



UCAR Subaward No. _____

Prime Recipient: University Corporation for Atmospheric Research

Subrecipient:

Subrecipient DUNS Number: [TBD]

Sponsoring Agency: National Aeronautics and Space Administration

Prime Award Number: NNX14AK03A

Fiscal Year in which Prime Award was Issued: 2014

Federal Award Date: July 25, 2014

Total Amount of Federal Award: [TBD]

Project Title: NRA/Research Opportunities in Space and Earth Sciences-2013

CFDA Number: 43.001

CFDA Title: Science

This Subaward for research and development, effective as of the date of last signature (Effective Date), is entered into by and between the University Corporation for Atmospheric Research (UCAR), a Colorado corporation having a mailing address of 3090 Center Green Drive, Boulder, Colorado 80301, and _____(Subrecipient), a _____having a mailing address of _____.

This Subaward does not bind or purport to bind the U.S. Government. Consequently, any claims or disputes arising from or in performance of this Subaward shall solely be between the parties of this Subaward and no others.

In WITNESS WHEREOF, the parties hereto have agreed to the terms and conditions recited in this Subaward as evidenced below by the signatures of each party's duly authorized representative.

By signing below, Subrecipient makes the certifications and assurances required by the Sponsoring Agency, attached hereto as Schedule A and incorporated herein by reference.

TBD

**UNIVERSITY CORPORATION
FOR ATMOSPHERIC RESEARCH**

By: _____
Signature

By: _____
Signature

Typed or Printed Name

Typed or Printed Name

Title: _____

Title: _____

Date: _____

Date: _____

LIST OF ENCLOSURES ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE:

- Schedule A, NASA Subrecipient Flow Down Requirements hereinafter referred to as “Schedule A”
- Schedule B, Statement of Work, GLOBE Region Coordination Offices hereinafter referred to as “Schedule B”
- Schedule C, Reporting and Deliverable Requirements hereinafter referred to as “Schedule C”
- Schedule D, Contact Information hereinafter referred to as “Schedule D”
- Schedule E, Budget and Budget Justification hereinafter referred to as “Schedule E”

TERMS AND CONDITIONS

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Article 1 Statement of Work

The Subrecipient agrees to perform the work described in Schedule B and fulfill the obligations of this Subaward in accordance with the requirements identified in Schedules A – E incorporated herein, including those applicable to subrecipients in the prime award.

Article 2 Subaward Type and Funding

This is a cost reimbursable type of Subaward valued at _____ United States Dollars (USD) (\$_____).

The total authorized funding under this Subaward shall not exceed _____ United States Dollars (USD) (\$_____) without a written modification of this Subaward from the UCAR Contract Representative identified in Schedule D.

UCAR may fund this Subaward incrementally. Funds may not be available for this Subaward beyond the specified Period of Performance or the authorized funding. UCAR shall have no liability for any payment that may arise for performance under this Subaward beyond the Period of Performance or in excess of the authorized funding.

Article 3 Period of Performance

The Period of Performance for work under this Subaward is defined as the Effective Date through May 28, 2017 (Expiration Date). In no event shall the Period of Performance extend beyond the Expiration Date without a modification.

Article 4 Federal Cost Principles

The Subrecipient is responsible for ensuring that costs charged are allowable, allocable, and reasonable under their applicable cost principles set out in 2 CFR 200 for education organizations, non-profit organizations, state governments, local governments and tribal governments and FAR Subpart 31 for commercial firms.

Article 5 Payment

UCAR shall reimburse the Subrecipient for costs incurred in performance of this Subaward on a monthly basis in accordance with the budget identified in Schedule E. Reimbursement for facilities and administrative costs shall be [TBD]. Reimbursement of expenses in any currency other than United States Dollars shall be based on the following exchange rate: [TBD]

Payment terms are net thirty (30) days from receipt of an invoice containing at a minimum the following information:

- Invoice number
- Date of invoice
- Subaward number
- Period covered
- Amount invoiced and cumulative totals shown by expense class category
- Supporting documentation such as copies of receipts or invoices

Subrecipient's name and address
(include business address and payment remit address, if different)
Certification in accordance with 2 CFR 200.415(a)

For Wire or ACH payments also include:

Bank Name
Branch Name (if any)
Bank Address
ABA# or Swift Address
Account Number
Account Name
Instructions to Beneficiary (if any)

Subrecipient shall submit all invoices on a monthly basis to the attention of the UCAR Contract Representative identified in Schedule D. The final invoice shall be clearly marked as FINAL and be submitted after all reporting requirements have been satisfied or within sixty (60) days of the Expiration Date of this Subaward, whichever is earlier.

