

**SUBCONTRACT AGREEMENT**

JOB NO:	SUBCONTRACT NO.
Contractor: Nova Group, Inc. Business Address: 185 Devlin Road P.O. Box 4050 Napa, CA 94558  Contact Person:  Telephone Number: Fax Number: E-Mail	Subcontractor: Business Address:  Contact Person:  Telephone Number: Fax Number: E-Mail

**EXHIBIT SB TO THIS SUBCONTRACT AGREEMENT IS A CERTIFICATION OF THE SUBCONTRACTOR'S SIZE AND STATUS IN ACCORDANCE WITH THE SMALL BUSINESS ACT AND 13 C.F.R. PARTS 121-127. THIS CERTIFICATION MUST BE COMPLETED AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE SUBCONTRACTOR AND RETURNED TO THE CONTRACTOR. FAILURE TO COMPLETE, SIGN, AND RETURN THIS DOCUMENT WILL PRECLUDE PROCESSING SUBCONTRACTOR'S REQUEST FOR PROGRESS PAYMENTS.**

**EXHIBIT SC TO THIS SUBCONTRACT AGREEMENT INCLUDES FEDERAL ACQUISITION REGULATIONS (FAR) RELATING TO IMMIGRATION, E-VERIFY REQUIREMENTS, BUSINESS ETHICS & COMPLIANCE, CERTIFICATIONS AND CLAIMS OR PROPOSALS, PAYMENT TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS, AND CLEAN AIR AND WATER. SUBCONTRACTOR, BY SIGING THIS AGREEMENT, HEREBY CERTIFIES PER THE UNINCLUDED PROVISIONS.**

**EXHIBIT FED TO THIS SUBCONTRACT AGREEMENT INCLUDES THE PROVISIONS OF THE FEDERAL ACQUISITION REGULATIONS (FAR) OR CODE OF FEDERAL REGULATIONS (CFR) WHICH ARE APPLICABLE TO THIS SUBCONTRACT IN ACCORDANCE WITH THE CONTRACT. THE SUBCONTRACTOR SHALL INCLUDE THESE CLAUSES IN ALL COVERED SUBCONTRACTS AND PURCHASE ORDERS.**

**SECTION 1. ENTIRE CONTRACT**

THIS AGREEMENT ("Subcontract" or "Agreement") is made [date]

On or about [date], Nova Group, Inc. ("Contractor") entered into Contract No. \_\_\_\_\_ with \_\_\_\_\_, ("Owner"). That Contract and all plans, specifications, amendments, general, special and supplemental conditions, specifically including all security and badging conditions and requirements, addenda and change orders thereto are incorporated by reference in this Subcontract. Specifications which are incorporated by reference into the Contract are so incorporated by reference into this Subcontract. That Contract, including all amendments and subsequent Contract can be accessed at \_\_\_\_\_. Specifications which are incorporated by reference into the Contract are so incorporated by reference into this Subcontract.

\_\_\_\_\_ ("Subcontractor") desires to perform a part of the work specified in the Contract, and Contractor is willing to sublet that work to Subcontractor for the consideration and upon the terms and conditions set forth herein.

Subcontractor certifies that it is fully familiar with the terms and conditions of the Contract, the location of the job site, and the conditions under which the work is to be performed, and that it enters into this Subcontract based upon its investigation of all such matters and is not relying on any opinions or representations of Contractor.

Subcontractor is bound to the Contractor to the same extent that Contractor is bound to Owner under the Contract. Where, in the Contract, reference is made to Contractor and the work or specifications therein pertain to Subcontractor's trade, craft, or type of work, such work or specifications shall be interpreted to apply to Subcontractor instead of Contractor.

Contractor and Subcontractor therefore agree as follows:

**SECTION 2 SUBCONTRACT SCOPE**

The Subcontractor shall perform the following work ("Work") and shall furnish all supervision, labor, materials, layout, tools, equipment, supplies, temporary utilities, shop drawings and all other things necessary (as defined herein) for the construction and completion of the Work and work incidental thereto in strict accordance and full compliance with the Contract as follows:

**2.1 Scope.**

**2.2 Submittals:** The Subcontractor shall prepare and submit to Contractor in form and content acceptable to Contractor and Owner all shop drawings, product samples, test data, manufacturers' literature, operating and maintenance instructions manuals, as-builts, and similar submittals as described in the Contract that are directly and indirectly applicable to the Subcontractor's Work. The Subcontractor is responsible for ensuring that all necessary submittals required by the Contract are identified and will be provided

(a) Subcontractor shall prepare and deliver its submittals to Contractor in a manner consistent with the Schedule and in such time and sequence so as not to delay Contractor or Owner in the performance of the Contract.

(b) In addition to the number of submittals identified in the Contract, provide an additional copy and one (1) electronic of all submittals.

(c) Contractor/Owner shall have forty-five (45) calendar days for review and approval of the submittals.

(d) The approval of any Subcontractor submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of this Subcontract unless express written approval is obtained from Contractor/Owner authorizing such deviation, substitution or change.

(e) Subcontractor shall not manufacture, release, ship, or start work until Contractor provides release.

(f) The Subcontractor shall include a Certificate of Conformance with the submittal data.

(g) Approved submittals from Subcontractor is an express condition precedent to Contractor's obligation to pay Subcontractor.

**2.2.1 Additional Submittal Requirements:**

(a)

**SECTION 3 SUBCONTRACT PRICE**

**3.1 Price Schedule**

Contractor agrees to pay the Subcontractor the sum of \$x.xx, subject to the provisions hereof and to make payments in accordance with this Subcontract. Unless stated otherwise, the prices in this Subcontract are in United States dollars.

Item	Cost Code	Description	Quantity	UM	Unit Price	Extended Price
1						
2						
3						
						<b>total subcontract</b>

NOTES:

(1) If the actual bond costs have not been determined, the bond price is based on an estimate of 2% of the Subcontract value.

(2) If this Subcontract includes Not-to-Exceed (NTE) amount(s), Subcontractor shall perform Work on a reimbursable basis within the NTE the price identified. Subcontractor shall notify the Contractor when 75% of the NTE amount has been expended or is expected to be expended. Subcontractor shall not exceed the NTE amount without approval by the Contractor and issuance of a revised Subcontract.

(3) If this Subcontract includes unit price(s), Subcontractor acknowledges that the unit price(s) stated shall represent full payment for all such Work, including direct and indirect costs and profit.

**3.2 Schedule of Values.** Subcontractor shall, within ten (10) calendar days of executing this Subcontract, provide Contractor with a schedule of values subject to Contractor's review and approval defining the scope of work in measurable quantities with unit prices. Contractor shall have thirty (30) calendar days within which to review and approve said schedule of values. An approved schedule of values from Subcontractor is an express condition precedent to Contractor's obligation to pay Subcontractor. The quantities and unit prices shall be utilized on periodic invoices for work performed.

## **SECTION 4 PAYMENT**

### **4.1 Invoices.**

The Subcontractor's invoices shall be submitted to the Contractor in form and content acceptable to Contractor and Owner. The Subcontractor shall submit monthly invoices month no later than the 4<sup>th</sup> calendar day of the month for Work performed up to and including the last day of the previous month. Subcontractor's invoices will be the basis for determining amounts earned by the Subcontractor. Subcontractor invoices shall be submitted as follows:

### **4.2 Payment Schedule.**

Notwithstanding anything to the contrary in Section 3 Contract Price, the amount(s) specified above shall be paid by Contractor as follows:

(1) Partial payments will be made to Subcontractor each month in an amount equal to the value of the Work in place (and stored at the site, if payment therefor is provided for in the Contract), as determined by Owner less the aggregate of prior payments, payable within seven (7) business days after Contractor receives payment therefor from Owner. Partial payments shall not be construed as an acceptance of Work performed or waiver of any of Contractor's rights.

