

## SUBCONTRACT

This Subaward Agreement (“**Subcontract**”), effective the date this agreement is fully executed by both parties, is between The Board of Trustees of The Leland Stanford Junior University, an educational institution with its principal place of business at Building 310, Main Quadrangle, Stanford University, Stanford, California 94305-2110, U.S.A. (“**Stanford**”) and \_\_\_\_\_ (“**Subcontractor**”).

Stanford administers the Global Climate and Energy Project (“**GCEP**”) which is sponsored by Exxon Mobil Corporation, General Electric Company, Schlumberger Technology Corporation, and Toyota Motor Corporation. The Project Director of GCEP (“**GCEP Project Director**”) named below leads and supervises GCEP, is a Stanford faculty member, and is Stanford’s primary representative with respect to GCEP. Each of these sponsoring companies plus any additional sponsors that may be added are, so long as they remain sponsors, referred to herein as the “**Sponsors**.”

Stanford desires to retain Subcontractor to undertake a research program involving the work described in **Attachment A** (the “**Subcontract Statement of Work**”) in accordance with the provisions of this Subcontract, and Subcontractor is so willing.

**Therefore**, Stanford and the Subcontractor agree as follows:

### ARTICLE 1

#### SUBCONTRACT RESEARCH PROGRAM

1.01 Scope of Work. Subcontractor agrees to provide all the necessary qualified personnel, equipment, materials (except as otherwise may be provided herein) and facilities to perform the work for the Subcontract Program as defined below and as described in **Attachment A** in accordance with the budget in **Attachment B** (“**Subcontract Budget**”). **Attachment A** and **Attachment B**, taken together, describe the “**Subcontract Program**.” Subcontractor may not further subcontract the work, except for the acquisition of standard products and routine services.

1.02 Period of Performance. The period of performance of the Subcontract Program is the effective date through \_\_\_\_\_, unless extended by amendment to this Subcontract (“**Period of Performance**”).

1.03 Funding.

(a) The total amount authorized for this Subcontract is \$\_\_\_\_\_ (the “**Authorized Funding**”). Funds may be used only for the work referenced in **Attachment A**. All authorized funds expire on the end date of the Period of Performance. Under no circumstances will total payments made to Subcontractor under this Subcontract exceed the Authorized Funding, as it may be revised from time to time by mutual agreement in writing in accordance with Article 18, provided however that Stanford may increase the Authorized Funding in a unilateral amendment signed by an authorized representative of Stanford.

(b) Payment for all services provided pursuant to this Subcontract is contingent upon the availability of GCEP funds received by Stanford from Sponsors in accordance with the following procedures:

- (i) In the event that funds are reduced by Sponsors, Stanford will provide Subcontractor with notice of such reduction within a reasonable time after such reduction and change in scope is known. Stanford will enter into negotiations with Subcontractor to revise the Subcontract Statement of Work and reduce the Subcontractor Budget and Authorized Funding accordingly. If an agreement cannot be reached on a revised Subcontract Statement of Work and Subcontract Budget, the Subcontract Program will be terminated in accordance with Article 11.
- (ii) In the event that funds are not provided or are not available to Stanford, Stanford will inform Subcontractor of such unavailability within a reasonable time after such unavailability is known. Stanford may terminate the Subcontract Program in accordance with paragraph 11.03.
- (iii) Under either subparagraph (i) or (ii) above, Stanford will make reasonable efforts to pay all outstanding amounts due at the time of termination from funds received by Stanford from Sponsors. Subcontractor will have no recourse against either Stanford or the Sponsors as a result of such reduction or unavailability of funding.

1.04 Subcontractor Principal Investigator. The **Subcontractor Principal Investigator** named in **Attachment C** for the performance of this Subcontract is \_\_\_\_\_. If for any reason the Subcontractor Principal Investigator cannot continue his or her duties, Subcontractor will appoint a successor, subject to the written approval of Stanford. If the parties cannot agree on a successor, either party may terminate the Subcontract Program upon thirty days prior written notice to the other party.

1.05 Authorized Representatives. The **Authorized Representatives** of Stanford and Subcontractor for technical and administrative matters are named in **Attachment C** to this Subcontract. Changes to the Authorized Representatives, with the exception of the Subcontractor Principal Investigator, will be communicated in writing between the parties, without necessity of a formal amendment.

1.06 Prior Approvals. Subcontractor will obtain written approval from the Stanford Authorized Official named in **Attachment C** (or as changed pursuant to paragraph 1.05) prior to taking any of the following actions:

- (a) Any change in the Subcontractor Principal Investigator or absences of the Subcontractor Principal Investigator from his or her duties in excess of sixty days.
- (b) Any change in the Subcontract Statement of Work referenced in **Attachment A**.

(c) No-cost extensions to the Period of Performance. Requests for any such extension must be received in writing by the Stanford Authorized Official sixty days prior to the Period of Performance end date. Requests will include: (i) requested revised end date, (ii) original budget, estimate of unspent amount to be carried over, and the reasons the expenses could not be incurred in the originally planned period, (iii) general description of how the excess funds will be spent if the extension is allowed, and (iv) a statement as to whether this request represents a change in the scope of the Subcontract Program.

(d) Use of funds awarded under this Subcontract as cost sharing or cost matching for any other award.

1.07 Property. With the exception of the deliverables specified in **Attachment A**, title to all equipment purchased or fabricated with funds from this Subcontract will vest in Subcontractor upon acquisition.

## ARTICLE 2

### REPORTS AND CERTIFICATIONS

2.01 Patent and Invention Reports. Subcontractor will promptly disclose all potentially patentable inventions made and all software created within the Subcontract Program Technology as defined in paragraph 6.01 to the **GCEP Administrative Manager** named in **Attachment C** so that Stanford may undertake its responsibilities pursuant to Article 6.

