**NATIONAL TECHNOLOGY AND ENGINEERING SOLUTIONS OF SANDIA, LLC (NTESS)**

**SF 6432-CI (05/01/2017)**

**SECTION II**

**STANDARD TERMS AND CONDITIONS FOR COMMERCIAL ITEMS**

**THE FOLLOWING CLAUSES APPLY TO THIS SUBCONTRACT AS INDICATED UNLESS SPECIFICALLY DELETED, OR EXCEPT TO THE EXTENT THEY ARE SPECIFICALLY SUPPLEMENTED OR AMENDED IN WRITING IN THE COVER PAGE OR SECTION I. (CTRL+CLICK ON A LINK BELOW TO ADVANCE DIRECTLY TO THAT SECTION)**

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# ACCEPTANCE OF TERMS AND CONDITIONS (Ts&Cs)

Subcontractor, by signing this subcontract and/or delivering item or services ordered under this subcontract, agrees to comply with all the Ts&Cs and all specifications and other documents that this subcontract incorporated by reference or attachment. NTESS hereby objects to any Ts&Cs contained in any acknowledgment of this contract that are different from or in addition to those mentioned in this document. Failure of NTESS or Subcontractor to enforce any of the provisions of this subcontract shall not be construed as evidence to interpret the requirements of this subcontract, nor a waiver of any requirement, nor of the right of NTESS or Subcontractor to enforce each and every provision. All rights and obligations shall survive final performance of this subcontract.

# APPLICABLE LAW

The rights and obligations of the parties hereto shall be governed by this subcontract and construed in accordance with the law of the state of delivery, except for Federal Acquisition Regulation (FAR) and FAR supplement clauses which shall be in accordance with federal law. The parties agree to jurisdiction in the Federal District Court, with venue in the district closest to the delivery point of the items or services giving rise to the claim. In the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in the State Court closest to the delivery point of the item or services giving rise to the claim.

# ASSIGNMENT

Subcontractor shall not assign rights or obligations to third parties without the prior written consent of NTESS. When the Subcontractor becomes aware that a change in its ownership has occurred, or is likely to occur, the Subcontractor shall notify the Subcontracting Professional (SP) within 30 days. However, Subcontractor may assign rights to be paid amounts due or to become due if NTESS is promptly furnished an executed Assignment of Payments form. Administration of this subcontract may be transferred from NTESS to U. S. Department of Energy/National Nuclear Security Administration (DOE/NNSA) or its designee, and in case of such transfer and notice thereof to the Subcontractor, NTESS shall have no further responsibilities hereunder.

# BANKRUPTCY

If the Subcontractor enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the SP responsible for this subcontract within five (5) days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing of the subcontract numbers for which final payment has not been made.

# CANCELLATION OR TERMINATION FOR CONVENIENCE

**(a)** NTESS may cancel this subcontract, in whole or in part, if the Subcontractor fails to comply with any of the terms of this subcontract, or fails to provide adequate assurance of future performance. In that event, NTESS shall not be liable for any amount for item or services not yet accepted by NTESS.

**(b)** NTESS may terminate for the convenience of NTESS or the government this subcontract, in whole or in part, for any item or services not yet accepted by NTESS. In that event NTESS shall be liable for the purchase price of item or services already completed or identified to this subcontract but not yet accepted by NTESS.

**(c)** Subcontractor shall not be liable for delays in performance occasioned by causes beyond Subcontractor's reasonable control and without Subcontractor's fault or negligence.

**(d)** The rights and remedies of NTESS in this clause are subject to the Disputes clause of this subcontract.

# CHANGES

The (SP) may at any time, by written notice, make changes within the general scope of this subcontract in any one or more of the following: (1) description of the services to be performed; (2) place of performance; and (3) the amount of services to be furnished. If any such change causes a difference in the cost of, or the time required for performance, an equitable adjustment shall be made in the price and/or delivery schedule and other affected provisions if and only if the order has not left Subcontractor’s point of origin for transportation to NTESS. Such adjustment shall be made by written revision to this subcontract signed by both parties. Any claim for adjustment by Subcontractor must be made within twenty (20) days from the date of receipt of NTESS' change notice, although NTESS in its sole discretion may receive and act upon any claim for adjustment at any time before final payment. Nothing in this clause, including any disagreement with NTESS about the equitable adjustment, shall excuse Subcontractor from proceeding with the subcontract as changed.

# COMPLIANCE WITH LAWS

Subcontractor shall comply with all applicable federal, state, and local laws and ordinances and all pertinent lawful orders, rules, and regulations and such compliance shall be a material requirement of this subcontract.

# DEFINITIONS

The following terms shall have the meanings set forth below for all purposes of this subcontract.

**(a)** **SUBCONTRACT** means Contract, Purchase Order, Price Agreement, Lower-Tier Subcontract, Ordering Agreement, or modifications thereof.

**(b)** **SUBCONTRACTOR** means the person or organization that has entered into this subcontract to sell something to NTESS.

**(c)** **GOVERNMENT** means the United States of America and includes the U.S. DOE/NNSA or any duly authorized representative thereof.

