

**FIXED PRICE SUBCONTRACT
NO. TBD**



The Regents of the University of California
Lawrence Berkeley National Laboratory
One Cyclotron Road
Berkeley, CA 94720

Subcontractor:

[Name]
Attention:
[Address]
[City, State, Zip]
Phone:
E-Mail:

University Procurement Representative:

Name:
Title:
Phone:
E-Mail

Introduction

This is a fixed price subcontract (hereinafter "Subcontract") for DesignForward Research and Development Leading to Exascale Computing, as further described herein.

This Subcontract is between The Regents of the University of California, (hereinafter "University") and the party identified above as the "Subcontractor".

This Subcontract is issued under Prime Contract No. DE-AC02-05CH11231 between the University and the United States Government (hereinafter "Government"), represented by the Department of Energy (hereinafter "DOE") for the management and operation of the Lawrence Berkeley National Laboratory (hereinafter "LBNL") and the performance of research and related work.

Agreement

The parties agree to perform their respective obligations in accordance with the terms, conditions, and provisions of the attached SCHEDULE OF ARTICLES and the documents referenced or incorporated therein, which together with this Signature Page shall collectively constitute the entire Subcontract and shall supersede all prior negotiations, representations, or agreements, whether verbal or written.

[SUBCONTRACTOR'S NAME]

**THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA**

| | |
|--------------|--------------|
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |
| Date: _____ | Date: _____ |

SCHEDULE OF ARTICLES

ARTICLE 1 – SCOPE OF WORK

- A. The Subcontractor shall conduct certain work generally described as _____. The work is more specifically described in the attached Statement of Work.

| <u>Milestone No.</u> | <u>Description</u> |
|----------------------|--------------------|
| TBD | TBD |

Subcontractor shall furnish all personnel, supervision, materials, supplies, equipment, tools, facilities, transportation, testing, and other incidental items and services necessary for performance of the Services, except for any Government Property specified herein to be furnished by the University. The Subcontractor shall deliver the materials, products, supplies, and reports, as specified herein.

- B. Location. The Services shall be performed by the Subcontractor at _____, at the LBNL, and at other locations approved by the University.

- C. Acceptance. Acceptance of the Services under this Subcontract shall be based on the Subcontractor's performance and completion of the Services in consonance with high professional standards and compliance with the delivery and reporting requirements specified herein.

ARTICLE 2 – PERIOD OF PERFORMANCE

The work described in the Article 1 – Scope of Work shall be completed on or before the following milestone completion dates.

| <u>Milestone No.</u> | <u>Completion Date</u> |
|----------------------|------------------------|
| TBD | TBD |

ARTICLE 3 – PRICE AND PAYMENT

- A. Fixed Price

The Subcontractor shall perform this Subcontract for the total fixed price of \$_____. The fixed price for each Milestone shall be as follows.

| <u>Milestone No.</u> | <u>Fixed Price</u> |
|----------------------|--------------------|
| TBD | \$TBD |

- B. Cost Sharing Provisions

TBD

- C. Sales or Use Tax. Items purchased by the University hereunder are titled to the Government and treated as for resale, per the University's California State Resale Permit No. SR-CH 21-835970 for

LBNL, and shall not be subject to any California or other State sales or use tax. Any items furnished hereunder for temporary use by the University are subject to California State sales or use tax, and such tax is included in the fixed price(s) stated herein.

D. Invoices

1. Invoice(s) shall be submitted by email directly to the LBNL Accounts Payable Office at APIInvoice@lbl.gov, upon completion of the milestone(s). The "subject" line of the email shall state the Subcontractor's name and the Subcontract number.

2. If unable to submit its invoices by email, the Subcontractor may submit its invoices to the following address:

Lawrence Berkeley National Laboratory
Accounts Payable Office, Subcontract No. _____
One Cyclotron Road, M/S 971-AP
Berkeley, CA 94720

3. Invoice(s) shall state the Subcontract number; clearly identify the Subcontractor (including business heading or logo); include an invoice date, unique invoice number, and remittance address; sufficiently identify the items/services being invoiced; and identify any separately payable freight charges (with receipts if available) and taxes. Invoice(s) in a spreadsheet format are not acceptable, but a spreadsheet can be used to support an invoice. The Subcontractor shall maintain records that support all invoiced amounts, and provide them to the University Procurement Representative upon request.

4. LBNL will verify completion of each milestone. Title to deliverable items or deliverable portions thereof shall vest in the Government immediately upon the date of the milestone payment.

5. Invoice questions should be directed to the Customer Service Resolution Specialist / Vendor Help Desk at (510) 486-6954 or vendordesk@lbl.gov.

