

NEW JERSEY INSTITUTE OF TECHNOLOGY
SUBCONTRACT

SUBCONTRACTOR:

ADDRESS:

PROJECT TITLE:

NJIT Suffix:

SUBCONTRACT PERIOD: -

TOTAL AMOUNT:

ISSUED BY:

**New Jersey Institute of Technology
Sponsored Research Administration
University Heights
Newark, New Jersey 07102-1982**

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PREAMBLE

This Subcontract, entered into _____ by **New Jersey Institute of Technology**, a public research university, located at University Heights, Newark, New Jersey 07102 (hereinafter "Institute"), and _____ (hereinafter "SUBCONTRACTOR"), and constituting a Subcontract under Prime Contract No. _____ between _____ and the INSTITUTE.

WITNESSETH THAT

The SUBCONTRACTOR agrees to furnish and deliver the supplies and perform the services set forth in this subcontract, entitled: _____ for the consideration stated herein.

ARTICLE 1. STATEMENT OF WORK

- (A) The SUBCONTRACTOR shall provide the necessary personnel, equipment, facilities and supplies to perform the services specified in the attached Work Statement/Proposal marked **Exhibit A**, which by this reference is made a part hereof.
- (B) This Subcontract is made pursuant to the terms of Prime Contract No. ____, and all applicable provisions contained in the Prime Contract shall be binding upon the SUBCONTRACTOR, and SUBCONTRACTOR agrees to comply with same. For purposes of construction, the obligations of SUBCONTRACTOR to INSTITUTE shall be deemed obligations of SUBCONTRACTOR to the prime sponsor as well.
- (C) Each deliverable under this Subcontract shall be subject to acceptance testing or review by INSTITUTE to verify that the deliverable satisfies the criteria required by the Prime Contract. When INSTITUTE reasonably determines that the applicable deliverable meets with the required criteria, then INSTITUTE shall accept the deliverable. In the event that any deliverable does not conform to the required criteria, then INSTITUTE will give SUBCONTRACTOR written notice thereof. INSTITUTE will cooperate with SUBCONTRACTOR in identifying in what respects the deliverable has failed. SUBCONTRACTOR shall, at no cost to INSTITUTE, promptly correct any deficiencies which prevent such deliverable from being acceptable to INSTITUTE so that the deliverable will conform to the required criteria under the Prime Contract.

ARTICLE 2. KEY PERSONNEL

- (A) SUBCONTRACTOR shall designate, _____, its Project Director/Principal Investigator who shall not be replaced without INSTITUTE'S prior consent.
- (B) The INSTITUTE designates, _____, as its Project Director/Principal Investigator.

ARTICLE 3. PERFORMANCE SCHEDULE

- (A) The performance schedule under this Subcontract shall begin on _____ and shall end on _____ unless extended by mutual written agreement or terminated under the conditions of this Subcontract. Whenever SUBCONTRACTOR knows that any actual or potential condition is delaying or threatens to delay the timely performance of this Subcontract, SUBCONTRACTOR shall provide notice thereof to INSTITUTE.

ARTICLE 4. ALLOWABLE COSTS AND PAYMENT

- (A) The cost of services to be provided under this Subcontract shall not exceed _____. A budget agreed to by the parties is attached as **Exhibit B** and made part of this Subcontract for all purposes and shall not be exceeded unless by written amendment to this Subcontract. For the purpose of determining the amount payable to SUBCONTRACTOR, the following rates are applicable:

- (1) Direct Costs: _____ ; and

- (2) Indirect Costs (overhead): _____

It is agreed that the above rates shall be applicable to the entire period of this Subcontract. If requested by INSTITUTE, SUBCONTRACTOR will provide a copy of the negotiated agreed rates with the applicable cognizant agency. It is agreed that rates for further periods will be established by subsequent negotiations and incorporated into this Subcontract by amendment. Payments for performance of this Subcontract by SUBCONTRACTOR shall be made by INSTITUTE on a cost reimbursement basis.

