

CONSULTANT AGREEMENT

INTRODUCTION

This Consultant Agreement (hereinafter called "Agreement") is entered into by and between The Regents of The University of California, a California corporation (hereinafter called "University"), and _____ (hereinafter called "Consultant"), whose mailing address is _____.

The University has entered into Prime Contract No. W-7405-ENG-48 with the United States Government (hereinafter called "Government") represented by the Department of Energy National Nuclear Security Administration (hereinafter called "DOE/NNSA") for the management and operation of the Lawrence Livermore National Laboratory (hereinafter called "LLNL") and the performance of certain research and development work, and this Agreement is entered into as a subcontract under the Prime Contract.

The University desires to utilize the expert advice and consultation assistance of Consultant in the field in which Consultant has professional qualifications, as specified herein (hereinafter called "Services").

The Consultant is willing and able to perform such Services in furtherance of the Prime Contract under the terms and conditions of this Agreement.

CLAUSE 1 – PERIOD OF PERFORMANCE AND TERMINATION

- A. The period of performance under this Agreement shall be from the Consultant's **signature acceptance through** _____, and may be renewed upon the mutual agreement of the parties hereto.
- B. Either the University or the Consultant may terminate this Agreement at any time by giving the other party written notice of such action. Such written notice shall specify the date such termination is effective. The liability of the University for termination of this Agreement is limited to those costs or charges payable in accordance with the payment provisions of this Agreement for the Services performed or furnished prior to the effective date of termination.

CLAUSE 2 - DESCRIPTION OF THE CONSULTING SERVICES

- A. The Services to be performed and the related project(s) are described below:

Description of the Project(s)

Description of the Services

- B. This Agreement authorizes performance of the Services for a total of _____ **days**; which shall not be exceeded without the prior written approval of the University Consultant Office Administrator.

- C. The Services shall commence only when the Services have been requested by the University Technical Representative as specified below. This Agreement does not guarantee any usage of the Services.
- D. The Services shall be performed at _____.
Any Services to be performed at sites other than those listed above must have the prior approval of the Consultant Office Administrator. **Any foreign travel must have approval from DOE/NNSA Headquarters prior to travel.**

Consultant shall not make an appearance on behalf of the University at a Congressional Office or a federal agency, including military organizations, without a University employee present.

CLAUSE 3 - COMPENSATION AND PAYMENT

- A. The University will pay the Consultant the fixed daily fee of \$_____ for each full day of service. Payment will be made in hourly increments, up to a maximum of eight hours per work day. Travel time will not be compensable.
- B. The University will reimburse the Consultant for costs and expenses of performance which have been approved in writing by the University, including those for travel as provided in the TRAVEL clause of this Agreement.
- C. The Consultant shall submit a timely Claim for Consulting Services, Form LL-240, accompanied by such other reasonable proof (including reports) as the University may require setting forth actual time spent in the performance of service under this Agreement. The Claim forms will be supplied by the University.
- D. The University's Claim for Consulting Services and Consultant Travel Expense Worksheet forms shall be used for claiming the consulting fee, miscellaneous, and travel expenses. In order to expedite processing of a claim, the Consultant shall include sufficient detail on the form to clearly identify the task or project and, if necessary, attach supporting documentation.
- E. All claim forms, with supporting documentation, shall be submitted to the Consultant Office Administration Section at the following address:

University of California
Lawrence Livermore National Laboratory
Attn.: Consultant Office Admin. Section, L-650
P.O. Box 5012
Livermore, CA 94551
- F. During the term of this Agreement, Consultant shall notify the University immediately of acceptance of, or intent to accept, any form of compensation from any other activity of the University. Consultant agrees that upon acceptance of, or notification to the University of the intent to accept such compensation, the University may modify this Agreement, including those terms governing amounts payable to Consultant hereunder, to an extent consistent with the University's then current and applicable policies and practices.

- G. Consultant shall immediately notify the University of any actual or proposed employment or other compensatory arrangement with any other activity of the University, during the term of this Agreement, and shall provide the University such details thereof as the University may require.

