

**FERMI RESEARCH ALLIANCE, LLC (FRA)  
SPECIAL TERMS AND CONDITIONS FOR BENEFITS OR AUDIT SERVICES**

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## 1. DEFINITIONS

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

- (a) The terms "Commercial component", "Commercial item", and "Non-developmental item" shall have the meanings contained in the clause at Federal Acquisition Regulation (FAR) 2.101, Definitions.
- (b) The term "Department" shall mean the U.S. Department of Energy or any duly authorized representative thereof.
- (c) The term "FRA" shall mean Fermi Research Alliance, LLC, a private not-for-profit Limited Liability Company that manages and operates the Fermi National Accelerator Laboratory under U.S. Department of Energy Contract No. DE-AC02-07CH11359, and includes the successor to or any duly authorized representative thereof. FRA is the contracting entity for this Subcontract.
- (d) The term "Fermilab" shall mean the physical site of the Fermi National Acceleratory Laboratory, including property, facilities, equipment, and accumulated technical data that are owned by the United States Government.
- (e) The term "Government" shall mean the United States Government acting through the U.S. Department of Energy or any successor agency.
- (f) Except as otherwise provided in this Subcontract, the term "sub-subcontract" includes purchase orders issued by the Subcontractor under this Subcontract.

1.1 When a solicitation provision or contract clause 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—

- (a) The solicitation, or amended solicitation, provides a different definition;
- (b) The contracting parties agree to a different definition;
- (c) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
- (d) 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 (a) applies.

## 2. ACCEPTANCE OF SUBCONTRACT

Acceptance of this Subcontract must be in accordance with and strictly limited to the requirements set forth in this Subcontract, including these Terms and Conditions. Any attempted change by the Subcontractor of the requirements set forth in this Subcontract without the proper acknowledgment or agreement by FRA shall have no force or effect. Where no such acknowledgment or agreement has been obtained, or where acknowledgment and agreement is sought by the Subcontractor after this Subcontract is awarded in the form of an Administrative Service Agreement, Benefits Program Application, Contract Addendum or other Subcontractor provided document, performance by the Subcontractor shall be deemed to be an acceptance by the Subcontractor of the requirements set forth in this Subcontract.

## 3. INSPECTION

- (a) SERVICES.
  - (i) "Services," as used in this paragraph, includes services performed, workmanship, and materials furnished or utilized in the performance of services.
  - (ii) FRA has the right to inspect, test, and audit all services called for by this Subcontract, to the extent practicable at all times and places during the term of the Subcontract. FRA shall perform inspections, tests, and audits in a manner that will not unduly delay the work. If FRA performs inspections, tests, or audits on the premises of the Subcontractor or a sub-subcontractor, the

Subcontractor shall furnish, and shall require sub-subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties.

- (iii) If any of the services do not conform with Subcontract requirements, FRA may require the Subcontractor to perform the services again in conformity with Subcontract requirements, at no increase in Subcontract amount. When the defects in services cannot be corrected by re-performance, FRA may require the Subcontractor to take necessary action to ensure that future performance conforms to Subcontract requirements and may enforce the performance guarantees attached as Exhibit PG and incorporated herein. If the Subcontractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Subcontract requirements, FRA may terminate the Subcontract for cause.

**4. ASSIGNMENT**

Neither this Subcontract nor any interest in it nor claim under it 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 the whole or any part of this Subcontract to the Government or its designee, or to any successor contractor, and in such event this Subcontract shall continue in full force and effect.

**5. CHANGES**

Changes in the requirements of this Subcontract may be made only by written agreement of the parties.

**6. PAYMENT**

Payment will be made after acceptance of the services by FRA and receipt of a proper invoice.

**7. TAXES**

The Subcontract price includes all applicable Federal, State, and local taxes and duties. If taxes are unknown at the time of pricing the Subcontractor must disclose and specify all taxes that may be charged in the Subcontractor's Services Agreement and provide pricing no later than 90 days prior to the beginning of each contract year.