- (B) SUBCONTRACTOR may transfer funds within approved budget categories in accordance with Office of Management and Budget Circular A-110, Uniform Administrative Requirements for Grant and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations", as in effect on the date of this Subcontract and in accordance with the provisions of the Prime Grant as attached in **Exhibit C**.

- (C) To be eligible for reimbursement, costs must be in accordance with either OMB Circular A-87, Cost Principles for State and Local Governments, OMB Circular A-122, Cost Principles for Non-Profit Organizations, OMB Circular A-21 Cost Principles for Educational Institutions, Federal Acquisition Regulation, Chapter 1, Subpart 31.6, Contracts with State, Local and Federally Recognized Indian Tribal Governments, Subpart 31.3, Contracts with Educational Institutions, or Subpart 31.7, Contracts with Non-Profit Organizations, as appropriate. Costs shall be further governed by policies and procedures of the Prime Contract.

- (D) SUBCONTRACTOR shall submit detailed invoices at no greater intervals of every ninety (90) days after the start of the Subcontract for payment of costs incurred during the preceding calendar months. A final invoice is required no later than thirty (30) days from the last day of this Subcontract. A final invoice received beyond the thirty (30) days following the end date of this

Subcontract is subject to refusal at the sole direction of the INSTITUTE. SUBCONTRACTOR shall submit invoices with receipts and other support information for all individual non-salary cost items in an amount equal or greater than five thousand (\$5,000) dollars on the attached form (**Exhibit D**), provided by the INSTITUTE.

- (E) SUBCONTRACTOR shall require in any subcontract that the subcontractor assume and agree in writing to perform SUBCONTRACTOR'S obligations hereunder and accept the maximum per diem rate permitted by the U.S. government (if applicable).

ARTICLE 5. AUDIT

- (A) SUBCONTRACTOR shall maintain all records relating to both negotiations and to costs incurred, which records shall include, but not be limited to, documents, papers, accounting records, and any other evidence pertaining to cost; shall make such records available at the respective offices of the INSTITUTE at all reasonable times during the contract period and for three (3) years from the date of the final payment, and shall furnish copies of the records if requested. Following passage of three (3) years from the date of payment of the applicable Final Invoice, the INSTITUTE may, at its option, ask the SUBCONTRACTOR to destroy the records or surrender records to the INSTITUTE for additional storage.
- (B) If any amount paid hereunder by the INSTITUTE is subsequently disapproved or disallowed by the sponsor or another agency, the SUBCONTRACTOR shall, upon demand, promptly remit disapproved or disallowed amount to the INSTITUTE.
- (C) SUBCONTRACTOR must comply with the requirements of OMB Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Organizations", or OMB Circular A-128, "Audits of State and Local Governments", and New Jersey OMB Circular Letter 93-05, as appropriate. In addition, the SUBCONTRACTOR shall supply the INSTITUTE with copies of any independent auditors' reports. In cases of non-compliance, the SUBCONTRACTOR shall provide copies of responses to auditors' reports and plan for corrective action. All audit reports shall be in accordance with the requirements of OMB Circular A-133 or A-128 as appropriate and submitted to (invoices should be sent to the NJIT Project Director/Principal Investigator and not to this audit point-of-contact): **Ms. Nancy Eng, Grant & Contract Services, New Jersey Institute of Technology, University Heights, Newark, New Jersey 07102-1982.**

ARTICLE 6. PATENTS, COPYRIGHTS AND INTELLECTUAL PROPERTY

- (A) Title to any inventions, intellectual property, software, designs, discoveries or the like (hereinafter collectively "Inventions") made solely by the SUBCONTRACTOR in the performance of this Subcontract, shall vest in the SUBCONTRACTOR to the extent permitted by the Prime Contract and/or prime sponsor. Rights to Inventions made solely by the INSTITUTE shall belong to the INSTITUTE. SUBCONTRACTOR will grant an irrevocable, non-exclusive,

royalty-free license to INSTITUTE for use of solely developed SUBCONTRACTOR Inventions for educational and research purposes only. SUBCONTRACTOR shall not incorporate any pre-existing intellectual property into the deliverables of this Subcontract without the prior written consent of INSTITUTE. All ownership rights to Inventions created by either party under this Subcontract are subject to U.S. and/or state Government rights therein, if any.

