

Below is a list of standard clauses and other terms required by the University of Colorado, Boulder when issuing a Subcontract under a Non-Federal Prime contract award. Please keep in mind, this list is provided for review purposes only to highlight key terms required by the University as an entity under the State of Colorado. Any awarded subcontract may contain additional terms depending on the scope and other factors related to the specific project. Please note that any Subcontract would also include the appropriate and applicable flow downs clauses from the Prime Award. For the purposes below, the University of Colorado, Boulder is the Contractor.

Representations and Certifications

Subcontractor shall complete electronic annual representations and certifications at <https://www.sam.gov> (System for Award Management, or SAM). Subcontractor shall update the representations and certifications submitted to SAM as necessary, but at least annually. The representations and certifications are effective for one year from date of submission or update to SAM.

Additional required certifications:

Subcontractor certifies with execution of this Subcontract that it is not suspended, debarred or ineligible from entering into contracts with any Department or other Agency of the Federal Government, or in receipt of a notice of proposed debarment or suspension. The Subcontractor shall provide immediate notice to the University in the event of being suspended, debarred or declared ineligible by any Department or other Federal Agency, or upon receipt of a notice of a proposed debarment or suspension, either prior to or after execution of this Subcontract.

Subcontractor certifies with its execution of this Subcontract that it has not been suspended, debarred or ineligible from entering into contracts with any Department or other Agency of the Federal Government, for the previous five (5) years.

Subcontractor agrees to secure from its participants in transactions expected to equal or exceed \$35,000, certification that such participants are not suspended, debarred or declared ineligible from entering into contracts, or in receipt of a notice of proposed debarment or suspension.

In the event funds allotted under this Subcontract, including any subsequent amendment to this Subcontract, are expected to exceed \$10,000, the Subcontractor certifies upon execution of this Subcontract that it is in compliance with "Equal Employment Opportunity" guidelines.

In the event funds allotted under this Subcontract, including any subsequent amendment to this Subcontract, are expected to exceed \$150,000, the Subcontractor certifies, upon execution of this Subcontract, that it is in compliance laws limiting the use of appropriated funds to influence certain Federal contracting and financial transactions.

Subcontract Key Terms

1. **Subcontractor's Work:** Subcontractor shall supply all personnel, equipment, and materials necessary to accomplish the tasks set forth in Subcontractor Statement of Work
2. **Limitation on Costs:** Contractor is not liable for any cost in excess of the Total Funding to Date without prior written authorization from Prime Sponsor.
3. **Payment:** Contractor shall reimburse Subcontractor not more often than monthly for allowable costs. All invoices shall be submitted using Subcontractor's standard invoice, but at a minimum shall include current and cumulative costs (including cost sharing), Subcontract number, and certification as to truth and accuracy of invoice. All payments shall be considered provisional and subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of an adverse audit finding against Subcontractor. All invoices required

