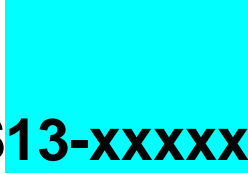




**UCAR Subcontract No. S13-xxxxx**



CUSTOMER:

**UNIVERSITY CORPORATION FOR ATMOSPHERIC RESEARCH  
1850 TABLE MESA DRIVE  
BOULDER, COLORADO 80305**

SUBCONTRACTOR:

**[SUBCONTRACTOR NAME]  
[SUBCONTRACTOR'S ADDRESS]**

This Subcontract, effective as of the date upon which it becomes fully executed (Effective Date), is entered into by and between the University Corporation for Atmospheric Research (UCAR), a non-profit corporation organized and existing under the laws of the State of Colorado, and \_\_\_\_\_ (Subcontractor), a [Corp. etc.] organized and existing under the laws \_\_\_\_\_.

The Subcontractor shall fulfill the obligations of this Subcontract in accordance with the requirements herein, including all Schedules, attachments, and exhibits.

This Subcontract does not bind or purport to bind the U.S. Government or the National Aeronautics and Space Administration (NASA), an independent agency of the U.S. Government. Consequently, any claims or disputes arising from or in performance of this Subcontract shall solely be between the parties of this Subcontract and no others.

In witness whereof, the parties hereto have caused this Subcontract to be executed, on the dates noted below, by their respective representatives duly authorized in that behalf.

**[SUBCONTRACTOR NAME]**

**UNIVERSITY CORPORATION  
FOR ATMOSPHERIC RESEARCH**

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

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

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Typed or Printed Name

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**SCHEDULE A  
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**LIST OF ENCLOSURES**

Schedule A, “Terms and Conditions” hereinafter referred to as “Schedule A”

Schedule B, “NASA Subcontract Flow Down Requirements,” hereinafter referred to as “Schedule B”

Schedule C, “2014 GLOBE Learning Expedition Hosting Opportunity dated July 6, 2013,” hereinafter referred to as “Schedule C”

Schedule D, “Subcontractors Proposal, dated \_\_\_\_TBD\_\_\_\_” hereinafter referred to as “Schedule D”

## SCHEDULE A TERMS AND CONDITIONS

### Article 1 Definitions

As used throughout this Subcontract, the following terms shall have the meanings set forth below:

**Cooperative Agreement:** UCAR's Cooperative Agreement No. NNX09AF27A with the National Aeronautics and Space Administration.

**Days:** Refers to calendar Days, unless otherwise identified in this Subcontract.

**Government:** The United States of America as represented by the National Aeronautics and Space Administration (NASA), and/or any other federal agency providing funding to UCAR to implement Work to be performed under this Subcontract.

**Lower-Tier Subcontract:** Any subcontract, agreement, or purchase order that the Subcontractor awards to any third party to perform a portion of the Work specified in this Subcontract.

**Lower-Tier Subcontractor:** Any person, subcontractor, organization, supplier, manufacturer or entity that has agreed under a Lower-Tier Subcontract with the Subcontractor to perform a portion of the Work specified in this Subcontract.

**Modification:** An amendment to the Subcontract mutually agreed to by the parties in writing.

**Subcontract:** The written agreement between UCAR and the Subcontractor. The Subcontract includes Schedules A – D attached hereto or incorporated herein by reference, and all Modifications and any other requirement or article mandated by law whether or not incorporated specifically herein.

**Subcontractor:** The person, organization, or entity to whom the Subcontract for the specified Work is awarded.

**UCAR:** The University Corporation for Atmospheric Research, which operates and manages the National Center for Atmospheric Research (NCAR) and UCAR Community Programs (UCP).

**Work:** Software, research, services, goods, data, articles, items and hardware, including any and all components and Intellectual Property, to be delivered and/or performed under this Subcontract.

### Article 2 Subcontract Type and Value

This is a Firm Fixed Price type of Subcontract valued at [TBD] United States Dollars (USD) and Zero Cents (\$ [TBD]).

Subcontractor acknowledges that UCAR is a tax-exempt entity organized under the Laws of the State of Colorado as a 501(c)(3) non-profit corporation. Subcontractor shall be responsible for the payment of any and all taxes, fees, or customs charges which may be imposed by its country's taxing authority or their representatives.