**(d) ITEM** means commercial items, commercial services and commercial components as defined in FAR 52.202-1.

**(e)**  **NTESS** means National Technology and Engineering Solutions of Sandia, LLC, under Contract No. DE-NA0003525 with the U.S. DOE/NNSA

**(f)**  **SP** means Subcontracting Professional, the only person authorized to execute and/or administer this subcontract for NTESS.

**(g)** **SELLER** means the person or organization that has entered into this subcontract to sell something to NTESS

**(h)** **SDR** means Sandia Delegated Representative. The SP may delegate personnel as authorized representatives for such purposes as and to the extent specified in the

delegation. Such delegation shall be in writing to the Subcontractor, and shall designate by

name the personnel so delegated as authorized representatives. The SDR shall

exercise no supervision over the Subcontractor's employees. THE SDR's AUTHORITY IS

LIMITED SOLELY TO THE AUTHORITY ENUMERATED IN SUCH WRITTEN

DELEGATION. THE SDR HAS NO AUTHORITY TO CHANGE ANY TERM OR

CONDITION CONTAINED IN THIS SUBCONTRACT.

**(i)** **SUBCONTRACT** also means any lower tier subcontract as indicated

# DISPUTES

Subcontractor and NTESS agree to use the NTESS Acquisition Conflict Resolution Process set forth at: <http://www.sandia.gov/bus-ops/scm/Subcontractor/Subcontractor-info.html> for resolving any and all disputes arising from this subcontract. NTESS Acquisition Conflict Resolution Process available in “Policies” tab.

**ETHICAL CONDUCT**

The Subcontractor, including any officers, employees or lower tier subcontractors while engaged in work related to this subcontract shall:

(a) Comply with all applicable laws, regulations and the terms of the subcontract

(b) Conduct themselves with the highest degree of ethics, integrity and honesty

(c) Treat others with respect and dignity, and create an environment free from discrimination, harassment, threats, violence, bullying, intimidating conduct or other similar behavior

(d) Promptly report violations to the NTESS Ethics organization and the NTESS Procurement Policy and Compliance department manager

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# EXCESS FREIGHT CHARGES

When NTESS pays any amounts for freight charges in connection with this subcontract, Subcontractor is responsible for and shall pay to NTESS the amount of any excess freight charges if the routing specified in writing by the SP is not used. If the specified routing cannot be used, Subcontractor shall promptly notify the SP before shipment, and obtain new routing directions from the SP.

# [INDEPENDENT SUBCONTRACTOR RELATIONSHIP](#_INDEPENDENT_CONTRACTOR_RELATIONSHIP)

**(a)** Subcontractor is an independent Subcontractor in all its operations and activities related to this subcontract. The employees used by Subcontractor to perform Work under this subcontract shall be Subcontractor's employees without any relation whatsoever to NTESS.

**(b)** Subcontractor shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Subcontractor, its officers, employees, agents, suppliers, or lower-tier subcontractors at any tier, in the performance of any of its obligations under this subcontract.

**(c)** Subcontractor shall indemnify and hold harmless NTESS from and against any actual or alleged liability, loss, costs, damages, fees of attorneys, and other expenses which NTESS may sustain or incur in consequence of:

**(i)** Subcontractor's failure to pay any employee for the Work rendered under this subcontract, or

**(ii)** any claims made by Subcontractor's personnel against NTESS.

The Subcontractor shall flow down the requirements of this clause to any applicable subcontracts for services.

# INFORMATION SECURITY

Official Use Only (OUO) and NTESS Proprietary Information (NPI) Subcontractor shall ensure NTESS information utilized in the performance of this subcontract is not used or disseminated for any other purpose. Subcontractor shall protect OUO and NPI information from unauthorized dissemination (e.g. to persons who do not require the information to perform work under this subcontract) and shall follow all requirements for OUO and NPI documents specified below. In addition, Subcontractor shall adhere to any Nondisclosure Agreement terms and conditions executed between Subcontractor and NTESS.  In the event of conflict between such Nondisclosure Agreement and any provisions contained herein, the Nondisclosure Agreement terms and conditions shall govern.

Definition: OUO and NPI information are unclassified with the potential to damage government, commercial or private interests if disseminated to persons who do not have a need-to-know the information.

1. Protection in Use: Precautions shall be taken by the Subcontractor to prevent access to documents marked as containing OUO information by persons who do not require the information to perform their jobs or other DOE-authorized activities.
2. Protection in Storage: Documents marked as containing OUO information shall be stored in a locked room or other locked receptacle (e.g., a locked file cabinet, desk).
3. Reproduction: Documents marked as containing OUO information shall be reproduced to the minimum extent necessary in performance of the subcontract. All copies of NTESS OUO and NPI (including 3-D print prototypes) shall be protected, accessed, stored, marked, transmitted and destroyed in the same manner as the originals.
4. Destruction: Disks shall be overwritten using approved software and destroyed. Hard copy OUO or NPI documentation shall be destroyed by using an approved shredder (strips no more than ¼ inch wide).