2.02 Technical Reports. Subcontractor will submit annual technical reports to the GCEP Project Director no later than May 10<sup>th</sup> of each year covered by the Period of Performance. Subcontractor will also submit a final report within sixty days after the Period of Performance. At a minimum, both the annual and final reports are expected to contain the following information: research progress, accomplishments, significant findings, publications pursuant to paragraph 7.05, presentations, and the invention and copyright disclosures made to the GCEP Administrative Manager in accordance with paragraph 2.01. The Subcontractor Principal Investigator should be prepared, if requested, on reasonable notice to make an annual presentation of his or her research progress.

2.03 Language. All documents, drawings and information to be delivered by Subcontractor will be in English.

2.04 Certifications.

(a) Compliance with Laws. Subcontractor will comply with all Federal, State and local laws, executive orders, rules and regulations applicable to performance under this Subcontract, including the Foreign Corrupt Practices Act, and with all laws of any other country or jurisdiction applicable to Subcontractor and/or Subcontractor's performance of this Subcontract.

(b) Authority. Subcontractor hereby represents that it has the right and authority to grant the rights in this Subcontract and that the Subcontractor Principal Investigator and

other personnel involved in the performance of this Subcontract, including employees and students of subcontractor, will assign or have assigned their rights consistent with this Subcontract.

(c) Objectivity in Research. Subcontractor certifies it has a written and enforced conflict of interest policy stating that faculty and employees owe their primary professional allegiance to Subcontractor and establishing a process whereby wherever outside activities create an apparent conflict of interest, that conflict will be managed, reduced or eliminated. If Subcontractor does not have such a policy, it agrees to abide by Stanford's Faculty Policy on Conflict of Commitment and Interest which may be accessed on the World Wide Web at <http://www.stanford.edu/dept/DoR/rph/4-1.html>. Subcontractor also certifies that to the best of Subcontractor's knowledge, all financial disclosures related to the activities funded by this Subcontract and required by Subcontractor's conflict of interest policy have been made, and that all identified conflicts of interest under this Subcontract will have been satisfactorily managed, reduced or eliminated in accordance with Subcontractor's conflict of interest policy prior to the expenditures of any funds under this Subcontract. The **Subcontractor Administrative Manager** named in **Attachment C** must disclose in writing conflicts which cannot be satisfactorily managed, reduced or eliminated to the Stanford Authorized Official immediately upon learning of any conflicts.

(d) In the event that Subcontractor is subject to OMB Circular A-133 audits or has external independent audits conducted of its operations, then during the Period of Performance Subcontractor will provide such audit reports to Stanford within sixty days after they become available to Subcontractor. If Subcontractor is not subject to OMB Circular A-133 audits or does not have external independent audits conducted of its operations, Subcontractor will respond to Stanford's annual Financial Status Questionnaire within sixty days after receipt. In any event, Subcontractor will comply with the program-specific audit procedures in accordance with Article 5.

2.05 Publications. Copies of publications made pursuant to paragraph 7.05 will be submitted to the GCEP Project Director annually as part of the technical reporting described in paragraph 2.02. All publications regarding this effort will cite the Global Climate and Energy Project as providing support for the work presented therein. All materials must also contain the following disclaimer: "Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of Stanford University, the Sponsors of the Global Climate and Energy Project, or others involved with the Global Climate and Energy Project."

2.06 Subcontract Program Income. Subcontractor will, during the Period of Performance and for one year thereafter, inform Stanford of the following income and will maintain appropriate records for the receipt and disposition of such income for audit under Article 5: gross income earned by Subcontractor that was directly generated by activities funded by this Subcontract or earned as a result of the funds provided under this Subcontract, including but not limited to income from fees for services performed, charges for the use or rental of property, equipment or supplies acquired with the funds, the sale of commodities or items fabricated with the funds,

charges for research resources acquired with the funds, but excluding license fees and royalties retained pursuant to any license granted pursuant to Article 6.

### ARTICLE 3

#### ALLOWABLE COSTS

3.01 All charges for research pursuant to this Subcontract must be reasonable, allowable and specifically benefit the Subcontract Program in accordance with Subcontractor's institutional policy. Allowable direct and indirect costs will be determined by Subcontractor in accordance with Subcontractor's institutional policy governing allowable charges to sponsored research projects awarded by commercial sponsors.

3.02 The payments made under this Subcontract are for the specific research described in **Attachment A** and may not be commingled with other funds at any time.

3.03 Indirect cost charges (facilities and administration charges, or overhead) will be at Subcontractor's applicable approved or usual institutional rate for each fiscal year of Subcontractor's Period of Performance. The current indirect cost rate will be set on the first day of Subcontractor's fiscal year. For U.S. subcontractors which receive federal funding, the applicable rate is presumptively the federal negotiated rate or rates in effect at the beginning of the Period of Performance.

3.04 Within limits, Subcontractor is authorized to incur expenses differently from the budget at **Attachment B** while remaining within the total awarded amount. Prior approval in writing by the **Stanford Authorized Official** named in **Attachment C** is required for deviations in expenses of plus or minus 25 percent of the budgeted categorical amount or \$50,000, whichever is less, in any expense category (a) through (e) in paragraph 3.06.

3.05 Facility renovation expenses and individual capital items must be approved in writing by the Stanford Authorized Official before they may be charged to the Subcontract Program. Inclusion in the approved Subcontract Budget at **Attachment B** constitutes prior written approval.

3.06 Budget Categories. For the purposes of this Subcontract, all expenses must be included and reported under one of the following categories:

- (a) Personnel (Salaries and Wages, Tuition Assistance, and Fringe Benefits).
- (b) Equipment (total purchase and/or fabrication cost, including taxes and shipping, exceeding \$5,000 with an expected life exceeding one year).
- (c) Travel.
- (d) Supplies and Services (including publications, patents and all expenses not included in other categories).
- (e) Indirect Cost (facilities and administration charges, or overhead).

3.07 Costs incurred prior to the beginning date of the Period of Performance are not authorized.

3.08 Taxes and Other Obligations. The payments made to Subcontractor under this Subcontract will not include any taxes, export or import duties, charges or remittance fees levied by any government agency against either Subcontractor or Stanford. All such taxes and charges in connection with this Subcontract will be paid by Subcontractor.