**Article 3 Statement of Work**

The Work included in this Subcontract is defined in Schedules C and D, incorporated herein.

**Article 4 Deliverable and Reporting Requirements**

The Subcontractor shall comply with the deliverable and reporting requirements as specified in Schedules C and D.

The final invoice shall not be submitted until all deliverables and/or reporting requirements have been satisfied.

**Article 5 Period of Performance**

The Period of Performance for Work under this Subcontract is the Effective Date through [TBD] (“Expiration Date”). In no event shall the Period of Performance extend beyond the Expiration Date without a Modification.

**Article 6 Payment**

Subcontractor shall be paid in accordance with the following milestone payment schedule:

[TBD]

Payment terms are [TBD] and upon receipt of an invoice containing at a minimum the following information:

- Invoice number
- Date of invoice
- Subcontract number
- Period covered and description of Work completed
- Amount invoiced and cumulative totals
- Subcontractor’s name and address  
(include business address and payment remit address, if different)

**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)

Subcontractor shall submit all invoices to the attention of the UCAR Contract Representative assigned in Article 7, “Authorized Representatives.” The final invoice shall be clearly marked as FINAL and submitted within sixty (60) Days of the acceptance or completion of work.

Subcontractor shall not submit receipts, time cards, and other supporting material with the invoice but shall maintain such material for future audits.

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

**Article 7 Authorized Representatives**

A. UCAR’s Technical and Contract Representatives for this Subcontract are:

**Technical Representative:**

[Name]  
[Title and/or Division]  
P.O. Box 3000  
Boulder, CO 80307-3000  
Phone: 303-497-\_\_\_\_  
FAX: 303-497-\_\_\_\_  
Email: \_\_\_\_@ucar.edu

**Contract Representative:**

Patti Young  
Contracts Office  
P.O. Box 3000  
Boulder, CO 80307  
Phone: 303-497-2144  
FAX: 303-497-8501  
Email: pyoung@ucar.edu

Deliveries made by a private commercial carrier shall be sent to the following address:

UCAR  
3090 Center Green Drive  
Boulder, CO 80301

B. Subcontractor’s Technical and Contract Representatives for this Subcontract are:

**Technical Representative:**

[Name]  
[Title]  
[Address]  
[City, State, Zip]  
Phone: \_\_\_\_\_  
FAX: \_\_\_\_\_  
Email: \_\_\_\_\_

**Contract Representative:**

[Name]  
[Title]  
[Address]  
[City, State, Zip]  
Phone: \_\_\_\_\_  
FAX: \_\_\_\_\_  
Email: \_\_\_\_\_

**Article 8 Contractual and Technical Direction**

A. The performance of the Work required under this Subcontract shall be subject to:

1. The administrative direction of the UCAR Contract Representative 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 or their designated representative.

B. As used herein, “Technical Direction” is direction to the Subcontractor that fills in details, or otherwise serves to clarify the Subcontract 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 Subcontract;
  2. May not constitute new assignment of Work, or change to the expressed terms and conditions, or specifications incorporated into this Subcontract, or the price; and
  3. Shall not constitute a basis for an extension to the Subcontract delivery schedule, or Period of Performance.
- C. The Subcontractor shall promptly comply with each written Technical Direction upon receipt thereof. If, however, the Subcontractor considers that any Technical Direction issued hereunder constitutes a proposed change as described in Article 9, "Modifications," the Subcontractor shall promptly submit a request for a Modification pursuant to Article 9, "Modifications," and stop proceeding with the Technical Direction until written approval is received via a Modification to this Subcontract. In all other instances, the Subcontractor shall promptly comply with each written Technical Direction upon receipt thereof.

#### **Article 9 Modifications**

- A. At any time, either party's Contract Representative may, in writing, propose changes to the other Contract Representative.
- B. If any such proposed change(s) would cause an increase or decrease in the cost of, or schedule for, performance of any part of the Work under this Subcontract, or affect any other terms and conditions of this Subcontract, the Subcontractor shall submit a proposal for an equitable adjustment in the Subcontract.
- C. If the UCAR Contract Representative proposes the change, the Subcontractor must submit its proposal within fourteen (14) Days from the date of receipt of the proposed change.

