EXHIBIT "A"
GENERAL CONDITIONS

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GC-1 DEFINITIONS (Aug 2012)

"CONTRACTOR" means Los Alamos National Security, LLC (LANS), a limited liability company, which manages and operates Los Alamos National Laboratory (LANL) pursuant to Contract No. DE-AC52-06NA25396 between the U.S. Department of Energy (DOE) / National Nuclear Security Administration (NNSA) and LANS. CONTRACTOR also means Subcontract Administrator, the individual authorized to act on behalf of LANS.

"Beneficial Occupancy" or "Use and Possession Prior to Completion", if used in this subcontract or task order, means the procedure where CONTRACTOR occupies or makes use of any part of the Work, in accordance with General Condition GC-29 USE OF COMPLETED PORTIONS OF WORK.

"Days" means calendar days unless otherwise provided.

"FAR" means the Federal Acquisition Regulations at 48 CFR Chapter 1.

"Final Acceptance" means CONTRACTOR'S acceptance of all of the Work as a whole following SUBCONTRACTOR completion and successful inspection and testing. It is conclusive except for latent defects, gross mistakes or fraud.

"Final Completion", if used in this subcontract or task order, means the point when all of the Work reasonably inferable from Subcontract Documents has been completed, as determined by CONTRACTOR. This includes the final cleanup of the premises, completion of all final inspection punch list items, and submission of all remaining contractual documents.

"GOVERNMENT" means the United States of America and includes the DOE / NNSA

"Jobsite" means a site at which the Work shall be performed under this subcontract.

"Laboratory" or "LANL" means the geographical location of Los Alamos National Laboratory, a federally funded research and development center owned by the DOE / NNSA.

"Subcontract Documents" denotes the Subcontract Form of Agreement and those appendices and exhibits referenced thereon.

"SUBCONTRACTOR" means the entity listed on the Subcontract Form of Agreement, and its authorized representatives, successors, and permitted assigns.

"Substantial Completion", if used in this subcontract or task order, means the point when the Work or a designated portion of the Work is sufficiently complete, in accordance with the Subcontract Documents, so that CONTRACTOR may use or occupy the Work or designated portion thereof for its intended purpose, as determined by CONTRACTOR. Additional requirements for achieving Substantial Completion are provided in Exhibit D, Scope of Work and Technical Specifications.

"Work", "Goods" or "Services" means all the stated or implied activities to be performed by SUBCONTRACTOR as required by the Subcontract Documents, including the furnishing and supervision of all technical personnel and labor, and the supply of equipment, materials, and supplies necessary to perform this Subcontract.

GC-2A AUTHORIZED REPRESENTATIVES, COMMUNICATIONS AND NOTICES (Jan 2010)

Unless otherwise specified, all notices and communications in accordance with or related to this subcontract shall be between authorized representatives designated in writing by the parties and shall comply with security requirements set forth in Exhibit G "Security Requirements". Notices shall be in writing and may be served either personally on the authorized representative of the receiving party, by electronic scanned document attached to an email, by facsimile, by courier or express delivery, or by certified mail to the address shown on the face of this subcontract or as directed by notice.

GC-3 INDEPENDENT CONTRACTOR (Jun 2009)

SUBCONTRACTOR represents that it is fully experienced, properly qualified, registered, licensed, equipped, organized, and financed to perform the Work under this subcontract. SUBCONTRACTOR shall act as an independent contractor and not as the agent of CONTRACTOR or GOVERNMENT in performing this subcontract, maintaining complete control over its employees and all of its suppliers and subcontractors of any tier. Nothing contained in this subcontract or any lower-tier purchase order or subcontract awarded by SUBCONTRACTOR shall create any contractual relationship between any lower-tier supplier or subcontractor and either CONTRACTOR or GOVERNMENT. SUBCONTRACTOR shall perform the Work hereunder in accordance with its own methods subject to compliance with the subcontract.

GC-4 SUBCONTRACT INTERPRETATION (Jun 2009)

All questions concerning interpretation or clarification of this subcontract by SUBCONTRACTOR shall be immediately submitted in writing to CONTRACTOR for resolution. Subject to the provisions of the General Condition titled "CHANGES," all determinations, instructions, and clarifications of CONTRACTOR shall be final and conclusive unless SUBCONTRACTOR believes such determinations, instructions or clarifications are fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence, in which case SUBCONTRACTOR shall proceed under the terms of the Disputes clause.

At all times SUBCONTRACTOR shall proceed with the Work in accordance with the determinations, instructions, and clarifications of CONTRACTOR. SUBCONTRACTOR shall be solely responsible for requesting instructions or interpretations and shall be solely liable for any costs and expenses arising from its failure to do so.

GC-5 NOTICE TO PROCEED (Jul 2011)

SUBCONTRACTOR shall not commence work on site at LANL prior to receipt of a notice to proceed issued by the Subcontract Administrator. A notice to proceed shall not be issued prior to:

(1) receipt by CONTRACTOR of a fully executed subcontract with the original signatures of both parties;
(2) receipt by CONTRACTOR of certificates of insurance and endorsements evidencing that required coverage and limits of insurance are in full force and effect, when such certificates and endorsements are required herein;
(3) approval by CONTRACTOR of SUBCONTRACTOR'S ES&H Plan submitted in accordance with the requirements of Exhibit F, when such ES&H Plan is required herein;
(4) approval by CONTRACTOR of any plans submitted by SUBCONTRACTOR in accordance with the requirements of Exhibit G, when such plan(s) is/are required herein;
(5) receipt by CONTRACTOR of executed payment and performance bonds, when such payment and performance bonds are required herein; and
(6) receipt by CONTRACTOR of written confirmation that SUBCONTRACTOR has included or will include (i.e. flow down) in subcontracts with its lower-tier suppliers and subcontractors all environment, safety, health, security, and quality assurance requirements contained in Exhibits F, G and H necessary to fulfill this subcontract as it relates to their portion of the Work; and
(7) compliance by SUBCONTRACTOR with any other applicable requirements specified in the subcontract.

CONTRACTOR reserves the right to issue a limited notice to proceed (LNTP) where CONTRACTOR determines circumstances require specific pre-performance activities necessary to support the subcontract. However this LNTP does not constitute a formal Notice to Proceed as set forth in this clause.

GC-6 ORDER OF PRECEDENCE (Jun 2009)

In resolving conflicts, discrepancies, errors or omissions between Subcontract Documents, the following order of precedence from highest to lowest shall be used, with the acknowledgement that a particular subcontract may not be comprised of all the documents listed below.

