 **UCAR Subcontract No. S15-19374 (NWSC-2)**

**Customer:** University Corporation for Atmospheric Research

**Subcontractor:**

**Prime Sponsor:** The National Science Foundation

**Prime Award Number:** AGS-0856145

This Subcontract, 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 \_\_\_\_\_\_\_\_\_\_\_\_ (Subcontractor), a \_\_\_\_\_\_\_\_\_\_[corporation/etc.] having a mailing address of .

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

By signing below, Subcontractor makes the certifications and assurances, as required by the Prime Sponsor, attached hereto as Schedule A and incorporated herein by reference.

**[SUBCONTRACTOR NAME] UNIVERSITY CORPORATION**

 **FOR ATMOSPHERIC RESEARCH**

By: By:

 Signature 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, NSF Flow Downs hereinafter referred to as “Schedule A”
* Schedule B, [Statement of Work] hereinafter referred to as “Schedule B”
* Schedule C, Contact Information hereinafter referred to as “Schedule C”
* Schedule D, [Subcontractor Proposal] hereinafter referred to as “Schedule D”
* Schedule E, Deliverable Requirements hereinafter referred to as “Schedule E”
* Schedule F, Acceptance Criteria and Testing hereinafter referred to as “Schedule F”
* Schedule G, Project Management Requirements hereinafter referred to as “Schedule G”
* Schedule H, R15-19374 NWSC-2 Technical Specifications, R15-19374 NWSC-2 Benchmark Instructions, and [Subcontractor’s] Benchmark Results Spreadsheet

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 **TERMS AND CONDITIONS**

# Article 1 Definitions

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

**Affiliate:** Any entity that directly or indirectly controls or is controlled by or is under common control with a party.

**Availability**: See System Availability and File System Availability

**Coefficient of Variation**: The ratio of the standard deviation to the mean.

**CISL**: The Computational and Information Systems Laboratory of NCAR.

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

**Deliverables:** The products and services delivered and/or performed by the Subcontractor under this Subcontract.

**Downtime**: Any period of time during which a node or component of the system cannot be used operationally. In calculating System Availability, only downtime due to the failure of Offeror-supplied hardware or software applies.

**External Network Test:** A test or suite of tests, mutually agreed to by the Offeror and UCAR, which demonstrates the system’s ability to communicate with other systems on, and transfer files across, the NCAR LAN and WAN.

**File System Availability**: Defined as

$$File System Availability= \frac{\sum\_{i}^{N} ( S\_{i}- D\_{i} )}{\sum\_{i}^{N} (S\_{i})}$$

where:

N is the number of file systems in the PFS

S*i* is the number of Scheduled Hours for file system i

D*i* is the number of hours of downtime for file system i

Scheduled Hours is wall-clock time minus any downtime scheduled by UCAR

**File System Downtime**: Any period of time during which data residing in a file system is inaccessible from the HPC system, the HPC system cannot write data to the filesystem, or the file system’s metadata is inaccessible. In calculating File System Availability, only downtime due to the failure of Offeror-supplied hardware or software applies.

**FRU**: Field Replaceable Unit

**Full scale**: All of the compute nodes in the system. This may or may not include all available compute resources on a node depending on the use case.

**Job Interrupt**: Any system event that causes a job to unexpectedly fail or unintentionally terminate, for example, to not exit or complete as expected due to a system failure, not an application failure.

**Lower-Tier Subcontract:** Any subcontract, agreement, or purchase order at any tier awarded 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 to perform a portion of the Work specified in this Subcontract.

**NCAR**: The National Center for Atmospheric Research, located in Boulder, CO.

**NSF**: The National Science Foundation.

**NWSC**: The NCAR Wyoming Supercomputing Center, located in Cheyenne, WY.

**PFS**: An acronym for the combination of hardware and software which implements one or more parallel file system(s).

**System Availability**: Defined as

$$System Availability= \frac{\sum\_{i}^{N} ( S\_{i}- D\_{i} )}{\sum\_{i}^{N} (S\_{i})}$$

where:

N is the number of nodes in the system

S*i* is the number of Scheduled Hours for node i

D*i* is the number of hours of downtime for node i

Scheduled Hours is wall-clock time minus any downtime scheduled by UCAR

**System Interrupt**: Any system event, or accumulation of system events over time, resulting in more than 1% of the compute resource being unavailable at any given time. Loss of access to any dependent subsystem, e.g. parallel file-system or service partition resource, which affects the system’s ability to run the scheduled workload, will also incur a system interrupt.