#### **Article 10 Independent Contractor**

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

#### **Article 11 Indemnification**

Subcontractor shall indemnify, defend, and hold harmless UCAR, as well as its officers, employees, trustees and agents (collectively, the "Indemnified Parties") from and against any and all liabilities, damages, losses, costs, expenses, including attorney's fees, incurred by the Indemnified Parties as a result of claims arising out of or resulting from the activities to be carried out pursuant to the obligations of this Subcontract or from a Subcontractor breach of this Subcontract.

Subcontractor agrees to notify UCAR immediately upon the commencement of any actions brought against Subcontractor whose outcome may affect the rights of the Indemnified Parties. UCAR agrees to notify Subcontractor after receiving written notice of a claim and to provide

Subcontractor with reasonable assistance, information and authority to perform its indemnification duties. Subcontractor shall have sole control of the defense and all related settlement negotiations; provided that Subcontractor must obtain the written consent of UCAR prior to committing to any settlement that does not fully release UCAR from liability or otherwise negatively impacts UCAR.

## **Article 12      Rights to Intellectual Property and Work**

### A. Definitions.

“Data” means recorded copyrightable information, regardless of form or the media on which it may be recorded. The term includes, but is not limited to, copyrightable technical information, books, videotapes, databases, designs, techniques, technology, processes, drawings and software.

“Intellectual Property” shall be defined as Data and Inventions.

“Inventions” means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code or any foreign country.

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

“Subject Invention” means any Invention developed or created solely by Subcontractor and conceived or first reduced to practice in the performance of Work under this Subcontract.

“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 Subcontractor Intellectual Property.

- B. UCAR shall retain full right, title and interest in and to all UCAR Intellectual Property, and Subcontractor has no rights to, and may not use, UCAR Intellectual Property unless a separate license agreement has been executed between the parties.
- C. Subject to the terms of this Subcontract, Subcontractor retains title in and to all Subcontractor Intellectual Property developed outside the scope of this Subcontract, and not arising out of the Work (“Pre-existing Subcontractor Intellectual Property”). Subcontractor grants to UCAR and the Government a non-exclusive, non-transferable, irrevocable, paid-up license to exercise or have exercised all the exclusive rights provided by copyright in, and to practice or have practiced for or on behalf of UCAR or the U.S. throughout the world, any Pre-existing Subcontractor Intellectual Property that is incorporated into the Work conducted pursuant to this Subcontract.
- D. UCAR shall own all right, title and interest in and to all Subcontractor Data first produced in the performance of the Work under this Subcontract. Additionally, UCAR shall own all right, title and interest in and to any and all Subject Inventions for which Subcontractor does not choose to retain title. At UCAR’s request, Subcontractor shall assist UCAR in executing further documents related to the transfer of rights in any such Intellectual Property.



- E. Subcontractor may retain right, title and interest to each Subject Invention. Subcontractor will promptly disclose each Subject Invention to UCAR and will elect at the time of notice whether to retain title to any such Subject Invention. With respect to any Subject Invention in which the Subcontractor retains title, the Government and UCAR shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of UCAR or the U.S. throughout the world. Such license, however, will not include the right to sell copies of the Subject Invention.

### **Article 13 Intellectual Property Representation, Warranty and Indemnity**

The Subcontractor represents and warrants that none of the Intellectual Property included in the Work delivered to UCAR hereunder will infringe upon any third party intellectual property rights.

The Subcontractor shall indemnify, defend and hold harmless UCAR and its affiliates, as well as their respective directors, officers, employees, trustees and agents (collectively, the “Indemnified Parties”) from and against any and all liabilities, damages, losses and expenses, including attorneys fees incurred by the Indemnified Parties as a result of claims of direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright, or any other third party intellectual property right arising out of or resulting from the Subcontractor’s performance of this Subcontract.

UCAR agrees to notify Subcontractor after receiving written notice of a claim of infringement and to provide Subcontractor with reasonable assistance, information and authority to perform its indemnification duties. Subcontractor shall have sole control of the defense and all related settlement negotiations; provided that Subcontractor must obtain the written consent of UCAR prior to committing to any settlement that does not fully release UCAR from liability or otherwise negatively impacts UCAR.