(1) Subcontract Form of Agreement
(2) Appendix SFA-1 titled “FAR & DEAR Clauses Incorporated By Reference”
(3) Exhibit "A" – General Conditions
(4) Exhibit “B” – Special Conditions
(5) Exhibit “F” – Environmental, Safety and Health Requirements
(6) Exhibit “G” – Security Requirements
(7) Exhibit “H” – Quality Assurance Requirements
(8) Exhibit "C" – Schedule of Quantities and Prices
(9) Exhibit "D" – Scope of Work
(10) Exhibit "D" – Technical Specifications
(11) Exhibit "E" – Drawings
(12) All other subcontract documents

NOTE: If this subcontract is funded in whole or part under the American Recovery and Reinvestment Act of 2009, Exhibit A1, ADDITIONAL GENERAL CONDITIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (May 2009) shall take precedence over all documents listed herein except for the Subcontract Form of Agreement.

GC-7 STANDARDS AND CODES (Jun 2009)

Wherever references are made in this subcontract to standards or codes in accordance with which the Work under this subcontract is to be performed, the edition or revision of the standards or codes current on the effective date of this subcontract shall apply unless otherwise expressly stated. In case of conflict between any referenced standards and codes and any Subcontract Documents, the General Condition titled “SUBCONTRACT INTERPRETATION” shall apply.

GC-8 LAWS AND REGULATIONS (Jun 2009)

(a) SUBCONTRACTOR shall comply with the requirements of applicable federal, state, and local laws and regulations. SUBCONTRACTOR shall also comply with DOE Directives, NNSA Policy Letters, and Laboratory policies and procedures, or parts thereof, which are identified in the subcontract. Copies of any such directives, letters, policies and procedures will be provided to the SUBCONTRACTOR upon request.

(b) If SUBCONTRACTOR discovers any discrepancy or inconsistency between this subcontract and any law, ordinance, statute, rule, regulation, order or decree, SUBCONTRACTOR shall immediately notify CONTRACTOR in writing.

(c) Regardless of the performer of the work, SUBCONTRACTOR is responsible for compliance with the requirements of this clause. SUBCONTRACTOR agrees to insert the substance of this clause, including this paragraph (c), in its subcontracts at any tier.

GC-9 PERMITS (Jun 2009)

Except as otherwise specified, SUBCONTRACTOR shall procure and pay for all permits, licenses, certifications and other applicable governing authority requirements and inspections, other than inspections performed by CONTRACTOR or GOVERNMENT or permits which by law or regulation must be acquired by CONTRACTOR or GOVERNMENT. SUBCONTRACTOR shall furnish any documentation, bonds, securities, deposits or assistance required to permit performance of the Work.

GC-10 TAXES (Jun 2009)

(a) SUBCONTRACTOR shall pay all taxes, levies, duties and assessments of every nature due in connection with the Work under this subcontract, and shall make any and all payroll deductions

and withholdings required by law. SUBCONTRACTOR agrees to indemnify and hold harmless CONTRACTOR and GOVERNMENT from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

(b) SUBCONTRACTOR shall with the approval of CONTRACTOR apply for and obtain for the benefit of the project any available exemption, deduction or exclusion under applicable laws for which SUBCONTRACTOR, CONTRACTOR or GOVERNMENT qualify.

GC-11 NEW MEXICO GROSS RECEIPTS TAX (Jun 2009)

SUBCONTRACTOR is required to pay such New Mexico Gross Receipts Tax (NMGRT) as may be required by law. CONTRACTOR will issue a New Mexico Nontaxable Transaction Certificate (NTTC) to all Subcontractors who provide goods or services to CONTRACTOR, on the condition that SUBCONTRACTOR only uses the NTTC as permitted by New Mexico law. In no event will the payment of NMGRT by SUBCONTRACTOR or its immediate and lower-tier subcontractors be considered an allowable cost under this subcontract if SUBCONTRACTOR or its immediate and lower-tier subcontractors are eligible for applicable deductions or exemptions from NMGRT under New Mexico law.

GC-12 FINES AND PENALTIES (Jun 2009)

If a state or federal agency takes an enforcement action with associated fines and penalties against CONTRACTOR and/or Government for regulatory and/or permit noncompliance that resulted from a failure of SUBCONTRACTOR to perform in accordance with this Subcontract (e.g., failure to meet regulatory reporting milestones, making false statements in reports, etc.), SUBCONTRACTOR shall reimburse CONTRACTOR and/or the Government for the amount of any resultant fine and/or the cost of additional Work required as a result of the enforcement action. CONTRACTOR may withhold such amounts from any payments due SUBCONTRACTOR.

GC-13 CONTRACTOR'S RIGHT TO OFFSET (Jan 2010)

CONTRACTOR may collect any amount determined by the Subcontract Administrator to be owed to CONTRACTOR by offsetting the amount against any payment due to the SUBCONTRACTOR under any subcontract it has with CONTRACTOR issued pursuant to CONTRACTOR'S contract with GOVERNMENT for management and operation of Los Alamos National Laboratory. Any challenge to the amount of an offset under this clause shall be resolved under the Disputes clause of this subcontract.

GC-14 LABOR, PERSONNEL AND WORK RULES (Jun 2009)

(a) SUBCONTRACTOR shall employ only competent and skilled personnel to perform the Work and shall remove from the Jobsite any SUBCONTRACTOR personnel determined to be unfit or to be acting in violation of any provision of this subcontract. SUBCONTRACTOR is responsible for maintaining labor relations in such manner that there is harmony among workers and shall comply with and enforce project and Jobsite procedures, regulations, work rules and work hours established by CONTRACTOR and GOVERNMENT.

(b) CONTRACTOR may, at its sole discretion, temporarily or permanently bar from the Work, and any other location within the Los Alamos National Laboratory (LANL), any employee of SUBCONTRACTOR or any of its lower-tier subcontractors by written notice to SUBCONTRACTOR. In the event an employee is excluded from the Jobsite, SUBCONTRACTOR shall, promptly replace such individual with another who is fully competent and skilled to perform the Work. SUBCONTRACTOR shall not be entitled to compensation for any costs resulting from the removal of such employee.

(c) SUBCONTRACTOR shall, to the extent permissible under applicable law, comply with the provisions of all labor agreement(s) which apply to the Work performed under this subcontract. If required by the terms of any such labor agreement(s), SUBCONTRACTOR shall, immediately after subcontract award, agree to comply with and be bound by the terms of such labor agreement(s).

(d) If SUBCONTRACTOR has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this subcontract, SUBCONTRACTOR shall immediately give notice, including all relevant information, to CONTRACTOR.

(e) SUBCONTRACTOR shall include the substance of this clause in all lower-tier subcontracts which require work to be performed at LANL.

