

APPENDIX C- Non-Federal

GENERAL TERMS AND CONDITIONS

1. GENERAL PROVISIONS

By signing this Subaward the Subrecipient makes the certifications and assurances as stated in Paragraph 27 herein and also assures that it will comply with all applicable terms and conditions of the Prime Award, as referenced on the Subaward Cover Page and incorporated herein by reference.

2. SCOPE OF WORK

Subrecipient shall perform the services as set forth in the Scope of Work attached hereto as Appendix A.

3. BUDGET AND INVOICING

The Subrecipient shall invoice the Research Foundation no more than monthly and all invoices shall be on Subrecipient's letterhead and will be accompanied by all necessary documentation, as requested and in accordance with the Budget, attached hereto as Appendix B. The invoice shall be submitted to the Project Director via email in the same or similar format, including the same information as included in the attached Invoice, attached hereto as Appendix D.

This Subaward is funded by the City of New York (hereinafter "NYC"), whose fiscal year runs from July 1 through June 30 of the following year. Subrecipient shall invoice Research Foundation for any expenses incurred in NYC's fiscal year no later than the July 5th subsequent to the end of that fiscal year. Invoices received after said July 5th will be processed at the sole discretion of Research Foundation and Research Foundation shall not be liable for payment thereof.

Unless submitted earlier as required by the paragraph above the final invoice shall be submitted by the Subrecipient within thirty (30) days of the expiration of this Subaward, unless another time period is agreed to between the parties. If the final invoice is not received within thirty (30) days of expiration or by the alternate agreed upon date of submission, it may be processed at the sole discretion of the Research Foundation. In the event of termination, the final invoice will be submitted in accordance with the terms and conditions stated in the notice of termination. Costs upon termination will be paid in accordance with Paragraph 8 herein.

Payment of the final invoice will terminate any obligation on the part of the Research Foundation for any additional payments to the Subrecipient.

4. CONDITION PRECEDENT TO PAYMENT

AS STATED IN SECTION 8 ON THE COVERSHEET OF THIS SUBAWARD THE SUBRECIPIENT IS RELYING ON THE CREDIT OF NYC FOR PAYMENT FOR THE WORK BEING DONE IN FURTHERANCE OF THIS SUBAWARD. RESEARCH FOUNDATION DOES NOT HAVE ANY OBLIGATION TO MAKE PAYMENT TO

SUBRECIPIENT UNLESS NYC HAS MADE PAYMENT TO RESEARCH FOUNDATION FOR SUBRECIPIENT’S WORK. RESEARCH FOUNDATION SHALL NOT BE RESPONSIBLE FOR ANY DELAYS IN PAYMENT OR FOR ANY NONPAYMENT UNLESS IT HAS RECEIVED THE ALLOCATED FUNDS FROM NYC.

5. INDEPENDENT CONTRACTOR STATUS

A. The Subrecipient and Research Foundation agree that the relationship of Subrecipient is as independent contractor to Research Foundation.

B. All experts, consultants or employees of the Subrecipient who are employed by the Subrecipient to perform work under this Subaward are not employees of the Research Foundation. Subrecipient alone is responsible for their work, direction, compensation and personal conduct while engaged under this Subaward. Nothing in this Subaward shall impose any liability or duty on the Research Foundation for the acts, omissions, liabilities or obligations of the Subrecipient, its directors, officers, employees, agents and subrecipients.

C. Subrecipient shall be solely responsible for all physical injuries and/or death to its agents or employees or to any other person arising from the performance of its work under this Subaward or for damage to any property sustained during its work on the project under this Subaward. The Subrecipient shall be solely responsible for the safety and protection of all of its employees.

6. ASSIGNMENT and SUBCONTRACTING

A. Subrecipient shall not assign, transfer, convey or otherwise dispose of this Subaward or of Subrecipient’s rights, obligations or duties, without the prior written consent of Research Foundation. Any such assignment, transfer, conveyance or other disposition without such consent shall be void.

B. Subrecipient shall not subaward any portion of the performance obligations of this Subaward without prior written approval of the Research Foundation, unless such subaward is identified within the approved Scope of Work and Budget.

7. MODIFICATION and NO-COST EXTENSION

This Subaward may be modified only by a written instrument executed by both parties, except a no-cost extension to this Subaward may be issued by the submission of a Research Foundation Payment Request, signed by the Project Director and acceptable to the Research Foundation or if requested by Subrecipient, an email from the Project Director extending the term of the Subaward. **In no event shall the Subaward be extended beyond the term of the Prime Award.**

8. TERMINATION

A. Research Foundation shall have the right, upon thirty (30) days' prior written notice, to postpone, delay, suspend or terminate the Subaward or any part thereof which the Subrecipient is engaged to perform, at any time and for any reason in the Research Foundation's interest. Subrecipient shall be entitled to payment of allowable costs up to and including date of termination or such reasonable part of the fee as shall apply to services properly performed prior to the date of postponement, suspension or termination.