In the event a claim of infringement is made or appears likely to be made against either of the parties, Subcontractor, at its option and expense, shall either:

1. Secure for UCAR the right to continue to use the third party’s intellectual property; or
2. Replace or modify the infringing intellectual property so that there is no infringement on a third party’s Intellectual Property Right as to such item.

### **Article 14 Insurance Requirements**

At all times during the period of performance of this Subcontract, Subcontractor 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 Subcontract.

### **Article 15 Assignment by Subcontractor**

The Subcontractor shall not assign or transfer, in whole or in part, this Subcontract, or any of the rights, privileges or obligations specified, without the express written consent of UCAR, which consent shall not be unreasonably withheld.

## **Article 16 Disclosure/Confidentiality of Information**

In the course of providing the services and/or performing the Work hereunder, the Subcontractor may have access to UCAR Confidential Information (“Confidential Information”). UCAR’s Confidential Information means information not generally known in the industry, including, but not limited to, specifications, designs, plans, product strategies, program strategies, proposals, evaluations, drawings, software, hardware, equipment, data, prototypes, patents, patent applications, continuations-in-part, know-how, financial, and personnel information. In order to be treated as confidential hereunder, such information must be marked with a confidential or similar legend or, in the case of intangible information or information disclosed orally, the information must be identified as confidential at the time of disclosure and again in a written summary sent to the receiving party within thirty (30) Days of the date of disclosure.

The Subcontractor shall use UCAR’s Confidential Information only for the purpose of performing its obligations in accordance with this Subcontract. The Subcontractor shall protect UCAR’s Confidential Information from disclosure to third parties by using at least the same degree of care, but no less than a reasonable degree of care, that it would use to protect its own information of like nature.

The term of confidentiality shall extend for a period of five (5) years from the date of expiration or termination of this Subcontract; however, it is understood that this Subcontract shall impose no obligations of confidentiality where the UCAR Confidential Information:

1. is or becomes a matter of public knowledge through no fault of the Subcontractor;
2. is rightfully received by the Subcontractor from a third party without a duty of confidentiality; or
3. is independently developed by Subcontractor as demonstrated by written evidence.

Subcontractor may disclose UCAR Confidential Information in accordance with a judicial or other governmental order; provided that Subcontractor gives UCAR reasonable notice prior to such disclosure to allow UCAR an opportunity to seek a protective order or the equivalent.

## **Article 17 Governing Law**

This Subcontract shall be governed by the laws of the State of Colorado, provided that such laws do not conflict with any federal law or regulations incorporated in or applicable to this Subcontract. Should there be a conflict, the federal law or regulation will govern and take precedence over the state law.

## **Article 18 Limitation of Liability**

EXCEPT FOR THE INDEMNIFICATION AND INSURANCE OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR LOST PROFITS OF ANY KIND, OR UNDER ANY CIRCUMSTANCES, OR LEGAL THEORY, WHETHER IN CONTRACT OR TORT, RELATING IN ANY WAY TO THIS SUBCONTRACT, REGARDLESS OF WHETHER THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS AND REGARDLESS OF THE COURSE OF DEALING WHICH DEVELOPS OR HAS DEVELOPED BETWEEN THE PARTIES. IN NO EVENT SHALL UCAR’S LIABILITY EXCEED THE TOTAL AUTHORIZED FUNDING OF THIS SUBCONTRACT OR THE ACTUAL COSTS INCURRED, WHICHEVER IS LESS.

### **Article 19 Notice of Delay**

Whenever any event, whatsoever, including an actual or potential labor dispute, is delaying or threatens to delay the timely performance of this Subcontract, Subcontractor shall give written notice to UCAR within five (5) Days, including all relevant information concerning the delay. The Subcontractor shall insert this Article, including this sentence, in any Lower-Tier Subcontract hereunder.

### **Article 20 Termination for Convenience**

UCAR may terminate this Subcontract in whole or in part upon thirty (30) Days written notice to the Subcontractor. In the event of such termination, the Subcontractor shall immediately stop all Work hereunder and shall immediately cause any and all of its Lower-Tier Subcontractors to cease Work. Subject to the terms of this Subcontract, UCAR shall pay the Subcontractor for (a) costs incurred prior to the termination for Work performed; (b) reasonable charges the Subcontractor can demonstrate, to the satisfaction of UCAR, that have resulted from the termination; and (c) reasonable cancellation charges incurred by the Subcontractor and any reasonable loss on outstanding commitments for personal services that the Subcontractor is unable to cancel; provided, that the Subcontractor exercised reasonable diligence in diverting such commitments to other operations. The Subcontractor shall not be paid for any Work performed or costs incurred, which reasonably could have been avoided. The remedy set forth herein constitutes the Subcontractor's sole and exclusive remedy and UCAR's entire liability for the termination for convenience.

