

## EXHIBIT "A" GENERAL CONDITIONS

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**GC-1B DEFINITIONS (Jan 2010)**

'CONTRACTOR' means Los Alamos National Security, LLC (LANS), a limited liability company, which manages and operates Los Alamos National Laboratory pursuant to Contract No. DE-AC52-06NA25396 between the U.S. Department of Energy (DOE) / National Nuclear Security Administration (NNSA) and LANS.

'CONTRACTOR'S Subcontract Administrator' means CONTRACTOR'S duly authorized representative who will administer the terms and conditions of this Subcontract. The Subcontract Administrator is the only individual authorized to direct SUBCONTRACTOR to deviate from the express, written terms of the subcontract.

'GOVERNMENT' means the United States of America and includes the DOE/NNSA and its authorized representatives and successors in interest.

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

'Owner' means the United States Department of Energy National Nuclear Security Administration and its authorized representatives and successors in interest.

'Products' means the goods, materials, articles, equipment, supplies, drawings, data, processes and all other property ordered hereunder, which are required in the performance of CONTRACTOR'S Prime Contract with Owner.

'Subcontract' means this agreement, including all attachments, appendices, sections, exhibits, schedules, and revisions hereto, as issued from time to time.

'SUBCONTRACTOR' means the company, corporation, partnership, individual, or other entity to which this Subcontract is issued, its authorized representatives, successors, and permitted assigns.

**GC-2B CORRESPONDENCE AND SUBCONTRACT INTERPRETATION (Jan 2010)**

SUBCONTRACTOR shall send all correspondence directed to CONTRACTOR to the attention of CONTRACTOR'S Subcontract Administrator named on the first page of this Subcontract at the address(s) shown. This Subcontract number must be referenced on all correspondence.

All questions concerning interpretation or clarification of this Subcontract or applicable standards and codes, (including the discovery of conflicts, discrepancies, errors or omissions) or the acceptable performance thereof by SUBCONTRACTOR shall be immediately submitted in writing to CONTRACTOR for resolution. Subject to the provisions of the clause titled 'CHANGES,' all determinations, instructions and clarifications of CONTRACTOR shall be final and conclusive unless determined to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not subject to substantial evidence.

**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;
- (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-6A ORDER OF PRECEDENCE (Jan 2010)**

In resolving conflicts, discrepancies, errors or omissions, the following order of precedence, from highest to lowest, shall be used:

- (1) General Condition titled 'FAR and DEAR Clauses Incorporated by Reference'
- (2) Remainder of General Conditions
- (3) Special Conditions
- (4) Line Items
- (5) Other terms and conditions

#### **GC-8A COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS (Jan 2010)**

SUBCONTRACTOR warrants that all Products shall have been produced, sold, delivered and furnished in strict compliance with all applicable laws and regulations, including all U.S. export control laws and regulations. SUBCONTRACTOR shall execute and deliver to CONTRACTOR any documents as may be required to effect or to evidence such compliance. All laws and regulations required to be incorporated in agreements such as this one are hereby incorporated herein by reference.

SUBCONTRACTOR shall indemnify, defend and hold CONTRACTOR, its respective affiliates, and Owner, 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, fines and any other losses which any of them may incur as a result of the sale or delivery to CONTRACTOR hereunder of Products which do not meet all requirements of such laws and regulations.

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

SUBCONTRACTOR is required to pay such New Mexico Gross Receipts Tax (NMGR) 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 NMGR 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 NMGR under New Mexico law.

#### **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-31C QUALITY STANDARDS AND ACCEPTANCE (Jan 2010)**

SUBCONTRACTOR shall ensure that the Products comply with the standards of quality specified by this Subcontract or those customary in the industry if no requirement is specified. CONTRACTOR'S quality surveillance representative shall be afforded free access during working hours to plants of SUBCONTRACTOR, and SUBCONTRACTOR agrees to procure a similar right for CONTRACTOR for quality surveillance purposes with respect to SUBCONTRACTOR'S suppliers in order to monitor compliance with quality requirements. CONTRACTOR'S right to inspect, examine, and test the Products shall extend through the manufacturing process, the time of shipment and a reasonable time after arrival at the final destination. SUBCONTRACTOR'S failure to adhere to the standards of quality required under this Subcontract shall be deemed to be reasonable grounds for concern, and CONTRACTOR may demand in writing, that SUBCONTRACTOR provide adequate assurances of SUBCONTRACTOR'S ability to meet said standards.