**System Mean Time Between Interrupt (SMTBI)**: Average time between system interrupts over a given time interval.

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

**Units:** The units and prefixes used herein are as defined in the International System of Units (SI). The following table provides a summary. See NIST Special Publications 330 and 811 and the IEC international standard ISO/IEC 80000-13:2008 for details.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Prefix | Symbol | Meaning |  | Prefix | Symbol | Meaning |
| Kilo | k | 103 |  | Kibi | Ki | 210 |
| Mega | M | 106 |  | Mebi | Mi | 220 |
| Giga | G | 109 |  | Gibi | Gi | 230 |
| Tera | T | 1012 |  | Tebi | Ti | 240 |
| Peta | P | 1015 |  | Pebi | Pi | 250 |
| Exa | E | 1018 |  | Exbi | Ei | 260 |
| Zetta | Z | 1021 |  | Zebi | Zi | 270 |
| Yotta | Y | 1024 |  | Yobi | Yi | 280 |

Thus, for example, a “gigabyte” refers to 1,000,000,000 bytes, while a “gibibyte” refers to 1,073,741,824 bytes.

**Work**: Software, research, products, 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 Statement of Work

The Subcontractor agrees to perform the Work described in Schedules B, D, E, F, G and H, and fulfill the obligations of this Subcontract in accordance with the requirements identified in Schedules A – H incorporated herein.

# Article 3 Subcontract Type and Funding

This is a firm fixed price type of Subcontract valued at ($\_\_\_\_\_), excluding any options defined in Article 5, “Options.”

# Article 4 Period of Performance

The Period of Performance for Work under this Subcontract is defined as the Effective Date through four (4) calendar years after the date of Acceptance of the NWSC-2 Production System(s) (Expiration Date). In no event shall the Period of Performance extend beyond the Expiration Date without a modification.

# Article 5 Options

The Subcontract includes two one-year option(s), which, if exercised, may extend the Period of Performance through the initial Effective Date plus two (2) calendar years. Options are also provided for UCAR to purchase additional equipment and/or services as identified in the table below. UCAR may exercise these options, in part or in their entirety, at its sole discretion. Service options must be exercised in writing before the start of an option period; equipment options may be exercised in writing at any time during an option period.

Options and prices are listed below:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Option | Description | Start Date  | End Date | Price |
| 1 | Many-core Compute Partition | Effective Date | Expiration Date | TBD |
| 2 | General Purpose GPU Compute Partition | Effective Date | Expiration Date | TBD |
| 3a | Parallel File System Scalable-Unit Upgrade | Effective Date | Expiration Date | TBD |
| 3b | Parallel File System 50% Upgrade | Effective Date | Expiration Date | TBD |
| 4 | Visualization, Data Analysis and Post-Processing Partition | Effective Date | Expiration Date | TBD |
| 5 | Software Tools and Programming Environment Software | Effective Date | Expiration Date | TBD |
| 6 | Early Access System | Effective Date | Expiration Date | TBD |
| 7 | Innovative Storage and Memory Technologies | Effective Date | Expiration Date | TBD |
| 8a | 5th Year Maintenance and Support Services | Effective Date | Expiration Date | TBD |
| 8b | 6th Year Maintenance and Support Services | Effective Date | Expiration Date | TBD |
| 8c | On-site Parts Cache | Effective Date | Expiration Date | TBD |
| 9a | 10% Expansion of NWSC-2 HPC system | Effective Date | Expiration Date | TBD |
| 9b | 25% Expansion of NWSC-2 HPC system | Effective Date | Expiration Date | TBD |
| 9c | 50% Expansion of NWSC-2 HPC system | Effective Date | Expiration Date | TBD |
|  | Additional options TBD |  |  |  |