# EXPORT CONTROL

**(a)** Any item, technical data, or software furnished by NTESS in connection with this purchase order/subcontract is supplied for use in the United States only. Subcontractor agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 USC 2751 - 2794, including the International Traffic in Arms Regulation (ITAR), 22 CFR 120 - 130; the Export Administration Act, 50 USC app. 2401 - 2420, including the Export Administration Regulations (EAR), 15 CFR 730 - 774; and including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Subcontractor agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under subcontract to Subcontractor or Subcontractor's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception. Subcontractor shall immediately notify the SP if it transfers any export controlled item, data, or services to foreign persons. Diversion contrary to U.S. export laws and regulations is prohibited.

**(b)** Subcontractor shall immediately notify the SP if Subcontractor is, or becomes, listed in any Denied Parties List or if Subcontractor's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

**(c)** If Subcontractor is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Subcontractor represents that it is registered with the Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.

The Subcontractor shall flow down the requirements of this clause to all lower-tier subcontracts.

# EXTRAS AND VARIATION IN QUANTITY

Except as otherwise provided in this subcontract, no payment for extras shall be made unless such extras and the price therefore have been authorized in writing by the SP. No variation in the quantity of any item called for by this subcontract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this subcontract

**OPERATIONS SECURITY**

(a) Operations Security (OPSEC) as used herein means a process designed to disrupt or defeat the ability of foreign intelligence or other adversaries to exploit U.S. DOE/NNSA sensitive programs and activities (SP&A) or OPSEC Critical Information and to prevent the unauthorized disclosure of such information. OPSEC is meant to prevent the inadvertent release of critical information that our adversaries want to collect.

(b) Subcontractor agrees to participate in the U.S. DOE OPSEC program defined in National Security Decision Directive 298, National Operations Security Program, and DOE O 471.6, Information Security, current version. In addition to security requirements that may be contained elsewhere in the purchase order/subcontract, OPSEC requires the Subcontractor to:

i. Use the OPSEC 5-step process to protect classified, sensitive unclassified, proprietary and critical information on NTESS purchase orders/subcontracts, and all performance thereunder, to preclude the dissemination of such information

ii. NTESS critical information supporting Subcontractor operations must be shared solely by the supported NTESS organization with the Subcontractor and critical information must be protected. The Subcontractor should develop and keep up to date, its own critical information related to any NTESS subcontract, especially when NTESS-developed critical information is not available or provided. Critical information must be shared with all personnel working on the subcontract, including support personnel, to ensure the personnel are aware and the information is to be protected from inadvertent release.

iii. Assure all Subcontractor employees given access to NTESS purchase orders/subcontracts, and information concerning the performance of work thereunder, shall be made aware of the need to protect such documents and information. Ensure OPSEC risk management decisions are made by those who are responsible for mission accomplishment and implement OPSEC measures, if appropriate. This may mean contacting the responsible program manager at NTESS.

iv. Notify the NTESS OPSEC Program Office by calling 505/844-OPSEC (6773) of any request for critical information for SP&A, critical information recommendations, or OPSEC implementation questions (roles and responsibilities, indicators, vulnerabilities, training, OPSEC plan, risk assessments, OPSEC awareness, definitions, etc.) on NTESS or NTESS purchase orders/subcontracts not directly related to that needed for subcontract performance.

(c) References:

i. FSO Tool cart http://www.sandia.gov/FSO/

(d) Definitions:

i. Critical Information: Specific facts about friendly (e.g., U.S., DOE, SNL) intentions, capabilities, or activities vitally needed by adversaries for them to plan and act effectively so as to guarantee failure or unacceptable consequences for accomplishment of friendly objectives.

ii. Critical Information List: is a compilation of critical information topics, generally organized by SP&A.

iii. OPSEC Measure: Anything that effectively negates or mitigates an adversary's ability to exploit vulnerabilities.

iv. SP&A: Classified or unclassified facilities, materials, programs, operations, inquiries, investigations, research and development, exercises, tests, training, and other functions at NTESS or its Subcontractors, which, if disclosed, could reasonably be expected to adversely

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# ORDER OF PRECEDENCE

Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) Cover Page; (2) Section I; (3) SF 6432-CI, Section II; (4); Specifications, drawings, and other documents incorporated in the subcontract.

# PAYMENT

Unless otherwise provided, terms of payment shall be Net 30 days from the latter of: (1) receipt of Subcontractor's proper invoice, if required, or (2) delivery of item/completion of work. Any offered discount shall be taken if payment is made within the discount period that the Subcontractor indicates. Payments shall be made by electronic funds transfer. Payment shall be deemed to have been made as of the date on which the electronic funds transfer was made.

# PERFORMANCE EVALUATION PROGRAM

In keeping with NTESS’ goals of continuous improvement, and promoting and creating an environment for superior Subcontractor performance, NTESS has established a collaborative feedback process through the NTESS Subcontractor Review and Evaluation Program. This program is intended to create an environment, which fosters dialog, provides feedback, and improves communication. Any subcontract awarded by NTESS is a candidate for evaluation under this program.

# RECYCLED AND/OR NEW MATERIALS

Unless otherwise specified in this subcontract, all Items delivered shall consist of recycled and/or new materials. New is defined as previously unused which may include residual inventory or unused former government surplus property. Subcontractor shall give preference to the use of recycled materials in support of NTESS’ Sustainable Acquisition Program as set forth in DEAR 970.5223-7 SUSTAINABLE ACQUISITION PROGRAM.