The Products shall not be deemed accepted until finally inspected and accepted by CONTRACTOR'S representative at final destination. The making or failure to make an inspection, examination or test of, or payment for, or acceptance of the Products shall in no way relieve the SUBCONTRACTOR from its obligation to conform to all of the requirements of this Subcontract and shall in no way impair CONTRACTOR'S right to reject or revoke acceptance of nonconforming Products, or to avail itself of any other remedies to which CONTRACTOR may be entitled, notwithstanding CONTRACTOR'S knowledge of the nonconformity, its substantiality or the ease of its discovery.

### **GC-35E CHANGES (Jan 2010)**

CONTRACTOR'S Subcontract Administrator may at any time direct, in writing, changes, including but not limited to changes in any one or more of the following: (1) additions to or deletions from quantities ordered; (2) delivery schedule; (3) method of shipment or packing; (4) place of delivery; and (5) drawings or specifications. If any such change causes an increase or decrease in the cost of or timing required to provide the Products, an equitable adjustment may be made in the price or delivery schedule, or both, and this Subcontract shall be modified by written amendment executed by authorized representatives of the parties. Any request by the SUBCONTRACTOR for adjustment under this Changes clause must be asserted within thirty (30) days from the date of receipt by the SUBCONTRACTOR of the notification of change. However, nothing in this clause shall excuse SUBCONTRACTOR from proceeding with the order as changed.

If this Subcontract requires CONTRACTOR to review and comment on SUBCONTRACTOR'S technical documents, SUBCONTRACTOR shall submit, within thirty (30) days from the date of SUBCONTRACTOR'S receipt of such comments, any request for adjustment which would result from implementation of CONTRACTOR'S comments. No adjustment will be made hereunder unless CONTRACTOR, through its authorized procurement representative, confirms the change in writing.

### **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-38A RECORDS AND AUDIT (Jan 2010)**

SUBCONTRACTOR shall maintain records and accounts in connection with the performance of this Subcontract for a period of three (3) years from final payment unless otherwise specified by applicable law. Such records and accounts shall accurately document incurred costs, both direct and indirect, of whatever nature. CONTRACTOR, Owner 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 or to evaluate the reasonableness of proposed Subcontract price adjustment requests and claims.

If CONTRACTOR or Owner establishes uniform codes of accounts for the Project, SUBCONTRACTOR shall use such codes in identifying its records and accounts.

**GC-39E WARRANTIES (Jan 2010)**

Unless otherwise provided in this Subcontract, the following warranties shall apply. SUBCONTRACTOR warrants that the Products shall (1) be free from liens and from defects in design, material, workmanship, and title; (2) conform in all respects to the terms of this Subcontract and to the applicable drawings; and (3) be new and of the best quality, if no quality is specified. If, any time prior to one (1) year from the date of CONTRACTOR'S acceptance (or with respect to liens, title or latent defects at any time) ), or SUBCONTRACTOR'S most favored customer warranty term, whichever is longer, it appears that the Products, or any part thereof, do not conform to these warranties, and CONTRACTOR so notifies SUBCONTRACTOR within a reasonable time after its discovery, SUBCONTRACTOR shall promptly correct such nonconformity to CONTRACTOR'S satisfaction, at SUBCONTRACTOR'S sole expense. If SUBCONTRACTOR fails to promptly correct such nonconformity to CONTRACTOR'S satisfaction, CONTRACTOR may (1) reject or revoke acceptance, and cover by making any reasonable purchase of Products in substitution for those rejected, and SUBCONTRACTOR shall be liable to CONTRACTOR for any additional costs for such substituted Products; or (2) proceed to correct SUBCONTRACTOR'S nonconforming work by the most expeditious means available, and the costs for such correction shall be for SUBCONTRACTOR'S account; or (3) retain the nonconforming Products and an equitable adjustment satisfactory to CONTRACTOR, reducing the order price to reflect the diminished value of such nonconforming Products, shall be made by SUBCONTRACTOR.

SUBCONTRACTOR'S liability hereunder shall extend to all damages proximately caused by the breach of any of the foregoing warranties, including incidental damages, such as disassembly, removal, inspection, re-installation, re-testing, and costs of transportation or warehousing.

CONTRACTOR and Owner shall have the right to enforce SUBCONTRACTOR'S warranty obligations set forth in this clause.