# Article 6 Reserved

# Article 7 Payment

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

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Item | Description | Target Date | Payment Amount | Cumulative Amount | Criteria for Payment |
| 1 | NWSC-2 Test Systems | August 1, 2016 | TBD | TBD | Installation and successful benchmark execution |
| 2 | AMPS System | September 1, 2015 | TBD | TBD | Acceptance per Schedules F & H |
| 3 | NWSC-2 Production HPC System | January 1, 2017 | TBD | TBD | Acceptance per Schedules F & H |
| 4 | NWSC-2 Production PFS System | January 1, 2017 | TBD | TBD | Acceptance per Schedules F & H |
| 5 | TBD |  |  |  |  |
| 6 | 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

Subcontract number

Period covered and description of Work completed

Hours worked and rates, if applicable

Amount invoiced and cumulative totals

Subcontractor’s name and address

(include business address and payment remit address, if different)

Certification from an officer or other responsible official of Subcontractor as to truth and accuracy of invoice

**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. The final invoice shall: (1) be submitted after all deliverable and/or reporting requirements have been satisfied; (2) be clearly marked as FINAL; and, (3) be submitted within forty-five (45) Days of the Expiration Date of this Subcontract.

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 UCAR Contract Representative in writing of any changes in payment instructions.

# Article 8 Audits

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

# Article 9 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 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 10, “Modifications,” the Subcontractor shall promptly submit a request for a modification pursuant to Article 10, “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 10 Modifications

1. At any time, either party’s Contract Representative identified in Schedule C may, in writing, propose changes to the other party’s Contract Representative.
2. 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 to the UCAR Contract Representative.
3. 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.
4. No modification of this Subcontract shall be valid unless made in writing and signed by duly authorized representatives of each party.

# Article 11 Resolution of Conflicts and Discrepancies

The Subcontractor shall comply with this Subcontract and all referenced documents as written. In the event of any discrepancies and/or inconsistencies in the Subcontract, which the Subcontractor determines or becomes aware of, the Subcontractor shall clarify and resolve any such discrepancies and/or inconsistencies with UCAR in a timely manner and before proceeding with any Work in question. If the Subcontractor determines during the performance of this Subcontract, that any portion of the Subcontract is inaccurate, inconsistent or incomplete, it shall promptly notify UCAR in writing specifying full particulars and request resolution before proceeding with the Work in question. In any such event, UCAR will make commercially reasonable efforts to provide clarification in order to permit the Subcontractor to proceed according to a mutually agreeable schedule. In the event that the Subcontractor fails to contact UCAR in a timely manner or proceeds with any Work in question to resolve said discrepancies and/or inconsistencies, the Subcontractor shall be deemed to have proceeded on its own accord and shall be solely responsible for any errors and associated cost and/or schedule impacts resulting therefrom. The Subcontractor shall not deny any responsibility or obligation hereunder to UCAR on the grounds that UCAR provided recommendations and/or assistance in any phase of the Work involved in producing or supporting the Work, including but not limited to the acceptance by UCAR of specifications, data, or the Work.

# Article 12 Packing, Marking, and Shipping

The Subcontractor shall pack, mark, and deliver all deliverables in accordance with the requirements of this Subcontract so as to be in compliance with transportation regulations and the best commercial practice for protection and shipment and shall secure the most advantageous transportation service and rates consistent therewith. Any expense incurred by UCAR as a result of improper preservation, packaging, packing, marking, or method of delivery shall be reimbursed by Subcontractor. Any transportation charges paid by Subcontractor for which Subcontractor is entitled to reimbursement shall be shown on Subcontractor’s invoice as a separate line item on the invoice. The Subcontractor shall be solely liable for packaging design and all charges for design, boxing, drayage, bundling, dunnage, containers, preparation, packing, crating, cartage, or storage as described herein shall be included in the Subcontract price. UCAR reserves the right to specify the mode of shipment.

# Article 13 UCAR Approval

Unless expressly stipulated elsewhere in this Subcontract as being excepted from this Article, wherever this Subcontract provides for submittal of designs, data, analysis, components, or other items for UCAR approval, such approvals shall not be construed as a complete check regarding the adequacy of said design, data, analysis or items, or as an agreement that such design, data, analysis, or items will meet Subcontract requirements. Any such approvals are for the purpose of ensuring UCAR knowledge that the Subcontractor’s progress on the Subcontract is satisfactory. Any such approvals shall in no way whatsoever relieve the Subcontractor of the responsibility for any error or deficiency, which may exist in the submitted design, data, analysis, or other items. The Subcontractor shall be responsible for meeting all Subcontract requirements irrespective of any UCAR approval.