# RELEASE OF INFORMATION

# No information relating to this subcontract shall be released other than to Subcontractor's employees or those of Subcontractor's lower-tier subcontractors requiring the information for the performance of the Statement of Work of this subcontract, without advance written approval of the SP. In no event shall the interest of NTESS or the DOE or the Government in this subcontract be indicated in any advertising or publicity without advance written approval of the SP.

# RIGHTS AND INTERESTS

All rights and interests resulting from this subcontract shall pass directly from the Subcontractor to the government. FAR 52.227-17 applies to all deliverables which are copyrightable works produced as part of the performance of this subcontract.

# RISK OF LOSS

If NTESS is responsible for the risk of loss during transportation of compliant item, NTESS shall compensate Subcontractor the lesser of: (1) the agreed price of such item or (2) the Subcontractor's cost of replacing such item; and such loss shall entitle the Subcontractor to an equitable adjustment in delivery schedule obligations.

# SUBCONTRACTS

If Subcontractor subcontracts any work in the performance of this subcontract, Subcontractor shall incorporate into every such lower-tier subcontract an appropriate set of NTESS Ts&Cs found at: <http://www.sandia.gov/bus-ops/scm/Subcontractor/Subcontractor-info.html> Terms and Conditions Tab. SF 6432-CI may be used for the purchase of commercial items.

# SUSPECT/COUNTERFEIT ITEMS (S/CI)

# Suspect/counterfeit item(s), fraudulent services, and fraudulent misrepresentation of goods or services, are of serious concern to NTESS because they not only threaten personal safety, equipment, and system reliability; but also may inhibit compliance with regulatory standards. Failure of a safety or mission critical system due to S/CI could also result in security implications at DOE facilities.

Definitions

* Suspect Item(s). An item is suspect when inspection or testing indicates that it **may not** conform to established Government or industry-accepted specifications or standards; and/or the item’s documentation, appearance, performance, material, or other characteristics **may have been** misrepresented by the vendor, supplier, distributor, or manufacturer.
* Counterfeit Item(s). A counterfeit item is one that has been copied, substituted, or appended without legal right or authority or whose material, performance, or characteristics **have been** misrepresented or not fully disclosed by the vendor, supplier, distributor, or manufacturer.
* Suspect/Counterfeit Items (S/CI) include but are not limited to: (i) items that are intentionally manufactured, refurbished, appended, or altered to imitate original products without authorization in order to be passed off as genuine; (ii) unlawful or unauthorized substitution or addition of component parts; (iii) false identification of grade, lot number, serial number, or performance characteristics, (iv) fraudulent services; (v) misrepresented items and services, (vi) items that introduce unintended features such as surveillance, transmissions, or other malicious characteristics.

The following provisions supplement and incorporate the existing subcontract terms by reference:

1. Subcontractor expressly warrants that all items, services, or software provided under this subcontract are suitable for the intended or specified use, and do not include unintended or unspecified characteristics.
2. Subcontractor warrants and shall ensure that counterfeit items, including component parts, and/or materials will not be furnished or delivered to NTESS.
3. Subcontractor warrants authorized and lawful use of any labels, trademarks, or logos designed for/affixed to items supplied or delivered to NTESS.
4. Subcontractor warrants that all items, goods, or services provided to NTESS are verifiably compliant with applicable quality, and/or safety and manufacturing standards including, but not limited to U.S. Government or industry-accepted specifications and national consensus standards.
5. Subcontractor shall use counterfeit prevention and/or quality assurance procedures, that include a S/CI detection program.
6. Subcontractor shall immediately notify NTESS if Subcontractor suspects, or becomes aware of used or counterfeit goods furnished to NTESS. Subcontractor is required to disclose the source of the S/CI to NTESS and shall provide documentation authenticating traceability of affected item(s). Subcontractor must immediately notify NTESS by either:
   1. contacting the SP (listed on the first page of this subcontract); or
   2. emailing the SNL Suspect/Counterfeit Items Program Coordinator at [sqasci@sandia.gov](mailto:sqasci@sandia.gov).
7. Unless otherwise specified, Subcontractor shall purchase directly from product manufacturers or authorized manufacturer distributors whenever possible.
8. Suspect/counterfeit items furnished under this subcontract will be impounded by NTESS. Subcontractor may be required to replace such items, at no cost, with items acceptable to NTESS. Subcontractor shall be liable for all costs relating to discovery, removal, impoundment, and replacement of materials and equipment that exhibit suspect or counterfeit item characteristics or conditions.
9. Subcontractor shall indemnify NTESS, its agents, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from any and all suspect or counterfeit services, goods, software, materials, components, or parts.

Detection of suspect counterfeit item(s), services, or software; evidence of misrepresentation of goods or services; or any fraudulent misrepresentations may result in reporting and/or investigation by the DOE and the Office of the Inspector General.

If this subcontract provides for the use of credit cards, their use in no way relieves the Subcontractor from complying with all requirements of this section.

Additional detailed information is available at the DOE webpage and in the DOE Suspect/Counterfeit Items Resource [Handbook](http://www.energy.gov/sites/prod/files/2016/08/f33/DOE-HDBK-1221-2016.pdf).