UCAR is not responsible for recovering payments that are lost or stolen due to Subrecipient's failure to provide accurate remittance information on each invoice. It is the responsibility of the Subrecipient to notify the Contract Representative identified in Schedule D in writing of any changes in payment instructions.

Article 6 Audits

In addition to the rights of the Government with respect to audits, UCAR shall have access to any pertinent books, documents, papers and records of the Subrecipient and of the performing organization, if different, to make audits, examinations, excerpts and transcripts related to this Subaward.

All payments made under this Subaward are considered provisional and subject to adjustment by UCAR within the total authorized funding identified in Article 2, "Subaward Type and Funding," for amounts found not to constitute allowable, allocable, and/or reasonable costs in accordance with the applicable cost principles identified in Article 4, "Federal Cost Principles."

Article 7 Contractual and Technical Direction

- A. The performance of the work required under this Subaward shall be subject to:
1. The administrative direction of the UCAR Contract Representative identified in Schedule D or their designated representative acting within the scope of their authority. Only this person may direct contractual obligations hereunder affecting price, performance, or schedule.
 2. The Technical Direction and surveillance of the UCAR Technical Representative identified in Schedule D or their designated representative.

- B. As used herein, “Technical Direction” is direction to the Subrecipient that fills in details, or otherwise serves to clarify the Subaward technical requirements. In order for the Technical Direction to be valid, it:
1. Must be issued in writing consistent with the general scope of the work set forth in this Subaward;
 2. May not constitute new assignment of work, or change the expressed terms and conditions, or specifications incorporated into this Subaward, or the price; and
 3. Shall not constitute a basis for an extension to the Subaward delivery schedule, or Period of Performance.
- A. The Subrecipient shall promptly comply with each written Technical Direction upon receipt thereof. If, however, the Subrecipient considers that any Technical Direction issued hereunder constitutes a proposed change as described in Article 8, “Modifications”, the Subrecipient shall promptly submit a request for a modification pursuant to Article 8, “Modifications”, and stop proceeding with the Technical Direction until written approval is received via a modification to this Subaward. In all other instances, the Subrecipient shall promptly comply with each written Technical Direction upon receipt thereof.

Article 8 Modifications

No amendment or modification of this Subaward shall be valid unless made in writing and signed by duly authorized representatives of each party.

Article 9 Independent Contractor

In all matters relating to this Subaward, the Subrecipient shall act as an independent contractor. The Subrecipient shall not represent that it has the authority to assume or create any obligation, express or implied, on behalf of UCAR, nor will it represent or attempt to represent UCAR as its agent, employee, or in any other capacity. Nothing in this Subaward shall be construed as a partnership, agency, or joint venture. Neither the Subrecipient, its employees, nor its lower-tier subcontractors shall be deemed to be employees of UCAR.

Article 10 Liability

Each party agrees to be responsible for the negligent acts or omissions of its employees, trustees, and officers, and directors in the performance of the work to the extent allowed by law.

Article 11 Intellectual Property

A. Definitions.

“Intellectual Property” shall be defined as patents, copyrights, and other intellectual property rights.

“Subrecipient Intellectual Property” means any Intellectual Property developed, created, owned, or generated by Subrecipient, provided that such intellectual property does not in any manner incorporate, use, or infringe any UCAR Intellectual Property.

“UCAR Intellectual Property” means any Intellectual Property developed, owned, created, or generated by UCAR, provided that such intellectual property does not in any manner incorporate, use, or infringe any Subrecipient Intellectual Property.

