

University of California
Office of the President

Vice President—
Research & Graduate Studies

Research Administration Office

Memo

Operating Guidance

No. 09-01
March 11, 2009

CONTRACT AND GRANT OFFICERS

Subject: Revised Lawrence Berkeley National Laboratory Intra-University Agreements

The Lawrence Berkeley National Laboratory (LBNL) has revised its Procurement Standard Practices SP 44.1, Intra-University Transactions (IUT). The changes, noted in red, primarily provide clarifications to the terms previously published in C&G Memo 08-06 which is now cancelled. The revisions are summarized at the bottom of page 8.

The effective date for this revision is March 11, 2009.

The procedures in SP 44.1 are directions to the Laboratory staff in charge of this process, as well as providing information for campus Principal Investigators and Contract and Grant Officers with regard to the restrictions and requirements of LBNL IUTs.

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Cancel: 08-06

Samuela A. Evans
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Enclosure: SP 44.1 (3/11/09)

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LBNL – PROCUREMENT STANDARD PRACTICES

Section: 44 Subcontracting Policies and Procedures

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PURPOSE:	This standard practice (SP) prescribes the manner in which research, shared labor, and supporting efforts may be acquired from University campuses.
POLICY:	Although work under the Laboratory's Prime Contract will be accomplished primarily by Laboratory employees and subcontractors, the Laboratory may also use existing expertise and resources at the University campuses.
SCOPE:	This SP applies to all agreements for research, shared labor, and supporting efforts with a University campus.
Exception	This SP does not apply to research being acquired from a campus as a National Institutes of Health (NIH) grant-supported collaborating organization. See SP 44.4, <i>National Institutes of Health Consortium Agreements</i> for the procedures to be followed.
DEFINITIONS:	
Acknowledgement	An acknowledgement is a counter signature on the Intra-University Transaction (IUT) agreement. This acknowledgement is obtained at the discretion of the procurement specialist with the concurrence of the campus. The acknowledgement is mandatory for all IUT agreements of \$1,000,000 or more.
Campus	A campus includes any organization of the University of California other than Los Alamos National Laboratory, Lawrence Livermore National Laboratory, or Lawrence Berkeley National Laboratory.
Intra-University Transaction (IUT)	An IUT is usually a cost reimbursement agreement with a University campus for research, shared labor, or supporting efforts under the Laboratory's Prime Contract or a work for others sponsored agreement.
Property	As used herein, the term property means all materials, equipment, supplies, and tangible personal property of every kind and description.
Research	As used herein, the term research means any independent work or effort that principally involves theoretical analysis, exploration, or experimentation, or the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. It includes any necessary personnel, equipment, materials, supplies, or services needed to fulfill the research requirement.

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Shared Labor

Shared labor is labor that is shared by the Laboratory and a campus such as:

- Campus labor support provided to Laboratory scientific and management staff working at either the campus or the Laboratory.
- An individual with a joint appointment or multiple location appointment. It is a coordinated employment action through the Laboratory and a campus Human Resources Department.

Supporting Effort

A supporting effort is the provision of equipment, materials/ supplies, or services to a Laboratory employee residing at a campus and costs related to infrastructure support. Supporting effort may also be a core service available from a campus. The direct charges are charged pursuant to a campus-wide recharge policy for the type of support being provided. These are costs that are not related to a research agreement.

PROCEDURES:

Initiating an IUT for Research

An IUT for research is initiated through a purchase requisition (PR) and approved by an authorized signer. The PR must provide the following information:

- A description of the work to be performed.
- A cost estimate, including a breakdown, if known, of the costs to be incurred (e.g., salaries, travel, materials, services, property). This may be in the form of a budget or a proposal.
- The names, organizational affiliations, and titles of the campus principal investigator and/or other personnel who will perform the work.
- If an IUT is expected to be in excess of \$25,000, an assessment of the capabilities of campus personnel to perform the intended work, including the campus' special capabilities, shall be provided and documented on a *Berkeley Lab Justification for Sole Source Procurement* form (available in the Procurement Forms Cabinet).
- The available funding, the period during which the funding will be available, and the account code information.
- An itemized list of any property to be provided by the Laboratory to the campus or anticipated to be acquired by the campus using funds provided by the IUT.
- Information pertaining to applicable Laboratory site-related requirements.