**8. TERMINATION FOR CONVENIENCE OF FRA**

FRA, by written notice, may terminate this subcontract, in whole or in part, when it is in FRA's or the Government's interest. If this subcontract is terminated, FRA shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination and for claims relating to the period before the effective date of termination.

**9. TERMINATION FOR CAUSE**

FRA may terminate this Subcontract, or any part hereof, for cause in the event of any default by the Subcontractor, or if the Subcontractor fails to comply with any Subcontract requirement, or fails to provide FRA, upon request, with adequate assurances of future performance. In the event of termination for cause, FRA shall not be liable to the Subcontractor for any amount for services not accepted, and the Subcontractor shall be liable to FRA for any and all rights and remedies provided by law and by other provisions of this Subcontract. If it is determined that FRA improperly terminated this Subcontract for cause, such termination shall be deemed a termination for FRA's convenience.

**10. STANDARD OF PERFORMANCE AND WARRANTY**

**(a) STANDARD OF PERFORMANCE (PROFESSIONAL SERVICES)**

The 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.

- (b) The Subcontractor shall, within a reasonable time after receipt of written notice from FRA and without cost to FRA, correct any defects or nonconformities in the services furnished or non-conformities with the performance guarantees under this Subcontract which appear within one year after the date of acceptance by FRA, unless a different warranty period is provided in the Subcontract. If,

within a reasonable time, the Subcontractor is unable or refuses to correct or re-perform, FRA may, by Subcontract or otherwise, correct or replace with similar services and charge to the Subcontractor the cost occasioned thereby, or make an equitable adjustment in the Subcontract price. If, however, FRA does not require correction or re-performance, it may at its option make an equitable adjustment in the Subcontract price.

- (c) The rights and remedies of FRA provided in this clause are in addition to and do not limit any rights afforded to FRA by law or by any other clause of this Subcontract.

#### **11. 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.

#### **12. OTHER COMPLIANCES**

The Subcontractor shall comply with all applicable Federal, State and local laws, executive orders, rules, and regulations in its performance of this Subcontract.

Subcontractor represents that it is exempt or excluded from the Service Contract Act and related regulations because the services are performed and provided in a bona fide executive, administrative, or professional capacity (29 CFR § 10.4(d)) or by some other exemption or exclusion.

If not exempt or excluded from the Service Contract Act and related regulations, the following clauses apply:

- For Subcontracts exceeding \$2,500 in value: FAR 52.222-41 SERVICE CONTRACT LABOR STANDARDS (AUG 2018) and, as applicable, FAR 52.22.43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS – PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (AUG 2018), OR FAR 52.222-44 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS – PRICE ADJUSTMENT (MAY 2014)
- In addition to the clauses listed above, for Subcontracts exceeding \$500,000 in value: FAR 52.204-14 SERVICE CONTRACT REPORTING REQUIREMENTS (OCT 2016), unless an Indefinite Delivery/Indefinite Quantity (IDIQ) subcontract in which case the following clause applies: FAR 52.204-15 SERVICE CONTRACT REPORTING REQUIREMENTS FOR INDEFINITE DELIVERY CONTRACTS (OCT 2016).

#### **13. PATENT INDEMNITY**

- (a) In accordance with FAR 52.227-3 (APR 1984), the Subcontractor shall indemnify FRA, the Government, and their officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this Subcontract, or out of the use or disposal by or for the account of the Government or FRA of such supplies or construction work.
- (b) This indemnity shall not apply unless the Subcontractor shall have been informed as soon as practicable by the Government or FRA of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to:
  - (1) An infringement resulting from compliance with specific written instructions of FRA or the Department Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the Subcontract not normally used by the Subcontractor,
  - (2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or
  - (3) A claimed infringement that is unreasonably settled without the consent of the Subcontractor, unless required by final decree of a court of competent jurisdiction.