## ARTICLE 4

### BILLING

4.01 Subcontractor will submit to the GCEP Project Director invoices for costs incurred to date but not previously invoiced. Invoices will be prepared as of the end of each fiscal quarter ending on the last day of November, February, May, and August and submitted within thirty days of the end of the invoiced period. Each invoice should follow the form of the sample invoice at **Attachment D**, and show the amount expended in the current period, and cumulatively to date by major cost category. All invoiced amounts and payments will be in U.S. dollars. Subcontractor will be notified if additional information is required. All invoices must reference Stanford Subcontract No. set forth in **Attachment D**, and include the following certification signed by the **Subcontractor Financial Contact** named in **Attachment C**:

I certify that the above charges accurately represent actual expenditures incurred during the period listed, that any prior approvals required for these items under the terms of the subcontract have been obtained, and all claimed costs are allowable under the terms and conditions of the subcontract. I further certify that no payment for any of the costs claimed above has been received.

4.02 Subcontractor's final invoice, signed, certified and clearly marked "FINAL," must be received by the GCEP Project Director within thirty days after the end date of the Period of Performance in order for Stanford to comply with its obligations to Sponsors. Stanford's final payment to Subcontractor will be forwarded upon receipt and acceptance of all reports required under Article 2. If Subcontractor's final invoice is not received within the required thirty day time period, Stanford may assume the last invoice was the "FINAL" invoice, and be relieved of the obligation to pay any subsequent invoice.

## ARTICLE 5

### AUDIT AND RECORD RETENTION

5.01 Subcontractor will maintain and have available for audit and inspection all administrative and financial documents and records generated and allocated to this Subcontract for a period of four years following termination of the Subcontract Program except that, if an audit is initiated before the expiration of the four year period, the records will be retained until audit findings have been resolved, but in no case will records be retained for less than four years after the end date of the Period of Performance. The above records are subject to inspection and audit by Stanford, or

its designated representatives at reasonable times and upon advance notice during the Period of Performance and for four years thereafter or longer if required by audit.

5.02 Any costs paid to Subcontractor by Stanford which are subsequently found to be disallowed under audit will be refunded to Stanford.

5.03 Subcontractor will retain, and upon written request make available to Stanford, all data generated during performance under this Subcontract for a period of four years following termination of the Subcontract Program. Data will include, but not be limited to, books, records, reports articles, research notes, charts, graphs, comments, computations, analyses, recordings, photographs, samples of materials, computer programs and other graphic or tangible data.

## ARTICLE 6

### **SUBCONTRACT PROGRAM TECHNOLOGY AND SUBCONTRACT PROGRAM PATENT RIGHTS**

6.01 Subcontractor will hold formal legal title to all technology, including without limitation all research results, raw and reduced data, technical information, inventions, discoveries, improvements, know-how, trade secrets, software, and other technical information, whether copyrightable or not, whether patentable or not, that is and are conceived, developed, reduced to practice, or acquired in or for the Subcontract Program by Subcontractor or by any employee or student of Subcontractor in the course of working on the Subcontract Program (collectively, “**Subcontract Program Technology**”), except that:

- (a) If Subcontract Program Technology is conceived, developed or reduced to practice jointly by employees or students of Subcontractor and others participating in the Subcontract Program, including Stanford, in the course of working on the Subcontract Program, Stanford and Subcontractor will hold joint formal legal title to such Subcontract Program Technology.
- (b) If Subcontract Program Technology is conceived, developed or reduced to practice by employees or students of Subcontractor in the course of working on the Subcontract Program while on the Stanford Campus, Stanford and Subcontractor will hold joint formal legal title to such Subcontract Program Technology as required by published Stanford policy.

6.02 When requested or authorized by Stanford, Subcontractor will seek patent coverage in the United States of America or other countries on specific Subcontract Program Technology that is or may be patentable. Subcontractor will hold formal legal title to all patent applications and patents, United States and non-United States, on any inventions, discoveries, and improvements conceived, developed, or reduced to practice by any employee or student of Subcontractor in the course of working on the Subcontract Program (collectively, “**Subcontract Program Patent Rights**”), except that Stanford and Subcontractor will hold joint formal legal title to patent applications and patents on any inventions, discoveries, and improvements conceived, developed, or reduced to practice as specified in clauses (a) and (b) of paragraph 6.01. Subcontractor will also hold formal legal title to all copyrights (subject to paragraph 7.05) in and

to written and other tangible expressions of Subcontract Program Technology, provided such expressions were developed in the course of the Subcontract Program, except that Stanford and Subcontractor will hold joint formal legal title to copyrights in and to tangible expressions of Subcontract Program Technology developed as specified in clauses (a) and (b) of paragraph 6.01.

6.03 Subcontractor will cause its employees and students to execute all documents reasonably necessary or appropriate to obtain or to perfect legal title to Subcontract Program Technology or related copyrights or Subcontract Program Patent Rights as specified in paragraphs 6.01 and 6.02.

6.04 Subcontractor may charge Stanford under Article 3 all reasonable costs that Subcontractor incurs in filing, obtaining, and maintaining Subcontract Program Patent Rights requested or authorized by Stanford pursuant to paragraph 6.02. Subcontractor will not abandon or permit to lapse any such substantive Subcontract Program Patent Right without the prior written consent of Stanford. Before the end of the Period of Performance, Subcontractor will bill Stanford for such costs quarterly pursuant to the procedures described in Articles 3 and 4. After the end of the Period of Performance, if Subcontractor continues to incur costs for filing, obtaining, or maintaining Subcontract Program Patent Rights requested or authorized by Stanford, Stanford and Subcontractor will put in place alternate billing procedures for handling such costs. If Stanford wishes to discontinue paying the costs of any such Subcontract Program Patent Right after the end of the Period of Performance, Stanford may do so, but only after entering into a written agreement with Subcontractor setting forth the understanding of the parties with respect to any continuing rights and obligations of Stanford, the Sponsors, and others with respect to the Subcontract Program Patent Right in question.