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The procurement specialist must ensure that the proposed work is appropriate for award to a University campus. While there is no specific listing of research topics, shared labor, or supporting efforts that are appropriate for the campuses to perform for the Laboratory, the determination of appropriateness should take into account decisional factors, such as efficiency of performance, scheduling, security, control of production or performance, and cost.

Situations of the type described in the *Reviews and Approvals, Procurement Manager* section should be brought to the attention of the Procurement Manager.

Proposal

A written proposal that includes the scope of work and a budget/cost estimate will be obtained from the campus for IUTs for research in excess of \$1,000,000. This proposal must be endorsed by an appropriate campus administrative authority.

Initiating an IUT for Shared Labor or Supporting Effort

An IUT is initiated through a PR and approved by an authorized signer. The PR must provide the following information:

- A description of the shared labor or supporting effort to be provided.
- Name and/or title of the shared labor and their organization affiliation, as applicable.
- A copy of the completed *Temporary Interlocation Transfer or Multilocation Appointment* form or Human Resources confirmation letter, as applicable, or a cost estimate/price for labor, equipment, materials, supplies, and/or services.
- Name of the individual or the Laboratory's Division receiving the shared labor or supporting effort, as applicable.
- The available funding, the period during which the funding will be available, and the account code information.
- Information pertaining to applicable Laboratory site-related requirements, if applicable.

Limitations

Costs

An IUT is usually a cost-reimbursable agreement (see Exhibit 44.1.a, *Intra-University Transaction Agreement*). Overhead must be charged to the Laboratory in accordance with University-wide procedures which, when charged, are audited rates approved by a federal agency responsible for rate approval for campus overhead and at no higher rates than those charged for other federally funded research.

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For the University of California, Berkeley, overhead may be waived or adjusted based on special agreements.

Personnel costs must be based on wage rates determined in accordance with University policy and charged at the same rate to the Laboratory as is charged to other federally funded research.

DOE approval is required for any IUT expected to exceed \$1,000,000, regardless of whether DOE funds are used (see additional requirements in the *REVIEWS/APPROVALS* section below).

Property

Title to property with a value of less than \$5,000, acquired by a campus under an IUT for research, will be retained by the campus.

Property provided to a campus by the Laboratory, or property acquired by a campus with a value of \$5,000 or greater under a federally-funded (except NIH-funded grants) IUT for research, is government-owned property and title shall remain with the government unless otherwise approved by DOE. Government-owned property shall be labeled and controlled in accordance with the Laboratory's Property Management Program (see SP 45.1, *Government Property*).

Foreign Travel

Prior to the proposed departure date, DOE approval must be obtained for any foreign travel to be charged to the Laboratory under the IUT. The Laboratory technical representative shall provide the Travel Office with the information needed to request DOE approval. The necessary information must be obtained from the campus and be submitted in time to meet DOE's advance foreign travel notification requirements. Specific lead time requirements are provided on the Laboratory's Travel Services website at:

http://travel.lbl.gov/foreign/foreign_sbs.html

The Technical Representative shall inform campus personnel when approval is obtained.

Intellectual Property

Intellectual property rights are governed as if the campus were a nonprofit subcontractor under the Prime Contract.

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Invoicing

Invoices will be prepared in accordance with campus' standard business practices, consistent with invoices prepared for government contracts, and the cost estimate. The invoice shall reference the IUT agreement number and include the following standard line items of expense categories when applicable:

- Consultants
- Property
- Fringe Benefits
- Indirect Costs
- Salaries
- Subcontracts
- Supplies/Expenses
- Travel
- Other Direct Costs (e.g., rent)

Review of Invoice

Invoices that are consistent with the cost estimate normally should not be questioned or require additional documentation. The Laboratory technical representative or requestor shall confer with the procurement specialist and the campus' principal investigator or representative, as necessary, regarding any questions on a campus invoice, to determine if the costs are reimbursable.

Disagreements

If a campus and Laboratory are unable to reach agreement on unreimbursed costs or nonperformance, the claim must be forwarded to the UC Laboratory Operations Office, Executive Director for Business and Finance, for resolution.