CLAUSE 4 - EXTENT AND CHARACTER OF SERVICES

- A. The relationship of the Consultant to the University is that of an independent contractor and nothing contained herein shall be construed as creating any other relationship. The Consultant, as an independent contractor, agrees to assume all risk associated with its activities under this Agreement; to indemnify and hold harmless the University, its employees, officers, and agents from any liability, cost or expense arising out of or resulting from such activities; and to obtain all the insurance necessary for Consultant's protection in connection with its performance of this Agreement.
- B. The Consultant shall adopt, subject to University approval, such arrangements as Consultant may desire with regard to the details of the Services performed hereunder, the hours during which the Services are to be provided, and the place or places where the Services are to be furnished, provided further that the Services shall be performed in a manner calculated to attain the most satisfactory results for the University. The Consultant, as an independent contractor, shall personally advise on such matters and at such point or points and for such periods as requested by the University and as agreed by the parties hereto. This Agreement does not guarantee any usage of the Services, and approved usage shall not exceed the maximum days authorized by the University.
- C. The Consultant shall not subcontract, assign, transfer, or otherwise employ anyone to do any of the Services called for under this Agreement without prior written approval of the University.
- D. All materials and equipment furnished by the University hereunder are to be and shall remain the sole property of the U.S. Government and shall be returned to the University within 60 days after the expiration or earlier termination of this Agreement.

CLAUSE 5 - TRAVEL

- A. When travel is required and has been authorized by the University, travel expenses will be reimbursed from Consultant's address, as indicated above, or from any place at which Consultant may be located when called upon to perform the Services, and for Consultant's return to any point providing reimbursement will not exceed the travel cost of returning to the place from which travel was authorized or to Consultant's business address.
- B. Travel expenses will be paid, in accordance with the University Consultant Travel Policy and applicable travel regulations for Contract W-7405-ENG-48, upon the submission by the Consultant of a properly certified Travel Expense Worksheet and such other reasonable documentation as the University may require. The University will be under no obligation to reimburse the Consultant for any travel expenses which exceed the limitations stipulated in the University Consultant Travel Policy.

CLAUSE 6 - COORDINATION AND ADMINISTRATION

- A. The **University Consultant Office Administrator** for this Agreement is _____
(925) 42 - _____. All matters relating to the non-technical interpretation, administration, and

performance of this Agreement shall be referred to the University Consultant Office Administrator. The Consultant shall direct all notices and requests for approval to the University Consultant Office Administrator.

- B. The **University Technical Representative** under this Agreement is _____ (925) 42 - _____, who will represent the University in matters relating to the technical performance of the Services. The University Technical Representative will interpret the technical requirements of the Services and determine the emphasis and direction of the Consultant in the conduct of the Services.

CLAUSE 7 - CONDUCT OF CONSULTANT

- A. **Gratuity:** The Consultant shall not accept any gratuity or special favor from individuals or organizations with whom the University is doing business, or proposing to do business, in accomplishing the Services under this Agreement, under circumstances which might reasonably be interpreted as an attempt to influence the Consultant in the conduct of its duties.
- B. **Use of Privileged Information:** The Consultant shall not use for personal gain or make other improper use of privileged information which is acquired in connection with the Services under this Agreement. In this connection, the term "privileged information" includes, but is not limited to, unpublished information relating to technological and scientific developments; medical, personnel, or security records of individuals; anticipated materials requirements or pricing actions; possible new sites for program operations; and knowledge of selection of contractors or subcontractors in advance of official announcement.

The Consultant further agrees to execute a separate Mutual Nondisclosure Agreement, upon request, which shall protect and govern the release of any proprietary, confidential, or protected information received by the Consultant during the course of the Services.

- C. **Equal Employment Opportunity:** Unless this Agreement is exempt, Consultant shall comply with the rules and regulations and relevant orders of the Secretary of Labor regarding equal employment opportunity issued under Section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967. The contractual provisions prescribed by Section 202 of Executive Order 11246 are incorporated herein by reference.

