

**FERMI RESEARCH ALLIANCE, LLC GENERAL TERMS AND CONDITIONS FOR  
DESIGN-BUILD SUBCONTRACTS AT LBNF FAR SITE**

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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 Code of Federal Regulations.

“DEAR” means the Department of Energy Acquisition Regulations.

“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.

“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.

“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.

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:

- (a) The solicitation, or amended solicitation, provides a different definition;
- (b) The contracting parties agree to a different definition in the Subcontract;
- (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 or different definition in this Definitions clause applies.

## **1.2 SCOPE OF SUBCONTRACT**

The scope of this Subcontract is set forth in the Subcontract, including the Schedule of Articles, and its 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:

- (a) 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,
- (b) This Subcontract does not create a joint employer relationship for FRA or the Government; and
- (c) 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. FRA may assign 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 of 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 - SUPERINTENDENCE BY SUBCONTRACTOR**

At all times during performance of this Subcontract at the SURF site, and until the work is completed and

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

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

### **CLAUSE 3 - PROFESSIONAL LICENSES AND PERMITS; STANDARD OF CARE**

The Subcontractor shall maintain all applicable professional licenses and permits in good standing with the appropriate jurisdiction or professional governing body throughout the term of this Subcontract. Subcontractor shall immediately notify FRA of any change in the good standing status of its professional 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.

The Subcontractor shall furnish design-build services in accordance with the standards currently practiced by design-builders on projects similar in size, complexity, and cost of the project.

### **CLAUSE 4 - SITE AND FACILITIES ACCESS**

**SURF Site or Facility Access:** The Subcontractor 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 DOE access restrictions. Any questions should be directed to either the subcontract designated Technical Representative or the FRA Procurement Administrator.

- (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 without prior written approval from DOE Headquarters. Terrorist-sponsoring countries currently include Iran, Sudan and Syria, but may be updated from time to time by the State Department. Requests for access must be submitted to the FRA Procurement Administrator 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 142.3A.

## **CLAUSE 5 - 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, SDSTA 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, the SURF site, or Government premises, or any other person who enters on the site 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 and any applicable SDSTA environmental, safety, and health requirements. The environmental, health, and safety requirements are incorporated as material terms of this Subcontract. The Subcontractor shall comply with any environmental, safety, and health requirements set forth in the Subcontract Schedule of Articles and any documents incorporated into the Subcontract.

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 of FRA, 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 of the 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 6 - CHANGES AND MODIFICATIONS**

### **6.1 CHANGES**

FRA may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Subcontract, including changes:

With respect to Design Services:

- (a) In the description of services to be performed;
- (b) In the time of performance of services;
- (c) In the place of performance of the services;

With respect to Construction:

- (d) In the specifications (including drawings and designs);
- (e) In the method or manner of performance of the work;
- (f) In the FRA furnished facilities, equipment, materials, services, or site; or
- (g) Directing acceleration in the performance of the work.

Any other written order or oral order (which, as used in this paragraph includes direction, instruction, interpretation, or determination) from FRA that causes change shall be treated as a change order under this clause, provided that the Subcontractor gives FRA written notice stating (a) the date, circumstances, and source of the order and (b) that the Subcontractor regards the order as a change order.

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.

If any change under this clause causes an increase or decrease in the Subcontractor's cost of, or the time required for, the performance of any part of the work under this Subcontract, whether or not changed by any such order, FRA shall make an equitable adjustment and modify the Subcontract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change shall be made for any costs incurred more than 30 days before the Subcontractor gives written notice as required. In the case of defective specifications for which FRA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Subcontractor in attempting to comply with the defective specifications.

The Subcontractor must assert its right to an equitable adjustment under this clause, within 30 days after (a) receipt of a written change order or (b) the furnishing of a written notice submitting to FRA a written statement describing the general nature and amount of the proposal, unless this period is extended by FRA.

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.

## **6.2 MODIFICATION PROPOSALS - PRICE BREAKDOWN**

The Subcontractor, in connection with any proposal he makes 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 7 - 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—

- (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.
- (c) 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.
- (d) 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 8 - INSURANCE AND BONDS**

### **8.1 INSURANCE**

Insurance requirements for this Subcontract are established by FRA as the contracting entity and the SDSTA Risk Transfer Protocols (for work occurring on the SURF site). Before undertaking any work under this Subcontract, the Subcontractor shall, except as otherwise approved by FRA, comply with the Insurance Requirements Exhibit to this Subcontract, which are based upon the applicable category of risk, and provide the required evidence 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.

### **8.2 BONDS FOR CONSTRUCTION WORK**

For work under this Subcontract taking place at SURF, the Subcontractor must comply with any applicable bond requirements of South Dakota Consolidated Laws Chapter 5-21.

For all work under this Subcontract, the Subcontractor must comply with the following bond requirements.