- (B) SUBCONTRACTOR and INSTITUTE shall jointly and equally own title to all Inventions made jointly by employees of SUBCONTRACTOR and INSTITUTE in the performance of this Subcontract. Each party agrees to cooperate with the other and to prepare and execute those documents reasonably necessary to carry out the intent of this Article. Each party agrees to share equally in the reasonable expenses in preparing, filing, prosecuting and/or maintaining patents for joint inventions in the U.S. and for those foreign countries which the parties mutually agree upon. INSTITUTE shall control the filing of all jointly made Inventions.
- (C) SUBCONTRACTOR shall provide prompt written notice to INSTITUTE of any Invention or joint Invention made during SUBCONTRACTOR'S performance of this Subcontract.
- (D) Title to capital equipment purchased by the SUBCONTRACTOR pursuant to the terms of this subcontract shall remain in the INSTITUTE. Unless other disposition is requested by the SUBCONTRACTOR and mutually agreed upon and permitted under the terms of the Prime Contract, equipment shall be returned to the INSTITUTE upon termination of this subcontract.

ARTICLE 7. REPORTS

- (A) The SUBCONTRACTOR shall submit such technical reports to the INSTITUTE Project Director/Principal Investigator as required by the INSTITUTE to meet the technical requirements of the Prime Contract. Reports must be submitted sufficiently in advance of due date to allow time for review and comment by the INSTITUTE. A final detailed technical report is due within thirty (30) days of the end of this Subcontract and shall include to the extent applicable, drawings, specifications, and the necessary operating and maintenance instructions concerning any equipment, item, or process developed under this Subcontract.
- (B) A final expenditure report is due within thirty (30) days of the end of this Subcontract.

ARTICLE 8. TERMINATION

- (A) INSTITUTE may terminate this Subcontract by giving thirty (30) days advance written notice to SUBCONTRACTOR. In the event of early termination by INSTITUTE, SUBCONTRACTOR shall cease work on the subcontract and refrain from incurring additional cost upon notification of termination. INSTITUTE will reimburse SUBCONTRACTOR for approved and authorized work, and all reasonable and non-cancelable costs incurred by SUBCONTRACTOR up to the date of notice of termination. However, in no

event shall INSTITUTE be obligated to pay more than the total amount of this Subcontract

- (B) Notwithstanding the provisions of Paragraph (A), in the event that the SUBCONTRACTOR is in default or has breached its obligations at the time of termination, INSTITUTE does not waive any of its rights or remedies which it may have against SUBCONTRACTOR resulting from SUBCONTRACTOR's default, and INSTITUTE may withhold all or part of payments to SUBCONTRACTOR to off-set its reasonably determined damages.

ARTICLE 9. PUBLICITY

- (A) SUBCONTRACTOR shall not use the name of the INSTITUTE, nor any of its employees or agents for the purpose of publicity or advertising without the prior written consent of the INSTITUTE. All publicity shall acknowledge the support of the prime sponsor to the extent required under the Prime Contract. Nothing herein shall be construed to prevent disclosures of information required by law or lawful process.

ARTICLE 10. DEBARMENT AND SUSPENSION

- (A) The SUBCONTRACTOR certifies that neither it nor its principals are debarred, suspended, or declared ineligible from participating in this agreement by and Federal and/or state agency.