GC-16 NONDISCLOSURE, PUBLICITY AND ADVERTISING (Jan 2010)

SUBCONTRACTOR'S disclosure to a third party of any information, material, data, charts, graphs, or records obtained, developed or maintained under this subcontract is prohibited, except as approved in writing in advance by CONTRACTOR. Furthermore, SUBCONTRACTOR shall not make any announcement, release any photographs, or release any information concerning this subcontract, or the Laboratory, or any part thereof to any member of the public, press, business entity, or any other third party unless prior written consent is obtained from CONTRACTOR. All SUBCONTRACTOR requests for review and approval shall be addressed to CONTRACTOR. Additionally, SUBCONTRACTOR will ensure that its employees, subcontractors and/or affiliates who work on this subcontract understand this non-disclosure requirement and provide written acknowledgement of the same if requested by CONTRACTOR'S Subcontract Administrator. SUBCONTRACTOR agrees to include a similar requirement in all lower-tier subcontracts. All requests for authorization to release information by lower-tier subcontractors shall be subject approval of CONTRACTOR'S Subcontract Administrator.

GC-17 ENVIRONMENTAL, SAFETY AND HEALTH REQUIREMENTS (Jun 2009)

(a) SUBCONTRACTOR shall be solely responsible for conducting operations under this subcontract to avoid risk of harm to the health and safety of persons and property and for inspecting and monitoring all its equipment, materials and work practices to ensure compliance with its obligations under this subcontract.

(b) Throughout performance of the Work, SUBCONTRACTOR shall conduct all operations in such a way as to minimize impact upon the natural environment and prevent any spread or release of contaminated or hazardous substances.

(c) SUBCONTRACTOR shall be solely responsible for complying with Exhibit F titled "ENVIRONMENTAL, SAFETY, AND HEALTH REQUIREMENTS", if made a part of this subcontract.

GC-25 OVERSIGHT OF WORK BY SUBCONTRACTOR (Jun 2009)

At all times during performance of this Subcontract and until the Work is completed and accepted, SUBCONTRACTOR shall directly oversee the Work, and when Work is performed on site at LANL, assign and have on site a competent individual, who is satisfactory to CONTRACTOR, who has authority to act for SUBCONTRACTOR.

GC-30 CONTRACTOR'S COMPLIANCE WITH DOE DIRECTIVES (Jun 2009)

When requested by CONTRACTOR, SUBCONTRACTOR shall provide such information, assistance and support as necessary to ensure CONTRACTOR'S compliance with any DOE directives that may be applicable to the scope of the work. If SUBCONTRACTOR believes that such request for information, assistance or support is not provided for elsewhere in the subcontract and constitutes a change under the General Condition titled "Changes", SUBCONTRACTOR shall proceed in accordance with the "Changes" clause.

GC-31B INSPECTION AND TESTING (Jun 2009)

(a) SUBCONTRACTOR shall provide and maintain an inspection system acceptable to CONTRACTOR and GOVERNMENT covering the Work under this subcontract. All equipment and material furnished, if any, and work performed shall be properly inspected by

SUBCONTRACTOR and shall at all times be subject to quality surveillance and quality audit by CONTRACTOR, GOVERNMENT or their authorized representatives who, upon reasonable notice, shall be afforded full and free access to the shops, factories or other places of business of SUBCONTRACTOR and its lower-tier suppliers and subcontractors for such quality surveillance or audit. If any equipment, material or work is determined by CONTRACTOR or GOVERNMENT to be defective or not in conformance with this subcontract the provisions of the General Condition titled "WARRANTY' shall apply.

(b) Unless otherwise provided in the subcontract, testing of equipment, materials or work shall be performed by SUBCONTRACTOR in accordance with subcontract requirements. Should tests in addition to those required by this subcontract be desired by CONTRACTOR, SUBCONTRACTOR will be given reasonable notice to permit such testing. Complete records of all inspection work performed by SUBC0NTRACTOR shall be maintained and made available to CONTRACTOR and GOVERNMENT during subcontract performance and for as long afterwards as the subcontract requires.

(c) SUBCONTRACTOR shall furnish samples as requested and shall provide reasonable assistance and cooperation necessary to permit tests to be performed on materials or work in place including reasonable stoppage of work during testing.

GC-33 EXPEDITING (Jun 2009)

The equipment and materials furnished and work performed under this subcontract shall be subject to expediting by CONTRACTOR or its representatives who shall be afforded full and free access to the shops, factories and other places of business of SUBCONTRACTOR and its suppliers and subcontractors of any tier for expediting purposes. As required by CONTRACTOR, SUBCONTRACTOR shall provide detailed schedules and progress reports for use in expediting and shall cooperate with CONTRACTOR in expediting activities.

GC-35B CHANGES (Jun 2009)

(a) CONTRACTOR may at any time, without notice to the sureties if any, unilaterally direct in writing subcontract changes, including additions, deletions, method of shipment or packing, place of delivery, rescheduling and acceleration or deceleration, to all or any part of the Work, and SUBCONTRACTOR agrees to perform such work as changed.

(b) If any change under this clause, whether or not changed by any such order, or an act or omission of CONTRACTOR or GOVERNMENT, directly or indirectly causes an increase or decrease in the estimated cost of, or in the time required for, performance of any part of the Work, CONTRACTOR shall make an equitable adjustment in the
(1) pricing or time of performance, or both;
(2) amount of any fixed fee; and
(3) other affected terms.

SUBCONTRACTOR shall, within thirty (30) calendar days of such change or act or omission, notify CONTRACTOR and submit detailed information substantiating its impact. SUBCONTRACTOR waives its rights, if any, to an equitable adjustment if it fails to comply with the requirements of this subclause. Upon agreement as to the impact of the change or act or omission, the subcontract shall be modified accordingly.

(c) SUBCONTRACTOR shall proceed diligently with performance of the Work, pending final resolution of any request for relief.

GC-36 DISPUTES (Jan 2010)

(a) *Definitions*. For purposes of this clause:

"Board" means the Civilian Board of Contract Appeals or such successor Board as may be established by law.

"Arbitration decision" means a decision of the Board in an arbitration pursuant to this clause.

"Claim" means a written demand or written assertion by either contracting party seeking as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of a subcontract term, or other relief arising under, or relating to, this subcontract. A voucher, invoice, or other request for payment or equitable adjustment under the terms of the subcontract that is not in dispute when submitted is not a claim. The SUBCONTRACTOR may convert such submission into a claim if it is disputed either as to liability or amount, or is not acted upon in a reasonable time, by demanding a decision by the Subcontract Administrator.

"Counterclaim" means a claim asserted in a pleading filed with the Board in an arbitration proceeding pursuant to this clause which arises from the same occurrence or transaction that is the subject matter of the opposing party's claim. Counterclaims do not need to be submitted to the Subcontract Administrator for decision.

(b) *Nature of the Subcontract*. This subcontract is not a Government contract and, therefore, is not subject to the Contract Disputes Act of 1978 (41 U.S.C. §§601-613). SUBCONTRACTOR acknowledges that GOVERNMENT is not a party to the subcontract, and, for purposes of the subcontract CONTRACTOR is not an agent of GOVERNMENT. Consequently, the provision for arbitration by the Board, as provided for in this clause, does not create or imply the existence of privity of contract between SUBCONTRACTOR and GOVERNMENT.