# Article 14 Inspections

UCAR and the Prime Sponsor have the right to inspect and test all materials furnished and services performed under this Subcontract, to the extent practicable at all places and times, including the Period of Performance, and in any event before acceptance. UCAR and the Prime Sponsor may also inspect the plant or plants of the Subcontractor or any Lower-Tier Subcontractors engaged in performance under this Subcontract. UCAR and the Prime Sponsor shall perform inspections and tests in a manner that will not unduly delay the Work.

If UCAR and/or the Prime Sponsor perform inspection or test on the premises of the Subcontractor or a Lower-Tier Subcontractor, the Subcontractor shall furnish and shall require all Lower-Tier Subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

UCAR may, from time to time, request special tests or analysis of the Work in progress. Subcontractor will perform tests and analysis as requested and as mutually agreed in writing. Nothing stated herein shall relieve the Subcontractor from any obligation and responsibility regarding defects or other failures to satisfy contractual requirements as set forth herein which may be discovered prior to final acceptance. The Subcontractor shall notify UCAR no less than two (2) weeks prior to any planned inspections. Records of all inspection Work by the Subcontractor on all deliverables shall be kept complete and made available to UCAR during the performance of this Subcontract and for seven (7) years following UCAR’s final acceptance of the last deliverable under this Subcontract. All deliverables shall be subject to receiving inspection and final acceptance at the delivery destinations set forth in this Subcontract, notwithstanding any payment or other prior inspections. UCAR may reject and hold, subject to Subcontractor’s disposal, all of the Subcontractor’s deliverables not conforming to applicable specifications, drawings, samples, or descriptions. Neither final acceptance, payment, nor any limitations con­tained in Article 28, “Warranty of Services,” or Article 29, “Warranty of Supplies,” herein shall relieve Subcontractor from responsibility for the correction or replacement of defective Work arising due to fraud, gross mistakes amounting to fraud, or for latent defects.

# Article 15 Key Personnel

In addition to the Subcontractor Representatives identified in Schedule C, the following individuals are identified as key personnel for this Subcontract:

[Insert name(s), telephone number(s), fax number(s), email address(es)]

If any of the key personnel plans to or becomes aware that he or she will: (1) devote substantially less effort to the Work than anticipated in the approved proposal (defined as a reduction of 25% or more in time); (2) sever his or her connection with the Subcontractor’s organization; or (3) be absent for a continuous period of three months or more, or otherwise relinquish active participation in the Work, the Subcontractor shall advise both the UCAR Technical Representative and the UCAR Contract Representative identified in Schedule C. Any replacements proposed by Subcontractor for the personnel so designated shall be qualified personnel, with a similar level of experience in successful completion of assignments of a similar nature and scope, to carry out the Work under this Subcontract. In the event that a suitable replacement is not made, action appropriate to the situation will be initiated, which may include termination of this Subcontract in accordance with Article 33, “Termination.”

# Article 16 Title

Title to deliverables shall remain with the Subcontractor until final acceptance has taken place in accordance with Article 17, “Acceptance.” All deliverables to be delivered to UCAR hereunder shall be free and clear of any and all liens and encumbrances whatsoever. Final acceptance by UCAR of any deliverables hereunder shall precede title passage, such that title shall be deemed not to have passed from the Subcontractor to the Government until UCAR’s final acceptance of deliverables hereunder.

# Article 17 Acceptance

UCAR will not accept the equipment, supplies, or other Work required by this Subcontract until all the specifications contained or incorporated in this Subcontract have been met to UCAR's sole satisfaction.

Risk of loss shall remain with the Subcontractor until final acceptance by UCAR. The Subcontractor shall bear all risk of loss or damage to deliverables rejected by UCAR, after notice of rejection until such deliverables are redelivered to UCAR, except for loss, destruction, or other damage to such rejected deliverables resulting solely from the negligence of officers, agents, or employees of UCAR acting within the scope of their employment.