6.05 Neither Stanford nor Subcontractor will transfer legal title to any Subcontract Program Patent Rights without the prior written consent of the other, and any such transfers will be subject to the rights of Stanford, Subcontractor, the Sponsors and their licensees, sublicensees, and recipients of immunities from suit, if any.

6.06 If Stanford does not request or authorize Subcontractor to seek patent coverage on specific Subcontract Program Technology that is or may be patentable, Subcontractor at its own expense and with prior written notice to Stanford may seek, obtain, and maintain Subcontract Program Patent Rights on such Subcontract Program Technology. All such Subcontract Program Patent Rights will be subject to the rights and licenses described below in this Article 6.

6.07 After providing prior written notice to Stanford, Subcontractor may enforce any Subcontract Program Patent Right at its own initiative, except that Subcontractor and Stanford will jointly decide on enforcement of Subcontract Program Patent Rights held jointly by them. If requested by Stanford, Subcontractor will enforce or cooperate with Stanford in enforcing any Subcontract Program Patent Right, on such terms as Stanford and Subcontractor may agree with respect to management of the enforcement action and sharing of expenses of enforcement and any net recoveries.

6.08 Subject to paragraphs 6.10 and 8.04, Stanford, Subcontractor and each Sponsor will have, without restriction and in its sole discretion and without conferring with or accounting to anyone,

a perpetual, nonexclusive, worldwide, irrevocable, royalty-free right and license to use, disclose, publish, republish, distribute, copy, prepare derivative works, sell, or otherwise transfer without limitation to any third party, whether affiliated or not, all or any part of the Subcontract Program Technology, with or without extending to that third party the right to sublicense, sell, or otherwise transfer the Subcontract Program Technology to other third parties.

6.09 Subject to paragraph 8.04, Stanford, Subcontractor and each Sponsor will have a perpetual, nonexclusive, worldwide, irrevocable, royalty-free right and license under all Subcontract Program Patent Rights to make, have made, use, have used, offer for sale, sell and import apparatus and compositions, and to practice and have practiced methods covered by such Subcontract Program Patent Rights. Also subject to paragraph 8.04, Stanford and Subcontractor at any time may extend to any entities controlled by Stanford or Subcontractor, respectively, the right and license described in the preceding sentence and each Sponsor at any time may extend to any of its affiliates the right and license described in the preceding sentence, and each such affiliate may in turn extend such right and license to any other affiliates of that Sponsor. In this context, "affiliate" means any corporation, partnership, or other legal entity which, directly or indirectly, at the time in question controls, is controlled by, or is under common control with the Sponsor. In this context, "control" means direct or indirect ownership of fifty percent or more of the voting interest, economic interest, or equity interest of the entity in question (or the maximum interest permitted under local law in countries where fifty percent ownership by a foreign entity is not permitted), or the right to determine the membership of the board of directors or equivalent governing body of the entity in question.

6.10 Subject to paragraph 8.04, from and after (but not before) (a) five years have elapsed from the issuance of a Subcontract Program Patent Right, or (b) in each case where a Subcontract Program Patent Right is a member of a patent family, five years have elapsed from the first issuance of any member of that patent family, whichever date is earlier, Subcontractor, each Sponsor and Stanford (but in the case of Stanford, only with respect to Subcontract Program Patent Rights that Stanford holds jointly with Subcontractor) may grant to nonaffiliated third parties licenses, sublicenses and immunities from suit with respect to that Subcontract Program Patent Right and with respect to all other members of the patent family in question. In this context, a "patent family" means all patents and patent applications that have common claims of priority. Stanford may waive or reduce the five-year period referred to above for a given Subcontract Program Patent Right or patent family. Subcontractor, each Sponsor and Stanford (but in the case of Stanford, only with respect to Subcontract Program Patent Rights that Stanford holds jointly with Subcontractor) may grant such licenses, sublicenses, and immunities without restriction, in its sole discretion, and without conferring with or accounting to anyone. However, as a courtesy in each such case, within thirty days after the day the license, sublicense, or immunity is executed, the granting party will give written notice to the others among Stanford, Subcontractor and Sponsors. Such notice will identify each Subcontract Program Patent Right that is the subject of the license, sublicense, or immunity; the signatory entities and beneficiaries of the license, sublicense or immunity; the duration of the license, sublicense, or immunity; and any geographic or field-of-use limitations in the license, sublicense, or immunity. Additionally, each Sponsor may extend to any of its affiliates, as defined in paragraph 6.09, the right to grant to third parties sublicenses and immunities with respect to Subcontract Program Patent Rights, as described and limited by this paragraph 6.10, provided that each such Sponsor gives the notices

described in the immediately preceding two sentences for all such sublicenses and immunities granted by its affiliates to nonaffiliated third parties.

6.11 At the request of any Sponsor, Subcontractor will transfer specific Subcontract Program Technology both to that Sponsor and to the GCEP Administrative Manager in written or other tangible form, such transfer to be non-exclusive, meaning that Subcontractor may use that Subcontract Program Technology and transfer other copies to others. Each Sponsor and Stanford will hold legal title to the specific copies of all reports, papers, computer programs, and other tangible works that it receives from Subcontractor. Sponsors will reimburse Subcontractor for the expenses of reproduction for extensive or costly transfers in accordance with GCEP policy. Consistent with the rights and licenses described above in this Article 6, subject to paragraph 8.04, each Sponsor and Stanford will have the right and license to use, disclose, publish, republish, distribute, copy, sell, and otherwise transfer all such tangible works, and prepare derivative works based on such works, without restriction and without accounting to anyone.

## **ARTICLE 7**

### **PUBLICITY, PUBLICATION AND LIMITED CONFIDENTIALITY**

7.01 The existence of the Subcontract Program; its general character, scope, and duration; the identities of Stanford, the Sponsors and the Subcontractor; and the terms and text of this Subcontract will all be nonconfidential.