(c) *Scope of Clause*. The rights and procedures set forth in this clause are the exclusive rights and procedures for resolution of all claims and disputes arising under, or relating to, this subcontract, and no action based upon any claim or dispute arising under, or relating to, this subcontract shall be brought in any court except as provided in this clause. The parties shall be bound by any arbitration decision rendered pursuant to this clause, which shall be vacated, modified, or corrected only as provided in the Federal Arbitration Act (9 U.S.C. §§1-16). An arbitration decision may only be enforced in any court of competent jurisdiction in the State of New Mexico.

(d) *Filing a Claim/Subcontract Administrator's Decision*.

(1) Unless otherwise provided in this subcontract, SUBCONTRACTOR must file any claim against CONTRACTOR within sixty (60) Days after SUBCONTRACTOR knew or should have known the facts giving rise to the claim. Failure to file a claim within the period prescribed by this paragraph shall constitute a waiver of SUBCONTRACTOR'S right, if any, to an equitable adjustment under the subcontract.

(2) SUBCONTRACTOR shall submit any claim in writing to the Subcontract Administrator who shall issue a decision on the matter within sixty (60) Days of receipt of the claim. If the Subcontract Administrator fails to issue a decision within sixty (60) Days, SUBCONTRACTOR may request mediation or demand for arbitration as provided in paragraphs (e) and (f) of this clause.

(3) CONTRACTOR may, at any time prior to final payment under the subcontract or expiration of any warranty period, whichever is later, file a claim against SUBCONTRACTOR by issuing a written decision by the Subcontract Administrator asserting such a claim.

(4) The decision of the Subcontract Administrator shall be final and conclusive unless SUBCONTRACTOR requests mediation or demands arbitration in accordance with the terms of this clause.

(e) *Request for Mediation.*

(1) If the decision of the Subcontract Administrator is not satisfactory to SUBCONTRACTOR, or the Subcontract Administrator has failed to timely issue a decision in accordance with subparagraph (d) 2) of this provision, and SUBCONTRACTOR desires to pursue further action, SUBCONTRACTOR may request that the matter be scheduled for mediation. The request for mediation must be made within forty-five (45) Days after receipt of the Subcontract Administrator's decision.

(2) If the Subcontract Administrator believes that mediation of the dispute is likely to lead to a satisfactory resolution, he or she will so inform SUBCONTRACTOR and the matter will be scheduled for mediation. The parties will agree on the format of the mediation and will jointly select the mediator. The cost of the mediator and related expenses shall be divided evenly between the parties.

(3) If the Subcontract Administrator decides that mediation is not likely to lead to a satisfactory resolution of the claim, or that a mediation undertaken pursuant to this clause has been unsuccessful, he or she will so inform SUBCONTRACTOR in writing.

(f) *Demand for Arbitration.* If the decision of the Subcontract Administrator is not satisfactory to SUBCONTRACTOR, or if SUBCONTRACTOR'S request for mediation has been denied, or a mediation undertaken pursuant to paragraph (e) of this clause has been unsuccessful, or the Subcontract Administrator has failed to timely issue a decision in accordance with subparagraph (d) (2) of this clause, and SUBCONTRACTOR desires to pursue further action, SUBCONTRACTOR must submit to the Board a written demand for arbitration of the claim within forty-five (45) Days after receipt of the Subcontract Administrator's decision, or within forty-five (45) Days after the Subcontract Administrator notifies SUBCONTRACTOR that its request for mediation has been denied or that the mediation undertaken pursuant to paragraph (e) has been unsuccessful, whichever is later.

(g) *Arbitration Procedures/Costs.* The Board shall arbitrate the claim and any counterclaims in accordance with the Rules of the Board. All claims for $100,000 or less shall be arbitrated under the Board's Small Claims (Expedited) Procedure. All other claims, regardless of dollar amount, shall be arbitrated under the Board's Accelerated Procedure. Both parties shall be afforded an opportunity to be heard and to present evidence in accordance with the Rules of the Board. Unless the Board orders otherwise, each party shall pay its own costs of prosecuting or defending an arbitration before the Board.

(h) *Review of Arbitration Decision.* An arbitration decision shall be final and conclusive unless a party files a timely action to vacate, modify, or correct the decision pursuant to the Federal Arbitration Act.

(i) *Subcontractor Performance Pending Claim Resolution.* SUBCONTRACTOR shall proceed diligently with performance of the subcontract and shall comply with any decision of the Subcontract Administrator pending final resolution of any claim or dispute arising under, or relating to, the subcontract.

(j) *Choice of Law.* The subcontract shall be governed by federal law as provided in this paragraph. Irrespective of the place of award, execution, or performance, the subcontract shall be construed and interpreted, and its validity determined, according to the federal common law of government contracts as enunciated and applied to prime government contracts by the federal boards of contract appeals and federal courts having appellate jurisdiction over their decisions rendered pursuant to the Contract Disputes Act of 1978. The Federal Arbitration Act, other federal statutes, and federal rules shall govern as applicable. To the extent that federal common law of government contracts is not dispositive, the laws of the State of New Mexico shall apply.

(k) *Interest.* Interest on amounts adjudicated due and unpaid by a party shall be paid from the date the complaining party files a demand for arbitration with the Board. Interest on claims shall be paid at the rate established by the Secretary of the Treasury of the United States pursuant to Public Law 92-41 (85 Stat. 97).

GC-37 BANKRUPTCY (Jun 2009)

In the event SUBCONTRACTOR enters into proceedings relating to bankruptcy, whether voluntary or involuntary, SUBCONTRACTOR agrees to furnish CONTRACTOR written notification of the bankruptcy within five (5) days of the proceedings.

GC-38 RECORDS AND AUDIT (Jun 2009)

(a) SUBCONTRACTOR shall maintain records and accounts in connection with the performance of this subcontract which will accurately document incurred costs, both direct and indirect, of whatever nature for a period of three (3) years from final payment unless otherwise specified by applicable law. CONTRACTOR, GOVERNMENT or their representatives shall have the right to examine and copy, at all reasonable times and with advance notification, such records and accounts for the purpose of verifying payments or requests for payment when costs are the basis of such payment and to evaluate the reasonableness of proposed subcontract price adjustments and claims.

(b) If CONTRACTOR or GOVERNMENT establishes uniform codes of accounts for the project, SUBCONTRACTOR shall use such codes in identifying its records and accounts.

(c) For subcontracts in excess of $100,000.00, FAR clause 52.215-2, Audit and Records – Negotiation (JUN 1999) shall also apply, when included in Appendix SFA-1, FAR and DEAR Clauses Incorporated By Reference.