ARTICLE 11. COMPLIANCE WITH LAWS

- (A) This Subcontract is subject to all applicable federal, state and local laws, rules and regulations and executive orders, as amended, and acceptance constitutes assurance of compliance, including but not limited to: (i) Non-Discrimination In Employment and Equal Employment Opportunity (NJS 10:2-1 through 10:2-4 and NJS 10:5-31 et seq; Titles VI and VII of the Civil Rights Act of 1964; Executive Orders 11246 and 11375 as implemented by 41 CFR Part 60; Rehabilitation Act of 1973, Section 504; Age Discrimination Act of 1976; and Title IX of Higher Education Act of 1972); (ii) Drug-Free Workplace Act of 1988 (34 CFR Part 85); (iii) Byrd Anti-Lobbying Amendment (31 USC 1352); (iv) Protection of Human Subjects (45 CFR Part 46); (v) Clean Air Act (42 USC 7401 et seq.); (vi) Water Pollution Control Act (33 USC 1251 et seq.); (vii) Notification of Employee Rights Concerning Payment Of Union Dues (Executive Order 13201 as implemented by 29 CFR Part 470); (viii) Fair Labor Standards Act of 1938 (29 CFR Part 5); and (ix) US Export Control (Arms Export Control Act, 22 USC 2751-2794; International Traffic and Arms Regulation, 22 CFR Part 120; Arms Administration Act, 50 USC 2401-2420; and Export Administration Regulations 15 CFR 730-774). SUBCONTRACTOR further agrees to adhere to the terms of legal compliance specifically set forth in the Prime Contract to the same extent as required by INSTITUTE, and shall furnish INSTITUTE with such assurances as may be required under the Prime Contract. This provision shall be included in the award documents for all subawards at all tiers.

ARTICLE 12. ASSIGNMENT

- (A) This Subcontract may not be assigned in whole or in part without the prior written consent of the INSTITUTE.

ARTICLE 13. INDEMNIFICATION/INSURANCE

- (A) SUBCONTRACTOR shall defend, indemnify, protect and save harmless the INSTITUTE, its officers, and employees from and against all suits, claims, losses, demands or damages arising out of or claimed to arise out of its negligent acts, errors, or omissions in the performance of this Subcontract, except that SUBCONTRACTOR shall not be responsible for claims arising from the negligent acts, errors or omissions of INSTITUTE. SUBCONTRACTOR shall, at its own expense, appear, defend and pay all charges for attorneys and all costs and other expenses arising from such suit or claim or incurred in connection therewith. The foregoing obligations shall survive termination or expiration of this Subcontract.
- (B) SUBCONTRACTOR shall procure and maintain during the term of this Subcontract workers compensation and employers liability insurance or equivalent self insurance at statutory limits for workers' compensation and no less than \$1,000,000 for employers' liability.
- (C) If requested by INSTITUTE or required by the terms of the Prime Contract, SUBCONTRACTOR shall procure and maintain during the entire term of this Subcontract, commercial general and/or professional liability insurance, or equivalent self-insurance as may be applicable, to respond to claims of personal injury of property damage occurring within the scope of SUBCONTRACTOR's performance under this SUBCONTRACT, with INSTITUTE named as an additional insured thereon with a limit of not less than \$1,000,000 per occurrence for bodily injury and property damage/\$2,000,000 aggregate.

ARTICLE 14. REPRESENTATIONS, WARRANTIES AND COVENANTS

- (A) SUBCONTRACTOR covenants that the performance of work and services pursuant to the requirements of this Agreement shall conform to all statutes, laws, regulations and standards. Except as set forth in the Work Statement/Proposal attached as **Exhibit A**, SUBCONTRACTOR warrants that its performance of this Subcontract does not depend on the acquisition of rights from any third party and the conveyance of the deliverables described in the Work Statement/Proposal attached as **Exhibit A** will not knowingly infringe on the intellectual property right of any third party.
- (B) SUBCONTRACTOR covenants that the quality of all services rendered shall be performed in accordance with prevailing professional standards within the applicable field or profession required under the Scope of Work.
- (C) SUBCONTRACTOR represents and warrants that to solicit or secure this Subcontract, no company or person, other than a bona fide employee working solely for the SUBCONTRACTOR, has been employed or retained; and that the