E. Payment Terms. All invoices except the final invoice shall be payable within 30 days of receipt, or 15 days if the Subcontractor is a small business; provided, however, that payments made thereafter shall not be subject to any penalty, interest, or late charges. Only those items/services identified in this Subcontract or a Subcontract Modification will be considered for payment. Payment amounts may be adjusted for any applicable credits, offsets, or withholds. Full payment shall not be due until any final acceptance requirements of this Subcontract have been satisfied.

F. Allocated Funding Limit

1. The funding presently allocated for payment to the Subcontractor under this Subcontract is limited to \$ _____. The allocated funding amount is expected to cover completion of [funded milestones TBD].

2. It is anticipated that the University will increase this allocated funding amount up to the total fixed price of this Subcontract as funding becomes available, excluding unexercised

options; however, the University shall not be obligated to do so. The allocated funding amount may be unilaterally changed by the University Procurement Representative, by issuance of a written modification to this Subcontract.

3. The allocated funding amount specified above shall be the limit of the University's liability for all costs under this Subcontract, any other provision to the contrary notwithstanding. The Subcontractor is not obligated to continue performance under this Subcontract or otherwise incur cost or expenses in excess of the allocated funding amount. The Subcontractor shall notify the University in writing at least ten working days prior to stopping the Services to avoid exceeding the allocated funding amount.

ARTICLE 4 – SUBCONTRACT ADMINISTRATION

- A. Notices, Requests, and Modifications. The Subcontractor shall submit all notices and requests for approval by email to the University Procurement Representative indicated on the signature page or at the following mail address:

Lawrence Berkeley National Laboratory
Attn: [University Procurement Representative]
One Cyclotron Road M/S 971-PROC
Berkeley, CA 94720

Only the University Procurement Representative is authorized to modify the terms, conditions, and requirements of this Subcontract, including any changes to the description of the Services, and to issue any notices and approvals required by this Subcontract.

- B. University Technical Representative. The University Technical Representative for this Subcontract is TBD or designee. The University Technical Representative will provide technical direction in connection with the work to be performed under this Subcontract. The term “technical direction” is defined to include (1) direction to the Subcontractor which assist in the interpretation of drawings, specifications, or technical portions of the work description; and (2) the review and approval of technical reports, drawings, specifications, and information to be delivered by the Subcontractor under the Subcontract, where required. The University Technical Representative will issue all technical direction in writing.

The University Technical Representative is not authorized to issue any technical direction which would (1) constitute an assignment of work outside the general scope of the work covered by this Subcontract; (2) change the description of the work to be performed or any applicable drawings, designs, and specifications; (3) change the time or place of performance; the method of shipment or packaging, or the place of inspection, delivery or acceptance; (4) increase the estimated cost for performance of the work or the time required for performance of the work; (5) change any expressed term or condition of the Subcontract; or (6) unreasonably interfere with the Subcontractor's ability to perform and complete the work. Any such change must first be authorized by a written modification to this Subcontract issued by the University Procurement Representative.

- C. Closeout. The Subcontractor shall, as a condition of full payment, assist the University after the completion of the Services in accomplishing the administrative closeout of this Subcontract,

including, as necessary or required, the furnishing of documentation and reports, the disposition of property, the disclosure of any inventions, the execution of any required documents, the performance of any audits, and the settlement of any interim or disallowed costs.

ARTICLE 5 – FURNISHED AND ACQUIRED PROPERTY

- A. University Furnished Property. The University will furnish the following U.S. Government Property for use as required under this Subcontract:

TBD or None

- B. Subcontractor Acquired Property. The Subcontractor is authorized to acquire the tangible personal property items identified in the Subcontractor's proposal for use under this Subcontract, including the items listed below. The Subcontractor shall not acquire other tangible personal property for use under this Subcontract without the University Procurement Representative's advanced written approval.

TBD or None

The Subcontractor shall not acquire other tangible personal property that has a value of \$5,000 or more or is on the LBNL Sensitive Property List, regardless of cost (e.g., electronic devices), without the University Procurement Representative's advanced written approval. The LBNL Sensitive Property List is available at: <http://www.lbl.gov/Workplace/CFO/pro/property/>

- C. All property furnished by the University or acquired by the Subcontractor under this Subcontract shall be identified, utilized, accounted for, and protected in accordance with the *Government Property* clause of the General Provisions. Disposition of University-furnished and of Subcontractor-acquired property for which title vests in the Government shall be as directed by the University Procurement Representative or a University Property Representative. For such property, the Subcontractor shall submit, upon request, a completed *Final Property Certification* form, as incorporated herein or provided, confirming the property disposition.