GC-39C WARRANTY (Jun 2009)

(a) SUBCONTRACTOR warrants that it will perform the services under this subcontract with the degree of high professional skill, sound practices and good judgment normally exercised by recognized professional firms providing services of a similar nature. In addition to all other rights and remedies which CONTRACTOR or GOVERNMENT may have, SUBCONTRACTOR shall, for no additional fee, re-perform the services to correct any deficiencies which result from SUBCONTRACTOR'S failure to perform in accordance with the above standards. When the defects in services cannot be corrected by re-performance, CONTRACTOR may (1) require SUBCONTRACTOR to take necessary action to ensure that future performance conforms to the subcontract requirements, and (2) reduce any fee payable under the subcontract to reflect the reduced value of the services performed.

(b) All equipment and materials, if any, furnished under this subcontract shall be new, of clear title and of the most suitable grade of their respective kinds for their intended uses unless otherwise specified. All workmanship shall be first class and performed in accordance with sound industry practices acceptable to CONTRACTOR.

(c) SUBCONTRACTOR warrants all equipment, materials and services it furnishes or performs under this subcontract against all defects for a period from Work commencement to a date twelve (12) months after acceptance of the project as a whole by GOVERNMENT.

(d) In the event CONTRACTOR or GOVERNMENT discover defects in design, equipment, materials or workmanship at any time before the expiration of the specified warranty period, SUBCONTRACTOR shall, upon written notice from CONTRACTOR or GOVERNMENT, cure any such defect by re-performing defective services and/or workmanship and repairing or replacing defective equipment and/or materials for no additional fee. If SUBCONTRACTOR fails to take corrective action within a reasonable time, CONTRACTOR or GOVERNMENT may perform the

corrective measures by other reasonable means and reduce any fee payable by an amount that is equitable under the circumstances.

(e) SUBCONTRACTOR further warrants any and all corrective measures for a period of twelve (12) months following their acceptance by CONTRACTOR or GOVERNMENT.

GC-41 INDEMNITY (Jun 2009)

(a) To the maximum extent permitted by applicable law, but no further, SUBCONTRACTOR hereby releases and shall indemnify, defend and hold harmless CONTRACTOR, GOVERNMENT and their subsidiaries and affiliates and the officers, agents, employees, successors and assigns and authorized representatives of all the foregoing from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs, expenses, and losses of whatsoever kind or nature in connection with or incidental to the performance of this subcontract, whether arising before or after completion of the Work hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned or contributed to in whole or in part, by reason of any act, omission, fault or negligence whether active or passive of SUBCONTRACTOR, its lower-tier suppliers, subcontractors or of anyone acting under its direction or control or on its behalf.

(b) The foregoing shall include, but is not limited to, indemnity for:

(1) Property damage and injury to or death of any person, including employees of CONTRACTOR, GOVERNMENT or SUBCONTRACTOR.

(2) The breach by SUBCONTRACTOR of any representation, warranty, covenant, or performance obligation of this subcontract.

(c) SUBCONTRACTOR specifically waives any immunity provided against this indemnity by an industrial insurance or workers' compensation statute.

GC-42A PATENT AND INTELLECTUAL PROPERTY INDEMNITY (Jun 2009)

(a) SUBCONTRACTOR hereby indemnifies and shall defend and hold harmless GOVERNMENT, CONTRACTOR, and their representatives from and against any and all claims, actions, losses, damages, and expenses, including attorney's fees, arising from any claim, whether rightful or otherwise, that any concept, product, design, equipment, material, process, copyrighted material or confidential information, or any part thereof, furnished by SUBCONTRACTOR under this subcontract constitutes an infringement of any patent or copyrighted material or a theft of trade secrets.

(b) If use of any part of such concept, product, design, equipment, material, process, copyrighted material or confidential information is limited or prohibited, SUBCONTRACTOR shall procure the necessary licenses to use the infringing or a modified but non-infringing concept, product, design, equipment, material, process, copyrighted material or confidential information or, with CONTRACTOR'S prior written approval, replace it with substantially equal but non-infringing concepts, products, designs, equipment, materials, processes, copyrighted material or confidential information; provided, however,

(1) That any such substituted or modified concepts, products, designs, equipment, material, processes, copyrighted material or confidential information shall meet all the requirements and be subject to all the provisions of this subcontract, and

(2) That such replacement or modification shall not modify or relieve SUBCONTRACTOR of its obligations under this subcontract.

(c) The foregoing obligation shall not apply to any concept, product, design, equipment, material, process, copyrighted material or confidential information the detailed design of which (excluding rating and/or performance specifications) has been furnished in writing by CONTRACTOR or GOVERNMENT to SUBCONTRACTOR.

GC-43 ASSIGNMENTS (Jun 2009)

(a) Any assignment of this subcontract or rights hereunder, in whole or part, without the prior written consent of CONTRACTOR shall be void, except that upon ten (10) calendar days written notice to CONTRACTOR, SUBCONTRACTOR may assign, with CONTRACTOR'S approval, claims for monies due or to become due hereunder to a bank, trust company, or other financial institution including any federal lending agency. Any such assignment may cover all amounts payable under this subcontract and not already paid, and shall not be made to more than one party, except that any such assignment may be made to one party, as agent or trustee of two or more parties participating in SUBCONTRACTOR'S financing. Payments to an assignee of any monies due, or to become due hereunder, shall be subject to setoff or recoupment for any present or future claim or claims which CONTRACTOR may have against SUBCONTRACTOR arising under this and other subcontracts. Upon such assignment, SUBCONTRACTOR shall provide CONTRACTOR with two copies of any such assignment and shall indicate on each invoice to whom payment is to be made.

(b) This subcontract may be assigned by CONTRACTOR, in whole or in part, to GOVERNMENT or to others upon written notice to SUBCONTRACTOR.

(c) No assignment will be approved which would relieve SUBCONTRACTOR or its sureties, if any, of their responsibilities under this subcontract.

GC-44 SUSPENSION (Jun 2009)

(a) CONTRACTOR may by written notice to SUBCONTRACTOR suspend the Work under this subcontract in whole or in part at any time. Upon receipt of such notice, SUBCONTRACTOR shall discontinue work to the extent specified in the notice; continue to protect and maintain the Work; and take any other steps to minimize costs associated with such suspension.

(b) Upon receipt of notice to resume suspended work, SUBCONTRACTOR shall immediately resume performance under this subcontract to the extent required in the notice.

(c) If SUBCONTRACTOR intends to assert a claim for equitable adjustment under this clause it must, pursuant to the General Condition titled "CHANGES" and within ten (10) calendar days after receipt of notice to resume work, submit a written notification of claim and within twenty (20) calendar days thereafter a written proposal setting forth the impact of such suspension. Any such claim for equitable adjustment must exclude profit.