CLAUSE 8 - ASSIGNMENT

- A. This Agreement may be assigned by the University to the U.S. Government or a successor-in-interest.
- B. The Consultant shall have no right, power or authority to sell, mortgage, transfer or assign this Agreement, any portion hereof, any interest herein or any claim hereunder, nor allow or permit any other party or parties to have any interest in or use any part of the rights or obligations granted hereunder for any purpose whatsoever without the prior written consent of the University.

CLAUSE 9 - RIGHT TO INVENTIONS; CLASS WAIVER

- A. The University will have the right of election to any and all inventions which are conceived and/or first reduced to practice under this Agreement, in accordance with Class Waiver No. W(C)-90-014, a copy of which is available from the University Consultant Office Administrator. All subject inventions will be treated as if they arose under the Prime Contract (No. W-7405-ENG-48), and the University will have the administrative responsibility for reporting such inventions to the DOE/NNSA.
- B. The Consultant further agrees to execute a separate Guest Patent and Copyright Agreement prior to performance of the Services, the form and substance of which shall be as stipulated by the University. The conditions of the Guest Patent and Copyright Agreement are hereby incorporated into and made a part of this Agreement.

CLAUSE 10 - INCORPORATED DOCUMENTS

The following documents **and forms** are hereby incorporated into this Agreement and are attached hereto. In these documents, the term Subcontract shall mean Agreement and the term Subcontractor shall mean Consultant:

Documents

SITE SERVICES REQUIREMENTS (SSR CONS ES&H LEVEL 0; 02/14/03)
SITE SERVICES REQUIREMENTS (SSR CONS ES&H LEVEL 1, 02/14/03)
SITE SERVICES REQUIREMENTS (SSR CONS ES&H LEVEL 2, 02/14/03)
SITE SERVICES REQUIREMENTS (SSR CONS ES&H LEVEL 3, 02/14/03)
ENVIRONMENT, SAFETY, AND HEALTH PROVISIONS (ES&H LEVEL 2; 02/14/03)
ENVIRONMENT, SAFETY, AND HEALTH PROVISIONS (ES&H LEVEL 3; 02/14/03)
SECURITY AND SITE ACCESS PROVISIONS (08/01/00)
PROCURED-SERVICES WORK SHEET, dated _____
SAFETY PLAN, Dated _____

Forms

TASK IDENTIFICATION PROCESS (TIP) LIST

Cover Letter transmitting this Agreement

CLAUSE 11 - CLAUSES INCORPORATED BY REFERENCE

The FAR and DEAR clauses listed below, which are located in Chapters 1 and 9, respectively, of Title 48 of the U.S. Code of Federal Regulations, are incorporated by this reference as a part of these GENERAL PROVISIONS with the same force and effect as if they were given in full text, as prescribed below. The full text of the clauses may be accessed electronically at <http://www.arnet.gov/far/> (FAR) and <http://www.pr.doe.gov/dear.html> (DEAR).

As used in the clauses, the term “contract” shall mean the Agreement; the term “Contractor” shall mean the Consultant; the term “subcontractor” shall mean the Subcontractor's subcontractor; and the terms “Government” and “Contracting Officer” shall mean the University, except in FAR clauses 52.227-1 and Alternate I, 52.227-2, 52.227-16, and 52.227-17, in which clauses “Government” shall mean the U. S. Government and “Contracting Officer” shall mean the DOE/NNSA Contracting Officer for Prime

Contract W-7405-ENG-48 with the University. As used in DEAR clause 970.5204-9, the term “DOE” shall mean DOE/NNSA and the University.

The modifications of these clause terms are intended to appropriately identify the parties and establish their contractual and administrative reporting relationship, and shall not apply to the extent they would affect the U.S. Government’s rights. The Consultant shall include the listed clauses in its Agreements at any tier, to the extent applicable.