For questions or to report suspect or counterfeit items, materials, services, or software email the SNL Suspect/Counterfeit Items Program Coordinator at [sqasci@sandia.gov](mailto:sqasci@sandia.gov). Suspected fraud, waste, or abuse by a DOE employee, Subcontractor, or grant recipient involving DOE programs may also be reported to the Office of Inspector General by phone (800) 541-1625, or by email [ighotline@hq.doe.gov](mailto:ighotline@hq.doe.gov). Additional information is available at: <http://energy.gov/ig/office-inspector-general>.

# PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION (PII)

In performing this subcontract, the Subcontractor may be provided with Personally Identifiable Information (PII) relating to NTESS employees, Subcontractor employees, and any other individuals related to the work under this subcontract. The Subcontractor agrees that the Subcontractor shall take all reasonable steps and precautions to ensure this provided PII is adequately controlled, protected and only used to perform work called for under this subcontract. For the purposes of this agreement PII is defined as: Any of the information listed below that can be used to distinguish or trace an individual's identity, is collected and maintained for the purpose of conducting official NTESS business, and is not solely comprised of information that is available to the general public: social security number, driver's license number, passport number, other federal- or state-issued identification card number, bank account number (with or without routing number, access code, or Personal Identification Number [PIN]), financial or benefit account number in combination with any required code permitting access, background information or verification reports or credit report, including consumer reports, medical or health information, including biometric, bio-monitoring, or genetic information, employment history including ratings, salary, wage, deduction information, and disciplinary actions, security clearance history or related information, criminal history, date of birth or age, place of birth, mother’s maiden name, race or ethnicity.

Notes:

1. One means of distinguishing or tracing an individual’s identity is to include the first name or the first initial and last name of an individual in combination with any information listed above.
2. PII does not include information that is on NTESS computing resources as a result of incidental personal use of computing and information resources or other assets.

Loss of Control of PII: If the Subcontractor becomes aware or suspects that any NTESS provided Personally identifiable Information, has been inappropriately, taken, used, disclosed, and/or released or that the controls for access to the information have been compromised, the Subcontractor shall immediately take steps to prohibit further disclosure and will give verbal notice to NTESS’ Security Incident Management Program (SIMP) by calling and reporting the incident at either at (505) 283-7467 or for subcontracts issued in California call 1-(925) 294-2600 ( these are manned 7 days a week 24 hours a day). After notifying SIMP, also verbally notify the SP and SDR (if one is identified in this subcontract). In addition to the immediate verbal notifications, written notification will be provided to the SP and SDR (if one is identified in the subcontract,) within 72 hours of the Subcontractor’s learning of the situation. The Subcontractor shall cooperate with NTESS and provide information needed to allow NTESS to evaluate the nature and extent of the release or loss of control.

The provisions of this clause shall survive and continue in force following the completion of work under this agreement until such time that any provided PII is either destroyed in its entirety in a manner that ensures it is not readable or decipherable through any means, or that the information including all copies is returned to NTESS. The Subcontractor shall ensure that these provisions shall be made applicable to any subcontractor or non-governmental third party who receives PII provided through this agreement.

# TAXES

For many purchases, NTESS can provide Transaction Exemption Certificates for both New Mexico and California, and certificates for other states may also be available. Direct any request for Transaction Exception Certificates to [taxes@sandia.gov](mailto:taxes@sandia.gov). NTESS holds California Contractor's Permit Number OH-98033576. Purchases made under this subcontract are exempt from California Sales and Use Taxes if performance occurs in California. Prices include all applicable federal taxes.

# TRANSPORTATION

All transportation shall be "FOB Origin" unless otherwise specified in this subcontract. If transportation is specified "FOB Origin," (a) no insurance cost shall be allowed unless authorized in writing, and (b) the bill of lading shall indicate that transportation is for DOE/NNSA and the actual total transportation charges paid to the carrier(s) shall be reimbursed by the government pursuant to contract No. DE-NA0003525 Confirmation will be made by Sandia National Laboratories.

# WARRANTY

Subcontractor expressly warrants that no counterfeit item or components in item shall be delivered to NTESS on this subcontract. Subcontractor expressly warrants that all item provided under this subcontract shall have a rightful transfer of good title thereto and are delivered free of any rightful claims of any third person by way of infringement of any intellectual property right. The warranty shall begin upon receipt of conforming item and extend for a period of: (1) the manufacturer's warranty period or six (6) months, whichever is longer, if the Subcontractor is not the manufacturer and has not modified the item, or (2) one (1) year or the manufacturer's warranty period, whichever is longer, if the Subcontractor is the manufacturer of the item or had modified it. If any nonconformity with item appears within that time, Subcontractor shall promptly repair, replace, or re-perform such item at Subcontractor's election. Transportation of replacement item and return of nonconforming item and repeat performance of services shall be at Subcontractor's expense. NTESS shall notify Subcontractor of such nonconformity within a reasonable time after discovery, and Subcontractor shall notify NTESS of whether it chooses to make repairs or replacements within three (3) working days after NTESS' notice of nonconformity. If repair or replacement or re-performance of services is not timely, NTESS may elect to return the nonconforming item or repair or replace them or re-procure the services at Subcontractor's expense. Subcontractor disclaims the implied warranties of merchantability or fitness for a particular purpose.