If UCAR agrees to accept any deliverables after the due dates specified in the Subcontract, Subcontractor shall make shipment by the most expeditious means via expeditious transportation at no additional cost to UCAR in the event a physical delivery is required. Acceptance of late deliveries shall not be deemed a waiver of UCAR’s right to hold Subcontractor liable for any loss or damage resulting therefrom nor shall it act as a modification of the Subcontractor’s obligation to make future deliveries in accordance with the due dates set forth in this Subcontract. The Subcontractor shall furnish sufficient labor and management personnel, plant and equipment, and any other resources required in performance of this Subcontract and shall work such hours, including overtime, additional shifts, weekend, and holiday work, as may be required to assure compliance with the due dates for deliverables as set forth herein at no change in Subcontract price. The time of delivery is an essential element of this Subcontract.

A “Certificate of Completion” shall be signed and submitted by the Subcontractor with each Deliverable and will be countersigned by the UCAR Contract Representative upon acceptance of each Deliverable. Deliverables are identified in Schedule E.

* For Deliverables requiring acceptance testing, UCAR’s acceptance shall be based upon the successful completion of the Deliverable’s acceptance test. Acceptance criteria and acceptance testing procedures are defined in Schedule F.
* For Deliverables not requiring acceptance testing, UCAR’s acceptance shall be based upon UCAR’s sole satisfaction and determination that the Deliverable’s requirements have been satisfactorily met.

# Article 18 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 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 Subcontract shall be construed as a partnership, agency, or joint venture. The Subcontractor, its employees, and its Lower-Tier Subcontractors shall not be deemed to be employees of UCAR.

# Article 19 Indemnification

Subcontractor shall defend, indemnify, and hold harmless UCAR and UCAR Affiliates, including any employees, trustees, and officers thereof (“Indemnified Parties”), from and against any and all liabilities, claims, lawsuits, losses, demands, damages, costs, and expenses (including reasonable attorneys' fees and court costs) arising directly or indirectly out 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 to which Subcontractor’s indemnification obligation applies and, at Subcontractor’s request, shall provide Subcontractor with reasonable assistance in the defense. 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 20 Intellectual Property

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, databases, videotapes, designs, techniques, technology, processes, drawings, and software.

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

“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.

1. 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.
2. 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 (“Subcontractor Pre-existing Intellectual Property”). Subcontractor grants to UCAR and the Prime Sponsor 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 United States throughout the world, any Subcontractor Pre-existing Intellectual Property that is incorporated into the Work conducted pursuant to this Subcontract.
3. 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, UCAR and the Prime Sponsor shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of UCAR or the United States throughout the world. Such license, however, will not include the right to sell copies of the Subject Invention.

# Article 21 Intellectual Property Representation

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 22 Insurance Requirements

Subcontractor agrees to provide UCAR with a certificate of insurance or, in UCAR's sole discretion, certified copies of insurance policies, evidencing compliance with the following insurance requirements. Such certificate of insurance shall name the University Corporation for Atmospheric Research, its officers, employees, and trustees as additional insured and shall provide that UCAR shall receive at least thirty (30) Days advance written notice of any cancellation, non-renewal, or material alteration of the referenced insurance policies. Further, such certificate shall not contain a statement purporting to limit the liability of the certificate issuer for its failure to provide notice per the terms of the certificate. The certificate shall be on a standard ACORD® form. The insurance certificate must be submitted prior to Subcontractor commencing to perform services or Work pursuant to this Subcontract. Such certificate shall clearly reference the certificate holder's address, this Subcontract number, and shall be sent to the attention of the UCAR Contract Representative for this Subcontract.

All insurance policies required under this Article shall be written by insurance companies admitted to do business in the state where operations are to be performed, and shall extend at least through any specified guarantee period, and shall be in force before any Work is started or services are provided. No third-party liability insurance may be written on a "claims made" form, with the exception of Professional Liability. The workers compensation, commercial general and business automobile policies must be endorsed to waive subrogation against UCAR. All policies must be endorsed to be primary and non-contributing with any policies purchased by UCAR. The obligation to provide Worker’s Compensation Insurance may be satisfied by providing evidence of qualification as a State authorized “self-insurer.”

The following insurance policies and terms are required:

**Worker’s Compensation**: Worker’s Compensation Insurance with statutory limits for Coverage A and limits of $500,000/500,000/500,000 for Coverage B.