FAR 52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995), if the Agreement exceeds \$100,000
FAR 52.203-7	ANTI-KICKBACK PROCEDURES (JUL 1995), if the Agreement exceeds \$100,000, excluding Paragraph (c)(1)
FAR 52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
FAR 52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 2003), if the Agreement exceeds \$100,000
FAR 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (OCT 2003)
FAR 52.227-1	AUTHORIZATION AND CONSENT (JUL 1995), with Alternate I.
FAR 52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)
FAR 52.227-16	ADDITIONAL DATA REQUIREMENTS (JUN 1987)
FAR 52.227-17	RIGHTS IN DATA - SPECIAL WORKS (JUN 1987)
DEAR 952.204-2	SECURITY (MAY 2002)
DEAR 952.204-70	CLASSIFICATION/DECLASSIFICATION (SEP 1997)
DEAR 952.209-72	ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997). The period of inelegibility shall be five years.
DEAR 970.5204-1	COUNTERINTELLIGENCE (DEC 2000)
DEAR 970.5204-9	ACCOUNTS, RECORDS, AND INSPECTION (DEC 2000), excluding paragraph (h)

CLAUSE 12 - CONFLICT OF INTEREST

- A. Consultant recognizes that the University is a prime contractor of the U.S. Government and that University desires to have the Consultant refrain from activities on behalf of the University and the Government which could be interpreted as creating a conflict of interest for the Consultant.
- B. The Consultant warrants and represents that to the best of its knowledge it has no direct or indirect private interest (including corporate stockholdings or other business agreements and obligations) which is or may appear to be incompatible with the Consultant's service under this Agreement.
- C. The Consultant agrees to avoid any activities which may influence the decisions of the University (including participation in proposal, design, or negotiation phases of University procurements) or which directly or indirectly affect the interest of the University or Government where the Consultant has a personal interest in the matter which may be incompatible with the interest of the University or Government, and to notify promptly the University regarding any change in Consultant's private interests or the Services under this Agreement which may result or appear to result in a conflict of interest.

CLAUSE 13 – SAFETY-RELATED REQUIREMENTS

A. General

The Consultant shall comply with all ES&H requirements, training, and associated safety documents referenced, attached, or incorporated to this Subcontract, including any incorporated safety related documents submitted by the Consultant and reviewed and accepted by the University. The Consultant shall also comply with, and assist the University and the DOE/NNSA in complying with OSHA requirements, , , and applicable University or DOE/NNSA directives identified in this Subcontract.

B. Safety Standards and Testing

Materials, supplies, and equipment furnished or used by the Subcontractor under this Subcontract shall meet nationally recognized safety standards or be tested by the Subcontractor in a manner demonstrating they are safe for use. **All electrical equipment, components, conductors, and other electrical material shall be of a type that is listed, labeled, or tested by a Nationally Recognized Testing Laboratory (NRTL) in accordance with Title 29, Part 1910, *Occupation Safety and Health Standards*, of the Code of Federal Regulations (29 CFR 1910).** The Subcontractor shall notify the University Procurement Representative **and the University Technical Representative**, in writing, of any materials, supplies, or equipment to be furnished or used under this Subcontract that do not meet these requirements.

C. Notice to Proceed

The Subcontractor may not commence any work performed at a location other than a Subcontractor or lower-tier subcontractor facility until the University Procurement Representative issues a written Notice to Proceed. The Subcontractor may proceed with all other work authorized or required by the Subcontract in preparation for performing the work on-site. The University Procurement Representative will not issue the Notice to Proceed until the Subcontractor has submitted, and the University has accepted, the following documents. These documents, except for the insurance certificates, shall become a part of this Subcontract upon their review and acceptance by the University.

Insurance Certificates (See the SITE SERVICES REQUIREMENTS attachment for information about insurance.)

Task Identification Process (TIP) List (See the TIP List attachment.)

Job Specific Safety Submittal (See the ENVIRONMENT, SAFETY AND HEALTH PROVISIONS attachment for information.)

Site Specific Safety Plan (See the ENVIRONMENT, SAFETY, AND HEALTH PROVISIONS attachment for information about the site specific safety plan.)

Workplace Substance Abuse Program Plan Certification (See the GENERAL PROVISIONS clause entitled *WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES*.)