“Original subcontract price” means the award price of the Subcontract; or, for requirements subcontracts, the price payable for the estimated total quantity; or, for indefinite quantity subcontracts, the price payable for the specified minimum quantity. Original subcontract price does not include the price of any options,



except those options exercised at the time of contract sub award.

For construction that is based on Subcontract options, the bond requirements shall be satisfied upon award of the option.

Subcontracts exceeding \$100,000 (Miller Act):

- (a) **Performance bonds** - Unless FRA determines that a lesser amount is adequate protection, the penal amount of performance bonds must equal—  
  
100 percent of the original subcontract price; and  
  
If the Subcontract price increases, an additional amount equal to 100 percent of the increase.
- (b) **Payment bonds** - Unless FRA makes a written determination supported by specific findings that a payment bond in this amount is impractical, the amount of the payment bond must equal  
  
100 percent of the original subcontract price; and  
  
If the subcontract price increases, an additional amount equal to 100 percent of the increase. The amount of the payment bond must be no less than the amount of the performance bond.

For Subcontracts exceeding \$25,000 but not exceeding \$100,000, unless FRA determines that a lesser amount is adequate for the protection of the Laboratory, the penal amount of the payment bond or the amount of alternative payment protection must equal—

100 percent of the original subcontract price; and

If the subcontract price increases, an additional amount equal to 100 percent of the increase.

If the subcontract price increases, FRA may require additional protection by directing the subcontractor to—

Increase the penal sum of the existing bond;

Obtain an additional bond; or

Furnish additional alternative payment protection.

Reducing amounts. FRA may reduce the amount of the security to support a bond, subject to the conditions of FAR 28.203-5(c) or 28.204(b).

### **8.3 ADDITIONAL BOND SECURITY**

The Subcontractor shall promptly furnish additional security required to protect FRA and persons supplying labor or materials under this contract if –

- (a) Any surety upon any bond furnished with this subcontract becomes unacceptable to FRA;

- (b) Any surety fails to furnish reports on its financial condition as required by FRA; or
- (c) The subcontract price is increased so that the penal sum of any bond becomes inadequate in the opinion of FRA.

## **CLAUSE 9 - TERMINATION AND NON-WAIVER OF DEFAULTS**

### **9.1 TERMINATION**

FRA may terminate this Subcontract in accordance with the FAR provisions on Termination for Convenience of the Government (Fixed Price), with Alternate I, Default (Fixed-Price Supply and Service), or Termination and Default (Fixed-Price Construction) that are incorporated by reference into these General Terms and Conditions at Clause 16.

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

### **9.2 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 10 - LIABILITIES AND INDEMNIFICATION**

### **10.1 LIABILITY FOR DEFECTS, INJURIES, AND DAMAGES**

Subcontractor assumes the entire responsibility and liability for losses, expenses, damages (including consequential damages), demands, suits, and claims in connection with or arising out of any defects in design or construction, personal injury (including death), and/or damage or destruction or alleged damage to or destruction of property, sustained, or alleged to have been sustained, in connection with or arising out of the performance of the work by the Subcontractor, its agents, servants, employees, subcontractors, and consultants, save and except that the Subcontractor, its agents, servants, employees, subcontractors, and consultants shall not be liable for the sole negligence of FRA.

### **10.2 INDEMNIFICATION**

**FRA Related Entities:** 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:

- (a) Subcontractor's breach of any term or provision of the subcontract documents, or

- (b) 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.

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

Except to the extent covered by insurance required under this Subcontract and the indemnification provisions required under this Subcontract, the Subcontractor and FRA waive consequential damages for claims, disputes or other matters arising out of or relating to this subcontract.

**SURF Related Entities:** 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.

### **10.3 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.

### **10.4 THEFT**

Necessary precautions for safeguarding material and equipment will be the responsibility of the Subcontractor. The Subcontractor shall follow the SDSTA procedures in the event of theft of Subcontractor or FRA furnished property while on the SURF site. In addition, the Subcontractor shall immediately notify the FRA Procurement Administrator of the 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.

## **CLAUSE 11 - LAWS AND REGULATIONS; DISPUTES; AND APPLICABLE LAW**

### **11.1 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 Provisions.

## **11.2 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 non-binding mediation.

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 Construction Industry Dispute Resolution Procedures of the AAA then in effect, before the Arbitrator. Notice of demand for arbitration must be filed in writing with the other parties to the arbitration. 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.

- (a) 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.
- (b) 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.

- (c) 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.
- (d) 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.

### **11.3 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 12 - WAGE RATES AND LABOR STANDARDS FOR DESIGN SERVICES AND CONSTRUCTION WORK**

### **12.1 SERVICE CONTRACT LABOR STANDARDS**

The design and any other services portions of this Subcontract are subject to the Service Contract Labor Standards (and the related FAR provisions that are incorporated by reference into these General Terms and Conditions at Clause 16) unless the Subcontractor provides a representation that it falls within a specified exemption from the Service Contract Act of 1965, as amended.