- Contractor's Principal Investigator's approval. Contractor reserves the right to reject an invoice.
4. **Incorporation of Prime Contract:** In the performance of Subcontractor's Work, all applicable terms and conditions of Prime Contract Terms and Conditions shall be flowed down to any awarded subcontract
 5. **Key Personnel:** Subcontractor's Principal Investigator, is considered essential to the work to be performed. Substitution or substantial reduction in commitment of Subcontractor's Principal Investigator requires the prior written approval of Contractor. In the event that Subcontractor notifies Contractor that it desires to replace Subcontractor's Principal Investigator, Subcontractor shall notify Contractor in writing within 30 business days of the date of such replacement and shall propose a substitute principal investigator, identifying the proposed substitute in the notice. Contractor shall notify Subcontractor within 30 business days after receipt of such notice of its decision either to continue the Subcontract with the substitute principal investigator or to terminate the Subcontract.
 6. **Independent Contractor.** Subcontractor is engaged as an independent contractor. Nothing in the Subcontract is intended to, or shall be deemed to, constitute a partnership or joint venture between the parties. No party has the authority to bind, nor incur any debts or obligations on behalf of, any other party, and no party (including any employee or other representative of a party with responsibility for program matters) shall take any action that attempts or purports to bind, nor incur any debts or obligations on behalf of, any other party.
 7. **Publicity/Use of Name.** Neither party shall use the name of the other party, or the name of any faculty member, employee, or student of such other party, in connection with any product, service, promotion, news release, or other publicity without the prior written permission of the other party and, if an individual's name be concerned, of that individual.
 8. **Publication.** Each party shall have the right to publish and disseminate information derived from the performance of work under this Subcontract. Qualification for authorship shall be in keeping with generally accepted criteria. Subcontractor shall provide Contractor with a copy of any proposed publication for review and comment at least thirty (30) days prior to submission. All publications must contain appropriate attributions to all authors and comply with the publication terms of the Prime Contract, including any required acknowledgement of the support from the Prime Sponsor of the work under this Subcontract.
 9. **Intellectual Property.** In addition to the rights and licenses granted by Subcontractor to Prime Sponsor, Subcontractor additionally grants the following licenses to Contractor:
 - a. Subcontractor hereby grants to Contractor an irrevocable, royalty-free, non-transferable, non-exclusive right and license to use, reproduce, make derivative works, display, and perform publicly any copyrights or copyrighted material (including any computer software and its documentation and/or databases) first developed under the Subcontract solely for the purpose of and only to the extent required to meet Contractor's obligations to the Prime Sponsor under the Prime Contract.
 - b. Subcontractor hereby grants to Contractor the right to use any written progress reports and deliverables created under the Subcontract solely for the purpose of and only to the extent required to meet Contractor's obligations to the Prime Sponsor under the Prime Contract.
 - c. Subcontractor hereby grants to Contractor the right to use data created in the performance of this Subcontract solely for the purpose of and only to the extent required to meet Contractor's obligations to the Prime Sponsor under the Prime Contract.
 - d. Moreover, Subcontractor agrees to comply with any applicable data sharing and access requirements of the Prime Sponsor and any Data Management/Sharing Plan submitted to the Prime Sponsor.
 10. **Confidentiality.** "Confidential Information" shall mean any business or proprietary information provided by one party to the other during the term of a Subcontract; provided that such

information is clearly labelled as "Confidential" by the transmitting party at the time of disclosure; or, if such transmittal occurs orally, the transmitting party has within thirty (30) days thereafter reduced such transmittal to written form, marked and identified it as confidential, and provided such record to the other party.

- a. The receiving Party may disclose the Confidential Information only on a need-to-know basis to its employees, directors or other advisors or representatives who are subject to confidentiality obligations sufficient to protect such information. The receiving party shall use the Confidential Information only for the purposes contemplated by a Subcontract and shall use reasonable efforts to prevent its disclosure to third parties.
 - b. Confidential Information does not include information that: (i) is already in the public domain or becomes publicly available through no wrongful act of receiving party, (ii) was previously known or developed by the receiving party without any violation of existing confidentiality obligations, (iii) was known by receiving party prior to disclosure by disclosing party, as evidenced by tangible records; (iv) becomes known to receiving party after disclosure from a third party having an apparent bona fide right to disclose it; (v) is independently developed or discovered by receiving party without use of disclosing party's Confidential Information, as evidenced by tangible records; or (vi) is required to be disclosed by operation of law, including the Colorado Open Records Act (C.R.S. § 24-72-201, et seq.) .
 - c. The parties agree that each party retains ownership of the Confidential Information it provides to the other. The receiving party shall promptly return the disclosing party's Confidential Information upon request. The obligations of this clause shall survive for a period of three (3) years following termination of a Subcontract.
11. **Export Controls/Compliance with Laws.** Subcontractor shall comply with all applicable United States federal, state and local laws, regulations and orders. Including those regarding the export or re-export of information, technical data, equipment, technology, materials and software (cumulatively "Information" for purposes of this Article). The Subcontractor shall not disclose or provide to Contractor any information, equipment or software (collectively, "Material") that is export-controlled under regulations of the US Department of State (22 CFR Parts 120-130 – ITAR) or the US Department of Commerce (15 CFR Parts 730-774 – EAR) without first notifying and obtaining written consent from the Contractor's Authorized Official.
 12. **Classified Research.** The parties will agree there will be no classified research performed under a Subcontract.
 13. **Limitation of Liability/Indemnity.** Subcontractor shall be solely responsible for its acts and omissions.
 14. **Insurance.** Subcontractor represents that it carries sufficient insurance coverage to comply with the requirements of federal, state and local laws as well as its obligations under a Subcontract.
 15. **Termination.** Either party shall have the right to terminate with 30 days written notice to the other party. In the event that Awarding Agency terminates Prime Contract, Subcontractor shall terminate the Subcontract in accordance with the terms of the Prime Contract. Upon termination, Subcontractor shall furnish to Contractor all necessary data and final reports, on the research completed or in progress through the date of termination. Thereafter, Subcontractor shall be reimbursed for allowable costs and non-cancelable obligations incurred prior to the date of termination.
 16. **HIPAA/PHI** There will not be personal health information (PHI) or personally identifiable information (PII) involved in this project. If there is, there are additional terms that will be included and IRB approval from Subcontractor is required.
 17. **Access to Records and Audit.** Representatives of the Prime Sponsor and/or Contractor shall have access to any documents, books, papers, data, facilities and records of Subcontractor pertinent to this Subcontract to audit examine and copy to determine technical progress or