**GC-41A INDEMNITY (Jan 2010) (Applies only if work is performed on site at LANL)**

To the maximum extent permitted by applicable law but no further, SUBCONTRACTOR shall indemnify and defend CONTRACTOR and Government, and their subsidiaries and affiliates and the officers, agents, employees, successors and assigns and authorized representatives of all the foregoing, from and against all suits, actions, loss, damage, expense and liability for injury or harm to persons or property resulting from, arising out of, or in any way connected with the performance of this Subcontract, including, but not limited to, property damage, injury or death of any person, including employees of CONTRACTOR, Government or SUBCONTRACTOR, and the breach by SUBCONTRACTOR of any representation, warranty, covenant or performance obligation under this Subcontract. SUBCONTRACTOR'S aforesaid indemnity obligations shall apply to the fullest extent permitted by law, but in no event shall they apply to liability to the extent caused by the negligence or willful misconduct of CONTRACTOR or Government.

CONTRACTOR, Government and the insurers of each shall not financially contribute in any way to defense and indemnity obligations of SUBCONTRACTOR, whether or not covered by insurance.

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

**GC-42C PATENT, TRADEMARK, COPYRIGHT OR TRADE SECRET INFRINGEMENT INDEMNITY (Jan 2010)**

SUBCONTRACTOR shall, at its own expense, indemnify, hold harmless and defend CONTRACTOR and Owner against any and all claims, legal actions, final judgments, reasonable attorneys' fees, fines and any other losses which they incur that are based upon a claim, whether rightful or otherwise, that any Products or parts thereof, furnished by SUBCONTRACTOR under this Subcontract, constitute an infringement of any patent, copyright, trademark or trade secret. If said Products, or any part thereof, are held to constitute infringement and/or their use is enjoined, SUBCONTRACTOR shall, at its own expense, pay all resulting damages and costs, and subject to the following provisions, either procure for CONTRACTOR and Owner an irrevocable, royalty-free license to continue using such Products, or with CONTRACTOR'S prior written approval, replace same with substantially equal but non-infringing Products or modify them so they become non-infringing, provided that no such replacement or modification shall in any way amend or relieve SUBCONTRACTOR of its warranties and guarantees set forth in this Subcontract.

The preceding paragraph shall not apply to any Products, or any part thereof, manufactured to CONTRACTOR'S or Owner's detailed design. As to such Products or any part thereof, the SUBCONTRACTOR assumes no liability whatsoever for infringement.

This indemnity is given upon the condition that CONTRACTOR or Owner shall promptly notify SUBCONTRACTOR of any claim or suit or proceeding in which such infringement is alleged, and shall permit SUBCONTRACTOR to control completely the defense or compromise of any such allegation of infringement, and shall render such reasonable assistance at SUBCONTRACTOR'S cost in the defense thereof as SUBCONTRACTOR may require.

Notwithstanding any proprietary legends or copyright notices to the contrary, CONTRACTOR or Owner may copy or reproduce documents and information furnished by SUBCONTRACTOR in connection with SUBCONTRACTOR'S proposal and with this Subcontract and distribute such copies or reproductions to others for the limited purposes of designing, constructing, operating, maintaining or licensing a project in which any Products furnished by SUBCONTRACTOR under this Subcontract are to be incorporated. SUBCONTRACTOR is responsible for obtaining necessary permission and releases from any third parties placing proprietary rights or copyrights on such documents or information and shall, at its own expense, hold harmless and defend CONTRACTOR and Owner against any and all claims, suits or proceedings based upon a claim whether rightful or otherwise that a proprietary right or copyright has been infringed by copying, reproduction, distribution or use by CONTRACTOR or Owner.

**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-44A SUSPENSION / EXTENSION (Jan 2010)**

Notwithstanding any other provisions of this Subcontract, CONTRACTOR may at any time, suspend, or extend the time for SUBCONTRACTOR'S performance, upon ten (10) days prior written notice of such suspension or extension. Thereafter, SUBCONTRACTOR shall resume performance as directed by CONTRACTOR. In the event of such suspension or extension, SUBCONTRACTOR shall be entitled to reimbursement for additional costs, excluding profit, reasonably and necessarily incurred by SUBCONTRACTOR in effectuating such suspension or extension period, to the extent that such additional costs are actually incurred, if claimed within thirty (30) days after resumption of performance.

**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-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-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.

**GC-61 ENTIRE AGREEMENT (Jan 2010)**

This Subcontract embodies the entire agreement between CONTRACTOR and SUBCONTRACTOR. The parties shall not be bound by or liable for any statement, representation, promise or understanding not set forth herein. Nothing contained in proposals, correspondence, discussions, order acknowledgments or any other of SUBCONTRACTOR'S forms or documents has any effect on this Subcontract unless specifically incorporated herein.