**Commercial General Liability**: Commercial General Liability Insurance with an occurrence limit of $1,000,000 combined single limit bodily injury and property damage and a general aggregate of $2,000,000. Products and completed operations aggregate of $2,000,000. Personal injury and advertising liability limit of $1,000,000. Such coverage shall be endorsed to provide a separate limit of liability per location or job site. The policy should include an adequate sublimit for damage to property in the Subcontractor’s care, custody or control.

**Business Automobile Liability**: Business Automobile Liability insuring claims arising out of the ownership, maintenance, or use of owned, non-owned, or hired automobiles. Such policy shall have a limit of $1,000,000 combined single limit bodily injury and property damage.

**Umbrella/Excess Liability Insurance**: Umbrella or "following form excess" liability insurance in excess of the liability limits specified above in the amount of $5,000,000 per occurrence, and $5,000,000 annual aggregate.

# Article 23 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.

Except as may be otherwise provided herein, the prices set forth herein shall be exclusive of any federal, state, or local sales, use or similar tax applicable to the purchase or use of any goods and/or services furnished under this Subcontract. In the event that any federal taxes are levied against any goods and/or services provided to UCAR directly by the Subcontractor, the Subcontractor shall be responsible for payment of such taxes.

Subcontractor is responsible for all taxes and shall make all required federal, state, and local reports, records, payroll deductions, and payment in connection with social security and workers’ compensation insurance; all federal, state, and local payroll and withholding taxes; and all other charges and taxes attributable to the employment of Subcontractor personnel assigned to perform Work hereunder and for any and all other liabilities arising out of Subcontractor’s independent status. Notwithstanding anything to the contrary herein, Subcontractor agrees to reimburse UCAR for all costs incurred, including, but not limited to, taxes, penalties, and interest, in the event the Internal Revenue Service seeks to collect any such charges from UCAR as a result of this Subcontract.

# Article 24 Assignment by Subcontractor

This Subcontract 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 Subcontract may not be assigned, in whole or in part, by the Subcontractor to any third party, except to its own Affiliates. The Subcontractor shall provide UCAR written notice within thirty (30) Days of such permitted assignment or transfer to a Subcontractor Affiliate.

# Article 25 Disclosure/Confidentiality of Information

A. Information. In the course of their relationship hereunder, the parties may be provided access to each other’s 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 Subcontract, 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 Subcontract. Recipient’s duty to protect the Information disclosed under this Subcontract shall expire five (5) years following the termination and/or expiration of this Subcontract.

C. Exceptions. This Subcontract 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 26 Governing Law

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

# Article 27 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 28 Warranty of Services

A. Notwithstanding acceptance by UCAR of the Work performed under this Subcontract, the Subcontractor warrants that all services performed under this Subcontract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Subcontract. The UCAR Contract Representative shall give written notice of any defect or nonconformance to the Subcontractor upon thirty (30) Days of detection. This notice shall state either:

1. that the Subcontractor shall correct or re-perform any defective or nonconforming services; or

2. that UCAR does not require correction or re-performance.

1. If the Subcontractor is required to correct or re-perform, it shall be at no cost to UCAR, and any services corrected or re-performed by the Subcontractor shall be subject to this Article to the same extent as Work initially performed. If the Subcontractor fails or refuses to correct or re-perform, the UCAR Contract Representative may, by contract or otherwise, correct or replace with similar services and charge to the Subcontractor the cost occasioned to UCAR thereby, or make an equitable adjustment in the Subcontract price.

C. If UCAR does not require correction or re-performance, the UCAR Contract Representative shall make an equitable adjustment in the Subcontract price.