Documentation

IUTs at Any Dollar Value

All IUTs must be formalized in writing, regardless of the dollar value and clearly state the basis for reimbursement (cost, no fee, time and material, labor hour, fixed price). The IUT file must include the following documentation:

- A PR that includes the name of the individual requesting the IUT and their Laboratory Division;
- A budget/cost estimate/proposal, as applicable;
- Identification of any significant restrictions in the Prime Contract that apply to the particular research or supporting effort;
- DOE approval, if required; and

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	<ul style="list-style-type: none">• An IUT agreement acknowledgement, if requested (see requirement below for IUTs exceeding \$1,000,000).
IUTs in Excess of \$25,000	<p>The file must include the following documentation if the IUT is in excess of \$25,000:</p> <ul style="list-style-type: none">• A signed <i>Summary Documentation Form (SDF) – IUTs</i> (available in the Procurement Forms Cabinet) prepared by the procurement specialist that includes reasonableness of price. Exception: Reasonableness of price is not required for joint appointments or multiple location appointments.• A completed <i>Berkeley Lab Justification for Sole Source Procurement form</i> (available in the Procurement Forms Cabinet).
IUTs in Excess of \$1,000,000	<p>The file must include the following documentation if the IUT is in excess of \$1,000,000:</p> <ul style="list-style-type: none">• A signed <i>Summary Documentation Form (SDF) – IUTs</i> (available in the Procurement Forms Cabinet), prepared by the procurement specialist, which includes reasonableness of price.• A signed supplement to the SDF, prepared by the procurement specialist, which addresses all of the elements of cost and anything unusual pertaining to the IUT if the IUT is for research or supporting effort.• A written proposal endorsed by an appropriate campus administrative authority if the IUT is for research.• An IUT agreement acknowledgement with a counter signature from the campus.
IUT Agreement Format	<p>See Exhibit 44.1.a, <i>Intra-University Transaction Agreement</i>, for the standard format to be used for an IUT. This agreement must be modified as appropriate for the type of support that is being obtained from the campus (i.e., research, shared labor, supporting effort).</p>
REVIEWS/ APPROVALS:	
Procurement Manager	<p>The Procurement Manager will consult with the UC Laboratory Operations Office, Executive Director for Business and Finance when, in his or her judgment, a proposed IUT involves an appearance of impropriety or could result in a disallowance of</p>

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cost by DOE under the Prime Contract. Such circumstances may include, but are not limited to, proposed agreements that:

- Involve a principal investigator who has an appointment with both the Laboratory and the campus when the funds are being provided by the Laboratory organization with whom the principal investigator holds an appointment; or
- Involve use of an IUT to circumvent the Laboratory's normal subcontracting process.

DOE

DOE approval is required for any IUT that meets one of the following criteria, regardless of the funding source:

- Is expected to exceed \$1,000,000;
- Involves direct reimbursement (as opposed to an overhead rate) of the operating costs of a campus organization;
- Involves the transfer of title to the campus of government-owned property over \$5,000, or not identified in the Agreement, for the purpose of performing research or supporting efforts (not applicable to NIH-funded grants);
- Involves payment in advance of the actual incurrence of costs;
- Involves the use of a campus to accomplish technology development supporting efforts (e.g., a Cooperative Research and Development Agreement); or
- Involves reimbursement for utilities (steam, gas, electricity, telephones, telephone lines, water, and sewage), which are furnished to campus building space occupied by LBNL-funded personnel.

Laboratory Technical Representative

The Laboratory technical representative shall provide the Travel Office with the information needed to request DOE Foreign Travel approval. The necessary information must be obtained from the collaborating institution and submitted in time to meet DOE's advance foreign travel notification requirements.

The Technical Representative shall inform the collaborating institution when approval is obtained.