B. If the Prime Award is terminated, this Subaward will be terminated as soon as required by the Sponsor. Pending approval of the Sponsor, Subrecipient shall be paid allowable costs up to and including the date of termination or such reasonable part of the fee as shall apply to services properly performed prior to the date of postponement, suspension or termination.

C. Research Foundation shall have the right to immediately terminate this Subaward in the event of material breach of this Subaward, including but not limited to non-performance or noncompliance with the Assurances and Certifications contained in Paragraph 27. At the sole discretion of the Research Foundation, Subrecipient shall be paid allowable costs up to and including the date of termination.

9. REPORTS

Unless otherwise stated in the Scope of Work, Subrecipient shall provide reports as required upon the request of the Project Director.

10. RECORDS

Subrecipient shall maintain documents for all charges incurred under this Subaward. The books, records and documents of the Subrecipient insofar as they relate to work performed or money received under this Subaward shall be maintained for a period of six (6) full years from the date of final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the Research Foundation or the Sponsor. The financial statements of the Subrecipient shall be prepared in accordance with generally accepted accounting principles.

11. NOTICES

The mailing of all notices, by certified mail, addressed to the Subrecipient shall be deemed sufficient notice to the Subrecipient.

A facsimile or email notice to the Subrecipient at the facsimile number or email address listed on the Subaward Cover Page and a copy sent via First Class Mail at the

address referred to on the Subaward Cover Page shall also be deemed sufficient notice to the Subrecipient .

12. HOLD HARMLESS AND INDEMNIFICATION

Subrecipient shall indemnify Research Foundation and NYC against and hold Research Foundation and NYC harmless from any and all claims, actions, proceedings, expenses, damages, or liabilities, including attorney fees and court costs, resulting from the negligent acts, fault or default of the Subrecipient, its directors, officers, employees, agents and subrecipients.

In the event that Subrecipient is a government agency or otherwise subject to government limitations regarding tort liability indemnification and unable to comply with the indemnification requirements herein, then Subrecipient agrees to indemnify the Research Foundation to the extent that is allowed by the law that limits the Subrecipient.

13. INSURANCE

A. Subrecipient will, at its expense, maintain at all times during the term of this Subaward or any amendment thereto, general liability insurance and/or a program of self-insurance for property damage and bodily injury to cover the performance of this Subaward. In no event shall the insurance limits be less than \$1,000,000 per occurrence for property damage and bodily injury. The policy shall be obtained from an insurer licensed to do business in the State of New York and the insurer shall have a Best's rating of no less than B+. Each insurance policy will name Research Foundation and NYC as additional insured and will contain a clause requiring the insurer to give the Research Foundation at least 30 days prior written notice of any alteration in the terms of such policy or cancellation. If the Subrecipient is self-insured and cannot provide a Certificate of Insurance naming Research Foundation and NYC as an additional insured, then a statement must be submitted by Subrecipient's authorized signatory, risk manager, or principal indicating the same. Upon execution of this Subaward, Subrecipient will deliver to Research Foundation a certificate evidencing such insurance.

B. Execution of this Subaward by the Research Foundation is conditioned upon receipt of the appropriate Certificate of Insurance.

C. The parties anticipate that insurance requirements set forth in Paragraph 13(A) above are sufficient to carry out the statement of work contemplated under this Subaward, and that there is no need for additional insurance coverage; however, the Subrecipient acknowledges that during its performance of this Subaward, should any circumstance(s) arise which would warrant a need for additional insurance coverage, the Research Foundation may request the Subrecipient to obtain such additional

insurance coverage.

14. INVENTIONS, PATENTS AND DISCOVERIES

A. The Research Foundation retains all right, title and interest to any such invention or discovery and retains the sole right to determine whether a patent application will be filed.

B. Subrecipient, warranting that it has the right to do so, agrees to disclose promptly, and to cause its employees, agents or any other person performing Services to disclose promptly to Research Foundation any invention or discovery, whether or not patentable, which is made or conceived by Subrecipient or its employees or agents, either alone or jointly with others, (i) during the term of this Subaward and within six (6) months thereafter and (ii) as a result of the Services performed or as a result of the information revealed directly or indirectly by Research Foundation. Subrecipient also agrees, upon Research Foundation's written request and at Research Foundation's sole cost and expense, to assign and to cause Subrecipient to assign to Research Foundation the entire right, title and interest in and to any and all inventions or discoveries and to execute and cause its employees or agents to execute such documents as may be required to file applications and to obtain patents covering such inventions or discoveries in Research Foundation's name.