7.02 The parties anticipate that they will discuss the Subcontract Program in many venues and will publicize the Subcontract Program. During the life of the Subcontract Program, Stanford in cooperation with Subcontractor and the Sponsors will take the lead in publicizing the Subcontract Program. To that end Stanford may, at its discretion participate in media interviews, and issue press releases, press response statements, and similar materials on behalf of Stanford, the Sponsors and Subcontractor with Subcontractor's prior consent obtained when appropriate from the Subcontractor Media Contact named in **Attachment C**. Subcontractor will cooperate with Stanford in these endeavors and in particular: Subcontractor will obtain prior approval from Stanford before issuing press releases, press response statements, and similar materials. Each Sponsor is entitled to issue in its own name (and not on behalf of Stanford, Subcontractor or other Sponsors) its own press releases, press response statements, and similar materials directed to the Subcontract Program, but during the life of the Subcontract Program these materials will be subject to Stanford's and Subcontractor's prior approval before they are publicly issued. However, press releases, press response statements, or similar materials that mention the Subcontract Program in a summary or incidental fashion, or that describe the Subcontract Program consistently with material previously approved by the entities involved, may be released by Stanford, Subcontractor or any Sponsor without prior approval. None of these entities is authorized in its press releases, press response statements, and similar materials to assume or create any legal obligations for, or make any legal representation or warranty on behalf of, or legally bind any other of the entities, or characterize any positions or policies of any other of the entities.

7.03 Neither Stanford, the Subcontractor nor any Sponsor will be obligated to hold the Subcontract Program Technology in confidence, except that Subcontractor will hold the

Subcontract Program Technology in confidence as a trade secret until ninety days after Subcontractor first distributes the Subcontract Program Technology in question in tangible form to Stanford. The purpose of that limited period of confidentiality is to allow time for discussions between Stanford and the Sponsors about filing patent applications on the Subcontract Program Technology. If a decision to file is made, at Stanford's request Subcontractor will hold the Subcontract Program Technology in question in confidence for such additional, reasonable time periods as may be necessary to enable Subcontractor to file patent applications before nonconfidential disclosure of such Subcontract Program Technology.

7.04 Any information disclosed by Stanford, by Subcontractor or by the Sponsors or their affiliates in the course of the Subcontract Program and any information, including technical data, contributed by the Sponsors or Stanford to the Subcontract Program will be nonconfidential and may be freely used and disclosed by the other entities specified above, subject only to valid claims regarding patents derived from independent work conducted outside the Subcontract Program before, during, or after the Subcontract Program, with such patent claims being subject to the provisions of Article 8.

7.05 Publication of Subcontract Program Technology in appropriate professional journals will further the objectives of the Subcontract Program. Accordingly, Subcontractor is specifically authorized and encouraged to publish Subcontract Program Technology in peer-reviewed professional journals and other appropriate publications, subject only to the confidentiality obligations in paragraph 7.03 and to authorship courtesies as established under appropriate academic standards. In accordance with the policies of such journals and publications, the copyright in the published articles may be owned by the journals and publications. Additionally, Subcontractor is specifically authorized and encouraged to use Subcontract Program Technology to educate and train students, post-doctoral research scientists, faculty, and other members of the academic community; however, such use of Subcontract Program Technology will not be considered part of the Subcontract Program. Related costs and expenses incurred by Subcontractor will not be charged to the Subcontract Program, unless specifically authorized in writing by Stanford. Nothing in this Subcontract will preclude students, post-doctoral researchers, and other employees of Subcontractor from being compensated by Subcontractor for their work on the Subcontract Program, provided that such compensation will be charged to the Subcontract Program only to the extent provided in **Attachment B**.

7.06 Subject to paragraphs 7.01 and 7.02, neither Stanford nor Subcontractor will identify the other party in any products, publicity, promotion, promotional advertising, or other promotional materials to be disseminated to the public, or use any trademark, service mark, trade name, logo, or symbol that is representative of the other party or its entities, whether registered or not, or use the name, title, likeness, or statement of any faculty member, employee, or student of the other party, without the other party's prior written consent. Any use by a party of the other party's name will be limited to statements of fact and will not imply endorsement by the other party of products or services of the using party.

## ARTICLE 8

### INDEPENDENT RESEARCH AND NON-SUBCONTRACT PROGRAM PATENT RIGHTS

8.01 Stanford, Subcontractor and each Sponsor reserve and retain their rights to carry out their own independent research, individually or cooperatively with others, apart from the Subcontract Program, even if directed towards the objectives of the Subcontract Program and even if similar to or overlapping with the Subcontract Program.

8.02 Stanford and Subcontractor recognize the desirability of being able to conduct the Subcontract Program without infringing patents or patent applications independently developed by Stanford, Subcontractor or any Sponsor. Stanford and Subcontractor also recognize the desirability of being able to design the Subcontract Program with a knowledge of patents owned or controlled by Stanford, Subcontractor or any Sponsor that might dominate and perhaps limit the usefulness of the results of the Subcontract Program. Stanford and Subcontractor also recognize the difficulty of monitoring the Subcontract Program and the Subcontract Program Technology with respect to the independently developed patents and patent applications of Stanford, Subcontractor or any Sponsor, and their affiliates (collectively, “**Non-Subcontract Program Patent Rights**”), especially in light of the broad scope of the research activities of Stanford, Subcontractor and the Sponsors. Accordingly, Stanford and Subcontractor agree as follows:

- (a) Stanford hereby represents that the GCEP Agreement between Stanford and the Sponsors grants persons and entities acting in the course of the Subcontract Program, including Subcontractor and its employees, an immunity from suit and indemnity for such Subcontract Program activities with respect to all Non-Subcontract Program Patent Rights owned or controlled by Stanford, the Sponsors or any related entity or affiliate.
- (b) Subcontractor hereby grants persons and entities acting in the course of the Subcontract Program, including Stanford, the Sponsors and their employees, an immunity from suit and indemnity for such Subcontract Program activities with respect to all Non-Subcontract Program Patent Rights owned or controlled by Subcontractor or any related entity.
- (c) If the GCEP Project Director named in **Attachment C** becomes personally aware that any Non-Subcontract Program Patent Right owned or controlled by Stanford, any Sponsor or a related entity or affiliate covers any Subcontract Program Technology, the GCEP Project Director will so advise Subcontractor promptly in writing.
- (d) If the Subcontractor Principal Investigator named in **Attachment C** becomes personally aware that any Non-Subcontract Program Patent Right owned or controlled by Subcontractor or a related entity or affiliate covers any Subcontract Program Technology, the Subcontractor Principal Investigator will so advise the GCEP Administrative Manager promptly in writing.