GC-45 EXPORT COMPLIANCE (Jun 2009)

(a) SUBCONTRACTOR agrees that U.S. export control laws and regulations may govern aspects of the performance of this subcontract. SUBCONTRACTOR also acknowledges that all applicable export rules and regulations of the origin countries shall apply to the exports of commodities, software and technology (technical data and assistance) under this subcontract. Additionally, SUBCONTRACTOR acknowledges that other rules and regulations may restrict the use of certain parties under this subcontract. Such laws, rules and regulations are generally described below. SUBCONTRACTOR shall be responsible for any delay resulting from SUBCONTRACTOR'S failure to comply fully and timely with any such laws, rules or regulations described herein.

(1) <u>Restricted Parties Lists</u>

The U.S. Government, foreign governments and international organizations publish Restricted Parties Lists ("Lists") that identify parties (such as known or suspected

terrorists, money launderers and drug traffickers) restricted from certain or all types of transactions. SUBCONTRACTOR shall review all applicable Lists prior to initiating transactions with any third party for the performance of all or any portion of the Work to ensure such third party is not identified on any applicable Lists. SUBCONTRACTOR shall not enter into any transactions with any third party identified on any applicable Lists.

(2) U.S. Export Control Requirements

(i) SUBCONTRACTOR will comply with all U.S. export control laws and regulations, including the provisions of the Export Administration Act of 1979 and the U.S. Export Administration Regulations (15 C.F.R. 730-774) promulgated thereunder, the U.S. Department of Energy's export regulations (10 C.F.R. Part 810), the Arms Export Control Act, the International Traffic in Arms Regulations, and the sanctions and laws administered by the U.S. Treasury Department, Office of Foreign Assets Control (OFAC). SUBCONTRACTOR acknowledges that these statutes and regulations impose restrictions on the import and export to foreign countries and foreign nationals of certain categories of items and data and that licenses from the U.S. Department of Energy, U.S. Department of Commerce, U.S. State Department and/or OFAC may be required before such items or data can be disclosed, and that such licenses may impose further restrictions on use of and further disclosure of such data. SUBCONTRACTOR further acknowledges that the information which CONTRACTOR may disclose to SUBCONTRACTOR pursuant to the subcontract may be subject to these statutes and regulations.

(ii) All work produced by SUBCONTRACTOR that is deemed to be export controlled shall be clearly marked with a legend on each page which states "Restricted access and distribution pursuant to U.S. export control laws."

(3) Licensing Requirements

(i) General: The United States of America and each country have export regulations that control commodities, software and technology for various reasons, such as national security, foreign policy, anti-terrorism, and to avoid the proliferation of weapons and potential weapons, e.g. certain nuclear, chemical or biological agents. Numerous countries have export regulations that specifically address dual-use items, meaning commercial items with the potential to be applied to military and/or weapon proliferation uses. SUBCONTRACTOR shall ensure that all necessary export licenses are timely obtained, or license exceptions confirmed in writing to CONTRACTOR, prior to the export of any commodity, software or technology. SUBCONTRACTOR shall provide to CONTRACTOR a copy of any export license obtained upon receipt by SUBCONTRACTOR, and in any event prior to the export occurring.

(ii) United States of America (USA) Export Licensing Requirements: SUBCONTRACTOR is solely responsible for obtaining any required USA export licenses for all commodities, software, and technology being supplied in the performance of the Work, except for any commodity, software or technology supplied by CONTRACTOR. A copy of the export license, or SUBCONTRACTOR'S rationale as to why a license is not required, shall be provided to CONTRACTOR in writing upon receipt of the export license or SUBCONTRACTOR'S determination that a license is not required, and in any event prior to the export occurring.

(b) In the event work under this subcontract is performed off shore, unless otherwise expressly provided for or otherwise approved in writing by CONTRACTOR:

(1) SUBCONTRACTOR shall use the specifications and technical data only for purposes of this subcontract;
(2) SUBCONTRACTOR shall not disclosure the specifications and/or technical data to any other person, except a lower-tier subcontractor within the same country where SUBCONTRACTOR is performing the work under this subcontract;
(3) Nothing in this subcontract shall permit SUBCONTRACTOR or any other non U.S. person to acquire any rights in the specifications and/or technical data;
(4) SUBCONTRACTOR, and any lower-tier subcontractor, shall destroy or return to CONTRACTOR all of the specifications and technical data upon completion of its subcontract; and
(5) SUBCONTRACTOR shall deliver the deliverables under this subcontract directly to and only to CONTRACTOR.

(c) SUBCONTRACTOR hereby agrees to indemnify, defend and hold CONTRACTOR, GOVERNMENT, each of their respective affiliates and the respective directors, officers, employees and representatives of each harmless from and against any and all claims, legal or regulatory actions, final judgments, reasonable attorneys' fees, civil fines and any other losses which any of them may incur as a result of SUBCONTRACTOR'S failure to comply with its obligations under this clause.

(d) The substance of this clause shall be included in all subcontracts at every tier.

GC-46 SUBCONTRACTS (Jul 2011)

(a) SUBCONTRACTOR shall not subcontract with any third party for the performance of all or any portion of the Work without the advance written approval of CONTRACTOR. Purchase orders and subcontracts of any tier must include provisions to secure all rights and remedies of CONTRACTOR and GOVERNMENT provided under this subcontract, and must impose upon the lower-tier supplier and subcontractor all of the duties and obligations required to fulfill this subcontract as it relates to their portion of the Work. SUBCONTRACTOR shall provide written confirmation prior to commencement of work on site at LANL that SUBCONTRACTOR has included or will include (i.e. flow down) in subcontracts with its lower-tier suppliers and subcontractors all environment, safety, health, security and quality assurance requirements contained in Exhibits F, G and H necessary to fulfill this subcontract as it relates to their portion of the Work. Additionally, when requested by CONTRACTOR, SUBCONTRACTOR shall provide written confirmation that SUBCONTRACTOR has included (i.e. flowed down) in subcontracts with its lower-tier suppliers and subcontractors all other duties and obligations required to fulfill this Subcontract as it relates to their portion of the Work.

(b) Copies of all purchase orders and subcontracts are to be provided to CONTRACTOR upon request. Pricing may be deleted unless the compensation to be paid there under is reimbursable under this subcontract.

(c) No subcontract will be approved which would relieve SUBCONTRACTOR or its sureties, if any, of their responsibilities under this subcontract.

GC-48B TERMINATION (Jun 2009)

FAR clause 52.249-6 titled "TERMINATION (COST-REIMBURSEMENT) (May 2004)" applies to this subcontract, as specified in Appendix SFA-1.

GC-49A FINAL INSPECTION AND ACCEPTANCE (Jun 2009)

When SUBCONTRACTOR considers the Work under this subcontract, or any CONTRACTOR specified segment thereof, complete and ready for acceptance, SUBCONTRACTOR shall notify CONTRACTOR in writing. CONTRACTOR will conduct such reviews, inspections and tests as needed to satisfy CONTRACTOR that each segment, or upon completion, the Work conforms to subcontract requirements.