**WRITTEN NOTICES**

A. The Subcontractor shall immediately notify the NTESS Subcontracting Professional in writing of: (1) any action, including any proceeding before an administrative agency, filed against the Subcontractor arising out of the performance of this Subcontract; and (2) any claim against the Subcontractor, the cost and expense of which is allowable under the terms of this Subcontract.

B. If, at any time during the performance of this Subcontract, the Subcontractor becomes aware of any circumstances which may jeopardize its performance of all or any portion of the Subcontract, it shall immediately notify the NTESS Subcontracting Professional in writing of such circumstances, and the Subcontractor shall take whatever action is necessary to cure such defect within the shortest possible time.

# ADDITIONAL TERMS AND CONDITIONS

This subcontract incorporates by reference with the same force and effect as if they were given in full text; the following cited Federal Acquisition Regulation (FAR) clauses and Department of Energy Acquisition Regulation (DEAR) clauses. The full text of these clauses may be found at Title 48 of the Code of Federal Regulations (CFR) at <http://www.ecfr.gov> or at the FARSite at <http://farsite.hill.af.mil> under regs - FAR or DEARS- Where the FAR/DEAR clauses refer to government and Contracting Officer, substitute NTESS and Subcontracting Professional (SP).

# APPLY TO SUBCONTRACTS AT ANY VALUE

FAR 52.203-99 Prohibition on Contracting with Entities that require Certain Internal Confidentiality Agreements (DEVIATION 2015-02)

FAR 52.208-8 Required Sources of Helium and Helium Usage Data

FAR 52.209-10 Prohibition on Contracting with Inverted Domestic Corporations

FAR 52.211-15 Defense Priority and Allocation Requirement

FAR 52.222-50 Combating Trafficking in Persons

FAR 52.223-13 Acquisition of EPEAT® - Registered Imaging Equipment

FAR 52.223-14 Acquisition of EPEAT® -Registered Televisions

FAR 52.223-16 Acquisition of EPEAT®-Registered Personal Computer Products

FAR 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts

FAR 52.225-9 Buy American -Construction Materials

FAR 52.225-21 Required Use of American Iron, Steel, and Manufactured Goods--Buy American Statute--Construction Materials

FAR 52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises

FAR 52.232-39 Unenforceability of Unauthorized Obligations

FAR 52.232-40 Providing Accelerated Payments to Small Business Subcontractors

FAR 52.242-15 Stop Work Order with Alternate I

FAR 52.244-6 Subcontracts for Commercial Items

FAR 52.245-1 Government Property

DEAR 952.211-71 Priorities and Allocations (Atomic Energy).

DEAR 952.217-70 Acquisition of Real Property

# APPLY TO ALL SUBCONTRACTS EXCEEDING $3,500

FAR 52.225-1 Buy American—Supplies

# APPLY TO ALL SUBCONTRACTS EXCEEDING $10,000

FAR 52.222-26 Equal Opportunity

FAR 52.222-40 Notification of Employee Rights under the National Labor Relations Act

# APPLY TO SUBCONTRACTS EXCEEDING $15,000

FAR 52.222-20 Contracts for Materials, Supplies, Articles and Equipment Exceeding $15,000

FAR52.222-36 Equal Opportunity for Workers with Disabilities

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# APPLY TO SUBCONTRACTS IF $25,000 OR MORE

DEAR 970.5223-4 Workplace Substance Abuse Programs at DOE Sites

**APPLY TO SUBCONTRACTS EXCEEDING $30,000**

FAR 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards

# APPLY TO ALL SUBCONTRACTS EXCEEDING $150,000

FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions

FAR 52.219-8 Utilization of Small Business Concerns

FAR 52.222-35 Equal Opportunity for Veterans

FAR 52.222-37 Employment Reports on Veterans FAR 52.246-2 Inspection of Supplies - Fixed Price

FAR 52.203-17 – Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights

# APPLY TO ALL SUBCONTRACTS EXCEEDING $700,000

FAR 52.219-9 Small Business Contracting Plan, Alternate II

FAR 52.219-10 Incentive Subcontracting Program

# APPLY TO ALL SUBCONTRACTS EXCEEDING $5,500,000

FAR 52.203-13 Contractor Code of Business Ethics and Conduct, applies when performance period is 120 days or more.

# APPLY TO ALL SUBCONTRACTS THAT MAY INVOLVE ACCESS TO CLASSIFIED INFORMATION

DEAR 952.204-2 Security

DEAR 952.204-70 Classification/Declassification

# APPLY TO ALL SUBCONTRACTS WHERE ANY WORK WILL BE PERFORMED ON A GOVERNMENT SITE

DEAR 970.5223-1 Integration of Environment, Safety, and Health into Work planning and Execution

DEAR 952.203-70 Whistleblower Protection for Contractor Employees

**APPLY TO SUBCONTRACTS TO BE PERFORMED ON A GOVERNMENT SITE WHENEVER THE WORK (1) COULD RESULT IN POTENTIAL EXPOSURE TO: (A) RADIOACTIVE MATERIALS; (B) BERYLLIUM; OR (C) ASBESTOS OR (2) INVOLVES A RISK ASSOCIATED WITH CHRONIC OR ACUTE EXPOSURE TO TOXIC CHEMICALS OR SUBSTANCES OR OTHER HAZARDOUS MATERIALS THAT CAN CAUSE ADVERSE HEALTH IMPACTS, IN ACCORDANCE WITH 10CFR PART 851**