(2) When the Work has been completed and accepted in writing by Owner, Contractor will pay the balance of the amount due to Subcontractor within seven (7) business days after Contractor receives full payment therefor from Owner. Acceptance of final payment shall constitute a release by Subcontractor in favor of Owner and of Contractor and its surety of all claims with respect to this Subcontract, other than claims excepted by the written consent of Contractor.

(3) Receipt by Contractor of payment from Owner for the Work is a condition precedent to the obligation of Contractor to make any payment to Subcontractor, unless nonpayment by Owner is due to a default by Contractor.

(4) If payment is not made in accordance with the above, Contractor shall pay Subcontractor interest for the period beginning on the day after the required payment date and ending on the date on which payment is made, computed at the rate of interest established by the Secretary of the Treasury and published in the Federal Register for interest payments under Section 12 of the Contract Disputes Act of 1978 at the time Contractor accrues the obligation to pay an interest penalty.

(5) If requested by Contractor, Subcontractor shall provide certified payrolls, payroll affidavits, receipts, vouchers, releases of claims for labor and material, and written partial or final waivers of lien, stop notice and bond rights to Contractor, and receipt of such payrolls and waivers also is a condition precedent to the obligation of Contractor to make any payment to Subcontractor.

(6) Subcontractor agrees to provide Contractor with a list of its suppliers with aggregate purchase orders or other contracts of \$5,000 or more; said list to include the name of the supplier, the address and telephone number of the supplier, and the nature of that purchased. Providing said list to Contractor is an express condition precedent to Contractor's obligation to pay Subcontractor.

(7) Contractor has the right to set-off amounts due from Subcontractor pursuant to this Subcontract or any other transaction against amounts payable to Subcontractor under this Subcontract. Contractor, at its option, shall have the right to make payment to Subcontractor and any actual or potential mechanic's lien, stop notice or bond right claimant by joint check. If any such claimant records a mechanic's lien, files a stop notice or commences an action on Contractor's bond, Contractor shall have the right to retain from payment due or to become due to Subcontractor an amount sufficient to indemnify (hereinafter defined) Contractor in connection therewith. All payments received by Subcontractor from Contractor shall be held in trust by Subcontractor and shall be applied to Subcontractor's obligations under this Subcontract until Subcontractor has been paid in full. Subcontractor shall furnish proof of the foregoing to Contractor on demand.

**4.3 Overpayments.** If the Subcontractor becomes aware of a duplicate Subcontract payment or that the Contractor has otherwise overpaid on a Subcontract payment, the Subcontractor shall immediately notify the Contractor and request instructions for disposition of the overpayment.

**4.4 Electronic Certified Payrolls.** To the extent Subcontract is performing work covered by the Davis Bacon Act, Subcontractor, and its lower tier subcontractors performing work covered by the Davis Bacon Act, shall provide certified payrolls in electronic format using LCPtracker, [www.lcptracker.com](http://www.lcptracker.com). Contractor shall provide Subcontractor with information to enable Subcontractor and its lower tier subcontractors, to access LCPtracker and secure online training.

## **SECTION 5 CHANGES IN THE WORK**

Contractor shall have the right to change the scope of the Work in any respect by written order to Subcontractor. The order may direct Subcontractor

- (i) to submit to Contractor a substantiated written proposal for an adjustment of the Subcontract price and/or time for performance before commencing the changed Work or
- (ii) to commence with the changed Work and then submit such a proposal to Contractor.

Subcontractor shall comply with the order and submit the proposal to Contractor within ten (10) business days after receipt of the order. Promptly after the submission of the proposal, the parties shall agree in writing upon such an adjustment. If the parties do not so agree, the adjustment, if any, shall be made in accordance with the changes clause in the Contract.

Any change in the scope of the Work ordered by Contractor and any change in the terms of this Subcontract or in the time or manner of payment to Subcontractor agreed to by the parties may be made without notice to Subcontractor's surety, if any, and no such change shall release or exonerate Subcontractor's surety, if any.

Contractor shall not be liable for any backcharge from Subcontractor unless the subject and amount of the backcharge was first authorized in writing by Contractor.

## **SECTION 6 SCHEDULE OF WORK**

Contractor shall have complete control of the job site and shall have the right to determine the time when, and the sequence in which, the work of Contractor, of Subcontractor and of other Subcontractors will be performed. Subcontractor shall comply with Contractor's progress schedule, as Contractor may modify it from time to time. Subcontractor shall prosecute the Work in a prompt and diligent manner so as to promote the general progress of the entire construction and shall not interfere with the Work of Contractor, or any other subcontractor, or any other contractor on the job.

If requested by Contractor, Subcontractor shall submit to Contractor a progress schedule for the Work, or at Contractor's election, cooperate with Contractor in the preparation of a progress schedule. Subcontractor acknowledges both four (4) ten (10)-hour day work weeks and five (5) eight (8)-hour day work weeks may be used throughout the course of this project. Contractor shall notify Subcontractor of work schedule prior to beginning of on-site contract work.

## **SECTION 7 NOTICE TO CURE**

If Subcontractor does not diligently prosecute the Work or maintain Contractor's schedule for the Work or timely pay any person or entity who has the right to file a stop notice with the Owner or to commence an action on Contractor's payment bond, or if Subcontractor otherwise materially breaches this Subcontract and if Subcontractor or its surety fails

within two (2) business days after receipt of written notice of such default from Contractor to commence and thereafter continue diligently to remedy such default, or if Subcontractor is otherwise guilty of a material breach of a provision of this Subcontract and fails within forty-eight (48) hours after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, Contractor shall have the right either

- (i) to perform the balance of the Work and deduct the cost thereof from amounts due and to become due to Subcontractor under this Subcontract or
- (ii) to terminate this Subcontract.

If Contractor terminates this Subcontract,

- (i) Subcontractor, on demand, shall assign to Contractor such purchase orders and subcontracts that Subcontractor has entered into with respect to the Work as may be designated by Contractor,
- (ii) Contractor shall have the right to use, to complete the Work, all on-site materials, implements, equipment, appliances or tools belonging to Subcontractor and
- (iii) Contractor shall have no further obligation to Subcontractor except to pay to Subcontractor, after the Work has been completed and Contractor has received final payment therefor from Owner, an amount equal to the excess, if any, of the unpaid balance of the amount payable under this Subcontract over the cost incurred by Contractor to finish the Work; if such cost exceeds such unpaid balance, Subcontractor or its surety promptly shall pay the excess to Contractor.

As used in this paragraph and hereafter, the term "cost" shall mean the cost incurred by Contractor plus an amount equal to 15% of such cost for overhead and an amount equal to 10% of total of the foregoing for profit. The remedies specified in this paragraph are in addition to any other legal remedies available to Contractor.