CONTRACTOR will notify SUBCONTRACTOR of any nonconformance and SUBCONTRACTOR shall take corrective action and the acceptance procedure shall be repeated as required by CONTRACTOR until each segment or, upon completion, the Work is accepted. If the Work is accepted in segments such acceptance is provisional pending Final Acceptance of the Work as a whole. CONTRACTOR'S written Notice of Final Acceptance of the Work shall be conclusive except for latent defects, fraud, or CONTRACTOR'S and GOVERNMENT'S rights under the General Condition titled "WARRANTY".

GC-50 NON-WAIVER (Jan 2010)

(a) Failure by CONTRACTOR to insist upon strict performance of any terms or conditions of this subcontract shall not operate as, nor be deemed to be, a waiver or release of SUBCONTRACTOR'S obligations under this subcontract. The following illustrative examples include but are not limited to:

(1) Failure or delay to exercise any rights or remedies provided herein or by law;

(2) The acceptance of or payment for any goods or services hereunder;

(3) Failure to properly notify SUBCONTRACTOR in the event of breach of any obligation;

(4) The review or failure by CONTRACTOR to review SUBCONTRACTOR submissions;

(5) The inspection and test by CONTRACTOR or the failure to inspect and test the Work; and

(6) The termination either in whole or in part of Work under this subcontract.

(b) CONTRACTOR or GOVERNMENT reserves the right to insist upon strict performance hereof and to exercise any of its rights or remedies as to any prior or subsequent default hereunder.

GC-51A REPRESENTATIONS AND CERTIFICATIONS (Mar 2012) (Does not apply in subcontracts below $2,500)

All Representations and Certifications provided by SUBCONTRACTOR are incorporated by reference and made part of this subcontract.

GC-52 SUBCONTRACT CLOSE-OUT CERTIFICATION AND RELEASE REQUIREMENTS (Jun 2009)

To administratively close out this subcontract, SUBCONTRACTOR shall submit, in addition to other requirements of this subcontract, the following documentation:

(1) Property Status

Include a certification that states the following:

> "All Government and CONTRACTOR-furnished property, material, special tooling, and special test equipment furnished, acquired, or generated and accountable to this subcontract has been consumed, delivered or otherwise disposed of by transfer, plant clearance or other authorized means as instructed by CONTRACTOR."

(2) Release and Certificate of Final Payment

SUBCONTRACTOR and each assignee, if any, under an assignment entered into under this subcontract and in effect at the time of final payment under this subcontract, shall execute and deliver, at the time of, and as a condition precedent to, final payment under this subcontract, a release in the format and content provided by CONTRACTOR,

discharging CONTRACTOR, GOVERNMENT, and their respective officers, agents, and employees, of and from all liabilities, obligations and claims arising out of or under this subcontract.

GC-54 RIGHT TO WORK TOOLS AND WORK PRODUCT (Jun 2009)

(a) SUBCONTRACTOR hereby grants GOVERNMENT, for the benefit of GOVERNMENT, CONTRACTOR and others performing work for GOVERNMENT, a permanent, assignable, non-exclusive, royalty-free license to use any concept, product, process (patentable or otherwise), copyrighted material (including without limitation documents, specifications, calculations, maps, sketches, notes, reports, data, models, samples, drawings, designs, and electronic software) and confidential information owned by SUBCONTRACTOR upon commencement of the Services under this subcontract and used by SUBCONTRACTOR or furnished or supplied to CONTRACTOR or GOVERNMENT by SUBCONTRACTOR in the course of performance under this subcontract.

(b) Any concept, product, process (patentable or otherwise), copyrightable material (including without limitation documents, specifications, calculations, maps, sketches, notes, reports, data, models, samples, drawings, designs and electronic software) or confidential information first developed, produced or reduced to practice by SUBCONTRACTOR or any of its employees in the performance of this subcontract (collectively, "Work Product") shall be the property of GOVERNMENT upon creation, whether or not delivered to CONTRACTOR or GOVERNMENT at the time of creation, and shall upon request by CONTRACTOR (but in no event later than thirty (30) calendar days from Final Acceptance of the Services) be delivered to CONTRACTOR. Upon request by CONTRACTOR from time to time, SUBCONTRACTOR agrees to do all things reasonably necessary, at CONTRACTOR'S expense and as CONTRACTOR directs, to obtain patents or copyrights on any portion of such Work Product, to the extent the same may be patentable or copyrightable. SUBCONTRACTOR further agrees to execute and deliver or cause to be executed and delivered such documents, including in particular instruments of assignment, as CONTRACTOR may in its discretion deem necessary or desirable to assign and transfer title to such Work Product to GOVERNMENT and to carry out the provisions of this clause.

GC-55 SEVERABILITY (Jun 2009)

The provisions of this subcontract are severable. If any provision shall be determined to be illegal or unenforceable, such determination shall have no effect on any other provision hereof, and the remainder of the subcontract shall continue in full force and effect so that the purpose and intent of this subcontract shall still be met and satisfied.

GC-56 SURVIVAL (Jun 2009)

All terms, conditions and provisions of this subcontract, which by their nature are independent of the period of performance, shall survive the cancellation, termination, expiration, default or abandonment of this subcontract.

GC-57 RELEASE AGAINST CLAIMS (Jun 2009)

SUBCONTRACTOR shall promptly pay all claims of persons or firms furnishing labor, equipment or materials used in performing the Work hereunder. CONTRACTOR reserves the right to require SUBCONTRACTOR to submit satisfactory evidence of payment and releases of all such claims. CONTRACTOR may withhold any payment until SUBCONTRACTOR has furnished such evidence of payment and release and shall indemnify and defend CONTRACTOR and GOVERNMENT against any liability or loss from any such claim.

GC-58 ACCOUNTS, RECORDS AND INSPECTION (Jan 2010)

(a) *Accounts*. The SUBCONTRACTOR shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred;

collections accruing to the SUBCONTRACTOR in connection with the work under this subcontract, other applicable credits, negotiated fixed amounts, and fee accruals under this subcontract; and the receipt, use, and disposition of all Government property coming into the possession of the SUBCONTRACTOR under this subcontract. The system of accounts employed by the SUBCONTRACTOR shall be satisfactory to CONTRACTOR and NNSA and in accordance with generally accepted accounting principles consistently applied.

(b) *Inspection and audit of accounts and records*. All books of account and records relating to this subcontract shall be subject to inspection and audit by CONTRACTOR, NNSA or their designees, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the SUBCONTRACTOR shall afford CONTRACTOR and NNSA proper facilities for such inspection and audit.

(c) *Audit of Lower Tier Subcontractors' records*. The SUBCONTRACTOR also agrees, with respect to any lower tier subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the lower tier subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the lower tier subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the Subcontract Administrator.