SUBCONTRACTOR has not agreed to pay any company or person, other than a bona fide employee working solely for the SUBCONTRACTOR, any finders fee, commission, percentage, brokerage fee, gift, or any other consideration, either contingent upon or resulting from the award or making of this Subcontract. For breach or violation of this representation or warranty, the INSTITUTE shall have the right to either annul this Subcontract without liability, or in its discretion to deduct or otherwise to recover from the contract price or consideration the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

ARTICLE 15. SITUS

- (A) Regardless of the place of physical execution or performance, this Subcontract shall be construed according to the laws of, and deemed to have been executed in the State of New Jersey. Any action or claim relating to or arising out of this Subcontract will be brought in a state or federal court sitting in the State of New Jersey and the parties irrevocably consent to personal jurisdiction and venue of, and agree to bound by any judgment and orders rendered by, such courts.

ARTICLE 16. NOTIFICATIONS

- (A) Any notices or communication required to be sent to INSTITUTE by SUBCONTRACTOR under this Subcontract shall be in writing and shall be hand delivered or sent by certified or registered mail, return receipt requested, to the below address or such other address as INSTITUTE may in the future specify (notifications as to technical matters should be sent to the NJIT Project Director/Principal Investigator): **Ms. Norma Rubio, Director of Sponsored Research Administration, Office of Research & Development, New Jersey Institute of Technology, Fenster Hall – 3rd Floor, University Heights, Newark, New Jersey 07102-1982.**

ARTICLE 17. CONFIDENTIALITY/PUBLICATION

- (A) The parties agree to keep and maintain as strictly confidential any confidential or proprietary information and material of the other required for the performance of this Subcontract, provided that such information it is clearly marked as “confidential” at the time of tender to the other, including but not limited to materials, technical data, or other information that one party may provide to the other, in connection with this Subcontract (collectively "Confidential Information"). INSTITUTE is free to refuse to accept any proffered confidential information of SUBCONTRACTOR. Each party shall hold the Confidential Information in confidence, with the same degree of care that it applies to its own confidential information of like importance, but not less than reasonable care, except that each party may disseminate such Confidential Information to its employees who have a need to know for performance of this Subcontract. Each party shall use Confidential Information that it receives solely to accomplish the work required under this Subcontract and for no other purpose. Each party agrees that in the event of a breach or threatened breach of this provision, both may be irreparably harmed such that monetary damages will not adequately compensate it for its injuries. In the event of any such breach, both parties may be entitled, in

addition to any rights or remedies it may have at law or in equity, to seek temporary and permanent injunctive relief issued by any court of competent jurisdiction enjoining and restraining the other from continuing such breach. The foregoing obligations shall survive termination or expiration of this Subcontract.

- (B) "Confidential Information" shall not include the following information, to the extent that a party can show that the information: (i) is previously known by it at the time of disclosure without obligation of confidence, or without breach of this Subcontract; (ii) is publicly disclosed through no wrongful act of a party or its representatives; (iii) is received from a third party having the right to lawfully possess and disclose same and without breach of this Subcontract, (iv) is independently developed by a party without access or reference to the Confidential Information, (v) is approved for release by prior written authorization of the disclosing party, (vi) is required to be disclosed by governmental law, statute, regulation or the like, or court order. If a party is required to disclose any Confidential Information by a court of competent jurisdiction pursuant to applicable law or regulation, or by a properly filed Open Public Records Request, such party shall make such disclosure only to the extent expressly required and only after reasonable efforts to alert the other party of such disclosure requirement, so that the party owning the Confidential Information may seek to contest disclosure at its own cost and expense.
- (C) INSTITUTE shall be furnished copies of any proposed publication by SUBCONTRACTOR involving any work under this Subcontract at least sixty (60) days in advance of the submission to permit INSTITUTE to make written comments or object in writing because there is patentable subject matter which needs protection or INSTITUTE'S proprietary information which needs to be removed. INSTITUTE shall provide SUBCONTRACTOR with such commentary or objection within thirty (30) days of receiving a proposed publication or forever waive its rights in this regard. In the event that INSTITUTE makes a timely objection to a proposed publication, SUBCONTRACTOR shall refrain from making such publication or presentation for a maximum of ninety (90) days from date of receipt of such objection in order for either INSTITUTE to file appropriate patent applications. If INSTITUTE objects due to its proprietary information being contained in the proposed publication, SUBCONTRACTOR agrees to remove the same.