#### 14. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

- (a) The Subcontractor shall report to the Department Contracting Officer through FRA promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Subcontract of which the Subcontractor has knowledge.
- (b) In the event of any claim or suit against FRA or the Government on account of any patent or copyright infringement arising out of the performance of this Subcontract or out of the use of any supplies furnished or work or services performed under this Subcontract, the Subcontractor shall furnish to FRA or the Government, when requested by FRA or the Department Contracting Officer, all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Subcontractor has agreed to indemnify the Government or FRA.
- (c) The Subcontractor agrees to include, and require inclusion of, this clause in all lower-tier sub-subcontracts for supplies or services (including construction and architect-engineer sub-subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

#### 15. DISPUTES

The parties agree that they will attempt in good faith to resolve through negotiation any dispute, claim, or controversy arising out of or relating to this Subcontract. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of alternative disputes resolution (ADR). In the event that ADR fails or is not used, the parties may thereafter pursue any remedy they may have at law or in equity.

#### 16. THIS SUBCONTRACT AND SUB-SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES - FAR 52.244-6 (FEB 2024)

(a) Definitions. As used in this clause—

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

Subcontract includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial products, commercial services, or non-developmental items as components of items to be supplied under this contract.

(c)

(1) The Contractor shall insert the following clauses in subcontracts for commercial products or commercial services:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Nov 2021) (41 U.S.C. 3509), if the subcontract exceeds the threshold specified in FAR 3.1004(a) on the date of subcontract award and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017).

(iv) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (Nov 2021), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204-21.

(v) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (DEC 2023) (Section 1634 of Pub. L. 115-91).

(vi) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(vii) 52.219-8, Utilization of Small Business Concerns (FEB 2024) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(viii) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(ix) 52.222-26, Equal Opportunity (Sep 2016) (E.O. 11246).

(x) 52.222-35, Equal Opportunity for Veterans (Jun 2020) (38 U.S.C. 4212(a)).

(xi) 52.222-36, Equal Opportunity for Workers with Disabilities (Jun 2020) (29 U.S.C. 793).

(xii) 52.222-37, Employment Reports on Veterans (Jun 2020) (38 U.S.C. 4212).

(xiii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.

(xiv)

(A) 52.222-50, Combating Trafficking in Persons (Nov 2021) (22 U.S.C. chapter 78 and E.O. 13627).

(B) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

(xv) 52.222-55, Minimum Wages for Contractor Workers under Executive Order 14026 (Jan 2022), if flow down is required in accordance with paragraph (k) of FAR clause 52.222-55.

(xvi) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2022) (E.O. 13706), if flow down is required in accordance with paragraph (m) of FAR clause 52.222-62.

(xvii)

(A) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a) if flow down is required in accordance with 52.224-3(f).

(B) Alternate I (Jan 2017) of 52.224-3, if flow down is required in accordance with 52.224-3(f) and the agency specifies that only its agency-provided training is acceptable.

(xviii) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xix) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Mar 2023), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

(xx) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) (46 U.S.C. 55305 and 10 U.S.C.2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Subcontractor may flow down to subcontracts for commercial products or commercial services a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Subcontractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract. (a) Definitions.

## **17. ANTI-KICKBACK PROCEDURES - FAR 52.203-7 (JUN 2020)**

(Applicable only if this Subcontract exceeds \$150,000)

### **17.1 DEFINITIONS. AS USED IN THIS CLAUSE—**

- (a) "Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, Subcontractor, or Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contractor in connection with a Subcontract relating to a prime contract.
- (b) "Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
- (c) "Prime Contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

- (d) "Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.
- (e) "Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.
- (f) "Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
- (g) "Subcontractor," as used in this clause (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or Subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher tier Subcontractor.
- (h) "Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a Subcontractor.

**17.2 41 U.S.C. CHAPTER 87, KICKBACKS, PROHIBITS ANY PERSON FROM—**

- (a) Providing or attempting to provide or offering to provide any kickback;
- (b) Soliciting, accepting, or attempting to accept any kickback; or
- (c) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a Subcontractor to a prime Contractor or higher tier Subcontractor.