**GC-62 PAYMENT (Jan 2010)**

Payment terms are specified on the face of this Subcontract, subject to any limitations as provided elsewhere in this Subcontract.

SUBCONTRACTOR shall submit an original invoice to the address designated on the face of this Subcontract. The invoice must include, at a minimum, the following:

- Name, address, and SUBCONTRACTOR'S DUNS number;
- Name, title and phone number of the person to notify in the event of a defective invoice;
- Invoice date and number;
- Subcontract number;
- Line item number, description, quantity, unit of measure, unit price and extended price of items delivered; and
- Terms of any discount for prompt payment offered.

If Subcontract fulfillment occurs by more than one shipment, SUBCONTRACTOR shall submit only one (1) invoice per month, after shipment is made. Any cash discount period offered by SUBCONTRACTOR shall be computed from the date of CONTRACTOR'S receipt of a proper invoice.

SUBCONTRACTOR shall be paid, except as otherwise stated in this Subcontract, upon submission of proper invoices; however, payment may be withheld or portions thereof may be deducted if in CONTRACTOR'S reasonable opinion SUBCONTRACTOR is not performing in accordance with the provisions of this Subcontract or if proper set-offs in favor of CONTRACTOR in other transactions are asserted. Invoice terms of payment shall be from receipt of goods or receipt of an acceptable invoice at CONTRACTOR'S Accounts Payable Department, whichever is later.

**GC-63 DELIVERY (Jan 2010)**

Preparation for shipment is the SUBCONTRACTOR'S responsibility. Crating or packaging shall be in accordance with standard industry practices, unless otherwise stated herein, and in a manner to provide a reasonable degree of protection against damage in transit. SUBCONTRACTOR shall include this Subcontract number on each shipping carton and packing slip. Items purchased under this Subcontract shall not be combined with items from other subcontracts / purchase orders.

If CONTRACTOR has designated a carrier and method of shipment, and shipment is made via a carrier other than as specified in the shipping block of this Subcontract, without CONTRACTOR'S prior written approval, CONTRACTOR shall not be liable for loss or damage in transit and reserves the right to refuse to pay any excess shipping costs resulting from the change in carrier.

**GC-64 TITLE AND RISK OF LOSS (Jan 2010)**

All Products furnished by SUBCONTRACTOR hereunder shall become the property of Government upon the Products being identified as appropriated to this Subcontract, payment therefore, or upon delivery, whichever occurs earliest. Notwithstanding the foregoing, SUBCONTRACTOR shall be responsible for and shall bear any and all risk of loss or damage to the Products until delivery thereof in accordance with the delivery provisions of this Subcontract. Upon such delivery, SUBCONTRACTOR shall cease to bear the risk of loss or damage; provided, however, that any loss or damage, whenever occurring, which results from SUBCONTRACTOR'S nonconforming packaging or crating shall be borne by SUBCONTRACTOR.

**GC-81A LANL DELIVERY DAYS (Aug 2014)**

Unless otherwise approved in writing by the Subcontract Administrator, SUBCONTRACTOR shall not make deliveries to LANL on the following days:

- Saturday and Sunday;

- The days designated as national holidays (i.e., New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day);
- If a national holiday falls on a Saturday or Sunday, the preceding Friday or the following Monday may not be a LANL work day; therefore contact the Subcontract Administrator for an acceptable delivery date;
- The Friday after Thanksgiving; and
- The days falling between Christmas Day and New Year's.

**GC-84 ASSESSMENT OF SUBCONTRACTOR'S PERFORMANCE (Aug 2014)**

CONTRACTOR shall periodically assess SUBCONTRACTOR'S performance to document how well SUBCONTRACTOR performed to the various standards/requirements described in this subcontract. That information will be used by CONTRACTOR in the future to determine whether SUBCONTRACTOR will be invited to submit proposals/bids for future solicitations for similar work.

**GC-87 RADIOACTIVE SEALED SOURCES (Aug 2014)**

Whenever CONTRACTOR purchases a sealed radioactive source (i.e., radiation which is enclosed in delivery devices such as cylinders, pellets, pins, plaques, rods, tubes or wires) from SUBCONTRACTOR, SUBCONTRACTOR shall affix a copy of the Source Certificate to the exterior of each sealed source container and the original Source Certificate shall be enclosed within the container.