DEAR 970.5204-3 Access to and Ownership of Records (OCT) (DEVIATION)

# THE REMAINING CLAUSES APPLY TO ALL SUBCONTRACTS WHERE ANY WORK WILL PERFORMED ON A GOVERNMENT SITE

**CERTIFICATE OF INSURANCE**

For all subcontracts where some portion of the work is to be conducted on a government site, and subcontract value including the sum of any options or releases equals or exceeds $150,000, the Subcontractor shall provide a Certificate of Insurance evidencing the following insurance coverage that will be provided to the SP prior to the commencement of work:

* Commercial General Liability Insurance (ISO policy form or equivalent) with limits of liability of not less than $1,000,000 each occurrence and in the aggregate for bodily injury, property damage, personal injury and contractual liability and will include NTESS as an additional insured.
* Workers’ Compensation and Employers’ Liability Insurance covering all employees performing work on the government site with Employers’ Liability limits not less than $1,000,000.
* Business Automobile Liability Insurance (ISO policy form or equivalent) with coverage for owned, leased and hired autos) with limits of not less than $1,000,000 each accident for bodily injury and property damage **if the on-site work contemplates the use of automobiles.**

Onsite visits for deliveries and status meetings are exempt from this requirement.

NTESS reserves the right to amend these insurance requirements which may include, but not be limited to, requiring additional limits and or coverages depending on the nature and scope of work being performed.

# CITIZENSHIP STATUS

All personnel of the Subcontractor and its subcontractors who require access must be United States citizens, or foreign nationals who are legal aliens or have the required authorization to perform work in the Unites States and must meet rules of the site for access to the work areas in place at the time of performance of this subcontract.

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# SUBCONTRACTOR USE OF GOVERNMENT OWNED VEHICLES The following provisions apply if work under this subcontract requires Subcontractor or subcontractor personnel to operate government-owned vehicles either on or off government sites. Subcontractor shall maintain, at Subcontractor's expense, during the period of performance of work under this subcontract, third-party vehicle liability insurance which shall cover the use of such government-owned vehicles with limits of at least $200,000/$500,000 public liability and $20,000 property damage. Medical payments coverage, comprehensive and collision insurance, uninsured motorist, and personal injury protection will not be required under this clause unless required by State statute. All Subcontractor's agents, employees and subcontractors of any tier shall obey all rules and regulations pertaining to the use of government-owned vehicles. In the event of a motor vehicle accident, the Subcontractor shall submit a completed Motor Vehicle Accident Reporting Form SF 91 to the SP together with any additional supplemental forms required by instructions given on the General Service Agreement (GSA) Form Packet 1627. A GSA Form Packet 1627 normally is located either in the headliner or glove box of the GSA vehicle. Subcontractor's personnel shall assure that a GSA Form Packet 1627 is available in a GSA vehicle prior to accepting and driving a GSA vehicle.

# ENVIRONMENTAL, SAFETY, AND HEALTH (ES&H) REQUIREMENTS

(a) Service Providers - NTESS-directed work, NTESS shall provide those workers with any and all necessary safety authorization documents, personal protective equipment, industrial hygiene monitoring, medical surveillance, and radiation protection services. For Subcontractor employees performing Subcontractor-directed work, Subcontractor shall provide its workers with all ES&H services, with the exception of Subcontractor employees performing Subcontractor-directed work on government sites for whom NTESS shall provide radiation dosimetry services and survey of record, as appropriate. (b) Training Requirements. Any Subcontractor personnel who will enter a government site to perform work shall have completed all of the ES&H training required by the Statement of Work (SOW) prior to any attempts to enter a government site as shown by written records of such training furnished to the SDR or to the Requester if no SDR is named in Section I of this subcontract. Subcontractor shall certify to NTESS completion of all required training on the Completion Record for Subcontractor Administered Training form. This form is located on the Web at <http://www.sandia.gov/supplier/forms> or obtained from the SDR. Subcontractor shall provide the completion record form for the initial ESH100 training to the SDR on the first day of work. Subcontractor shall provide the completion records for any other training required above to the SDR before starting the affected work activity. Any person not having completed all ES&H training requirements may be denied access to any government site and Subcontractor may be terminated for default of this subcontract as well as every other subcontract the Subcontractor has with NTESS.

# HAZARDOUS MATERIALS

(a) Handling Requirements for subcontracts that require the performance of work on government sites, the Subcontractor shall coordinate with the SDR all activities associated with the acquisition (including reporting hazardous materials used on government sites), handling, storage, accidental spills, and/or disposal of hazardous materials and/or waste. The Subcontractor shall notify the SDR of all hazardous and/or radioactive waste generated during performance of work. Such materials become NTESS-owned waste and the Subcontractor shall notify the SDR for proper disposal by NTESS. Subcontractor's assistance in disposal may be required by NTESS. (b) Removal Requirements. Those hazardous materials brought onto NTESS-controlled premises by the Subcontractor which are job-related consumables and have not been removed from their original packaging and which have not been purchased by NTESS, shall remain the property of the Subcontractor and shall be removed from NTESS after completion of the work. Hazardous materials in the original, labeled container are not hazardous waste if the material is usable and the full or partially full container is intact and properly closed. Those scrap items which are not hazardous and which have not become hazardous through co-mingling with hazardous items are owned by the Subcontractor and shall also be removed.