**17.3 (a) The Subcontractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph 17.2 of this clause in its own operations and direct business relationships.**

- (b) When the Subcontractor has reasonable grounds to believe that a violation described in paragraph 17.2 of this clause may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.
- (b) The Subcontractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph 17.2 of this clause.
- (c) FRA may—
  - (i) Offset the amount of the kickback against any monies owed by FRA under this Subcontract and/or
  - (ii) Direct that the Subcontractor withhold from sums owed the sub-subcontractor under the prime contract the amount of the kickback. FRA may direct that monies withheld under subdivision 17.3(c)(i) of this clause be paid over to FRA unless FRA has already offset those monies under subdivision 17.3(c)(ii) of this clause. In either case, the Subcontractor shall notify FRA when the monies are withheld.
- (d) The Subcontractor agrees to incorporate the substance of this clause, including this subparagraph 17.3(d), in all sub-subcontracts that exceed \$150,000.

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

Applies to Subcontracts as indicated below.

**18.1 DEFINITIONS. AS USED IN THIS CLAUSE—**

- (a) "Executive" means officers, managing partners, or any other employees in management positions.
- (b) "First-tier Subcontract" means a Subcontract awarded directly by FRA for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include FRA's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.

- (c) "Month of award" means the month in which a contract is signed by the Contracting Officer or the month in which a first-tier Subcontract is signed by FRA.
- (d) "Total compensation" means the cash and noncash dollar value earned by the executive during FRA's or the Subcontractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
  - (i) Salary and bonus.
  - (ii) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.
  - (iii) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - (iv) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - (v) Above-market earnings on deferred compensation which is not tax-qualified.
  - (vi) Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

#### 18.2 FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT.

Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires FRA to report information on Subcontract awards. The law requires all reported information be made public, therefore, FRA is responsible for notifying its Subcontractors that the required information will be made public.

#### 18.3 DISCLOSURE OF CLASSIFIED INFORMATION.

Nothing in this clause requires the disclosure of classified information.

#### 18.4 FIRST-TIER SUBCONTRACT INFORMATION.

Unless otherwise directed by the FRA Procurement Administrator, or as provided in paragraph 18.6 of this clause, by the end of the month following the month of award of a first-tier Subcontract with a value of \$30,000 or more, the Subcontractor shall report the following information to the Procurement Administrator within 15 days of the award. FRA shall report the following information at <http://www.frs.gov> for the first-tier Subcontract. (FRA shall follow the instructions at <http://www.frs.gov> to report the data.

- (a) Unique identifier (DUNS Number) for the Subcontractor receiving the award and for the Subcontractor's parent company, if the Subcontractor has a parent company.
- (b) Name of the Subcontractor.
- (c) Amount of the Subcontract award.
- (d) Date of the Subcontract award.
- (e) A description of the products or services (including construction) being provided under the Subcontract, including the overall purpose and expected outcomes or results of the Subcontract.
- (f) Subcontract number (the Subcontract number assigned by FRA).
- (g) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
- (h) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
- (i) The Subcontract number, and order number if applicable.



- (j) Awarding agency name and code.
- (k) Funding agency name and code.
- (l) Government contracting office code.
- (m) Treasury account symbol (TAS) as reported in FPDS.
- (n) The applicable North American Industry Classification System code (NAICS).

**18.5 EXECUTIVE COMPENSATION OF THE FIRST-TIER SUBCONTRACTOR.**

- (a) Unless otherwise directed by the FRA Procurement Administrator, within 15 days of the Subcontract award the Subcontractor shall report the names and total compensation of each of the five most highly compensated executives if –
  - (i) In the Subcontractor's preceding fiscal year, the Subcontractor received –
    - (A) 80 percent or more of its annual gross revenues from Federal contracts (and Subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
    - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and Subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
  - (ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)
- (b) Unless otherwise directed by FRA, by the end of the month following the award of a first-tier sub-subcontract with a value of \$30,000 or more, and annually thereafter (calculated from the prime contract award date), the first-tier Subcontractor shall report the names and total compensation of each of the five most highly compensated executives for that first-tier Subcontractor for the first-tier Subcontractor's preceding completed fiscal year at <http://www.fsr.gov> if–
  - (i) In the Subcontractor's preceding fiscal year, the Subcontractor received –
    - (A) 80 percent or more of its annual gross revenues from Federal contracts (and Subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
    - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and Subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
  - (ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

**18.6 Neither** FRA nor the Subcontractor shall not split or break down first-tier Subcontract awards to a value less than \$30,000 to avoid the reporting requirements in paragraph 18.4.