15. RIGHTS IN DATA AND COPYRIGHTS

All copyrightable works (including but not limited to reports, compilations of data, software or pictorial or graphics) created or prepared by the Subrecipient in the course of its work shall be "works for hire" (as that term is defined in the copyright laws of the United States) for the Research Foundation and all copyright rights therein are expressly intended to be wholly owned and the copyright to be held by the Research Foundation. To the extent that any such copyrightable works may not, by operation of law, be works for hire, the Subrecipient hereby assigns to the Research Foundation the ownership of copyright in such items and the Research Foundation shall have the right to obtain and hold in its own name copyrights, registrations and similar protection which may be available in such items. The Subrecipient agrees to give the Research Foundation or its designees all assistance reasonably required to perfect such rights.

16. INFRINGEMENTS

The Subrecipient agrees to indemnify and hold Research Foundation harmless to the extent allowed by law for any damage or loss or expense sustained by Research Foundation as a result of any infringement by the Subrecipient of any copyright, trademark or patent rights or design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Subrecipient in the performance of this Subaward.

17. GOVERNING LAW

This Subaward shall be governed by and construed in accordance with the laws of the State of New York without reference to its conflicts of laws principles. All disputes, including tort claims, arising out of or related to this Subaward shall be interpreted and decided in accordance with the laws of the State of New York. Subrecipient agrees to submit to jurisdiction of State Federal or Supreme Court located in New York State, New York County.

18. ORDER OF PRECEDENCE

In the event of a conflict in the terms of this document and its attachment the following order of precedence will be applied:

1. Prime Award
2. This Appendix C: General Terms and Conditions, including Special Terms and Conditions, if applicable
3. Subaward Cover Page, Budget and Scope of Work

19. GENERAL RELEASE

The acceptance by the Subrecipient or any person under the direction of the Subrecipient of any payment made on the final invoice under this Subaward shall operate as and shall be a release to Research Foundation from all claims for payment to the Subrecipient, its successors, legal representatives and assigns for anything done or furnished under the provisions of this Subaward.

20. ONE YEAR LIMITATION

No action shall lie or be maintained against Research Foundation upon any claim based on this Subaward or arising out of this Subaward or out of anything done in connection with this Subaward unless such action is commenced within one year after the termination or expiration of this Subaward.

21. NON-WAIVER

Any failure or delay of the Research Foundation in exercising or enforcing the strict performance of any of the Subrecipient 's obligations under this Subaward or in exercising or enforcing any right or remedy herein contained shall not be construed as a waiver or a relinquishment for the future of such obligation right or remedy. No waiver by the Research Foundation of any provision of this Subaward shall be deemed to have been made unless set forth in writing and signed by the Research Foundation.

22. ENTIRETY OF AGREEMENT

This Subaward with its attachments embodies the entire understanding of the parties and there are no other agreements or understandings between the parties relating to the subject matter herein.

23. FORCE MAJEURE

Neither party shall be liable for failure or delay in the performance of any duties under this Subaward when such delay or failure is due to causes beyond the party's control that could not have been avoided by the exercise of due care, including, but not limited to, acts of God; natural disasters; riots; war; epidemics; terrorists activities; government restrictions; or the like. The impacted party shall give the other party notice of the failure or delay as soon as possible.

24. PARAGRAPH HEADINGS

Paragraph headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Subaward and in no way affect the Subaward.

25. COUNTERPARTS and e-SIGNATURES

This Subaward may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts shall together constitute one executed Subaward. The parties agree that execution of this Subaward by exchanging facsimile, PDF, or e-Signature (as defined below) signatures shall have the same legal force and effect as the exchange of original signatures. Pursuant to this Subaward, e-Signatures shall mean a signature that consists of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with the electronic document, that (a) is unique to the person making the signature; (b) uses a technology or process to ensure the signature is under the sole control of the person making the signature; (c) uses a technology or process that can identify the person using the technology or process; and (d) has an electronic signature that can be linked with an electronic document in such a way that it can be used to determine whether the electronic document has been changed since the electronic signature was incorporated in, attached to or associated with the electronic document.

26. SEVERABILITY

If any part of this Subaward is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other part or provision of this Subaward, which other part or provision shall remain in full force and

effect.