8.03 If the GCEP Project Director or the Subcontractor Principal Investigator knowingly fails promptly to disclose a Non-Subcontract Program Patent Right to Subcontractor or the GCEP Administrative Manager, respectively, as required by paragraph 8.02, the other party, and where the other party is Stanford, each of the Sponsors as well, will have a perpetual, nonexclusive, worldwide, irrevocable, royalty-free right and license under such Non-Subcontract Program Patent Right, and all foreign counterparts, to make, have made, use, have used, offer for sale, sell, and import apparatus and compositions, and to practice and have practiced methods covered by such Non-Subcontract Program Patent Right, and counterparts, along with the right to sublicense any or all such rights to any third party, without restriction and without accounting to anyone, except that if the Non-Subcontract Program Patent Right cannot be so licensed the affected parties will negotiate another equitable resolution. That right and license is for the sole purpose of allowing the licensees and their sublicensees to practice the rights granted under this Subcontract with respect to Subcontract Program Technology and Subcontract Program Patent Rights. No right or license to a Non-Subcontract Program Patent Right will be extended to other, independent activities of any entity.

8.04 Except for the patent licenses granted in paragraphs 8.02 and 8.03, neither Stanford, Subcontractor nor any Sponsor will have by virtue of this Subcontract any rights, express or implied, to the results of the independent research or to independently developed patents or patent applications of any other of such entities or related entity or affiliate.

## **ARTICLE 9**

### **WARRANTIES AND LIABILITIES**

9.01 The research to be carried out in the Subcontract Program is pioneering, and Subcontractor does not guarantee the results. However, Subcontractor does warrant that it will use its best efforts to commit adequate resources to the Subcontract Program, to the extent that sufficient funding has been provided by Stanford, that it will administer, supervise, and conduct the Subcontract Program in a professional manner in good faith, and in compliance with applicable laws and regulations, that it has the right to grant to Stanford and the Sponsors the rights it is granting in this Subcontract, and that its arrangements with its employees and students are consistent with this Subcontract. ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE ACCURACY, RELIABILITY, OR UTILITY OF THE SUBCONTRACT PROGRAM TECHNOLOGY AND THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, USAGE OF TRADE, AND FREEDOM FROM INFRINGEMENT OF THIRD-PARTY PATENTS OF THE SUBCONTRACT PROGRAM TECHNOLOGY ARE HEREBY EXPRESSLY DISCLAIMED. SUBCONTRACTOR WILL PROVIDE THE SUBCONTRACT PROGRAM TECHNOLOGY ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND.

9.02 EXCEPT FOR CLAIMS BASED ON WILLFUL MISCONDUCT, NO PARTY WILL BE LIABLE TO ANY OTHER PARTY OR ANY OTHER PERSON FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF ANTICIPATED REVENUES OR PROFITS, ARISING FROM ANY CLAIM RELATING TO THIS SUBCONTRACT, THE

SUBCONTRACT PROGRAM, OR ANY SUBCONTRACT PROGRAM TECHNOLOGY, WHETHER SUCH CLAIM IS BASED ON CONTRACT, TORT, STATUTE, OR OTHER LEGAL THEORY, EVEN IF A REPRESENTATIVE OF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SAME.

9.03 Subcontractor hereby agrees to defend, indemnify, and hold harmless Stanford and the Sponsors against all claims, demands, losses, damages, causes of action, and other liabilities of every kind (whether based on contract, tort, statute, or other legal theory) by any and all third parties for personal injury, death, property damage, or other loss or damages arising out of or resulting from (a) any use of any Subcontract Program Technology or Subcontract Program Patent Rights by Subcontractor or any third party to whom Subcontractor has extended the right to use any Subcontract Program Technology or Subcontract Program Patent Rights; or (b) any breach of Subcontractor's warranties set forth in this Subcontract.

9.04 Stanford hereby agrees to defend, indemnify, and hold harmless Subcontractor against all claims, demands, losses, damages, causes of action, and other liabilities of every kind (whether based on contract, tort, statute, or other legal theory) by any and all third parties for personal injury, death, property damage, or other loss or damages arising out of or resulting from (a) any use of any Subcontract Program Technology or Subcontract Program Patent Rights by Stanford or any third party to whom Stanford has extended the right to use any Subcontract Program Technology or Subcontract Program Patent Rights; or (b) any breach of Stanford's warranties set forth in this Subcontract.

## **ARTICLE 10**

### **RELATIONSHIPS OF PARTIES AND OTHERS, AND TAX ELECTION**

10.01 The relationships of the parties respecting the Subcontract Program are defined by this Subcontract. This Subcontract is not intended to create an agency, partnership, joint venture, or any other form of association, for tax purposes or otherwise, between and among the Sponsors, Stanford, Subcontractor, or any other persons or entities connected with the Subcontract Program in any way, and all such persons and entities will be independent contractors in relation to each other, except to the limited extent described in paragraph 10.02. Further, none of such persons and entities connected with the Subcontract Program will have any authority, express or implied, to assume or create any legal obligation of any kind for, or to make any legal representation or warranty on behalf of, or to legally bind any other such person or entity, except to the limited extent described in paragraph 10.02. Subcontractor's employees will at all times be employees of the Subcontractor, not Stanford or any Sponsor, and Subcontractor will determine and be responsible for their compensation, benefits, and other terms of employment. It is understood by Stanford and Subcontractor that the Sponsors are not parties to this Subcontract and that this Subcontract does not create any obligation on the part of any Sponsor.