## **SECTION 8 BANKRUPTCY/INSOLVENCY**

Subcontractor agrees that if an order for relief is entered with respect to Subcontractor pursuant to the Bankruptcy Reform Act of 1978, as it may be amended, or if Subcontractor makes a general assignment for the benefit of Subcontractor's creditors or if a receiver is appointed for Subcontractor, or if Subcontractor seeks protection under the Bankruptcy Code or commits any other act of insolvency, it is probable that Subcontractor will not be able to perform Subcontractor's obligations under this Subcontract. Accordingly, if any such event occurs, Contractor shall have the right to request Subcontractor or Subcontractor's successor in interest to provide Contractor with written assurance that is reasonably adequate to Contractor that Subcontractor or Subcontractor's successor in interest will be able to continue to perform Subcontractor's obligation under this Subcontract. If Subcontractor or Subcontractor's successor in interest fails to respond to such request within ten (10) business days after receipt thereof or if the response within that period is not adequate assurance, Contractor shall have the right to terminate this Subcontract by written notice to Subcontractor or to Subcontractor's successor in interest and the sections herein applicable to termination shall apply. Pending a response to Contractor's request, if Subcontractor then is in default under this Subcontract, Contractor shall have the right to cure such default and to offset the cost incurred by Contractor in connection therewith against amounts due and to become due to Subcontractor under this Subcontract. If such cost exceeds the unpaid balance of the Subcontract price, Subcontractor shall be liable to Contractor for the excess.

## **SECTION 9 DAMAGES CAUSED BY DELAYS**

If Subcontractor is delayed in the prosecution of the Work by Owner, by Contractor, by another subcontractor of Contractor, or by any cause that would entitle Contractor to an extension of time under the Contract, Subcontractor shall give Contractor written notice of the occurrence of the cause within four (4) business days after the commencement thereof and keep Contractor currently informed in writing with respect thereto until the delay has terminated. If Subcontractor fails to give such notice within the time specified, Subcontractor shall be deemed conclusively to have waived its right to an extension of time based upon such cause.

If Subcontractor is so delayed, the parties shall agree in writing upon an extension of the time for the performance of the Work or, if they are unable to so agree, Subcontractor's entitlement to, and length of, the extension of time shall be determined pursuant to the Dispute Resolution provisions hereof. The length of the extension of time shall be equal to the number of calendar days that the completion of Subcontractor's Work actually was delayed by such cause. Anything in this paragraph to the contrary notwithstanding, if such delay (other than a delay caused by Contractor or another subcontractor) also concurrently delays the completion of the Contract, Subcontractor shall not be entitled to an extension of time that is longer than the extension of time granted by Owner to Contractor therefor.

Subject to the above, Subcontractor shall perform the Work within such time as will permit Contractor to complete the Contract within the time specified therein. If Subcontractor breaches this obligation, Subcontractor shall be liable to Contractor

(i) for all liquidated damages that are collected by Owner from Contractor that are caused by Subcontractor's breach and

(ii) for such other damages (losses, costs, expenses, liabilities and damages, including consequential damages) that are caused to Contractor by Subcontractor's breach.

#### **SECTION 10 TERMINATION FOR CONVENIENCE BY OWNER**

If Owner terminates the Contract for a reason other than the default of Contractor, or stops or suspends work under the Contract, Contractor shall have the right to terminate this Subcontract or Contractor shall have the right to order Subcontractor to stop or suspend the Work, as the case may be, and Contractor will pay Subcontractor such amount as Contractor receives from Owner that is attributable to Work, payable within ten (10) business days after Contractor receives payment from Owner. Said payment to Subcontractor shall relieve Contractor from all further obligations under this Subcontract.

Additionally, the Contractor may at any time and for any reason terminate Subcontractor's services and work at Contractor's convenience. Termination shall be by service of written notice to Subcontractor's place of business.

Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities, and supplies in connection with the performance of this Subcontract, and shall, if requested, make every reasonable effort to procure termination or cancellation of all existing orders or contracts upon terms satisfactory to Contractor or, at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived there from.

Subcontractor shall thereafter do only such work as may be necessary to preserve and protect the work already in progress and to protect material and equipment on the job site or in transit thereto.

#### **SECTION 11 DAMAGES CAUSED BY OWNER**

If Subcontractor shall claim that it is entitled to additional compensation or damages by reason of any act or omission of Owner or for which Owner is responsible, Subcontractor promptly, and in no event later than ten (10) business days, shall submit a claim therefor in writing to Contractor and Contractor will, on behalf of Subcontractor, submit the claim to Owner and invoke on behalf of Subcontractor all procedures and remedies provided in the Contract for the resolution of the claim.

Subcontractor agrees to be bound to Contractor to the same extent as Contractor is bound to Owner by such procedures and remedies and by the final decision of any Contracting Officer, court, board or other tribunal having jurisdiction of the claim pursuant to the Contract or to law. Except as above provided, Subcontractor hereby waives all rights Subcontractor otherwise may have against Contractor in regard to such a claim and agrees not to seek payment of such claim from Contractor, except to the extent that Contractor actually receives payment for the claim from Owner. Subcontractor shall, at Subcontractor's expense, cooperate fully with Contractor in the submission and in all steps taken in connection with the prosecution of the claim, prepare all supporting data, produce all witness and consultants and do all things necessary to present said claim properly, and shall reimburse Contractor for all reasonable expenses and attorneys' fees incurred by Contractor in connection therewith. If Owner shall actually pay additional compensation or damages to Contractor on account of said claim, then Contractor promptly will pay an amount equal thereto to Subcontractor, less Contractor's mark-up thereon.

In the event any claim of Subcontractor is presented to Owner with claims of Contractor, or others, Contractor's reasonable determination as to the amount, if any, paid by Owner with respect to Subcontractor's claim shall be final and binding on Subcontractor.

#### **SECTION 12 DAMAGES CAUSED BY CONTRACTOR**

If Subcontractor shall claim that it is entitled to additional compensation or damages by reason of any act or omission of Contractor or for which Contractor is responsible, Subcontractor shall give written notice thereof to Contractor within five (5) business days after the occurrence of the act or omission, stating in detail the nature thereof and the additional compensation or damages sought to the extent that the same then can be determined. If Subcontractor fails to give

such notice within the time specified, Subcontractor shall be deemed conclusively to have waived any claim based upon such act or omission. Promptly after each such notice is given, the parties shall agree upon the Subcontractor's entitlement to, and the amount of, such claim. If the parties are unable to so agree, the dispute will be determined by the dispute resolution provisions hereof.

## **SECTION 13 INSURANCE**

**13.1 Casualty Insurance.** Subcontractor shall, at its expense, and prior to the start of work, procure and maintain insurance on all of its operations, with companies acceptable to Contractor, as follows:

**13.1.1 Workers' Compensation and Employer's Liability Insurance.** Workers' Compensation insurance shall be provided as required by any applicable law or regulation. Employer's Liability insurance shall be provided in amounts not less than:

- \$ 1,000,000 each accident for bodily injury by accident
- \$ 1,000,000 policy limit for bodily injury by disease
- \$ 1,000,000 each employee for bodily injury by disease

If there is an exposure of injury to Subcontractor's employees under the U. S. Longshoreman and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

The Workers' Compensation Policy shall include a Waiver of Subrogation and Workers' Compensation lien and Right of Intervention in favor of the Contractor and Owner.

**13.1.2 General Liability Insurance.** Subcontractor shall carry primary Commercial General Liability insurance (Insurance Services Office, Form CG 00 01 or equivalent) covering all operations by or on behalf of Subcontractor providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including but not limited to coverage for:

- (1) premises and operations
- (2) products and completed operations
- (3) contractual liability
- (4) broad form property damage (including completed operations)
- (5) explosion, collapse and underground hazards (including subsidence and any other earth movement)
- (6) personal injury liability
- (7) independent contractors

Should Subcontractor's policy contain a "cross-suits" exclusions, the cross exclusion shall not apply to any "additional insureds", and the endorsement shall be modified to exclude "additional insureds" from the "cross-suits" exclusion. The limits of liability shall be not less than:

- \$10,000,000 each occurrence (combined single limit for bodily injury and property damage),
- \$10,000,000 for personal injury liability,
- \$10,000,000 aggregate for products-completed operations,
- \$10,000,000 general aggregate.