- B. UCAR shall retain full right, title, and interest in and to all UCAR Intellectual Property in existence prior to the execution of this Subaward (“UCAR Pre-existing Intellectual Property”). Additionally, all right, title, and ownership of Intellectual Property resulting from research under this Subaward, which is conceived or reduced to practice solely by UCAR, without the use or incorporation of Subrecipient Intellectual Property shall remain with UCAR.
- C. Subject to the terms of this Subaward, Subrecipient shall retain full right, title, and interest in and to all Subrecipient Intellectual Property in existence prior to the execution of (and not arising out of) this Subaward (“Subrecipient Pre-existing Intellectual Property”) and all right, title, and ownership of Intellectual Property resulting from Subrecipient’s work under this Subaward, which is conceived or reduced to practice solely by Subrecipient, without the use or incorporation of UCAR Intellectual Property, shall remain with Subrecipient.
- D. Subrecipient grants to UCAR a non-exclusive, non-transferable, irrevocable, royalty-free license to exercise and have exercised all rights in and to any and all Subrecipient Intellectual Property resulting from Subrecipient’s work under this Subaward and all Subrecipient Intellectual Property included in the work conducted pursuant to this Subaward (including, but not limited to, any copyright in any report or publication).
- E. Any joint Intellectual Property developed by UCAR and Subrecipient under this Subaward shall be jointly owned. With respect to any joint Intellectual Property, the parties shall decide, based on consideration of the facts and circumstances in each case, which party shall pursue patenting (if inventions are involved), and any other action, which might be required, including payment of such expenses to protect the Intellectual Property. Further, the parties shall agree on a division of any income received as a result of the Intellectual Property, which reflects the relative contributions of the individuals who invented, discovered, or created the property or otherwise based on mutual agreement of the parties.

Article 12 Insurance Requirements

At all times during the Period of Performance of this Subaward, both parties shall maintain in force comprehensive general liability, automobile liability, workers’ compensation in accordance with statutory limits, and employer liability insurance to the extent necessary to provide coverage for any risk or loss that may arise out of or relate to the performance of the work to be conducted under this Subaward.

Article 13 Taxes

UCAR is a non-profit educational, charitable, and scientific institution exempt from federal income taxes under section 501(c)(3) of the 1954 IRS Tax Code. UCAR is also entitled to tax-free transactions under title 26 of the Internal Revenue Code.

The Subrecipient shall obtain all necessary exemptions for the goods and/or services that it procures in order to fulfill its obligations under this Subaward. The allowability of reimbursement for such taxes shall be in accordance with the applicable cost principle in Article 4, "Federal Cost Principles." Upon Subrecipient's written request, UCAR will provide the Subrecipient any necessary support or documentation to secure the exemptions.

Article 14 Assignment by Subrecipient

This Subaward shall be binding upon and inure to the benefit of the parties hereto, their successors and their permitted assigns. Except as otherwise permitted by UCAR, this Subaward may not be assigned, in whole or in part, by the Subrecipient to any third party, except to its own Affiliates. The Subrecipient shall provide UCAR written notice within thirty (30) days of such permitted assignment or transfer to a Subrecipient Affiliate. For purposes of this Subaward, the term "Affiliate" means any entity that directly or indirectly controls or is controlled by or is under common control with a party.

Article 15 Disclosure/Confidentiality of Information

- A. Information. In the course of their relationship hereunder, the parties may be provided access to each others' confidential and/or proprietary information ("Information"). Such Information may include specifications, design plans, product strategies, product architectures, drawings, software, data, prototypes, business strategies, business plans, equipment and/or any other business and/or technical information. This Article applies to protect only written Information marked by the disclosing party ("Discloser") with a confidential or similar legend or, in the case of intangible Information or Information disclosed orally, Information that is identified as confidential at the time of disclosure and thereafter in a written summary sent to the receiving party ("Recipient") by the Discloser within thirty (30) days of the date of disclosure. Any party may refuse to receive any Information at any time, and the Discloser shall honor such request.
- B. Obligations. Recipient shall protect the Information by using the same degree of care used to protect its own confidential and proprietary information; provided that in no case shall Recipient use less than a reasonable degree of care. Recipient may use the Information only for the purposes set forth in this Agreement, and for no other purpose. Recipient shall be permitted to disclose the Information only to those of Recipient's employees, subcontractors and consultants who have a definable need to know such Information for the purposes of performing hereunder; provided that such employees, subcontractors, and consultants are under obligation(s) of confidentiality consistent with this Subaward. Recipient's duty to protect the Information disclosed under this Subaward shall expire five (5) years following the termination and/or expiration of this Subaward.
- C. Exceptions. This Subaward imposes no obligation upon the Recipient where such Information: (a) was known to the Recipient prior to the receipt from the Discloser, as

demonstrated by written evidence; (b) is or becomes a matter of public knowledge through no fault of the Recipient; (c) is rightfully received by the Recipient from a third party without a duty of confidentiality; (d) is disclosed by Discloser to a third party without a duty of confidentiality to the third party; (e) is independently developed by the Recipient without the use of the Information, as demonstrated by written evidence; (f) is disclosed under operation of law; or (g) is disclosed by Recipient with the Discloser's prior written approval.