ARTICLE 18. NEW JERSEY BUSINESS REGISTRATION REQUIREMENT

- (A) SUBCONTRACTOR is hereby given notice that a business organization or individual that fails to provide a copy of a business registration as required pursuant to section 1 of P.L.2001, c.134 (C.52:32-44 et al.) or subsection e. or f. of section 92 of P.L.1977, c.110 (C.5:12-92), or that provides false business registration information under the requirements of either of those sections, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a State of New Jersey contracting agency such as INSTITUTE. No payment shall be made by INSTITUTE to SUBCONTRACTOR under this Subcontract until SUBCONTRACTOR provides an acceptable New Jersey Business Registration Certificate.

ARTICLE 19. GENERAL PROVISIONS

- (A) The failure by either party to enforce any provision of this Subcontract or to timely insist on performance shall not constitute or be construed as a waiver of any right to strictly enforce a contractual provision.
- (B) This Subcontract constitutes the entire understanding between the parties regarding this matter and merges any and all prior discussions, representations, promises, and warranties within its scope. There are no representations, warranties or promises not expressly set forth in this Subcontract.
- (C) Except as expressly set forth herein, this Subcontract may not be modified, renewed, or extended, except in writing, signed by both parties.
- (D) SUBCONTRACTOR shall not communicate directly with the prime sponsor regarding the performance of this Subcontract without the prior consent of INSTITUTION.
- (E) Any provision of this Subcontract that by its nature is intended to survive termination and/or expiration of this Subcontract, including but not limited to Articles 4, 5, 6, 9, 11, 13, 14 and 17, shall survive termination and/or expiration of this Subcontract.
- (F) SUBCONTRACTOR shall be deemed to be an independent contractor and, as such, neither SUBCONTRACTOR nor its employees shall be entitled to any benefits applicable to employees of INSTITUTE nor shall INSTITUTE or its employees be entitled to any benefits applicable to employees of SUBCONTRACTOR.
- (G) Neither party is authorized or empowered to act as agent for the other for any purpose and shall not on behalf of the other enter into any contract, warranty, statement, commitment or representation as to any matter. Neither shall be bound by the acts or conduct of the other.
- (H) SUBCONTRACTOR acknowledges that technology, software, services, and commodities provided by INSTITUTE may be subject to laws or regulations restricting their export, re-export, transfer or release to certain entities or destinations, including those laws and regulations administered by the U.S. Department of Commerce (Bureau of Industry and Security) and the U.S. Department of the Treasury (Office of Foreign Assets Control). With respect to any export, re-export, transfer, or release otherwise permitted under this Agreement, SUBCONTRACTOR shall comply with all applicable U.S. government requirements, including the U.S. Export Administration Regulations.

IN WITNESS WHEREOF, the parties have executed this subcontract as of the day and year first above written.

New Jersey Institute of Technology

By _____
Dr. Donald H. Sebastian
Sr. Vice President for Research & Development

Dated: _____

ATTEST/SEAL

Dated: _____

For the SUBCONTRACTOR:

By _____

(Typed Name)

(Title)

SAMPLE