### **Article 21 Termination for Default**

At any time, UCAR may terminate this Subcontract in whole or in part, due to Subcontractor's default. Before exercising this right, UCAR shall provide Subcontractor thirty (30) Days written notice and the opportunity to cure such default or provide adequate assurances of future performance to the satisfaction of the UCAR Contract Representative. UCAR reserves the right to terminate this Subcontract without notice to limit any potential UCAR liabilities. In the event of termination for default, UCAR shall not be liable to the Subcontractor for any amount for components or services UCAR has not accepted, and the Subcontractor shall be liable to UCAR for any and all rights and remedies provided by law. In the event that UCAR terminates this Subcontract for default under this Article, the Subcontractor shall pay any and all additional or excess costs due to UCAR's re-procurement required for the satisfactory completion of the Work. If it is determined that UCAR improperly terminated this Subcontract for default, such termination shall be deemed a termination for convenience.

### **Article 22 Stop-Work Order**

UCAR may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all, or any part, of the Work called for by this Subcontract for a period of ninety (90) Days after the order is delivered to the Subcontractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-Work order issued under this Article. Upon receipt of the order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the order during the period of Work stoppage. Within a period of ninety (90) Days after a stop-Work order is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, UCAR shall either:

1. Cancel the stop-Work order; or
2. Terminate the Work covered by the order as provided in Article 20, "Termination for Convenience," or Article 21, "Termination for Default."

If a stop-Work order issued under this Article is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume Work. UCAR shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified accordingly, if the stop-Work order results in an increase in the time required for or the Subcontractor's cost allocable to the performance of any part of this Subcontract; and the Subcontractor asserts it right to the adjustment within thirty (30) Days after the end of the period of Work stoppage.

If a stop-Work order is not canceled and the Work covered by the order is terminated pursuant to either Article 20, "Termination for Convenience," or Article 21, "Termination for Default," UCAR shall allow reasonable costs resulting from the stop-Work order in arriving at the termination settlement.

### **Article 23      Disputes**

- A. The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Subcontract promptly by negotiating between senior executives of the parties, other than each party's Contract Representative, who have authority to settle the controversy.
- B. Notice. In the event that a claim or controversy arises hereunder, the claim or controversy shall be reduced to writing by the aggrieved party and delivered to the non-aggrieved party pursuant to the notice provisions set forth in paragraph A of Article 29, "Miscellaneous." The non-aggrieved party shall be given thirty (30) Days from the date of receipt of such writing to explain and/or remedy such claim or controversy to the aggrieved party's satisfaction. If the aggrieved party is not satisfied with such explanation and/or remedy, the claim or controversy shall be submitted to binding arbitration.
- C. Arbitration Rules and Laws. Any disputes arising out of this Subcontract that are not resolved under this Article shall be submitted to binding arbitration in Denver, Colorado before three (3) arbitrators and conducted pursuant to the Rules of Commercial Arbitration of the American Arbitration Association ("AAA"). Each party shall pick one arbitrator from the panel list supplied by the AAA, and the third arbitrator shall be chosen by the two appointed by the parties. The arbitration costs and expenses shall be borne by the non-prevailing party as determined by the arbitrators.
- D. Binding Effect. The parties agree that the decision of the arbitrators shall be the sole and exclusive remedy between them regarding any claims, counterclaims, issues or accountings presented or pled to the arbitrators and shall be final, binding and incontestable and may be used as a basis for judgment, thereon in Colorado or elsewhere.
- E. Performance During Dispute. Pending resolution of the dispute, the parties shall, except in the event of termination, continue to perform their obligations under this Subcontract. Notwithstanding the provisions of this Article either party may proceed to any court of competent jurisdiction to obtain immediate injunctive relief with regard to protecting any Intellectual Property or confidential and proprietary information.