Article 16 Governing Law

The validity, interpretation and performance of this Subaward shall be governed by and construed under the laws of the United States of America, and any disputes between the parties with respect to this Subaward shall be decided by competent courts located in the United States of America.

Article 17 Limitation of Liability

Any claims for damages hereunder by either party shall be limited only to the dollar amount paid to Subrecipient for services under this Subaward or the actual, direct damages suffered by the injured party, whichever is less, and in no event shall any additional damages or monies be awarded. NEITHER PARTY SHALL BE LIABLE FOR LOSSES OR DAMAGES WHICH ARE INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY, INCLUDING WITHOUT LIMITATION, ANY LOSS OF PROFITS OR REVENUE INCURRED BY EITHER PARTY WHETHER IN AN ACTION BASED ON CONTRACT OR TORT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES ARISING FROM OR RELATED TO THIS SUBAWARD.

Article 18 Termination

- A. Termination for Convenience. Either party may terminate this Subaward at any time during the term stated herein and without cause, provided the terminating party gives the terminated party thirty (30) days prior written notice. The date of termination shall be effective thirty (30) days from the date of the notice.

Additionally, UCAR shall have the right to terminate for convenience if UCAR ceases the management of the National Center for Atmospheric Research (NCAR) under a Cooperative Agreement with the National Science Foundation.

- B. Termination for Cause. This Subaward may be terminated by either party should any of the following occur:
1. either party materially breaches any terms or provisions of this Subaward and fails to cure the same to the non-breaching party's satisfaction within thirty (30) days of the date of receipt of such notice of breach; or
 2. either party breaches, misuses or misappropriates any proprietary and/or confidential interest or right held by the other party; or
 3. either party initiates bankruptcy proceedings, becomes insolvent or ceases to do business for sixty (60) continuous days.

- C. Effect of Expiration or Termination. In the event of expiration and/or termination of this Subaward, each party, as appropriate, shall immediately return all Information, software, hardware, data, items, materials, systems, equipment and the like supplied and/or provided hereunder, by one party to the other, except with regard to software, hardware, data, items, materials, systems, equipment and the like to which a party has retained title. Further, in the event any access to the computer network of one party has been granted to the other party, such other party shall stop its access and/or use of the computer network. Additionally, all monies due and owing hereunder from UCAR to Subrecipient shall be paid.

Following receipt of a notice of termination, Subrecipient agrees to take necessary steps to avoid incurring additional expenses, except for those costs necessary to terminate the efforts or services, including the payment of any non-cancellable obligations. Subrecipient shall provide UCAR with a final invoice identifying services performed and all the associated expenses within sixty (60) days of expiration or termination. Following full and final payment, UCAR and Subrecipient shall be relieved of any further obligations except those that survive under Article 25.F, "Survival."

Article 19 Disputes

In the event that a dispute arises between the parties to this Subaward, the aggrieved party agrees to reduce the claim in dispute to writing and submit it to the non-aggrieved party pursuant to the notice provision set forth in Article 25.A, "Notice." The non-aggrieved party has thirty (30) days from receipt of the notice to explain and/or remedy the claim to the aggrieved party's satisfaction. If the aggrieved party is not satisfied with such explanation or remedy, the parties may agree to escalate the dispute to a senior member of each party not directly involved in the Subaward for informal, nonbinding mediation. In the event that the parties cannot resolve their dispute informally, they are free to seek any relief appropriate.

In addition to termination and/or any other remedies, the non-breaching party may seek equitable relief, including immediate injunctive relief, and actual and direct damages within the limitations of liability specified herein, except where otherwise stated in this Subaward.

Binding Arbitration. All disputes arising out of or in connection with this Subaward shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one arbitrator appointed in accordance with the ICC Rules, in Denver, Colorado.

Article 20 Compliance

- A. Export: Both parties shall comply with all laws, regulations, orders, or other restrictions of the United States export regulations. The parties agree that they will not disclose or deliver any deliverables (including software), that are export-controlled under the International Traffic in Arms Regulations (ITAR) or appear on the Commerce Control List (except EAR99) of the Export Administration Regulations, without first notifying the receiving party of which category of the Commerce Control List or United States Munitions List applies to control the information and/or deliverables, as applicable. The disclosing party shall obtain the consent of the other party's Technical Representative identified in Schedule D and thereafter label all such material with appropriate restrictive markings, such as "Restricted; Export Controlled" prior to delivery of any information under this Subaward.