10.02 As recited in paragraph 10.01, it is intended that the Subcontract Program not be treated as a partnership for income tax purposes. However, if the United States Internal Revenue Service ("IRS") determines that the Subcontract Program is a partnership for federal income tax purposes, as such or together with the Sponsors as part of GCEP, Stanford and Subcontractor each hereby elect to be excluded from the provisions of Chapter 1, Subchapter K of the Internal

Revenue Code of 1986, as amended, such election being intended to meet the requirements of Section 1.761-2(b)(2)(ii)(a) of the Treasury Regulations. Stanford is hereby authorized and agrees to submit to the IRS or any related federal agency all appropriate evidence of this election. If any present or future applicable state income tax laws or any future United States income tax law contains provisions similar to Chapter 1, Subchapter K of the Internal Revenue Code of 1986, Stanford and Subcontractor agree to make a similar election to be excluded, and Stanford will submit similar evidence of that election.

## **ARTICLE 11**

### **TERMINATION**

11.01 The Subcontract Program may be terminated as provided in paragraphs 1.04 and 12.01.

11.02 If either party is in material default of this Subcontract, the other party may give written notice thereof. If the default is not cured within thirty days following the notice, the other party may then terminate the Subcontract Program by written notice given within the following thirty days.

11.03 In the event that the Sponsors terminate funding to Stanford prior to the end of the Period of Performance, the Subcontract Program will terminate immediately upon Subcontractor's receipt of written notice from Stanford. In the event of termination, Stanford will pay for approved and reasonable costs incurred and approved and reasonable non-cancelable commitments through the date of termination, contingent upon Stanford having received said funds from the Sponsors.

11.04 Upon termination, Subcontractor will make all reasonable efforts to mitigate costs. Subcontractor will furnish all necessary reports of research completed or in progress through the date of termination, as required under Article 2.

## **ARTICLE 12**

### **EXPORT CONTROL**

12.01 In the event that Subcontractor intends to disclose to Stanford information which may be subject to the U.S. Export Administration Regulations (EAR), the U.S. International Traffic in Arms Regulations (ITAR), or any other similar regulations issued by U.S. Government agencies, Subcontractor will so inform Stanford in a writing, directed to the Authorized Official named in **Attachment C**, prior to any such disclosure, and will not forward or provide any export controlled information to Stanford without the express written permission of Stanford. The burden will be on the party disclosing the export controlled information to make it available only to eligible individuals as designated by Stanford, or to obtain the appropriate license or approval from the relevant agency, or to invoke an available exception, exemption, or exclusion. Stanford will have the right to terminate the Subcontract Program on thirty days prior written notice to Subcontractor if the disclosure of export controlled information, under license or otherwise, would destroy Stanford's ability to invoke the fundamental research exemption with regard to the conduct or reporting of its research.

## ARTICLE 13

### ADDRESSES AND NOTICES

13.01 Written notices to either party may be given in writing, by facsimile or by PDF file to the appropriate individual of that party at the address specified in **Attachment C** or at such other address as the party may designate from time to time in writing specifically referring to this Article, and will be effective when delivered to that address. Copies of any written notices to either party required or permitted under the provisions of this Subcontract will be sent to the party's Authorized Official and also to the GCEP Project Director, in the case of Stanford, or to the Subcontractor Principal Investigator, in the case of Subcontractor.

## ARTICLE 14

### ENGLISH LANGUAGE

14.01 The English language will be used in the Subcontract Program invoices, notices, and other formal communications between the parties. If a translation of this Subcontract or any notices or other formal communications is made, the original English version takes precedence.

## ARTICLE 15

### SUCCESSORS AND ASSIGNS

15.01 This Subcontract will bind and inure to the benefit of the parties and their successors and permitted assigns. Neither party may assign this Subcontract without the prior written consent of the other party. Any assignment without such written consent will be void. No assignment will relieve a party of its previously accrued obligations under this Subcontract.

## ARTICLE 16

### CHOICE OF LAW

16.01 This Subcontract and the legal relationships between the parties will be governed by the applicable laws of the United States of America and the laws of the State of California, U.S.A., without reference to California's choice of law rules.

## ARTICLE 17

### DISPUTES

17.01 All disputes between the parties arising out of or relating to this Subcontract (each a "**Dispute**") will be referred in writing by the Authorized Official of the party raising the Dispute to the Authorized Official of the other party, such Authorized Officials being identified in **Attachment C** or as changed pursuant to paragraph 1.05. Senior management of both parties will thereupon meet and attempt to resolve the Dispute by good faith negotiations. If the Dispute is not resolved within thirty days following the referral, the Dispute will be arbitrated in accordance with paragraph 17.02.

17.02 Disputes not resolved under paragraph 17.01 will be arbitrated before a sole arbitrator under the International Arbitration Rules of the American Arbitration Association (“AAA”). If an arbitration is commenced, the parties to the arbitration will attempt to agree on the selection of the arbitrator. If they have failed to select the arbitrator within thirty days of commencement of the arbitration, the AAA will make the selection. The arbitration will take place in the County of Santa Clara, California, U.S.A. The language of the arbitration will be English. The arbitrator will apply the substantive law specified in Article 16. The Federal Arbitration Act of the United States of America will apply to the arbitration. The arbitrator will not have the power to award special, consequential, punitive, exemplary, or incidental damages that the parties have waived in paragraph 9.02. Any monetary portion of the arbitrator’s award will be in U.S. Dollars. Judgment on the award may be entered in any court of competent jurisdiction.

17.03 The parties may amend paragraph 17.02 to arbitrate a specific Dispute pursuant to the rules of an organization other than the AAA; the parties also may amend other provisions of paragraph 17.02 as they apply to that specific Dispute. Any such amendments will be effective only when made in writing signed by both parties. In the absence of any such amendments, paragraph 17.02 will apply by its terms to all Disputes arising out of or relating to this Subcontract.

## **ARTICLE 18**

### **ENTIRE SUBCONTRACT**

18.01 This Subcontract constitutes the entire understanding of the parties with respect to the Subcontract Program. No prior draft of this Subcontract, summary of this Subcontract, correspondence about this Subcontract, or similar documentation or information relating to this Subcontract in being before the effective date of this Subcontract will be used in construing this Subcontract. It may be amended, modified or changed only in a writing signed by an authorized representative of each party.