The general aggregate limit shall apply separately to Subcontractor's work under this Subcontract. For subcontracts in excess of \$10,000,000.00, an additional \$5,000,000 Excess Liability Insurance policy shall be maintained over the General Liability coverage. Such Excess coverage shall, at a minimum, include the items set forth in 1-7 above. Higher limits of liability may be required for hazardous work. Any such requirement is set forth in Section 22, Miscellaneous Provisions.

In addition, Subcontractor shall maintain primary and excess products liability and completed operations coverage for at least two (2) years following completion of the project and its acceptance by Owner.

If any umbrella or excess liability policy is used to meet the limits of liability contained herein, said policy shall be "flowing form" of the underlying primary policy and shall meet the additional insured and primary insurance required herein.

Contractor, Owner, and any other interested parties, as designated by Contractor, shall be named as additional insureds under the Commercial General Liability Policy and such insurance afforded the additional insureds shall apply as primary insurance. The additional insured coverage shall provide coverage at least as broad as ISO, additional insured endorsement forms CG 20 10 and CG 20 37, 07/04 edition, or similar forms as approved by Contractor. The duty to provide such additional insured coverage is independent of the defense and indemnify obligations contained in this Subcontract. Any other insurance maintained by Contractor or Owner shall be excess insurance and not be called upon to contribute with this insurance.

Coverage for the Contractor, and the Owner as additional insureds, shall be provided, from the beginning of the work until at least two (2) years following completion of the project and its acceptance by Owner, by endorsements providing coverage at least as broad as Insurance Services Office, Additional Insured Endorsement Forms CG 20 10 and CG 20 37 or similar form as approved in writing by Contractor. The duty to provide such additional insured coverage is independent of the defense and indemnity obligations set forth in Section 14.3, Indemnification.

Subcontractor shall ensure that their subcontractors (at all tiers) of every tier also carry insurance in like form with the limits of liability specified above. Subcontractor and all subcontractors (at all tiers) shall provide written proof that the requisite insurance is being carried prior to entry to the jobsite. Contractor may also require that the subcontractor (at all tiers) name Contractor and Owner as additional insureds. Such naming shall be provided at no additional cost or expense to Contractor or Owner.

The Commercial General Liability Policy shall include a Waiver of Subrogation in favor of the Contractor and Owner.

**13.1.3 Claims Made/Self Insurance Provisions.** Subcontractor shall not provide general liability insurance under any Claims Made General Liability form without the express written consent of Contractor. Any self-insurance program providing coverage in excess of \$50,000.00 per occurrence requires the express written consent of Contractor.

**13.1.4 Automobile Liability Insurance.** Subcontractor shall carry automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

The Automobile Liability Policy shall include a Waiver of Subrogation in favor of the Contractor and Owner.

**13.1.5 Hazardous Materials.** If Subcontractor's work includes the remediation of hazardous materials, or if Subcontractor's work creates an exposure to hazardous materials, as those terms are defined in federal, state or local law, Subcontractor and its subcontractors and suppliers must obtain a "Contractor's Pollution Liability" policy with limits not less than \$1,000,000 per occurrence for Bodily Injury, Personal Injury and Property Damage. If Subcontractor's work includes the hauling of hazardous materials or pollutants (including waste), the policies must extend pollution coverage to the transportation of hazardous materials or pollutants. Such coverage shall include Contractor as an additional insured. Subcontractor will attach any endorsements required by law, such as the MCS-90 endorsement required by the Motor Carrier Act of 1980, if applicable.

**13.1.6 Professional Liability.** If Subcontractor's work includes design/build services (e.g. design/build responsibility for mechanical, electrical, structural, plumbing, or fire sprinkler systems) Subcontractor must obtain a Professional Liability Insurance Policy with limits not less than \$1,000,000 per occurrence, with a retroactive or prior acts date not later than the date such services began. Such insurance shall be maintained for not less than three (3) years following completion of the project and its acceptance by Owner.

**13.1.7. Deductibles.** Certificates of insurance, as evidence of the insurance required by this Subcontract and including the required "additional insured" endorsement(s) shall be furnished by Subcontractor to Contractor. Certificates shall set forth deductible amounts applicable to each policy and all exclusions or limitations not set forth in ISO Commercial General Liability Form CG 00 01. The Contractor may allow deductible provisions and/or self-insured retentions of up to \$50,000 if Subcontractor is willing to post security, guaranteeing payment of losses and defense expenses for a period of one (1) year after the project is completed. Standard ISO Form CG 00 01 exclusions will also be allowed. Allowance of any additional exclusions or coverage limiting endorsements is at the discretion of the Contractor. Regardless of the consent to exclusions, coverage limitations or deductibles by the Contractor, the Subcontractor shall be responsible for any deductible amount or any loss arising out of coverage denials by his insurance carrier(s).

Subcontractor's certificates of insurance shall provide that there will be no cancellation or reduction of coverage without an unqualified, thirty (30) day, prior written notice to Contractor.



**13.1.8 Continuous Insurance Coverage.** Subcontractor shall arrange for new Certificate(s) to be automatically forwarded to Contractor upon expiration of old Certificate(s).

Contractor may take whatever actions are necessary to assure Subcontractor's compliance with its obligations under this section of the Subcontract. Should any insurance policy lapse or be canceled during the period that insurance is required by this Subcontract, the Subcontractor shall, prior to the effective expiration or cancellation date, furnish the Contractor with evidence of renewal or replacement of the policy.

**13.1.9 Effect of Providing Insurance Certificate.** Any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of its duties and responsibilities under this Subcontract including the duty to provide the requisite insurance, the duty to indemnify and hold harmless Contractor as set forth in Section 14.3, Indemnification, and the duty to provide thirty (30) calendar days' written notice prior to cancellation and/or any adverse material change in the requisite insurance. Receipt by Contractor of any certificate of insurance shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Subcontract.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Subcontractor for liability in excess of such coverage nor shall it preclude the Contractor from taking such other actions as is available to it under any other provision of this Subcontract or by law. If higher limits or other forms of insurance are required in the Contract Documents, Subcontractor will comply with such requirements. Failure to continuously satisfy the insurance requirements herein is a material breach of this Subcontract. In the event Subcontractor fails to maintain any part of the insurance coverage required, Contractor may, but is not required to, maintain such coverage and charge the expense to Subcontractor or may pursue its remedies under this Subcontract.

Subcontractor shall provide in the description of operation/locations block on the Insurance Certificate the following:

**"for the Contract No \_\_\_\_\_."**

## **13.2 Property Insurance**

**13.2.1 Waiver of Subrogation.** Contractor and Subcontractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to the extent reimbursed by any property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If any applicable policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

**13.2.2 All-Risk Insurance.** In addition, Subcontractor shall maintain in full force and effect "All Risk Insurance", acceptable to Contractor, for all work, including any equipment, and property obtained by or for Subcontractor which is to become a part of the Work while such equipment and property is stored at the jobsite, at temporary locations, or while in transit to the project from such temporary locations. Subcontractor shall also be responsible for insuring Subcontractor's owned, rented or borrowed equipment.