27. ASSURANCES and CERTIFICATIONS

EXPORT CONTROLS

A. Subrecipient agrees to comply and reasonably assist the Research Foundation, upon request, in complying with, all applicable U.S. Government export and import laws and regulations, including but not limited to U. S. Department of Commerce Export Administration Regulations (EAR), 15 CFR 730-774, as applicable, and the U.S. Department of State International Traffic in Arms Regulations (ITAR), 22 CFR 120-130, as applicable.

B. Subrecipient agrees that it will not directly or indirectly export, re-export, distribute or transfer any technology, information or materials of any value to any nation, individual or entity that is prohibited or restricted by ITAR, EAR, the Office of Foreign Assets Control (OFAC), the United States Department of State's State Sponsors of Terrorism, or by any other government agency that requires said approval without first obtaining the appropriate license.

C. Subrecipient confirms that any confidential information disclosed during the course of the work herein will not contain export controlled technology or technical data identified on any U.S. export control list, including but not limited to the Commerce Control List (CCL), 15 CFR 774 and the U.S. Munitions List (USML), 22 CFR 121.

D. In the event, the Subrecipient intends to provide export controlled information, the Subrecipient will inform Research Foundation thirty (30) days prior to the release of such export controlled technology or technical data. Export controlled information will not be released to Research Foundation or CUNY personnel without prior written consent of the Research Foundation. If the U.S. government imposes a fine or penalty upon the Research Foundation because of the Subrecipient's failure to notify the Research Foundation, Subrecipient agrees to indemnify and hold the Research Foundation harmless from any and all resulting fines and penalties from such omission.

CIVIL RIGHTS AND EQUAL EMPLOYMENT OPPORTUNITY

A. Subrecipient agrees that it: (a) will comply with the Title VI and Title VII of the Civil Rights Act of 1964 (P.L. 88-352) and Executive Order No. 11246 as amended by E.O. 11375 relating to Equal Employment Opportunity, which prohibits discrimination on the basis of race, color and national origin; (b) Title IX of the Education Acts of 1972, as amended (20 U.S.C. §§ 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex; (c) Sections 503/504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) which prohibits discrimination on the basis of handicaps; (d) Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 – 6107); (e) Drug Abuse Office

and Treatment Act of 1972, (P.L. 92-255). as amended; (f) Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (P.L. 91-616, as amended; (g) American with Disabilities Act of 1990; (h) Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (P.L. 92-540 & 93-508), E.O. 11701 and regulations of the Secretary of Labor promoting opportunities for the disabled and Vietnam veterans, along with related regulations and reporting requirements of each.

B. Subrecipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin or age and will take affirmative action to ensure that applicants and employees are treated during employment, without regard to their race, color, religion, sex, national origin, age or status as a disabled or Vietnam era veteran Vietnam Veteran Re-Adjustment Act of 1972, as amended.

C. In the event of the Subrecipient's noncompliance with the Equal Opportunity clause of this Subaward or any of the said rules, regulations, or orders, this Subaward may be cancelled, terminated or suspended, in whole or in part, as deemed appropriate by the Research Foundation.

PROTECTION OF HUMAN SUBJECTS

A. If this Subaward involves the use of human subjects, the Subrecipient agrees that the rights and welfare of human subjects will be protected in accordance with the Code of Federal Regulations, 45 CFR Part 46, subpart A, "Protection of Human Subjects" including the Federal Policy for the Protection of Human Subjects and the regulations of the Office for Human Research Protections (OHRP) in HHS, the federal agency charged with ensuring compliance with the human research participants.

B. Upon request the Subrecipient will submit evidence of approval of the Subrecipient's Institutional Review Board indicating the review and approval of the human subjects' research protocol for this project.

PRIVACY AND SECURITY OF PERSONAL HEALTH INFORMATION

If Subrecipient is a covered entity pursuant to the Health Information Portability and Accountability Act of 1996 ("HIPAA"), 45 CFR, Part 160 and Subparts A and E of Part 164 or P. L. 104-191, 110 Stat. 1936 and the Privacy Act of 1974, then Subrecipient represents and warrants that any individually identifiable personal health information used or disclosed in connection with this Subaward shall be protected in accordance with applicable statutes and regulations regarding the privacy and security of such information.

CLEAN AIR AND WATER ACT

The Subrecipient agrees: (a) to comply with all the requirements of the Clean Air Act, as amended and the Federal Water Pollution Control Act, as amended respectively, relating to inspection, monitoring entry, reports, and information, as well as other requirements specified in the Clean Air Act and the Federal Water Pollution Control Act, respectively, and all regulations and guidelines issued thereunder before the award of this Subaward; (b) that no portion of the work required by this Subaward will be performed in a facility listed on the Environmental Protection Agency list of Violating Facilities on the date that this Subaward was awarded unless and until EPA eliminates the name of such facility or facilities from such listing; and (c) to use its best efforts to comply with clean air standards and clean water standards at the facility in which this Subaward is being performed.