(d) *Disposition of records*. Except as agreed upon by CONTRACTOR/NNSA and the SUBCONTRACTOR, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the SUBCONTRACTOR in connection with the work under this subcontract, other applicable credits, and fee accruals under this subcontract, shall be the property of the Government, and shall be delivered to CONTRACTOR or otherwise disposed of by the SUBCONTRACTOR either as the Subcontract Administrator may from time to time direct during the progress of the work or, in any event, as the Subcontract Administrator shall direct upon completion or termination of this subcontract and final audit of accounts hereunder. Except as otherwise provided in this subcontract, all other records in the possession of the SUBCONTRACTOR relating to this subcontract shall be preserved by the SUBCONTRACTOR for a period of three years after final payment under this subcontract or otherwise disposed of in such manner as may be agreed upon by CONTRACTOR and SUBCONTRACTOR.

(e) *Reports*. The SUBCONTRACTOR shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this subcontract as the Subcontract Administrator may from time to time require.

(f) *Inspections*. CONTRACTOR and NNSA shall have the right to inspect the work and activities of the SUBCONTRACTOR under this subcontract at such time and in such manner as they shall deem appropriate.

(g) *Lower Tier Subcontracts*. The SUBCONTRACTOR further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of such subcontract, costs incurred are a factor in determining the amount payable to the lower tier subcontractor.

(h) *Comptroller General*.

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(3) Nothing in this contract shall be deemed to preclude an audit by the Government Accountability Office of any transaction under this contract.

GC-59 CERTIFICATION REGARDING FORMER UC OR CONTRACTOR EMPLOYEES (Jun 2009)

(a) Effective June 1, 2006, individuals who retire under CONTRACTOR'S Defined Benefit Pension Plan, who wish to begin a retirement benefit, are required to have a true and complete severance from CONTRACTOR with no prior prearrangement for reemployment with CONTRACTOR or any of CONTRACTOR'S affiliated companies or subcontractors to do similar work. This can be documented by completing a form at the time of termination stating that no prearrangement for reemployment existed prior to the termination, and by demonstrating a true and complete severance from CONTRACTOR for at least one year before working for any of CONTRACTOR'S affiliated companies or subcontractors.

(b) Effective June 1, 2006, individuals who retire under CONTRACTOR'S TCP 2 401(k) Retirement plan, before attaining age 59 ½, are required to have a true and complete severance from CONTRACTOR with no prior prearrangement for reemployment with CONTRACTOR or any of CONTRACTOR'S affiliated companies or subcontractors to do similar work. This can be documented by completing a form at the time of termination stating that no prearrangement for reemployment existed prior to the termination, and by demonstrating a true and complete severance from CONTRACTOR for at least one year before working for any of CONTRACTOR'S affiliated companies or subcontractors. Individuals who retire under CONTRACTOR'S TCP 2 401(k) Retirement plan after age 59 ½ can be immediately reemployed.

(c) An individual who retired under the University of California Retirement Plan (UCRP) or the Public Employees Retirement System (PERS) may be immediately reemployed by any of CONTRACTOR'S affiliated companies or subcontractors, unless that individual also retired under one of CONTRACTOR'S retirement plans in which case such individual must also comply with paragraph (a) or (b) above.

(d) Any former employee of CONTRACTOR or of the University of California (UC) who was terminated for cause or who resigned in lieu of termination for cause is prohibited from returning to work at Los Alamos National Laboratory (LANL) for a period of seven (7) years, unless there is a compelling reason to allow such individual to return to LANL sooner. SUBCONTRACTOR and its lower tier subcontractors may not employ any former employee of CONTRACTOR or of UC, who was terminated for cause or who resigned in lieu of termination for cause, for any on-site work at LANL or for any work under this subcontract in which such former employee may have any direct or indirect substantive contact with a current CONTRACTOR employee, unless approved by CONTRACTOR in writing prior to commencement of work by SUBCONTRACTOR.

(e) In order to assure compliance with paragraphs (a) through (d), SUBCONTRACTOR shall, with respect to its employees who are assigned to work under this subcontract and those of its lower tier subcontractors' employees who are assigned to work under this subcontract, certify that all individuals who are assigned to work under this subcontract are in compliance with the requirement of paragraphs (a) through (d) of this clause. Such certification must be provided in writing to CONTRACTOR before the start of work under this subcontract and on a quarterly basis thereafter on a form provided by CONTRACTOR. In making this certification SUBCONTRACTOR and its lower tier subcontractors may rely on information provided by applicants for employment or current employees, so long as SUBCONTRACTOR and its lower tier subcontractors have exercised due diligence and have, at a minimum, obtained the following information from each applicant or employee:

(1) whether the applicant or employee was a former UC or CONTRACTOR employee, and if so, the date of separation;

(2) whether the separation was the result of retirement, termination for cause, or resignation in lieu of termination for cause;
(3) whether the applicant or employee is a member of CONTRACTOR'S Defined Benefit Pension Plan or Contractor's TCP 2, 401(k) Plan; and
(4) confirmation that, if the applicant or employee retired under one of CONTRACTOR'S retirement plans, to the extent described above, the applicant had no prior prearrangement for reemployment by SUBCONTRACTOR or one of its lower tier subcontractors prior to termination.

(f) CONTRACTOR may exclude SUBCONTRACTOR from future subcontracts for a reasonable, specified period, if CONTRACTOR determines that SUBCONTRACTOR breached any of the requirements contained in paragraphs (a) through (d) of this clause.

(g) SUBCONTRACTOR shall ensure that the substance of this clause is included in all lower-tier subcontracts awarded pursuant to this subcontract.

GC-60 SUBCONTRACTS WITH CONTRACTOR'S TEAM MEMBERS AND TEAM MEMBER AFFILIATES (Jan 2010)

(a) As used in this provision:

(1) Team Members means any of the following entities: Bechtel National, University of California, The Babcock and Wilcox Company, and the Washington Division of URS, Professional project Services, Inc. and DreamTech Solutions, LLC doing business as Ngenuity.

(2) Team Member Affiliate means any person or entity which is a wholly owned, majority owned, or otherwise an affiliate of any Team Member. The term 'affiliate' is defined at FAR 2.101.

(b) Because of restrictions in the contract between NNSA and CONTRACTOR concerning the payment of fee or profit when subcontracting with any Team Member or any Team Member Affiliate, as well as Organizational Conflict of Interest concerns, neither SUBCONTRACTOR nor any tier of its lower tier subcontractors or suppliers shall enter into a subcontract with any Team Member or any Team Member Affiliate to provide goods or services under this subcontract without the advance written approval of the Subcontract Administrator. In the event that written approval is granted to enter into a subcontract with a Team Member or a Team Member Affiliate, no fee or profit shall be paid to such Team Member or Team Member Affiliate under the proposed subcontract. In the event it is later determined that a Team Member or a Team Member Affiliate has been paid a fee or profit, SUBCONTRACTOR shall reimburse CONTRACTOR the amount of this fee or profit.

(c) SUBCONTRACTOR shall include the substance of this provision in all lower tier subcontracts and purchase orders.