# PROTECTION OF GOVERNMENT PROPERTY

All NTESS National Laboratories information, information technologies and information systems are United States government property. Please read the notice at: http://www.NTESS.gov/resources/employees/proxy.htmlAll facilities, personal property, existing vegetation, structures, equipment, utilities, improvements, materials and work at Sandia National Laboratories are United States government property. Acts of theft, improper use and/or unlawful destruction of United States government property are punishable under one or more Federal Criminal Laws.

# REQUIREMENTS FOR ACCESS

**(a)** Government Sites. The Subcontractor agrees and shall ensure that all personnel entering Government sites for any activity related to this agreement shall at all times be subject to and shall comply with all laws, regulations, policies, and site access rules for the site including but not limited to all ES&H and Security requirements. For work performed at SNL and elsewhere, the Security and ES&H requirements can be obtained by contacting the SDR. The government requirements include but are not limited to, all of the requirements set forth in this clause for any work to be performed on a government site. To obtain access to such premises, the Subcontractor shall write a letter to the SDR or the SP stating the company designation to be used by the Subcontractor and each subcontractor and furnishing the following information on each individual requiring access to such premises: name, date of birth, and citizenship status, completed ES&H training requirements set forth in the SOW. Access will be granted for the period of performance of the work only.

Subcontractor shall withdraw and replace any individual, including any subcontractor employee, assigned to perform work under this subcontract, who in the judgment of NTESS or DOE/NNSA, is to be denied access to any government site. Subcontractor shall submit to the SDR or the SP any proposed working schedules for its personnel and the personnel of each of its subcontractors that deviate from NTESS' normal workday or work week schedule. The schedules will show proposed daily working hours and proposed work weeks. Schedules that deviate from NTESS' normal work day or work week must be approved by the responsible SDR. In the absence of a written authorization from the SP or DOE/NNSA, use of government sites by the Subcontractor and its subcontractors of any tier, pursuant to access granted under this clause, shall be limited to work required by this subcontract to be performed on such premises. THE USE OF THE ACCESS PRIVILEGE FOR ANY PURPOSE OTHER THAN TO PERFORM WORK UNDER THIS SUBCONTRACT IS PROHIBITED AND MAY BE GROUNDS FOR TERMINATING THIS SUBCONTRACT DEFAULT OR FOR FINDING THAT AN INDIVIDUAL IS UNACCEPTABLE FOR FUTURE ACCESS.

**(b)** SNL Sites. The organizations listed below are responsible for coordinating and administering the provisions of visitor access and control for the sites as listed. Sandia National Laboratories, Albuquerque, New Mexico – Badge Office, NTESS, Innovation Parkway Office Complex (IPOC). Sandia National Laboratories, Livermore, California - Visitor Control and Administration Section, NTESS, Building 911. Tonopah Test Range, Tonopah, Nevada - Office of the Tonopah Test Range Manager.

**(c)** Subcontractor shall ensure that its personnel and the personnel of each of its subcontractors assigned to work on SNL's or Government premises comply with all applicable site policies. In addition, the Subcontractor, its personnel and personnel of each of its lower-tier subcontractors, shall:

1. not bring weapons of any kind onto the premises;
2. not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages while on the premises;
3. not possess hazardous materials of any kind on the premises without proper authorization;
4. remain in authorized areas only;
5. not conduct any non-NTESS related business activities (such as interviews, hires, dismissals or personal solicitations) on the premises;
6. not send or receive non-NTESS related mail through NTESS' or Government's mail systems; and
7. not sell, advertise or market any products or memberships, distribute printed, written or graphic materials on the premises without the SP’s written permission or as permitted by law.

**(d)** All persons, property, and vehicles entering or leaving SNL's, KAFB or Government's premises are subject to search. (e) Subcontractor shall promptly notify NTESS and provide a report of any accidents or security incidents involving loss of or misuse or damage to SNL's or Government's intellectual or physical assets, and all physical altercations, assaults, or harassment.

# VEHICLE INSURANCE

All vehicles, owned or operated by the Subcontractor, lower-tier subcontractors or their agents and employees, having access to government sites shall be covered by at least $200,000/$500,000 public liability and $20,000 property damage insurance.

# VEHICLE MARKINGS

All vehicles used by either the Subcontractor or its subcontractors shall be marked clearly to indicate company name of user. Vehicles which do not bear permanent markings may be temporarily marked as follows: (1) Signs, no longer than the vehicle door is wide, with a white or lighter background, showing the Subcontractor's name in one-inch-high, or larger, dark colored letters, may be made from sheet metal, cardboard or other suitable material and temporarily attached to the vehicle's front door panels so that the signs appear in the approximate center of each door panel. Words such as "Company," "Corporation" or "Division" may be abbreviated. (2) No signs shall be attached to the vehicle's glass area for safety reasons.