CERTIFICATION REGARDING VICTIMS OF TRAFFICKING

Subrecipient's signature on this Subaward constitutes a certification that it is in compliance with the Victims of Trafficking and Violence Protection Act of 2000, P. L. 108-193 and P.L 109-164; codified at 22 USC 7104 as amended, 2 CFR 175 (award term for trafficking in persons for grants and cooperative agreements), or FAR regulation at Subpart 22.17; FAR contract clause at 52.222.50, as applicable. Subrecipient further certifies that it will notify the Federal government in the event of violation by any employee.

NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT

Subrecipient certifies that it shall be subject to, and comply with, the New York State Information Security Breach and Notification Act (the "Act") (N.Y. Gen. Bus. Law § 899-aa), if applicable. Subrecipient agrees to notify Research Foundation immediately if it has cause to believe that any applicable data received or prepared under this Subaward may have been obtained by an unauthorized person as defined in the Act and that Subrecipient will consult with Research Foundation prior to, during and after any required notifications. Subrecipient agrees to be solely responsible for any required notifications and agrees to indemnify Research Foundation against any damage due to a breach of security caused by Subrecipient.

CARE OF LABORATORY ANIMALS

If the work under this Subaward involves the use of laboratory animals, the Subrecipient agrees that it will comply with the applicable portions of the Animal Welfare Act (P.L. 89-544, as amended, (P.L. 91-579 and 94-279) U.S.C. 2131 at seq.), and will follow the guidelines prescribed in DHHS Publications No. 86-23 Rev. 1985 or succeeding revisions (NIH) "Guide for the Care and Use of Laboratory Animals." If using animals, as specified in NIH GUIDE, Vol. 14 No. 8 June 25, 1985, Subrecipient shall comply with regulations cited therein and provide Research Foundation with an approval from an appropriate institutional committee that the policy requirements are being met.

CONFLICT OF INTEREST

The Subrecipient affirms that to the best of its knowledge there exists no actual or potential conflict between the Subrecipient's family, business or financial interests and its services under this Subaward. The Subrecipient will notify the Research Foundation of all changes in any of the interests listed above during the term of this Subaward and any amendments thereto. The Research Foundation reserves the right in its sole discretion to determine whether or not any of the interests required to be disclosed by this paragraph will disqualify the Subrecipient from performing the services called for by this Subaward.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

Subrecipient's signature on this Subaward constitutes a certification that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or other government agency. If at any time, Subrecipient learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, it shall promptly notify Research Foundation. In the event Subrecipient fails to notify Research Foundation, this Subaward will terminate as of the date of such debarment, suspension, ineligibility and/or voluntary exclusions, such failure to notify is considered a material breach of this Subaward. In the event the Subrecipient or its principals become debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or other government agency, the Subaward will terminate immediately pursuant to Paragraph 8(C), as debarment, suspension, ineligibility and voluntary exclusions are each considered a material breach.

IRAN DIVESTMENT ACT

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL) Section 165-a, effective April 12, 2012. This act may be viewed in its entirety at <https://ogs.ny.gov/system/files/documents/2021/12/iran-divestment-act-of-2012.pdf>. Pursuant to SFL Section 165-a(3)(b), the Commissioner of the Office of General Services (OGS) has developed and maintains a list ("prohibited entities list") of "persons" who are engaged in "investment activities in Iran" (defined terms in the law). The list may be found on the OGS website at: <http://www.ogs.ny.gov/about/regqs/docs/ListofEntities.pdf>.

Subrecipient certifies that it is not included on the prohibited entities list. Subrecipient further certifies that it will not contract with any organization that is identified on the

prohibited entities list. If at any time Subrecipient or any organization it contracts with is added to the prohibited entities list it shall immediately notify Research Foundation.

PASSPORT

If applicable to the Subrecipient, the Subrecipient certifies compliance with the New York City Procurement Policy Board (PPB) Rule 2-08, regarding PASSport registration requirements. Specifically, NYC maintains information for every city contract and prospective vendor for awards over \$100,000 and for vendors or subcontractors doing more than \$100,000 in cumulative annual business with NYC; however, all vendors contracting with NYC are encouraged to enroll in PASSport. More information can be found at: <https://www.nyc.gov/site/mocs/passport/about-passport.page>.

COMPLIANCE WITH LAWS

The Subrecipient shall perform all services under this Subaward in accordance with all applicable laws and regulations as are in effect at the time such services are performed.

June 2023 (revised)