## **SECTION 14. SUBCONTRACTOR OBLIGATIONS**

Subcontractor agrees:

### **14.1 Responsibilities**

To furnish all supervision, administration, labor, material, tools, equipment, supplies, power, shop drawings, fuel, light, water, telephone service, as-built drawings, operator training, operations manuals, testing, and all other things necessary to perform and incidental to the performance of the Work.

### **14.2 Obligations under the Prime Contract**

To assume and perform all obligations of Contractor under the Contract that are applicable to the Work, and all rights and remedies of Owner under the Contract that are applicable to the Work may be enforced by Contractor against Subcontractor.

**14.3 Indemnification**

To the fullest extent permitted by law, to indemnify Contractor and Owner, including their officers, agents, employees, affiliates, parents and subsidiaries, and each of them, with respect to injury to, or death of, any person (including employees of Subcontractor) and damage to, or destruction of, property that arises out of, or is in any way connected with, the performance of the Work. Subcontractor's agreement to indemnify shall apply to any acts or omissions (whether active or passive) and to the willful misconduct on the part of Contractor or Subcontractor (or their respective employees, agents or subcontractors of any tier or the latter's employees or agents); provided, that said indemnity shall not be applicable to the sole negligence or the sole willful misconduct of

- (i) Owner, or its employees or agents or
- (ii) Contractor, or its employees or agents or
- (iii) independent contractors (other than Subcontractor) who are directly responsible to Owner or to Contractor.

The term "indemnify" or "indemnity," as used in this paragraph and elsewhere in this Subcontract, means to indemnify and hold harmless the indemnitees and its employees and agents from all liability, loss, damage, penalties, expenses and attorneys' fees in connection with any claim, demand or cause of action asserted against the indemnitee or its employees or agents based upon the matter to which the indemnity relates. If Subcontractor breaches its agreement to indemnify, all liability, loss, damage, penalties, expenses and attorneys' fees incurred by the indemnitee or its insurance carrier shall be covered by the indemnity.

To indemnify Contractor and Owner with respect to any breach by Subcontractor of any of its obligations under this Subcontract.

To indemnify Contractor for any penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, caused by the action or inaction of Subcontractor.

To indemnify Contractor for any violation or infraction by Subcontractor of any law, order, citation, rule, regulation, standard, ordinance or statute any way relating to the occupational health or safety of employees, including, but not limited to the use of Contractor's or other's equipment, hoists, elevators, or scaffolds.

The indemnification provision of this Section shall extend to claims occurring after this Subcontract is terminated as well as when it remains in force.

**14.4 Patent Infringement**

To indemnify Contractor and Owner with respect to infringement of any patent rights by Subcontractor.

**14.5 Subcontractor Employees**

To remove from the site of the Work any employees of Subcontractor or of its subcontractors of any tier to whom Contractor has any reasonable objection.

**14.6 Claims, Liens, Bond Claims**

To pay when due all third parties who have the right to assert mechanic's lien, stop notice or bond rights with respect to the Work, to provide to Contractor on demand satisfactory evidence of such payment and not to permit any such

- (i) mechanic's lien to be recorded,
- (ii) stop notice to be filed or
- (iii) bond right to be asserted or,

if any such mechanic's lien is recorded or such stop notice is filed, promptly to provide a bond to release the same, or, if any such bond right is asserted, promptly to provide Contractor and its surety with an amount in cash to indemnify Contractor and its surety against the same.

**14.7 Permits and Licenses**

To obtain and pay for all permits, licenses and inspections required in connection with the Work.

**14.8 Assignment**

Not to assign, sublet or further subcontract any of the Work or any payments to become due under this Subcontract without the prior written consent of Contractor. Such consent shall not be unreasonably withheld.

**14.9 Risk of Loss**

That Subcontractor shall be responsible for its own work, property and materials and shall bear the risk of damage to, or destruction of, the Work from any cause, other than negligence of Contractor, until Contractor is relieved of responsibility therefor to and by Owner and that Subcontractor promptly shall repair or replace any damage to, or destruction of, the Work, for which it bears said risk. Subcontractor waives all rights Subcontractor might have against Contractor for loss or damage to Subcontractor's work, property, or materials.

**14.10 Contractor's Use or Occupation of Work**

That Contractor shall have the right to use or occupy any portion of the Work before the Work is accepted by Owner, but such use or occupation shall not relieve Subcontractor from any of its obligations under this Subcontract.

**14.11 Waiver of Obligation**

That the waiver by Contractor of any obligation of Subcontractor shall not be construed as a waiver by Contractor of any other obligation of Subcontractor.

**14.12 Clean-Up**

To keep the site of the Work clean and free from unnecessary tools, equipment, materials and supplies and, on written demand by Contractor, to clean the site of the Work and remove such unnecessary tools, equipment, materials and supplies; and, if Subcontractor fails to do so within 48 hours after receipt of such demand, that Contractor shall have the right to do so and charge Subcontractor the reasonable cost thereof.

**14.13 Repair of Damage**

That if Subcontractor damages the work of Contractor or any other Subcontractor or other contractor on site, Subcontractor promptly will repair the same at Subcontractor's sole cost.

**14.14 Cutting and Patching**

To perform in a workmanlike manner all cutting and patching required by Contractor in connection with the Work.

**14.15 Warranties & Bond under Prime Contract**

To provide all warranties and guarantees and related bonds, if any, applicable to the Work that are required by the Contract.

**14.16 Shop Drawings, Samples and Submittals**

To provide all shop drawings, samples and submittals applicable to the Work that are required by the Contract.

**14.17 Inspection**

That Subcontractor has fully acquainted itself with all obstructions, subsurface and other conditions relevant to the Work, the site of the Work and its surroundings, and that it has made all investigations essential to a full understanding of the difficulties which may be encountered in performing the Work; that Subcontractor assumes the risk of any variances between the actual conditions and the conditions shown or represented in the Contract or this Subcontract and, anything in the Contract, this Subcontract, or in any representations, statements or information made or furnished by Contractor or Owner notwithstanding, Subcontractor will complete the Work for the amount stated in this Subcontract, and assume full and complete responsibility for all conditions relating to the Work, the site of the Work and its surroundings and all risks in connection therewith, except as otherwise provided for in the Contract for changed or differing site conditions.

That Subcontractor shall at all times furnish to Contractor and its representatives safe and ample facilities for inspecting material at the site of construction, shops, factories or any place of business of Subcontractor and its subcontractors and material men where materials under this Contract may be in course of preparing, process, manufacture or treatment. Subcontractor shall furnish to Contractor as often as required by Contractor, full reports of the progress of the work at any place where materials under this Contract may be in the course of preparation or manufacture. Such reports shall show the progress of such preparation and manufacture in such details as may be required by Contractor, including, but not limited to, any plans, drawings or diagrams in the course of preparation.

#### **14.18 Debarment**

That Subcontractor certifies, to the best of its knowledge and belief, that

(a) Subcontractor and/or any of its principals are not presently debarred, suspended, proposed for debarment, or declared ineligible for contracts by any federal agency;

(b) Subcontractor and/or any of its principals have not within a three-year period preceding this date been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of recording, making false statement, or receiving stolen property;

(c) Subcontractor and/or any of its principals are not presently indicted of, or otherwise criminally or civilly charged by a governmental entity with the commission of any of the offenses enumerated in (b) above;

(d) Subcontractor has not, within a three (3)-year period preceding this offer, had one or more contracts terminated for default by any federal agency; and

(e) Subcontractor shall provide immediate written notice to Contractor if, at any time hereafter during the term of this subcontract and until Contractor has been fully released by the federal governments under its prime contract, if Subcontractor learns that these certifications were erroneous at the execution hereof or have become erroneous by reason or changed circumstances.