**Article 24 Compliance**

The Subcontractor agrees to comply with all applicable international, federal, state and local laws, including those applicable by reason of the fact that this Subcontract is issued under a Cooperative Agreement with the Government.

**Article 25 Export Compliance**

The Subcontractor shall comply with all laws, regulations, orders, or other restrictions of the U.S. export regulations. Subcontractor agrees that it will not disclose to UCAR information, nor deliver to UCAR 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 UCAR of which category of the Commerce Control List or US Munitions List applies to control the information and/or deliverables, as applicable. The Subcontractor shall obtain the consent of the UCAR Technical Representative set forth in Article 7, "Authorized Representatives," and thereafter label all such material with appropriate restrictive markings, such as "Restricted: Export Controlled" prior to delivery.

**Article 26 UCAR's Disclaimer of Warranty**

ANYTHING SUPPLIED BY UCAR HEREUNDER, INCLUDING, BUT NOT LIMITED TO, UCAR 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. THE PARTIES EXPRESSLY DISCLAIM THAT THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT (UCITA) APPLIES TO OR GOVERNS THIS SUBCONTRACT. UCAR MAKES NO WARRANTIES AS TO THE ADEQUACY OF ANY LICENSED INTELLECTUAL PROPERTY OR ASSOCIATED DOCUMENTATION OR TO ITS SUITABILITY FOR ANY LICENSED APPLICATIONS.

**Article 27 Excusable Delays**

Neither party shall be liable for loss or delay in the performance of this Subcontract if, and to the extent, non-performance is caused by an occurrence beyond the reasonable control of the non-performing party and without its fault or negligence such as; acts of the Government in either its sovereign or contractual capacity, acts of terrorism, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, hereinafter referred to as "Force Majeure." In the event of non-performance due to a Force Majeure condition, the non-performing party's Contract Representative shall notify the other party's Contract Representative, in writing, as soon as it is reasonably possible after the commencement of any Force Majeure condition. The notice will set forth the specifics of the delay, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contract Representative of the cessation of such occurrence.

**Article 28 Publicity**

The Subcontractor shall not issue any news releases pertaining to activities supported by this Subcontract without prior written permission from UCAR. Requests for permission shall be submitted to the UCAR Contract Representative. All news releases, publications, World Wide

Websites and similar items prepared by the Subcontractor and/or its employees that describe activities related to this Subcontract shall acknowledge the sponsorship of NSF and UCAR.

#### **Article 29 Miscellaneous**

- A. Notice. Any notice required or permitted to be given under this Subcontract shall be in writing and shall be either transmitted by e-mail, facsimile or sent via pre-paid express overnight delivery, with verified receipt to the Contract Representative as specified in Article 7, "Authorized Representatives." 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 Subcontract 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 Subcontract 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 Subcontract by any third party.
- D. Captions. Captions used in this Subcontract are included for the convenience of the parties only and shall be disregarded in interpretations of this Subcontract.
- E. Binding Signatures. The parties acknowledge that facsimile signatures or signatures sent via electronic mail are fully binding and constitute a legal method of executing this Subcontract.
- F. Survival. The following obligations shall survive the expiration or termination of this Subcontract: Article 11, "Indemnification," Article 12, "Rights to Intellectual Property and Work," Article 13, "Intellectual Property Representation, Warranty and Indemnity," Article 14, "Insurance Requirements," Article 16, "Disclosure/Confidentiality of Information," Article 17, "Governing Law," Article 18, "Limitation of Liability," Article 23, "Disputes," Article 26, "UCAR's Disclaimer of Warranty," and paragraph F of Article 29, "Miscellaneous."
- G. Severability. If any provision of this Subcontract 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 Subcontract. All rights of either party under this Subcontract shall be cumulative and may be exercised separately or concurrently.

#### **Article 30 Order of Precedence**

In the event of any inconsistency the following is the order of precedence:

1. Schedule A
2. Schedule B
3. Schedule C
4. Schedule D

Should there be any inconsistency, the Subcontractor shall give the UCAR Contract Representative written notice and the UCAR Contract Representative shall give the Subcontractor prompt clarification.

### **Article 31 Complete Agreement**

This Subcontract, as defined in Article 1, "Definitions," constitutes 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 Subcontract may be executed in a number of counterparts and that the sum of the counterparts shall represent a fully executed document.