# Article 29 Warranty of Supplies

1. Except for deliverables identified by Subcontractor and accepted by UCAR in writing as "used equipment," all equipment purchased hereunder shall be new.
2. In addition to any other warranties in this Subcontract, the Subcontractor warrants, that Work performed under this Subcontract conforms to the Subcontract requirements, as well as any published warranties and specifications, and is free of any defect. This warranty shall continue for a period of four (4) years from the date of final acceptance of the Work.
3. The Subcontractor shall remedy at the Subcontractor's expense any failure to conform, or any defect. In addition, the Subcontractor shall remedy at the Subcontractor's expense any damage to UCAR-owned or controlled real or personal property, when that damage is the result of:
4. the Subcontractor's failure to conform to Subcontract requirements; or
5. any defect of equipment, material, workmanship, or design furnished.
6. The Subcontractor shall restore any Work damaged in fulfilling the terms and conditions of this Article. The Subcontractor's warranty with respect to Work repaired or replaced will continue for four (4) years from the date of repair or replacement.
7. The UCAR Contract Representative shall notify the Subcontractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
8. If the Subcontractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, UCAR shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Subcontractor's expense.
9. With respect to all warranties, express or implied, from Lower-Tier Subcontractors for Work performed and materials furnished under this Subcontract, the Subcontractor shall:
10. Obtain all warranties that would be given in normal commercial practice;
11. Require all warranties to be executed, in writing, for the benefit of UCAR, if directed by UCAR’s Contract Representative; and
12. Enforce all warranties for the benefit of UCAR, if directed by the UCAR’s Contract Representative.
13. In the event the Subcontractor's warranty under paragraph B of this Article has expired, UCAR may bring suit at its expense to enforce a Lower-Tier Subcontractor’s warranty.
14. This warranty shall not limit UCAR's rights under Article 16, “Title and Risk of Loss,” with respect to latent defects, gross mistakes, or fraud.
15. Defects in design or manufacture of equipment specified by UCAR on a "brand name and model" basis shall not be included in this warranty. In this event, the Subcontractor shall require any Lower-Tier Subcontractors thereof to execute their warranties, in writing, directly to UCAR.

# Article 30 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 immediately, including all relevant information concerning the delay. The Subcontractor shall insert this Article, including this sentence, in any Lower-Tier Subcontract hereunder.

# Article 31 Force Majeure

Except for defaults of subcontractors at any tier, neither party shall be liable for loss or delay in the performance of this Subcontract if, and to the extent, such failure is as a result of an extraordinary event (such as a fire, flood, earthquake or other natural disaster, war, invasion, act of foreign enemies, revolution, terrorist act, strike, utility failure), beyond the control of the non-performing party, which is not the result of such party’s fault or negligence and cannot be overcome by the exercise of due diligence (“Force Majeure”).

If a party asserts Force Majeure as an excuse for failure to perform, then the nonperforming party must prove that it took reasonable steps to minimize delay or damages, that the party substantially fulfilled all non-excused obligations, and that it promptly notified the other party of the Force Majeure. The non-performing party shall suspend performance only for such period of time as is necessary to overcome the results of the Force Majeure and shall use best efforts to resume performance as quickly as possible.

If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Subcontractor and a Lower-Tier Subcontractor at any tier, and without the fault or negligence of either, the Subcontractor shall not be deemed to be in default, unless:

1. The supplies or services to be provided from a Lower-Tier Subcontractor were obtainable from other sources;

2. The UCAR Contract Representative ordered the Subcontractor in writing to purchase these supplies or services from the other source; and

3. The Subcontractor failed to comply reasonably with this order.

Upon request of the Subcontractor, the UCAR Contract Representative shall ascertain the facts and extent of the failure. If the UCAR Contract Representative determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of UCAR under Article 33, “Termination.”

# Article 32 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 stop work 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 stop work 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;
2. Extend the stop work order with mutual agreement of the Subcontractor; or
3. Terminate the Work covered by the stop work order as provided in Article 33, “Termination.”

If a stop work order issued under this Article is canceled or the period of the stop work order or any extension thereof expires, the Subcontractor shall resume Work. UCAR shall make an equitable adjustment in the delivery schedule or Subcontract price, or both, and the Subcontract shall be modified accordingly, if the stop work order results in an increase in the time required for or the Subcontractor’s costs 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 the stop work order.

If a stop work order is not canceled and the Work covered by the stop work order is terminated pursuant to Article 33, “Termination,” UCAR shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement.

# Article 33 Termination

1. Termination for Convenience. UCAR may terminate this Subcontract at any time during the term stated herein and without cause, provided that UCAR gives the Subcontractor thirty (30) Days prior written notice. The date of termination shall be effective thirty (30) Days from the date of the notice.