#### **14.19 Controlled Substance Screening**

To the extent not in conflict with any collective bargaining agreement to which Subcontractor is a party, all of Subcontractor's employees on the site of the above-referenced project shall be subject to drug testing as follows: prior to initial entry on site; post-accident/incident defined when based upon suspected impairment; reasonable suspicion when based upon suspected impairment; and no more than monthly random sampling.

Subcontractor agrees that all of Subcontractor's employees who test positive for those substances established by the National Institute on Drug Abuse (NIDA) and the Department of Health and Human Services (DHHS) at those levels adopted by NIDA and DHHS shall be immediately removed from the site by Subcontractor. Said employees shall not be returned to the site of the above-referenced project for a minimum period of thirty (30) calendar days and not until said employees have screened negatively for drugs.

Should Contractor determine that Subcontractor does not have a comparable drug screening protocol to that of Contractor, Subcontractor agrees that Contractor shall perform on site drug screening and analysis on behalf of Subcontractor, at Contractor's expense. This on-site drug screening shall be the same as Contractor performs on its own employees; provided, however, that if Contractor dispatches its employees to a lab or clinic for offsite initial screening, any and all costs and expenses associated with the dispatch of Subcontractor employees to said lab or clinic shall be borne exclusively by Subcontractor. Should Subcontractor perform and/or have performed its collection of specimens and analysis, said collection and analysis shall be performed under the specifications hereof, and Subcontractor shall not be entitled to any credit therefor.

Subcontractor agrees that the random selection of Subcontractor's employees for drug screening shall be made by Contractor. Subcontractor agrees to indemnify and hold Contractor harmless for any and all liability, loss, damage, penalties, expenses and attorneys' fees in connection with any claim, demand or cause of action asserted against Contractor or its employees or agents based upon the above-referenced drug screening. Subcontractor further agrees that it shall not be entitled to additional time or compensation from Contractor as a result of any drug screening provided herein.

#### **14.20 Release of Information.**

Subcontractor shall not publicly release information, photographs, or other documents concerning any aspect of the materials or services relating to this contract without the prior written approval of the Owner.

**SECTION 15 SAFETY**

Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes with respect to occupational health and safety, hazard communication, the handling and storage of hazardous materials, accident prevention, safety equipment and practices including the accident prevention and safety program of Owner and Contractor and those relating to Environmental Protection. Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees and for employees of its subcontractors and suppliers of material and equipment, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards, and statutes.

To the extent applicable under the Contract, FAR 52.223-3 is fully incorporated herein by reference, and a copy of said FAR 52.223-3 is attached hereto and incorporated herein by reference as though fully set forth at length.

**SECTION 16 INDEPENDENT CONTRACTOR**

Subcontractor is, and shall remain until the completion of the Work, an independent contractor and an employing unit subject as an employer to all federal and state laws and regulations pertaining to social security, unemployment and disability compensation and other payroll deductions and contribution with respect to its employees. Subcontractor shall maintain all records, make all reports and pay all payroll taxes, deductions and contributions required by such laws and regulations.

**SECTION 17 BONDS**

Concurrent with the execution of this subcontract, Subcontractor shall furnish standard Subcontract Performance and standard Subcontract Payment bonds in favor of Contractor, each in a penal sum equal to the amount or the aggregate amounts specified in Contract Price. The form on all the bonds, the surety thereon, and the terms thereof shall be acceptable to Contractor. The invoice for bond premium shall be billed to Contractor directly from Subcontractor and include a copy of the paid invoice from Subcontractor to Surety or Broker. Contractor payment for bond premium shall not exceed the actual cost of Subcontractors premium. Any such bonds shall remain valid and in full effect for the warranty period specified in the Contract.

Subcontractor acknowledges that entry to the jobs site will be denied until Contractor has received and approved payment and performance bonds from Subcontractor.

**SECTION 18 TIME**

Time is of the essence of this Subcontract.

**SECTION 19 DISPUTE RESOLUTION**

If any dispute shall arise between Contractor and Subcontractor pertaining in any manner to the interpretation of this Subcontract, or to the breach hereof, which the parties are unable to settle by mutual agreement, Contractor shall have the exclusive option either to have the dispute determined by court or by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Contractor shall exercise said option by commencing a court action or by commencing an arbitration proceeding. If Subcontractor first commences a court action with respect to a dispute which Contractor desires to have determined by arbitration or an arbitration proceeding which Contractor desires to have determined by a court action, Contractor shall have the right to have said court action or arbitration proceeding stayed if Contractor promptly shall commence the arbitration proceeding or court action desired by Contractor.

Judgment upon the award in any arbitration proceeding may be entered in any court having jurisdiction thereof. The prevailing party (as determined by the court or arbitrator(s)) shall be entitled to reasonable expenses and attorneys' fees from the other party in an amount to be fixed by the court or arbitrator(s). The arbitrator(s) in any arbitration proceeding shall have the right to allocate his or their fees between the parties or to charge all of such fees to one party, as the arbitrator(s) shall deem to be just. The laws of the site of the Work shall govern all disputes referred to in this paragraph. The provisions of Section 1283.05 of the Code of Civil Procedure of the State of California (pertaining to depositions and discovery) hereby are incorporated by reference herein and are made a part hereof, if the site of the Work is in California. If the Contract contains a clause for the settlement of disputes by arbitration and if an arbitration

proceeding is commenced by Contractor or by Owner which involves the Work, upon written demand by Contractor, Subcontractor shall become a party to the arbitration proceeding and Subcontractor shall be bound by the award therein and by any judgment entered upon the award. Subcontractor shall require each of its subcontractors, of every tier, to agree to the obligation of Subcontractor specified in the preceding sentence.

Provided, however, that in the event of any dispute or controversy with Contractor or any other Subcontractor over any matter whatsoever, Subcontractor shall not cause any delay or cessation in or of Subcontractor's work or the work of any other Subcontractor or of the Contractor, but shall proceed under this Subcontract with the performance of the work required thereby.

**SECTION 20 SMALL BUSINESS PARTICIPATION**

**20.1 North American Industry Classification System (NAICS)**

The NAICS for the Work under this subcontract is:

NAICS Number:	Size Standard:
---------------	----------------

**20.2 Size Standards**

Small Business Size Standards matched to North American Industry Classification System (**NAICS**) are found at [www.naics.org](http://www.naics.org) or [www.census.gov](http://www.census.gov). Sector 23 is construction; subsector 235 construction of buildings, subsector 237 heavy and civil engineering construction, and subsector 234 specialty trade contractors. Upon request, Contractor will provide Subcontractor with a copy of the Small Business Size Standards matched to NAICS.

**20.3 Small Business Subcontracting Plan**

Subcontractor shall be bound to the extent applicable to the provisions of FAR 52.219-9, Small Business Subcontracting Plans and, to the extent that Subcontractor is a large business, Subcontractor acknowledges that Subcontractor is expressly subject to FAR 52.219-9. If Subcontractor is a large business and this Subcontract is in excess of \$1,500,000.00, then Subcontractor shall adopt a Small Business Subcontract plan as described in FAR 52.219-9 and shall supply complete Standard Form 294 and Standard Form 295 and submit the same to Contractor as provided for in FAR 52.219-9. Complete Plan no later than ten (10) calendar days after issuance of Subcontract.