Subrecipient acknowledges that UCAR may not export any export controlled information or technology (“Controlled Technology”) to Subrecipient without fully complying with all applicable export control laws and regulations of the United States of America (“U.S. Export Requirements”). UCAR shall not be required to deliver any Controlled Technology unless it can do so in full compliance with U.S. Export Requirements.

- B. Laws: Subrecipient agrees to comply with all applicable international, federal, state and local laws, including those applicable by reason of the fact that this Subaward is issued under a financial assistance award with the United States Government.
- C. No member of the Subrecipient’s Board of Directors (if one exists) may serve as a GLOBE Country Coordinator, Assistant Coordinator, or GLOBE Region Office Coordinator during the Period of Performance of this Subaward.

Article 21 Disclaimer of Warranty

ANYTHING SUPPLIED BY EITHER PARTY HEREUNDER, INCLUDING, BUT NOT LIMITED TO, INTELLECTUAL PROPERTY IS PROVIDED “AS IS” AND THERE ARE NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Article 22 Publicity

No press releases, advertising or other publicity with regard to the University Corporation for Atmospheric Research (UCAR), the National Center for Atmospheric Research (NCAR) or UCAR Community Programs (UCP) or the Subrecipient shall be made by either party unless otherwise agreed to, in writing, by the non-issuing party.

Article 23 UCAR Equipment

In the event that UCAR equipment is provided to the Subrecipient in performance of this Subaward, it shall be returned to UCAR in the same condition as when received except for reasonable wear and tear. The Subrecipient shall be liable for loss or destruction of or damage to UCAR-provided equipment in accordance with this Article.

Article 24 Equal Opportunity

41 CFR 60-741.5(a) is hereby incorporated into this Subaward. **The Subrecipient shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**

41 CFR 60-300.5(a) is hereby incorporated into this Subaward. **The Subrecipient shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**

Article 25 Additional Provisions

- A. Notice. Any notice required or permitted to be given under this Subaward shall be in writing and shall be transmitted by electronic mail, facsimile, or sent via pre-paid express overnight delivery, with verified receipt to the party's Contract Representative, as identified in Schedule D. Any such notice shall be deemed received on the day such notice is received.
- B. Waiver. The express waiver by either party of any provision, condition, or requirement of this Subaward shall not constitute a waiver of any future obligation to comply with such provision, condition, or requirement nor shall a waiver of one provision, condition, or requirement constitute a waiver of the remaining provisions, conditions, or requirements. Any delay or omission by either party to exercise any right or remedy under this Subaward shall not be construed to be a waiver of any such right or remedy, or any other right or remedy hereunder.
- C. Third Party Beneficiaries. Nothing herein shall be construed as creating any right in this Subaward by any third party, except the Government.
- D. Captions. Captions used in this Subaward are included for the convenience of the parties only and shall be disregarded in interpretations of this Subaward.
- E. Binding Signatures. The parties acknowledge that this Subaward may be executed in a number of counterparts and that the sum of the counterparts shall represent a fully executed document. The parties acknowledge further that electronic or facsimile signatures are fully binding and constitute a legal method of executing this Subaward.
- F. Survival. The following obligations shall survive the expiration or termination of this Subaward: "Liability," "Intellectual Property," "Insurance Requirements," "Taxes," "Disclosure/Confidentiality of Information," "Governing Law," "Limitation of Liability," "Disputes," "Compliance," "Disclaimer of Warranty," "UCAR Equipment," and "Additional Provisions."
- G. Severability. If any provision of this Subaward is held invalid or unenforceable for any reason, the parties agree that such invalidity shall not affect the validity of the remaining provisions of the Subaward. All rights and remedies of either party under this Subaward, at law and in equity, shall be cumulative and may be exercised separately or concurrently.

Article 26 Order of Precedence

In the event of any inconsistency between the documents incorporated in this Subaward, the following is the order of precedence:

1. Subaward Terms and Conditions
2. Schedule B
3. Schedule C
4. Schedule D
5. Schedule A
6. Schedule E

Should there be any inconsistency, the Subrecipient shall give the UCAR Contract Representative identified in Schedule D written notice and the UCAR Contract Representative identified in Schedule D shall give the Subrecipient clarification promptly.

Article 27 Complete Agreement

This Subaward, any modifications, and its Schedules constitute the complete agreement regarding the subject matter and work set forth herein and supersedes any prior oral or written communications between the parties. No other terms and conditions contained in any resulting order or written communication shall be applicable unless both parties execute a modification. The parties acknowledge that this Subaward may be executed in a number of counterparts and that the sum of the counterparts shall represent a fully executed document.