 Following receipt of a notice of termination, Subcontractor 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. 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 pro rata portion of any payments provided to Subcontractor in advance of services performed or costs incurred shall be returned to UCAR within thirty (30) Days of the termination of the Subcontract.The remedy set forth herein constitutes the Subcontractor’s sole and exclusive remedy and UCAR’s entire liability for the termination for convenience.

1. Termination for Cause. This Subcontract may be terminated by UCAR should any of the following occur:
2. Subcontractor materially breaches any terms or provisions of this Subcontract and fails to cure the same or provide adequate assurances of future performance to UCAR’s satisfaction within thirty (30) Days of the date of receipt of such notice of breach; or
3. Subcontractor breaches, misuses, or misappropriates any proprietary and/or confidential interest or right held by the other party; or
4. Subcontractor initiates bankruptcy proceedings, becomes insolvent, or ceases to do business for sixty (60) continuous Days.

In the event of termination for cause, 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 reprocurement required for the satisfactory completion of the Work. If it is determined that UCAR improperly terminated this Subcontract for cause, such termination shall be deemed a termination for convenience.

1. Effect of Termination. In the event of termination of this Subcontract, Subcontractor shall immediately return all Information, software, hardware, data, items, materials, systems, equipment, and the like supplied and/or provided hereunder, except with regard to software, hardware, data, items, materials, systems, equipment, and the like to which the Subcontractor has retained title. Further, in the event any access to any computer network has been granted to the Subcontractor by or through UCAR, Subcontractor shall stop its access and/or use of the computer network.

Subcontractor shall provide UCAR with a final invoice identifying services performed and all the associated expenses within forty-five (45) Days of termination. Following full and final payment, UCAR and Subcontractor shall be relieved of any further obligations except those that survive under Article 40.F, “Survival.”

# Article 34 Disputes

In the event that a dispute arises between the parties to this Subcontract, 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 40.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 Subcontract 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 Subcontract.

# Article 35 Compliance

1. Export: Both parties shall comply with all laws, regulations, orders, or other restrictions of the United States export regulations.  Subcontractor agrees not to disclose or provide 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 United States Munitions List applies to control the information and/or deliverables, as applicable.  Subcontractor shall obtain the consent of UCAR’s Technical Representative identified in Schedule C and thereafter label all such material with appropriate restrictive markings, such as “Restricted; Export Controlled” prior to delivery of any information under this Subcontract.

# Article 36 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.

# Article 37 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 Subcontractor shall be made by either party unless otherwise agreed to, in writing, by the non-issuing party.

# Article 38 UCAR Equipment

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

# Article 39 Equal Opportunity

41 CFR 60-741.5(a) is hereby incorporated into this Subcontract. **The Subcontractor 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 Subcontract. **The Subcontractor 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 40 Additional Provisions

1. Notice. Any notice required or permitted to be given under this Subcontract 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 C. Any such notice shall be deemed received on the Day such notice is received.
2. 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, except the United States Government.

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 this Subcontract 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 Subcontract.

F. Survival. The following obligations shall survive the expiration or termination of this Subcontract: “Indemnification,” “Intellectual Property,” “Intellectual Property Representation,” “Insurance Requirements,” “Taxes,” “Disclosure/Confidentiality of Information,” “Governing Law,” “Limitation of Liability,” “Warranty of Services,” “Warranty of Supplies,” “Disputes,” “Compliance,” “UCAR’s Disclaimer of Warranty,” “UCAR Equipment,” and “Additional Provisions.”

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 and remedies of either party under this Subcontract, at law and in equity, shall be cumulative and may be exercised separately or concurrently.

# Article 41 Order of Precedence

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

1. Subcontract Terms and Conditions
2. Schedule E, Deliverable Requirements
3. Schedule F, Acceptance Criteria and Testing
4. Schedule B, [Statement of Work]
5. Schedule G, Project Management Requirements
6. Schedule C, Contact Information
7. Schedule A, NSF Flow Downs
8. Schedule D, [Subcontractor Proposal]
9. Schedule H, R15-19374 NWSC-2 Technical Specifications, R15-19374 NWSC-2 Benchmark Instructions, and [Subcontractor’s] Benchmark Results Spreadsheet
10. ­

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 42 Complete Agreement

This Subcontract, 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 Subcontract may be executed in a number of counterparts and that the sum of the counterparts shall represent a fully executed document.