ARTICLE 6 – SHIPPING REQUIREMENTS

- A. Shipping Terms. The shipping terms are F.O.B. Destination, freight included/prepaid. All shipments shall be shipped via the Subcontractor's vehicles or a licensed common carrier selected by the Subcontractor, at the Subcontractor's expense.

- B. Delivery Address. All shipments shall be delivered to the following address:

Lawrence Berkeley National Laboratory
For the U.S. Department of Energy
Attn: TBD
Oakland Scientific Facility
415 Thomas Berkley Way
Oakland, CA 94612

ARTICLE 7 – REPORTS

A. Type of Reports

The Subcontractor shall prepare and submit the following reports.

1. Monthly Progress Reports. Monthly progress reports shall be submitted by the fifth business day of each month. The progress reports may be informal letter summaries in a format approved by the University representatives. These reports shall contain a description of Services performed during the report period and the Services planned for the succeeding period
2. Final Report. A final report shall be submitted upon completion of the Services and contain a comprehensive summary of all Services results and conclusions. The form and content of the final report shall be acceptable to the University Technical Representative. If so requested, a draft copy of the Report shall be provided to the University Technical Representative for review prior to final submittal.

B. Submittal. Written reports shall be submitted to the following recipients at the following email or mailing address:

Lawrence Berkeley National Laboratory
Attention: [Intended Recipient; see below]
One Cyclotron Road, Mail Stop [see below]
Berkeley, CA 94720

| <u>Recipient</u> | <u>Mail Stop</u> | <u>Email</u> |
|------------------|------------------|---------------|
| Name | | _____@lbl.gov |
| Name | | _____@lbl.gov |
| Name | | _____@lbl.gov |

ARTICLE 8 –KEY PERSONNEL

It is understood and agreed that the Subcontractor's key personnel designated below are considered to be essential to the Services being performed hereunder and shall not be reassigned or replaced without prior University approval, except where such circumstances are beyond the reasonable control of the Subcontractor. The Subcontractor shall notify the University Procurement Representative reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the performance of this Subcontract.

| <u>NAME</u> | <u>TITLE</u> |
|-------------|--------------|
| TBD | TBD |

The Subcontractor shall not employ on the work any unfit person or anyone not skilled in the work assigned to him or her and shall devote only qualified personnel to work under this Subcontract. Should the University deem anyone employed on the work incompetent or unfit for his or her duties and so inform the Subcontractor, the Subcontractor shall remove such person from work under this Subcontract

and he or she shall not again, without written permission of the University, be assigned to work under this Subcontract.

ARTICLE 9 – LBNL SITE ACCESS REQUIREMENTS

- A. All Subcontractor and lower-tier subcontractor employees requiring access to LBNL DOE-affiliated sites are subject to DOE restrictions.
- B. The Subcontractor shall not assign foreign national employees to work at LBNL DOE-affiliated sites who were born in, are citizens of, are employed 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 include Cuba, Iran, Sudan, and Syria. Requests for access must be submitted to LBNL at least 180 days in advance to allow time for approval from the DOE.
- C. The University is also required by DOE to document all foreign national employees who were born in, are citizens of, or are employed by a government, employer, institution or organization, of a sensitive country who require access to LBNL or DOE-affiliated sites for 30 days or more (assignees). Such employees must identify themselves upon entry to any LBNL site. Sensitive countries include Algeria, Armenia, China, India, Israel, Libya, North Korea, Pakistan, Russia and various other former Soviet Union countries, and Taiwan. A complete list of sensitive countries and additional information on this requirement is available at <http://www.lbl.gov/ufva>.

ARTICLE 10 – ACCESS TO LBNL COMPUTER AND NETWORK RESOURCES

- A. Access to LBNL computer and network resources by Subcontractor personnel shall be in accordance with, and is subject to, the LBNL security policies and procedures, including, but not limited, to the policies found at <http://www.lbl.gov/ITSD/Security/guidelines/>. These policies and procedures are applicable, whether such access is at LBNL, at the Subcontractor's facility, or elsewhere. If the Subcontractor does not comply with these requirements, the University may withdraw Subcontractor's access to LBNL resources. Misuse of LBNL resources may be a violation of law and could result in appropriate action, including termination for default and/or criminal prosecution.
- B. Access to LBNL resources by Subcontractor personnel is only permitted as required to perform the Services authorized under this Subcontract. All information or data furnished by the University, obtained from a LBNL computer, or developed on a LBNL resource by Subcontractor personnel must be protected by the Subcontractor to prevent disclosure to any person other than those authorized by the University. Files which are not designated for access by Subcontractor personnel may not be accessed without specific permission from the University. The University reserves the right to monitor the use of LBNL computer resources by all appropriate means.
- C. Computer and network passwords issued to Subcontractor personnel for access to the LBNL resources must not be shared and must be protected by Subcontractor personnel to prevent disclosure to any other persons. If a password is disclosed, or disclosure is suspected, the Subcontractor must immediately notify the University Technical Representative and arrange for replacement of the password.