Procurement Specialist

The procurement specialist shall ensure that:

- The IUT is authorized by an individual with an appropriate level of procurement authority;
- A *Berkeley Lab Justification for Sole Source Procurement form* is completed and appropriately signed for IUTs in excess of \$25,000 (except for joint appointments and multiple location appointments);

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- An *SDF – IUT* is prepared, as described above, for the file for IUTs in excess of \$25,000;
 - A signed supplement to the SDF is prepared, as described above, for the file for IUTs in excess of \$1,000,000;
 - All property acquired by a campus with a value of \$5,000 or more or furnished to the campus by the Laboratory under a federally funded IUT (except for NIH-funded grants) is treated and dispositioned as government-owned property;
 - The IUT file is documented in accordance with the procedures above;
 - Approval by DOE and/or coordination with the UC Laboratory Operations Office, Executive Director for Business and Finance, are obtained under the procedures above; and
 - IUT modifications clearly identify new, supplemented, or modified appendices, attachments, and exhibits.
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Revision Notes:


Changes were made as follows:

1. Revised the *Property* definition to be consistent with Prime Contract Clause I.115 (DEAR 970.5245-1).
2. Changed the *Sole Source for IUT Justification* form title to *Berkeley Lab Justification for Sole Source Procurement* form throughout.
3. Modified the following IUT Agreement Articles.
 - *Article 6 - Invoicing and Payment*: Added instructions for the procurement specialist on when to use the last paragraph in subparagraph A. Provided additional instructions to the Campus on submitting invoices.
 - *Article 7 – Property*: Deleted the instructions to the procurement specialist which made inclusion of the Property Article optional.
 - *Article 13 - Reviews and Approvals and Authorization/Acceptance* (previously Article 16 - *Acknowledgement*) are modified to conform to the practice described in the SP sections, *DEFINITIONS – Acknowledgement and Documentation, IUTs in Excess of \$1,000,000*.
4. Made minor editorial corrections.

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Subject: 44.1 Intra-University Transactions

Exhibit: 44.1.a Intra-University Transaction Agreement

INTRA-UNIVERSITY TRANSACTION AGREEMENT NO. _____	 The Regents of the University of California Lawrence Berkeley National Laboratory One Cyclotron Road Berkeley, CA 94720
UNIVERSITY OF CALIFORNIA [<i>CAMPUS NAME</i>] Attention: _____ [<i>Address</i>] [<i>City, State, Zip</i>] Phone: _____ Fax: _____ E-Mail: _____	Laboratory Procurement Representative: Name: _____ Title: _____ Phone: (510) 486-_____ Fax: (510) 486-_____ E-Mail: _____@lbl.gov

INTRODUCTION

This Intra-University Transaction Agreement (hereinafter called Agreement) is entered into by and between the University of California, Lawrence Berkeley National Laboratory (hereinafter called Laboratory) and the University of California [*Campus Name*] (hereinafter called Campus) for [*work/research*] authorized under Contract No. **DE-AC02-05CH11231** between The Regents of the University of California (The Regents) and the United States Department of Energy (DOE).

ARTICLE 1 - SCOPE OF WORK

The [*research/shared labor/supporting effort*] to be provided under this Agreement shall be in accordance with [*budget/cost estimate/proposal/statement of work*] entitled [*title*], which is [*provided below/referenced in the INCORPORATED DOCUMENTS Article*]. The statement of work may be modified by mutual agreement of the parties to this Agreement.

[Either write the entire statement of work here or incorporate the statement of work under the *INCORPORATED DOCUMENTS Article*, below.]

ARTICLE 2 - INCORPORATED DOCUMENTS

The following documents are hereby incorporated as a part of this Agreement and are attached hereto:

[Identify the documents that are incorporated as part of this Agreement below, as appropriate.]

Budget, Dated [*date*]
Cost Estimate, Dated [*date*]
Proposal, Dated [*date*]
Statement of Work, Dated [*date*]

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ARTICLE 3 - TERM

The term of this Agreement shall be [*date*] through [*date*].

Except as necessary to comply with any reporting and closeout procedures, the Campus shall discontinue performance of work on the last date cited above unless the Laboratory extends the period of performance by written notice to the Campus, as agreed upon by both parties.

ARTICLE 4 - EXPENDITURES AND ALLOCATED FUNDING

- A. This IUT is awarded on a cost reimbursement basis [OR *fully describe the method of reimbursement*]. The estimated cost of work to be performed under this Agreement is [*\$amount*].
- B. The Laboratory has currently obligated [*\$amount*] as the maximum amount to be reimbursed to the Campus.