IN WITNESS WHEREOF, Stanford and Subcontractor have signed this Subcontract in multiple originals to be effective on the date indicated at the beginning of this Subcontract. For convenience, Stanford and Subcontractor may bind themselves to this Subcontract by signing and exchanging by facsimile or PDF file separate signature pages, and each signature transmitted by facsimile or by PDF file will be deemed an original signature.

**THE BOARD OF TRUSTEES OF THE LELAND  
STANFORD JUNIOR UNIVERSITY**

**SUBCONTRACTOR:**

By: \_\_\_\_\_

Meredith O'Connor

Managing Senior Contract Officer

Date: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

Stanford Subaward Agreement No. \_\_\_\_\_

**ATTACHMENT A**  
**Subcontract Statement of Work**

Stanford Subaward Agreement No. \_\_\_\_\_

**ATTACHMENT B**  
**Subcontract Budget**

**ATTACHMENT C**  
**Authorized Representatives**

<b>STANFORD Contacts</b>	<b>SUBCONTRACTOR Contacts</b>
<p style="text-align: center;"><b><u>Authorized Official</u></b></p> <p>Name: Meredith O'Connor Address: Office of Sponsored Research 320 Panama Street Stanford, CA 94305-4100</p> <p>Telephone: 1-650-723-5854 Fax: 1-650-724-2290 Email: <a href="mailto:meredith.oconner@stanford.edu">meredith.oconner@stanford.edu</a></p>	<p style="text-align: center;"><b><u>Authorized Official</u></b></p> <p>Name: Address:</p> <p>Telephone: Fax: Email:</p>
<p style="text-align: center;"><b><u>GCEP Project Director</u></b></p> <p>Name: Franklin M. Orr, Jr. Address: Global Climate and Energy Project 416 Escondido Mall Stanford, Ca 94305-2205</p> <p>Telephone: 1-650-725-6270 Fax: 1-650-725-9190 Email: <a href="mailto:fmorr@pangea.stanford.edu">fmorr@pangea.stanford.edu</a></p>	<p style="text-align: center;"><b><u>Principal Investigator</u></b></p> <p>Name: Address:</p> <p>Telephone: Fax: Email:</p>
<p style="text-align: center;"><b><u>Invoice &amp; Payment Contact</u></b></p> <p>Name: Mr. Lee Wood Address: 416 Escondido Mall 556T Peterson Laboratory Stanford, CA 94305-2205</p> <p>Telephone: 1-650-725-3226 Fax: 1-650-725-9190 Email: <a href="mailto:leewood@stanford.edu">leewood@stanford.edu</a></p>	<p style="text-align: center;"><b><u>Financial Contact</u></b></p> <p>Name: Address:</p> <p>Telephone: Fax: Email:</p>
<p style="text-align: center;"><b><u>Audit Contact</u></b></p> <p>Name: Steve Jung Address: 651 Serra Street, Room 290 Stanford, CA 94305-6212</p> <p>Telephone: 650-725-0076 Fax: 650-725-0073 Email: <a href="mailto:sjung@stanford.edu">sjung@stanford.edu</a></p>	<p style="text-align: center;"><b><u>Audit Contact</u></b></p> <p>Name: Address:</p> <p>Telephone: Fax: Email:</p>

<p><b><u>GCEP Administrative Manager</u></b>  Name: Mr. Lee Wood  Address: 416 Escondido Mall  556T Peterson Laboratory  Stanford, CA 94305-2205</p> <p>Telephone: 1-650-725-3226  Fax: 1-650-725-9190  Email: <a href="mailto:leewood@stanford.edu">leewood@stanford.edu</a></p>	<p><b><u>Administrative Manager</u></b>  Name:  Address:</p> <p>Telephone:  Fax:  Email:</p>
<p><b><u>Media Contact</u></b>  Name: Maxine Lym  Address: 416 Escondido Mall  556T Peterson Laboratory  Stanford, CA 94305-2205</p> <p>Telephone: 1-650-725-3228  Fax: 1-650-725-9190  Email: <a href="mailto:maxlym@stanford.edu">maxlym@stanford.edu</a></p>	<p><b><u>Media Contact</u></b>  Name:  Address:</p> <p>Telephone:  Fax:  Email:</p>

**ATTACHMENT D**

**Invoice Format**

Subcontract Number: \_\_\_\_\_

Send all payments to: (Subcontractor's Name and Address)

STANFORD UNIVERSITY  
 Lee Wood  
 Global Climate and Energy Project  
 416 Escondido Mall, Room 556T  
 Stanford, CA 94305-2205

PTA #:  
 GCEP Project Director: Franklin M. Orr, Jr.  
 Subcontractor Ref. #:

Subcontract Program Title: ("TITLE")

**REQUEST FOR CASH REIMBURSEMENT**

Voucher No:	<input type="checkbox"/> Final	Date Prepared:	
Period Covered:			
EXPENSES:	Current Charges (if applicable)	Cumulative Charges	Cumulative Cost-Sharing

Salaries, Wages, Tuition, and Fringe Benefits:

Facilities Renovation:

Equipment:  Budgeted:  
 Unbudgeted:

Travel:

Supplies and Services:

Indirect Cost (Rate & Base \_\_\_\_\_):

Total Cost: \$\_\_\_\_\_ \$\_\_\_\_\_ \$\_\_\_\_\_

Less Previous Cumulative Amount: \$\_\_\_\_\_ \$\_\_\_\_\_

TOTAL AMOUNT DUE ON THIS VOUCHER: \$\_\_\_\_\_

I certify that the above charges accurately represent actual expenditures incurred during the period listed, that any prior approvals required for these items under the terms of the subcontract have been obtained, and all claimed costs are allowable under the terms and conditions of the subcontract. I further certify that no payment for any of the costs claimed above has been received.

SIGNED: \_\_\_\_\_

DATE: \_\_\_\_\_

NAME: \_\_\_\_\_  
 (Subcontractor Financial Contact)

PHONE NUMBER: \_\_\_\_\_

TITLE: \_\_\_\_\_