### **12.2 DAVIS-BACON ACT AND CONSTRUCTION WAGES**

The construction portion of this Subcontract is subject to the wage and labor standards under the Davis-Bacon Act and the related labor standards FAR provisions that are incorporated by reference into these General Terms and Conditions at Clause 16.

## **CLAUSE 13 - 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 14 - 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 15 - ENTIRE AGREEMENT AND ORDER OF PRECEDENCE**

This Subcontract shall consist of the Subcontract document (including any signature page and Schedule of Articles), these General Terms & 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 (including the Schedule of Articles); (b) these General Terms & Conditions, including the FAR and DEAR clauses incorporated by reference; (c) any specifications or drawings; (d) other documents listed in the Subcontract Article entitled *Incorporated Documents*, if any, in the order in which they are listed; and (e) any other referenced or incorporated clauses, provisions, or documents.

## **CLAUSE 16 - 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 <http://farsite.hill.af.mil/>.

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. 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 TO ALL SUBCONTRACTS**

FAR 52.203-5	COVENANT AGAINST CONTINGENT FEES (MAY 2014)
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 (JUN 2016) Applies if subcontractor has federal contract information residing in or transiting through its information system
FAR 52.211-5	MATERIAL REQUIREMENTS (AUG 2000)
FAR 52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (NOV 2016) Applies if the Subcontract involves any further subcontracting opportunities.
FAR 52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

- FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS – OVERTIME  
COMPENSATION (MAY 2014)  
Subsections (a) through (d) only apply if Subcontract involves laborers or mechanics and is not  
for “commercial items” (defined in FAR)
- 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 (MAR 2015)
- FAR 52.222-55 MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (DEC 2015)
- 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 (DEC 2007)
- FAR 52.223-17 AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND  
CONSTRUCTION CONTRACTS (MAY 2008)
- FAR 52.223-18 ENCOURAGING POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG  
2011)  
Applies to driving on Fermilab site or DOE/U.S. Government owned or leased property.
- FAR 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)
- FAR 52.224-2 PRIVACY ACT (APR 1984)
- FAR 52.225-1 BUY AMERICAN ACT – SUPPLIES (MAY 2014)
- FAR 52.225-8 DUTY-FREE ENTRY (OCT 2010)
- FAR 52.225-9 BUY AMERICAN ACT – CONSTRUCTION MATERIALS (MAY 2014)
- FAR 52.225-13 RESTRICTION ON CERTAIN FOREIGN PURCHASES (JUN 2008)
- FAR 52.227-3 PATENT INDEMNITY (APR 1984)
- FAR 52.227-4 PATENT INDEMNITY – CONSTRUCTION CONTRACTS (DEC 2007)
- FAR 52.227-13 PATENT RIGHTS – OWNERSHIP BY THE GOVERNMENT (DEC 2007)
- 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 52.232-1	PAYMENTS (APR 1984) Applies to pre-construction services portion of the Subcontract
FAR 52.232-5	PAYMENTS UNDER FIXED PRICE CONSTRUCTION CONTRACTS (MAY 2014)
FAR 52.232-40	PROVIDING ACCELERATED PAYMENT TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013)
FAR 52.236-2	DIFFERING SITE CONDITIONS (APR 1984)
FAR 52.236-3	SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)
FAR 52.236-5	MATERIALS AND WORKMANSHIP (APR 1984)
FAR 52.236-7	PERMITS AND RESPONSIBILITIES (NOV 1991)
FAR 52.236-9	OTHER CONTRACTS (APR 1984)
FAR 52.236-21	SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997)
FAR 52.242-14	SUSPENSION OF WORK (APR 1984)
FAR 52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS (JAN 2017) Applies to Subcontractor's sub-subcontracts for commercial items
FAR 52.245-1	GOVERNMENT PROPERTY (JAN 2017), with ALTERNATE I (APR 2012)
FAR 52.246-4	INSPECTION OF SERVICES – FIXED PRICE (AUG 1996)
FAR 52.246-12	INSPECTION OF CONSTRUCTION (AUG 1996)
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 (FEB 2006)
FAR 52.249-2	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) (APR 2012), with ALTERNATE I (SEP 1996)
FAR 52.249-8	DEFAULT (FIXED-PRICED SUPPLY AND SERVICE) (APR 1984)
FAR 52.249-10	DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)
DEAR 927.303(c)	FACILITIES LICENSE (DEC 2000)
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 952.227-82 RIGHTS TO PROPOSAL DATA (APR 1994)

Applies if the Subcontract is based on a technical proposal

DEAR 952.247-70 FOREIGN TRAVEL (JUN 2010)

DEAR 970.5208-1 PRINTING (DEC 2000)

Applies if the Subcontract requires printing.

DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010)

Applies if the Subcontract involves work at the Fermilab site or on Government -owned or leased property.

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

DEAR 970.5232-3 ACCOUNTS, RECORDS, AND INSPECTION (DEC 2010)

Paragraphs (a) through (h) are the only portions incorporated by reference into this Subcontract. Applies where costs incurred are a factor in determining the amount payable to the subcontractor. In this clause, "Government" shall mean the United States Government; "Contracting Officer" shall mean the DOE Contracting Officer for Prime Contract No. DE-AC-2-07CH11359; and "DOE" shall mean the Department of Energy and FRA.

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

FAR 52.203-6 RESTRICTIONS ON SUB-SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)

FAR 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLE BLOWER RIGHTS (APR 2014)

FAR 52.215-2 AUDITS AND RECORDS-NEGOTIATION (OCT 2010)

FAR 52.222-17 NONDISPLACEMENT OF QUALIFIED WORKERS (MAY 2014)  
Applies to Subcontracts for services.

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.

**THE FOLLOWING CLAUSES APPLY TO CONSTRUCTION WORK IF THE SUBCONTRACT EXCEEDS \$2,000**

FAR 52.222-3 CONVICT LABOR (JUN 2003)

FAR 52.222-6 CONSTRUCTION WAGE REQUIREMENTS (MAY 2014)

NOTE: See the applicable Wage Determination included in the Subcontract. Download the required Poster at <https://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>

FAR 52.222-7 WITHHOLDING OF FUNDS (MAY 2014)

FAR 52.222-8 PAYROLLS AND BASIC RECORDS (MAY 2014)

FAR 52.222-9 APPRENTICES AND TRAINEES (JUL 2005)

FAR 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

FAR 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (MAY 2014)

FAR 52.222-12 CONTRACT TERMINATION – DEBARMENT (MAY 2014)

FAR 52.222-13 COMPLIANCE WITH CONSTRUCTION WAGE RATE REQUIREMENTS AND RELATED REGULATIONS (MAY 2014)

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

FAR 52.222-15 CERTIFICATION OF ELIGIBILITY (MAY 2014)

**THE FOLLOWING CLAUSES APPLY TO SERVICES WORK IF THE SUBCONTRACT EXCEEDS \$2,500 (unless exempt from the Service Contract Act of 1965, as amended)**

FAR 52.222-41 SERVICE CONTRACT LABOR STANDARDS (MAY 2014)

FAR 52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS – PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (MAY 2014)

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.

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

FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015)

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

FAR 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (APR 2015)

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 (JUL 2014)

**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 (OCT 2016)

**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 (OCT 2015)

Applies to Subcontracts that are not for Commercial Off-the-Shelf Items

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

FAR 52.227-1 AUTHORIZATION AND CONSENT (DEC 2007)

DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2000)

In this clause, "Government" shall mean the United States Government and "Contracting Officer" shall mean the DOE Contracting Officer for Prime Contract No. DE-AC-2-07CH11359

**THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$150,000**

FAR 52.203-7 ANTI-KICKBACK PROCEDURES (MAY 2014)  
Excluding paragraph (c)(1)

FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)

FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (OCT 2015)

FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS (FEB 2016)

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

FAR 52.204-14 SERVICE CONTRACT REPORTING REQUIREMENTS (OCT 2016)  
Applies to services contracts, including construction services.

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

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

FAR 52.215-10 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA (AUG 2011)  
Applies if certified cost or pricing data is required.

FAR 52.215-11 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA – MODIFICATIONS (AUG 2011)  
Applies if certified cost or pricing data is required.

FAR 52.215-12 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (OCT 2010)  
Applies if certified cost or pricing data is required.

FAR 52.215-13 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA – MODIFICATIONS (OCT 2010)

Applies if certified cost or pricing data is required.

FAR 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

FAR 52.230-2 COST ACCOUNTING STANDARDS (OCT 2015)

Applies if the Subcontract is with a large business; is for other than a "commercial item" 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 (OCT 2015)

Excluding paragraph (b). Applies if the Subcontract is with a large business; is for other than a "commercial item" 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.

**THE FOLLOWING CLAUSES APPLY TO NON-CONSTRUCTION SUBCONTRACTS THAT EXCEED \$700,000 AND CONSTRUCTION CONTRACTS THAT EXCEED \$1,500,000**

FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2017)

Applies unless the Subcontractor is a small business or there are no subcontracting possibilities

**THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$5,500,000**

FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (OCT 2015)

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 FNAL DOE Contracting Officer.

FAR 52.203-14 DISPLAY OF HOTLINE POSTER(S) (OCT 2015)

Modified by DEAR 903.1004. Applies unless subcontract is for the acquisition of a commercial item 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 DESIGN-BUILD AT LBNF FAR SITE)