**20.3.1 Subcontracting Plan Information**

Contract Number:	
Contractor DUNS:	
Contractors Official for receipt or rejecting ISR:	Mona Carlson
Email:	<a href="mailto:contracts@novagr.com">contracts@novagr.com</a>

**SECTION 21 SUBCONTRACT TO PREVAIL**

To the extent that any document attached hereto and/or incorporated by reference herein by Subcontractor whether the same by titled a proposal, quotation, addendum, attachment, exhibit, etc., is in conflict with the provisions of this Subcontract, all terms and conditions of this Subcontract shall prevail and the conflicting provisions of the attached and/or incorporated document shall be deemed of no force and effect.

**SECTION 22 MISCELLANEOUS PROVISIONS**

(1) This Subcontract contains the entire Subcontract between the parties with respect to the subject matter thereof. No representative of Subcontractor or of the Contractor has authority to make any representations or agreements not set forth herein. No modification of the terms hereof shall be binding unless reduced to writing and executed by both parties.

(2) This Subcontract may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement.

(3) If any term of this Subcontract is finally determined to be contrary to law, the remaining terms of this Subcontract shall remain in full force and effect.

(4) Each person executing this Subcontract represents that the execution of this Subcontract has been duly authorized by the party on whose behalf the person is executing the Subcontract and that such person is authorized to execute the Subcontract on behalf of such party.

(5) This Subcontract shall bind and inure to the benefit of the respective successors and assigns of the parties hereto and, if Subcontractor is a natural person, his heirs, legatees and personal representatives.

IN WITNESS WHEREOF: The parties have executed this Subcontract for themselves, their heirs, executors, successors, administrators, and assigns on the day and year below written.

**CONTRACTOR: Nova Group, Inc.**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
 Project Manager

**SUBCONTRACTOR: \_\_\_\_\_**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
 (Signature)

Print Name/Title: \_\_\_\_\_

Must be signed by an officer, if a corporation; a partner, if a partnership; or by the sole proprietor

State License No.		State:	
Organization:	<input type="checkbox"/> Corporation	State of Incorporation:	
	<input type="checkbox"/> Partnership		
	<input type="checkbox"/> Sole Proprietorship		
Federal Tax ID No			

**EXHIBIT SB  
BUSINESS STATUS CERTIFICATION**

**Subcontractor, by signing this Subcontract, certifies to the following:**

**1 DUNS, CAGE CODE, AND NAICS CODE**

Subcontractor hereby certifies himself/herself/itself as

DUNS:	
Cage Code:	
NAICS:	

**2 CERTIFICATION**

Subcontractor hereby certifies himself/herself/itself as

<input type="checkbox"/> Large Business Concern	<input type="checkbox"/> Small Business Concern
	<input type="checkbox"/> Small Disadvantaged Business Concern
	<input type="checkbox"/> HUBZone Small Business Concern
	<input type="checkbox"/> Woman-Owned Small Business Concern
	<input type="checkbox"/> Veteran Owned Small Business Concern
	<input type="checkbox"/> Service-Disabled Veteran Owned Small Business Concern

The offeror represents and certifies that the above information is true and understands that whoever for the purpose of securing a contract or subcontract under subsection (a) of Section 1207 of Public Law 99-661 misrepresents the status of any concern or person as a small business concern, small disadvantaged, HUBZone small, woman owned small, or veteran or service-disabled veteran (as described below) shall be

- (i) punished by imposition of a fine, imprisonment, or both;
- (ii) be subject to administrative remedies including suspension and disbarment; and\
- (iii) be ineligible for participation in programs conducted under the authority of the Small Business Act.

See also FAR 52.219(e)(4). The offeror represents and certifies that by submission of its offer and execution of this subcontract the certifications in System for Awards Management, [www.sam.gov](http://www.sam.gov), are correct and complete as of the date of the offer for this subcontract.

**3 BUSINESS TYPE DEFINITIONS**

**Small Business Concern:** A concern including affiliates, that is independently owned and operated, not dominant in its field of operations in which it is bidding on Government Contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

**Subsidiary:** All divisions or subsidiaries of the Corporation.

**Small Woman-owned Business Concern:** A small business concern that is at least 51% owned by a woman or women who are U.S. citizens and who also control and operate the business.

**International Business:** Business whose goods/services are manufactured outside the U.S.

**City-State/Government/Non-Profit Organization:** Offering goods or services at no profit.

**Small Disadvantaged Business (SDB):** A small business concern that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or a publicly-owned business having at least 51% of its stock owned by one or more socially and economically disadvantaged individuals and has its management and daily business controlled by one or more such individuals.

**Certified 8(a) Firm:** A firm owned and operated by socially and economically disadvantaged individuals and eligible to receive federal contracts under the SBA's 8(a) Business Development Program.



Subcontract No.: \_\_\_\_\_

**HUBZone Firm:** The firm must be a small business by SBA size standards; its principal office must be located within a HUBZone, which includes lands on federally recognized Indian reservations; it must be owned and controlled by one or more U.S. citizens; and at least 35% of its employees must reside in a HUBZone. **NOTE:** HUBZone small businesses must be certified by SBA and listed in Contractors Central Registration (CCR), integrated into System for Awards Management, [www.sam.gov](http://www.sam.gov), Dynamic Small Business Search ([http://dsbs.sba.gov/dsbs/search/dsp\\_dsbs.cfm](http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm)) to be considered for any preferences, including procurements in which price and evaluation adjustments are offered.

**Veteran Owned Small Business:** A small business concern that is at least 51% owned by one or more veterans or, in the case of any publicly owned business, not less than 51% of the stock of which is owned by one or more veterans and that management and daily business operations of which are controlled by one or more veterans.

**Service-Disabled Veteran Owned Small Business:** A small business concern that is at least 51% owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51% of the stock of which is owned by one or more veterans and that management and daily business operations of which are controlled by one or more service-disabled veteran. A service connected disability is defined in 38 U.S.C. 101(16).

**SUBCONTRACTOR:** \_\_\_\_\_

By: \_\_\_\_\_ Dated: \_\_\_\_\_

Print Name \_\_\_\_\_

Print Title \_\_\_\_\_

TEMPLATE

**EXHIBIT SC  
SUBCONTRACTOR CERTIFICATION**

**1. IMMIGRATION**

Subcontractor by signing this Subcontract represents and warrants that it is, and will remain, in compliance with any and all provisions of the Immigration Reform and Control Act of 1986 (IRCA), as amended, the Immigration and Nationality Act, as amended, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all other applicable immigration laws, rules, and regulations (Immigration Laws) including all form I-9 verification, E-Verify, and record keeping requirements.

Subcontractor shall Indemnify and hold Contractor and its Surety harmless from any claims, liabilities including any damages resulting from work stoppages or delays occasioned by or arising from any subcontractor noncompliance with IRCA or any such immigration laws, ordinances, rules, regulations, orders or decisions, as relates to the work of this Subcontract. The Subcontractor agrees to submit a certification, acceptable to contractor that its employees have presented the correct documents to legally work in the United States. Subcontractor also agrees to insert the substance of this clause, including this paragraph, in all Subcontracts or Purchase Orders hereunder.

**1.1.1 E-VERIFY REQUIREMENT**

Subcontractor by signing this Subcontract/purchase order, Subcontractor/vendor hereby certifies that it has previously enrolled in the U.S. Citizenship and Immigration Services E-Verify program or shall enroll in that program within 30 calendar days of the award of this subcontract/purchase order. Subcontractor/vendor hereby agrees that

- (1) it shall use the E-Verify program to verify the employment eligibility of all new hires thereafter;
- (2) it shall use the E-Verify program to verify the employment eligibility of all employees assigned to perform work or services related to this subcontract/purchase order; and
- (3) shall include this clause in all covered subcontracts and purchase orders.