[Optional: Use the first paragraph below if the Agreement is subject to incremental funding.]

Full funding is not presently available for the Agreement. It is contemplated that further allocations of funds, up to the total of the estimated costs identified above, will be made by the Laboratory, by a written modification to this Agreement.

The current obligated amount specified above for the payment of allowable costs shall be the limit of the Laboratory's liability for all costs under this Agreement, any other provision of this Agreement notwithstanding, and shall not be exceeded by the Campus.

- C. Costs incurred prior to the start date of this Agreement as stated above in the *TERM Article*, or not in accordance with the [*budget/cost estimate/proposal*] are not authorized without prior written authorization from the Laboratory Procurement Representative. The Campus shall not incur costs and the Laboratory shall not be obligated to make any payments under the Agreement in excess of the amount obligated or not in accordance with the [*budget/cost estimate/proposal*] in the absence of a written modification or notice from Laboratory-authorized personnel named in the *AUTHORIZED PERSONNEL Article*.
- D. If, and to the extent the amount obligated by Laboratory is increased, any costs the Campus incurs before the increase that are in excess of the amount previously obligated shall be allowable upon Laboratory approval to the same extent as if incurred afterward.

ARTICLE 5 - FISCAL AND ADMINISTRATIVE STANDARDS

Allowable costs and administration shall be governed by standards set forth in Office of Management and Budget Circulars A-21 and A-110 and the Prime Contract.

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ARTICLE 6 - INVOICING AND PAYMENT

- A. Invoices shall be prepared in accordance with Campus' standard business practices. The invoice shall reference the IUT number, the period covered, and include the following standard line items of expense categories when applicable: salaries, fringe benefits, travel, supplies/expenses, property, subcontracts, consultants, other direct costs (e.g., rent), and indirect costs or facility and administration costs.

[Include the following if the *INVOICES FOR ACQUIRED PROPERTY* Article is used.]

See *INVOICES FOR ACQUIRED PROPERTY* Article, for additional requirements regarding invoices for acquired property.

- B. The Campus shall email its invoice no more frequently than monthly directly to the LBNL Accounts Payable Office at APIInvoice@lbl.gov.

If unable to submit its invoices by email, the Campus may submit its invoices by mail to the following address:

Lawrence Berkeley National Laboratory
Accounts Payable Office, IUT No. [XXX]
P.O. Box 528
Berkeley, CA 94701

Invoices should not be submitted more than ninety (90) days in arrears.

- C. Payment shall be made by check to The Regents of the University of California, including the remittance invoice number, and mailed to the address indicated on the invoice.
- D. Campus will notify the Laboratory when incurred costs approach 75% of obligated funds.
- E. Upon completion of the work and delivery of all required deliverables and reports, the Campus shall provide the Laboratory with an invoice marked "Final Invoice," notifying Laboratory that no further invoices and charges are forthcoming. Final payment will be made upon completion of the Laboratory's close-out requirements and will be subject to applicable adjustments.

ARTICLE 7 - PROPERTY

- A. Only if this Agreement is for research, the Campus may retain title to all property it acquires under this Agreement with a value of less than \$5,000. Otherwise, all other property acquired by the Campus under this Agreement shall become government property upon delivery to the Campus or Laboratory or upon receipt of payment, whichever occurs first.
- B. The following property shall be furnished to the Campus by the Laboratory or purchased by the Campus under this Agreement. Prior written Laboratory approval is needed to purchase any property not identified below.

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Exhibit: 44.1.a Intra-University Transaction Agreement

Laboratory-Furnished Property

[List all property to be furnished or *type* NONE.]

Campus-Purchased Property

As identified in the incorporated [*budget/cost estimate/proposal*]. [OR List all property proposed by the Campus for purchase OR *type* NONE.]

[Only the end products to be acquired and reimbursed as direct items of cost should be listed; e.g., manufactured items, not consumable supplies or raw materials.]

The Campus agrees that all property furnished or purchased under this Agreement shall, during its term, only be used for performing this Agreement unless authorized in writing by the Laboratory's **Procurement Representative**.