compliance with the terms of this Agreement and the Prime Contract. The documents and records of Subcontractor shall be retained by Subcontractor for a period of at least three years from the date of final payment.

- a. All such inspections shall be conducted in such a manner as to not unduly delay the progress of the Project and reasonable notice will be provided to Subcontractor prior to conducting any such inspections. Inspection by Sponsor or University shall not relieve Subcontractor of any responsibilities hereunder, including its responsibility to fully and formally report the details of the Project set forth herein and meet the Milestone schedule.
18. **Disputes.** The parties shall attempt to resolve all disputes through informal means. Each party agrees that, prior to resorting to litigation to resolve any dispute, it will confer with the other party to determine whether other procedures that are less expensive or less time consuming can be adopted to resolve the dispute.
 19. **Anti-Kickback.** Subcontractor represents that no part of the total Subcontract amount provided herein shall be paid directly or indirectly to any officer or employee of Prime Contractor or Awarding Agency as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to Subcontractor in connection with any work contemplated or performed relative to this Subcontract.
 20. **Subcontracts and Assignment.** Subcontractor may not assign or subcontract any portion of the work to be performed under a Subcontract without the prior written approval of Contractor's Authorized Representative. This requirement is not intended to apply to the purchase of goods and services used in the normal course of business
 21. **Severability.** If any provision of a Subcontract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Subcontract which can be given effect without the invalid provision, and to this end the provisions of a Subcontract are declared to be severable.
 22. **Waiver.** No waiver of any term or provision of a Subcontract shall be effective unless in writing signed by an Authorized Official of the waiving party, and no such single waiver shall be deemed to be, or construed as, a further or continuing waiver of any such term or provision, or of any other term or provision, of a Subcontract.
 23. **Choice of Law.** Colorado law, and rules and regulations shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void.
 24. **Governmental Immunity.** The Subcontractor understands and agrees that the liability of the University, the State of Colorado and their officers and employees, relating to actions that lie in tort or could lie in tort, is controlled and limited by the Colorado Governmental Immunity Act, Colorado Revised Statute ("CRS") § 24-10-101 et seq. The Subcontractor also agrees that nothing in this Subcontract shall be construed as a pledge of the full faith and credit of the State of Colorado, as the assumption by the University of a debt, contract or liability of the Subcontractor in violation of Section 1 of the Constitution of the State of Colorado. Any provision in this Subcontract, whether or not incorporated herein by reference or otherwise, will be controlled or otherwise modified to limit any liability of the University, the State of Colorado and their officers and employees to that set forth in the above-cited laws.
 25. **Fund Availability.** A Subcontract is subject to and contingent upon the continuing availability of funds required for the Project. If funds are no longer available, this Subcontract may be terminated for convenience.