ARTICLE 11 – APPROVAL OF TECHNICAL DATA

If this Subcontract requires the Subcontractor to furnish any drawings, specifications, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance or test data, or other technical data (hereinafter called “data”) for the University’s approval, University’s approval of the data shall not relieve the Subcontractor from responsibility for any errors or omissions in such data or from responsibility for complying with the requirements of this Subcontract, except as specified below. Any work done prior to such approval shall be at the Subcontractor’s risk.

If the data includes any variation from the Subcontract requirements, the Subcontractor shall describe such variation in writing at the time of submission of the data to the University, for University’s review and approval. If University approves any such variation, the variation will be incorporated into the Subcontract by a bilateral Modification to this Subcontract.

Unless otherwise specified, University requires a period of 10 working days, from date of receipt, to review and approve the data. If University does not approve the data within the allotted time period, the parties will establish a new time period for review and approval of the data and, if necessary, the delivery schedule or completion date will be equitably adjusted.

All submittals shall be sent to the following e-mail address to the maximum extent practical.

TBD@lbl.gov

All submittals that cannot be sent electronically shall be sent to the following address.

Lawrence Berkeley National Laboratory
Attention: TBD, Mail Stop TBD
One Cyclotron Road
Berkeley, CA 94720

ARTICLE 12 – ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES

In the performance of this Subcontract, the Subcontractor shall specify, furnish, and use environmentally preferable products and services (i.e., products and services with a lesser or reduced effect on human health and the environment), to the maximum possible extent consistent with the Subcontract requirements and the intended end use of the products or services. Information on environmentally preferable products and services is available at: <http://www.epa.gov/opptintr/epp/>.

ARTICLE 13 - E-VERIFY PROGRAM ENROLLMENT

Pursuant to the *Employment Eligibility Verification* clause of the General Provisions (FAR 52.222-54), the Subcontractor shall:

Enroll as a Federal contractor in the online E-Verify System at: <https://e-verify.uscis.gov/enroll>, and within 10 days of award of this Subcontract provide the University Procurement Representative with written verification of the enrollment, such as a copy of the Subcontractor's "Company Information" page from the E-Verify System.

Include the clause in each lower-tier subcontract for construction or services exceeding \$3,000, as required by the clause (excluding those with self-employed individuals), and within 10 days of award thereof provide the University Procurement Representative with written verification of the subcontractor's enrollment in the E-Verify System.

ARTICLE 14 – OBLIGATIONS OF THE PARTIES

The University and the Subcontractor agree that this Subcontract involves cutting-edge technology, research, and development under aggressive schedules. The University and the Subcontractor agree (i) that the Subcontractor shall use reasonable efforts to perform in accordance with the milestones, requirements, and/or schedules set forth in this Subcontract, and (ii) to reasonably consider limitations that may occur in meeting obligations under this Subcontract. If the Subcontractor is unable to meet its performance obligations, then the University and the Subcontractor hereby agree to negotiate the Statement of Work and/or the Subcontract price, if necessary, to reflect changes to the Subcontractor's performance obligations. The University and the Subcontractor agree to use this process to address performance issues before resorting to any rights or remedies available by way of the *DISPUTES* or the *TERMINATION* clauses of the GENERAL PROVISIONS.

ARTICLE 15 – INCORPORATED DOCUMENTS

The following documents are hereby incorporated as a part of this Subcontract. The documents marked with an asterisk are available at: http://www.lbl.gov/Workplace/CFO/pro/forms/general_prov.html.

- General Provisions for Fixed Price Non-Commercial Supplies & Services, dated 11/7/12 *
- DesignForward Class Advance Waiver, dated 3/1/2013
- Statement of Work, [Title TBD], dated _____
- Small Business Subcontracting Plan, dated _____

ARTICLE 16 – GENERAL PROVISIONS

- A. The clauses listed in the referenced General Provisions shall be applicable to this Subcontract, based on the value of the Subcontract, the status of the Subcontractor, or the nature and location of the Services, as indicated in the General Provisions.
- B. This Subcontract is for research, development, or demonstration work or design work involving non-standard types of construction. Accordingly, the clauses listed in the General Provisions related to such work shall apply.
- C. General Provisions Clause DEAR 970.5232-3 shall apply.

(END OF SCHEDULE OF ARTICLES)