**18.7** FRA is required to report information on a first-tier Subcontract covered by paragraph 18.4 when the Subcontract is awarded. Continued reporting on the same Subcontract is not required unless one of the reported data elements changes during the performance of the Subcontract. FRA is not required to make further reports after the first-tier Subcontract expires.

**18.8** If the Subcontractor in the previous tax year had gross income from all sources under \$300,000, FRA does not need to report awards for that Subcontractor.

**18.9** The FSRs database at <http://fsrs.gov> will be prepopulated with some information from SAM and FPDS databases. If FPDS information is incorrect, the Subcontractor should notify FRA. If the SAM database information is incorrect, the Subcontractor is responsible for correcting this information

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

- 19.1 The Subcontractor shall comply with all applicable U.S. export control laws and regulations.
- 19.2 The Subcontractor's responsibility to comply with all applicable laws and regulations exists independent of, and is not established or limited by, the information provided by this clause.
- 19.3 Nothing in the terms of this contract adds to, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive Orders, and regulations, including but not limited to—  
The Atomic Energy Act of 1954, as amended;  
The Arms Export Control Act (22 U.S.C. 2751 et seq.);  
The Export Administration Act of 1979 (50 U.S.C. app. 2401 et seq.), as continued under the International Emergency Economic Powers Act (Title II of Pub. L. 95-223, 91 Stat. 1626, October 28, 1977; 50 U.S.C. 1701 et seq.);  
Trading with the Enemy Act (50 U.S.C. App. 5(b), as amended by the Foreign Assistance Act of 1961);  
Assistance to Foreign Atomic Energy Activities (10 CFR part 810);  
Export and Import of Nuclear Equipment and Material (10 CFR part 110);  
International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130);  
Export Administration Regulations (EAR) (15 CFR parts 730 through 774); and  
Regulations administered by the Office of Foreign Assets Control (31 CFR parts 500 through 598).
- 19.4 In addition to the Federal laws and regulations cited above, National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical, and Engineering Information establishes a national policy that, to the maximum extent possible, the products of fundamental research shall remain unrestricted. NSDD 189 provides that no restrictions may be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided in applicable U.S. statutes. As a result, contracts confined to the performance of unclassified fundamental research generally do not involve any export-controlled activities. NSDD 189 does not take precedence over statutes. NSDD 189 does not exempt any research from statutes that apply to export controls such as the Atomic Energy Act, as amended; the Arms Export Control Act; the Export Administration Act of 1979, as amended; or the U.S. International Emergency Economic Powers Act; or the regulations that implement those statutes (e.g., the ITAR, the EAR, 10 CFR part 110 and 10 CFR part 810). Thus, if items (e.g., commodities, software or technologies) that are controlled by U.S. export control laws or regulations are used to conduct research or are generated as part of the research efforts, the export control laws and regulations apply to the controlled items.
- 19.5 The Subcontractor shall include the substance of this clause, including this paragraph 19.5, in all solicitations and Subcontracts.

## 20. UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS

In accordance with FAR 52.232-39 (JUN 2013), except as stated in paragraph (b) of this clause, when any supply or service acquired under this Subcontract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government or FRA to indemnify the Subcontractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

- (a) Any such clause is unenforceable against the Government or FRA. Neither the Government nor any Government authorized end user such as FRA shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government, any Government authorized end user, or FRA to such clause.
- (b) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.
- (c) Paragraph (a) of this clause does not apply to indemnification by the Government or FRA that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

## 21. STOP WORK ORDER

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—

(a) Cancel the stop-work order; or

(b) 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—

(a) 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

(b) 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.

(END OF FRA SPECIAL TERMS AND CONDITIONS FOR BENEFITS OR AUDIT SERVICES)