Upon request, subcontractor/vendor shall furnish evidence of its enrollment in the E-Verify program. If the subcontract/purchase order is \$3,000.00 or less or is for commercial off-the-shelf items ("COTS items") or COTS items except for minor modifications as defined in FAR § 2.101(3)(ii), this clause shall not be applicable.

**2. BUSINESS ETHICS & COMPLIANCE**

The Subcontractor, by signing this Agreement, hereby certifies that it has reviewed the requirements of FAR §§ 52.203-13 and 52.203-14, that it has or will adopt a written code of business ethics and conduct within 30 days of the award of this subcontract, and will otherwise comply with the applicable requirements of the above referenced FAR provisions, and will include the substance of those FAR provisions in subcontracts or purchase orders in excess of \$5,000,000 and a performance period in excess of 120 days unless said lower tier subcontract (purchase order) is for the acquisition of a commercial product or shall be performed entirely outside of the United States. Upon Contractor's request, the Subcontractor shall furnish a copy of its written code business ethics and conduct. This clause is not applicable if the subcontract or purchase order is less than \$5,000,000.

**3. CERTIFICATIONS AND CLAIMS OR PROPOSALS**

**3.1 CONTRACT DISPUTES ACT CERTIFICATIONS**

With respect to any Subcontractor claims submitted by Contractor to Owner, Subcontractor agrees to provide at the time of the submission of the claim to Contractor a certification signed by a senior company official in charge of the work involved, that the claim is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the contract adjustment for which Subcontractor believes the Owner is liable. Subcontractor agrees Contractor may rely exclusively on this certification in providing any certification Contractor may be required to submit to the Owner insofar as the claim includes a claim for or on behalf of Subcontractor. Subcontractor further agrees to recertify its claim in the above form at any time requested by Contractor.

**3.2 PROPOSALS AND REPRESENTATIONS**

If the Owner-Contractor Agreement is subject to the Contract Disputes Act of 1978, the False Claims Act (Title 31 of the United States Code, Section 231, *et seq.*), the Forfeiture Statute (Title 28 of the United States Code, Section (2514),

Title 18 of the United States Code, Section 287, Title 18 of the United States Code, Section 1001, Title 10 of the United States Code, Section 2306(1), and Title 41 of the United States Code Section 254, or any other federal laws or any state law which impose requirements of good faith, accuracy, completeness and fair dealing in connection with the presentation of cost proposals or claims against, or the provisions of statements to, any party. Subcontractor and its surety hereby undertake to defend at its own cost with its own legal counsel, indemnify and hold harmless Contractor and their respective officers, directors, employees, sureties and agents, from any and all loss, cost, penalty, damage, claim, demand, expense and assessment whatsoever, including reasonable attorney's fees, arising from, relating to or in any manner connected with any allegation or claim of, or finding of, a violation of one or more applicable federal or state laws, provided that the alleged violation relates to, is directed at or is attributable to the Subcontractor, specifically, or relates to, is directed at or is attributable to those claims and supporting data submitted by Subcontractor in connection with the presentation of any claim by the Subcontractor for additional compensation, or adjustment of the contract terms, payment request, or any other act or statement by the Subcontractor.

### **3.3 CERTIFICATION AND DISCLOSURE REGARDING PAYMENT TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

The Subcontractor, by signing this Agreement, hereby certifies that to the best of his or her knowledge it complies with the requirements set forth in FAR 52.203-11 - Certification and Disclosure Regarding Payment to Influence Certain Federal Transactions (Sept 2007), that to the best of its knowledge and belief no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract, and that the Subcontractor will include the language of this certification in all subcontracts, purchase orders, purchase agreements, etc., awards in excess of \$100,000 and require that all recipients of such a subcontract, purchase order, purchase agreement, etc., to certify and disclose accordingly and to obtain the equivalent certification from lower tier subcontractors or suppliers with contracts or purchase orders in excess of \$100,000.

### **4. ENVIRONMENTAL COMPLIANCE.**

#### **4.1 CLEAN AIR AND WATER**

The Subcontractor, by signing this Agreement, hereby certifies that

(a) Any facility to be used in the performance of this proposed contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;

(b) The Offeror will immediately notify the Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the EPA, indicating that any facility that the Offeror proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and

(c) The Subcontractor will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt Subcontract.

**EXHIBIT FED  
FEDERAL LAW & REGULATION COMPLIANCE**

**Subcontractor, by signing this Subcontract, agrees to abide by the provision of the Federal Acquisition Regulations (FAR) or Code of Federal Regulations (CFR) which are applicable to this Subcontract in accordance with the Contract. Particular attention is directed to the requirements of the following provisions. The Subcontractor shall include these clauses in all covered subcontracts and purchase orders.**

**1 FEDERAL LAW & REGULATION COMPLIANCE**

To comply with all applicable federal, state and municipal laws, regulations, orders, citations and standards and with the programs and policies of Owner and Contractor that pertain to the Work including, without limitation

- (i) those pertaining to prevailing wage (specifically the current Davis-Bacon Act, 40 U.S.C. Section 276a) and amendments thereto;
- (ii) those pertaining to affirmative action and the elimination of discrimination in employment and employment practices because of race, creed, color, national origin, sex, and age (specifically, the provisions of the following laws are hereby made a part of this Subcontract by reference: Executive Order #11246, as amended, Sec. 503 of the Rehabilitation Act of 1973, Sec. 402 of the Vietnam Era Veterans Readjustment Assistance Act, the Americans with Disabilities Act), the federal Family and Medical Leave Act),
- (iii) those pertaining to occupational health, safety, accident prevention and safety equipment, and
- (iv) those pertaining to hazardous substances

and to conduct all training, make all reports and maintain all records required by any of the foregoing or by Owner or Contractor.

**2. EQUAL EMPLOYMENT OPPORTUNITY VIOLATIONS.**

Subcontractor is aware that Contractor is an EEO employer, and Subcontractor at its expense agrees to comply and conform to the equal employment opportunity policies of Contractor and any and all applicable Governmental authorities

**3. AFFIRMATIVE ACTION FOR VETERANS AND THE DISABLED**

Subcontractor acknowledges that as a government contractor, Contractor is subject to various federal laws, executive orders, and regulations regarding equal opportunity and affirmative action which may also be applicable to Subcontractor. **Accordingly, Subcontractor shall, to the extent they apply, abide by the requirements of 41 CFR §§ 60-1.4(a), 60-4.3, 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individual based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

**4. BUY AMERICAN ACT.**

The Buy American Act applicable to this contract is: \_\_\_\_\_

Subcontractor is required to provide a letter of certification.

**5. ORDER RATING.**

This order is rated DO-C2 in accordance with provisions of DPAS Regulation 1 and/or DMS Regulation 1.

Date(s) Delivery Required: \_\_\_\_\_  
Signed: \_\_\_\_\_

Purchase orders and subcontracts issued by you or by your subcontractors and suppliers for materials or equipment must be certified and signed as follows to meet the requirements of DPAS.

This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations Systems Regulations (15 CFR 700).  
PRIORITY RATE: DO-C2  
Date(s) Delivery Required: \_\_\_\_\_  
Signed: \_\_\_\_\_

The delivery required date must always be entered. Do not use such terms as "immediately" or "as soon as possible" as this does not constitute a delivery date and nullifies the effect of the rating.