (PF 2022-23 (OCT 2021))
Paragraph (a) through (h) only. Applies only when costs are a factor in determining the amount payable to the Subcontractor

DEAR 970.5225-1 COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS (NOV 2015)

DEAR 970.5227-8 REFUND OF ROYALTIES (AUG 2002)
Applies if subcontract price includes amounts for royalties payable to Subcontractor

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS THE SIMPLIFIED ACQUISITION THRESHOLD, DEFINED IN FAR PART 2

FAR 52.203-5 COVENANT AGAINST CONTINGENT FEES (MAY 2014)

FAR 52.203-6 RESTRICTIONS ON SUB-SUBCONTRACTOR SALES TO THE GOVERNMENT (JUN 2020)

FAR 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLE BLOWER RIGHTS (NOV 2023)

FAR 52.215-2 AUDITS AND RECORDS-NEGOTIATION (JUN 2020)
Applies if not a Subcontract for commercial products or commercial services or otherwise exempt under FAR 15.403-1

FAR 52.215-14 INTEGRITY OF UNIT PRICES (NOV 2021)
Applies to Services where supplies are required, except for paragraph (b)

FAR 52.215-23 LIMITATIONS ON PASS-THROUGH CHARGES (JUN 2020)

FAR 52.227-1 AUTHORIZATION AND CONSENT (JUN 2020)

DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2000) (DEVIATION)
In this clause, "Government" shall mean the United States Government and "Contracting Officer" shall mean the DOE Contracting Officer for Prime Contract No. DE-AC02-07CH11359

FAR 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (FEB 2013)

DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009), with ALTERNATE I (AUG 2009)

Applies if the Subcontract involves advisory and assistance services as defined in FAR 2.101

DEAR 970.5223-7 SUSTAINABLE ACQUISITION PROGRAM (OCT 2010)

Applies to first tier Subcontracts that offer significant subcontracting opportunities for energy efficient or environmentally sustainable products or services

FAR 52.244-2 SUBCONTRACTS (JUN 2020)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$2,500 AND IS NOT EXEMPT OR EXCLUDED FROM THE SERVICE CONTRACT LABOR STANDARDS STATUTE OR BY THE SECRETARY OF LABOR

FAR 52.222-41 SERVICE CONTRACT LABOR STANDARDS (AUG 2018)

FAR 52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS – PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (AUG 2018)

FAR 52.222-44 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS – PRICE ADJUSTMENT (MAY 2014)

Applies if not a multiple year or option contract

FAR 52.222-62 PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706 (JAN 2022)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$3,500

FAR 52.222-3 CONVICT LABOR (JUN 2003)

FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (NOV 2021)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$10,000

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

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$15,000

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

FRA and the Subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

THE FOLLOWING CLAUSES APPLY 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 CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$35,000

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 EXCEEDS \$150,000

FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUN 2020)
Excluding paragraph (c)(1)

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

FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS – OVERTIME COMPENSATION (MAY 2018)
Applies unless exempt under FAR 22.305

FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (JUN 2020)

FRA and the Subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS (JUN 2020)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$500,000, IS PRIMARILY FOR SERVICES PROVIDED BY “SERVICE EMPLOYEES,” AND IS NOT EXEMPT OR EXCLUDED FROM THE SERVICE CONTRACT LABOR STANDARDS STATUTE OR BY THE SECRETARY OF LABOR

FAR 52.204-14 SERVICE CONTRACT REPORTING REQUIREMENTS (OCT 2016)
Applies unless exempt or excluded from the Service Contract Act of 1965, as amended, and unless an Indefinite Delivery/Indefinite Quantity (IDIQ) subcontract

FAR 52.204-15 SERVICE CONTRACT REPORTING REQUIREMENTS FOR INDEFINITE DELIVERY CONTRACTS (OCT 2016)
Applies to Indefinite Quantity/Indefinite Delivery (IDIQ) subcontracts unless exempt or excluded from the Service Contract Act of 1965, as amended

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

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

FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (SEP 2023)
Applies unless the Subcontractor is a small business or there are no subcontracting possibilities

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$2,000,000 AND MEETS THE REQUIREMENTS FOR SUBMISSION OF CERTIFIED COST OR PRICING DATA AT FAR 15.403-1(b) AND 15.403-4

FAR 52.215-10 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA (AUG 2011)

FAR 52.215-11 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA – MODIFICATIONS (JUN 2020)

FAR 52.215-12 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (JUN 2020)

- FAR 52.215-13 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA – MODIFICATIONS (JUN 2020)
- FAR 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2010)
- FAR 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)
- FAR 52.230-2 COST ACCOUNTING STANDARDS (JUN 2020)
Applies if the Subcontract is with a large business; is for other than a “commercial product” or “commercial service” as defined in FAR 2.101; and is not otherwise exempt under 48 CFR 9903.201-1 or 9903.201-2
- FAR 52.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (JUN 2020)
Excluding paragraph (b). Applies if the Subcontract is with a large business; is for other than a “commercial product” or “commercial service” as defined in FAR 2.101; is not otherwise exempt under 48 CFR 9903.201-1 or 9903.201-2; and the Subcontractor certifies that it is eligible for and elects to use modified CAS coverage, per 48 CFR 9903.201-2
- FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2010)
Applies if FAR 52.230-2 or FAR 52.230-3 apply.

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$6,000,000

- FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (NOV 2021)
Applies if the Subcontract has a performance period of more than 120 days. All disclosures of violation of the False Claims Act or of Federal criminal law shall be directed to the DOE Inspector General, with a copy to the DOE Contracting Officer for the Fermilab site
- FAR 52.203-14 DISPLAY OF HOTLINE POSTER(S) (NOV 2021)
Modified by DEAR 903.1004. Applies unless Subcontract is for the acquisition of a “commercial product” or “commercial service” as defined in FAR 2.101 or is performed entirely outside of the United States. Download the required Poster at <https://energy.gov/ig/downloads/office-inspector-general-hotline-poster>

THE FOLLOWING CLAUSE APPLIES TO CONTRACTS SET ASIDE OR RESERVED FOR OR AWARDED ON A SOLE SOURCE BASIS TO HUBZONE SMALL BUSINESS CONCERNS:

- FAR 52.219-3 NOTICE OF HUBZONE SET-ASIDE OR SOLE SOURCE AWARD (NOV 2011)
Agreements limiting sub-subcontracting in sub-paragraphs (d) – (g) apply

(END OF GENERAL TERMS AND CONDITIONS FOR
TIME-AND-MATERIALS OR LABOR-HOURSUBCONTRACTS FOR NON-R&D WORK)