Subcontractor Workplace Substance Abuse Program Plan (See the GENERAL PROVISIONS clause entitled *WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES*.)

D. Training

There are no safety-related training requirements for these Services.

The safety training requirements listed below are specific to the facility in which, or the area where, the work will be done. All Consultant and lower-tier subcontractor personnel working on-site shall satisfactorily complete the training before commencing work on-site. The Consultant shall coordinate the scheduling and location for this training with the University Technical Representative.

[List Course Number, Name, Course Hours, Etc.]

E. Off-Site Work Locations

Upon arrival at the work location, the Consultant must report its presence to the work location Point of Contact (POC) indicated below. The Consultant shall comply with all safety directions as required by the work location POC.

Work Location(s)

POC

Telephone Number

CLAUSE 14 – ACCESS TO LLNL COMPUTER RESOURCES

A. The performance of this Subcontract may require Subcontractor personnel (including lower-tier subcontractor personnel) to use or connect with LLNL computer resources (i.e., computers or computer networks). Any such access and use shall be in accordance with and subject to LLNL Computer Security Operations (LLNL CSO) requirements, including the following:

1. Approval to access specific LLNL computer resources shall be obtained from the appropriate LLNL Information Systems Security Officer (ISSO), through the University Technical Representative.
2. Access to LLNL computer resources by Subcontractor personnel is only permitted as required to perform the work authorized under this Subcontract. Classified computer resources or information shall not be accessed or attempted to be accessed without specific written authorization from the LLNL CSO. Personal and non-work-related use of LLNL computer resources by Subcontractor personnel is prohibited.
3. Only Subcontractor personnel who are U.S. citizens may access or use LLNL computer resources, unless specific written authorization is granted for each non-U.S. citizen by the LLNL CSO.
4. Only the approved Open Terminal Server (OTS) modem pool method shall be used to access unclassified LLNL resources via modems. All unclassified computer systems with modems other than facsimile machines must be configured with auto-answer turned off. Modems are prohibited on classified systems.
5. All software used by Subcontractor personnel on LLNL computer resources must be appropriately acquired and used according to the applicable licensing agreements.

6. All information or data furnished by the University or obtained from or developed on a LLNL computer resource by Subcontractor personnel shall be treated as confidential and protected by the Subcontractor to prevent disclosure to any persons other than those authorized by the University.
 7. Computer passwords used by Subcontractor personnel for LLNL computer resources shall comply with the applicable rules and be protected to prevent disclosure to other persons. If a computer password is disclosed, or disclosure is suspected, the Subcontractor shall immediately notify the University Technical Representative and arrange for replacement of the password.
 8. The use at the LLNL of any non-LLNL computing or video conferencing equipment with electronic data transfer capabilities (e.g., personal computers, including portables, laptops, electronic notebooks, personal digital assistants, and handhelds) may not be connected to or used to communicate with any LLNL computer resources without the written approval of the University Technical Representative and the LLNL CSO.
- B. These requirements shall be applicable whether such access is at the LLNL, at the Subcontractor's facility, or elsewhere; and shall be applicable to lower-tier subcontractors and their personnel whose work requires access to LLNL computer resources. The Subcontractor shall report any suspected or actual computer security incident as soon as possible to the appropriate ISSO or, if the ISSO is not available, then the directly to LLNL CSO.
- C. The University may monitor the use of LLNL computer resources by network operating software, reviewing the contents of all LLNL computer resources and any computers used to access LLNL computer resources, and other appropriate means.
- D. If the Subcontractor does not comply with the provisions of this article, the University may withdraw the Subcontractor's access to LLNL computer resources. Misuse of LLNL computer resources may be a violation of law and could result in appropriate action, including termination for default and/or criminal prosecution.

TITLE, FIRST AND LAST NAME

**THE REGENTS OF
THE UNIVERSITY OF CALIFORNIA**

BY: _____

BY: _____

SSN: _____

TITLE: _____
LLNL Procurement & Materiel

DATE: _____

DATE: _____