- C. Upon completion or termination of the work, the Campus shall issue a report to the Laboratory identifying all Laboratory-furnished property and Campus-acquired government-owned property under this Agreement. The Laboratory shall issue disposition instructions for such property within 120 calendar days, excluding property to which the Campus retains title.

ARTICLE 8 - INTELLECTUAL PROPERTY

The parties hereby acknowledge that intellectual property rights are governed as if the Campus were a nonprofit subcontractor under the Prime Contract.

ARTICLE 9 - FOREIGN TRAVEL OR LABORATORY-SPECIFIED TRAVEL APPROVAL

Any foreign travel or Laboratory-specified travel to be incurred under this Agreement requires the advance authorization and approval of the Laboratory. In the case of foreign travel, the Laboratory shall secure DOE approval and must be notified with enough lead time to meet DOE's advance foreign travel notification requirements. If approval is not obtained before departure, the Campus may be liable for the expenses incurred.

[Optional: Use if applicable.]

ARTICLE 10 - VISITS OR WORK AT **LBNL OR **LBNL-CONTROLLED SITE****

Campus personnel visiting or performing any work at the Laboratory or other Laboratory-controlled site will be subject to and must conduct the visit or work in accordance with applicable Laboratory requirements pertaining to security and site access; environment, safety, and health (ES&H); integrated safety management (ISM); and vehicle operation. While at the Laboratory, Campus personnel must possess badging appropriate for the area being accessed. Campus personnel shall follow the instructions of Laboratory **Technical Representatives** designated in the *AUTHORIZED PERSONNEL Article*, with respect to the applicable site-related requirements.

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[Optional: Use if applicable.]

ARTICLE 11 - DELIVERABLES AND/OR REPORTS [Modify as appropriate.]

A. The Campus shall prepare and submit the following deliverable(s) to the Laboratory:

[Describe the deliverable(s).]

B. The Campus shall prepare and submit the following report(s) to the Laboratory:

[Add provisions for Financial and Progress reports if appropriate.]

Final Report - A final report shall be submitted upon completion of the work and contain a comprehensive summary of all work results and conclusions. The format and scope of the Final Report shall be acceptable to the Laboratory Technical Representative. If so requested, a draft copy of the Final Report shall be provided to the Laboratory Technical Representative for review prior to final submittal.

C. Distribution of Reports - All reports shall be separately addressed and transmitted to:

University of California
Lawrence Berkeley National Laboratory
Attention: (Name of Recipient; see below)
[Address]

<u>Type of Report</u>	<u>No. of Copies</u>	<u>Recipient</u>
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[Optional: Use if property is acquired by the Campus.]

ARTICLE 12 - INVOICES FOR ACQUIRED PROPERTY

All invoices requesting reimbursement for any property acquired by the Campus with a value of \$5,000 or more shall be accompanied by a list of the property sufficient for tracking in the Laboratory Property Management database.

[Add other special Laboratory-specific requirements as necessary.]

ARTICLE 13 - REVIEWS AND APPROVALS

The Campus represents that all reviews and approvals required for this Agreement by The Regents/Campus policies have been conducted and obtained, including those pertaining to environment, health, safety, human subjects, and animal subjects.

ARTICLE 14 - TERMINATION

This Agreement may be terminated without cause by either party upon 30 days prior written notice to the other party. The Laboratory shall reimburse the Campus for noncancellable obligations and allowable costs incurred to the effective date of termination.

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ARTICLE 15 - AUTHORIZED PERSONNEL

The following individuals or their superiors are authorized to negotiate, modify, or terminate this Agreement:

For Lawrence Berkeley National Laboratory

[*Name of individual*]

[*Title of individual*]

[*Address of individual*]

For the Campus

[*Name of individual*]

[*Title of individual*]

[*Address of individual*]

The following individuals are authorized within the scope of work to provide technical direction for the Laboratory:

[*Name of individual(s)*]

AUTHORIZATION:

LAWRENCE BERKELEY NATIONAL LABORATORY

By _____

Title _____

Date _____

[Optional if for \$1,000,000 or less]

ACCEPTANCE:

[NAME OF CAMPUS]

By _____

Title _____

Date _____