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

**SF 6432-CL (12/2017)**

**SECTION II**

**STANDARD TERMS AND CONDITIONS FOR COMMERCIAL LEASES**

**THE FOLLOWING CLAUSES APPLY TO THIS LEASE 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 OF THIS LEASE. (CTRL+CLICK ON A LINK BELOW TO ADVANCE DIRECTLY TO THAT SECTION)**

[**ACCEPTANCE OF TERMS AND CONDITIONS (Ts&Cs)**](#ACCEPTANCE_OF_TERMS_AND_CONDITIONS)

[**ACCESSIBILITY AND SEISMIC SAFETY**](#_CL02_-_ACCESSIBILITY)

[**ALTERATIONS**](#_CL03_-_ALTERATIONS)

[**AMERICANS WITH DISABILITIES ACT**](#_CL04_–_AMERICANS)

[**APPLICABLE LAW**](#_CL05_-_APPLICABLE)

[**ASSIGNMENT**](#_CL06_-_ASSIGNMENT)

[**BANKRUPTCY**](#BANKRUPTCY)

[**CANCELLATION OR TERMINATION FOR CONVENIENCE**](#_CL08_-_CANCELLATION)

[**COMPLIANCE WITH LAWS**](#_CL09_-_COMPLIANCE)

[**DEFINITIONS**](#_CL10_-_DEFINITIONS)

[**DISCLOSING\_USE\_OF\_FREE\_LIBRE\_AND\_OPEN\_SOURCE\_SOFTWARE (FLOSS)**](#DISCLOSING_USE_OF_FREE_LIBRE_AND_OPEN_SO)[**ELECTRICAL AND MECHANICAL SYSTEMS**](#_CL11_-_ELECTRICAL)

[**ENTIRE AGREEMENT**](#_CL12_-_ENTIRE)

[**ETHICAL CONDUCT**](#ETHICALCONDUCT)

**[EXPORT CONTROL](#_EXPORT_CONTROL_1)**

[**FIRE AND CASUALTY DAMAGE**](#_CL13_-_FIRE)

[**GOVERNMENT PERSONAL PROPERTY**](#_CL14_-_GOVERNMENT)

[**HANDLING\_PROTECTION\_AND\_RELEASE\_OF\_INFORMATION**](#HANDLING_PROTECTION_AND_RELEASE_OF_INF)

[**HAZARDOUS MATERIALS**](#_CL15_-_HAZARDOUS)

[**HEADINGS**](#_CL16_-_HEADINGS)

# [INDEPENDENT SUBCONTRACTOR RELATIONSHIP](#_INDEPENDENT_CONTRACTOR_RELATIONSHIP_1)

[**JANITORIAL SERVICES**](#_CL17_-_JANITORIAL)

[**LIABILITY**](#_CL18_-_LIABILITY)

[**LIENS AND ENCUMBRANCES**](#_CL19_-_LIENS)

[**MODIFICATIONS**](#_CL20_-_MODIFICATIONS)

**[NTESS ACCESS](#_CL21_-_OCCUPANCY)**

**[NTESS INGRESS AND EGRESS RIGHTS](#_NTESS_INGRESS_AND_1)**

**[NTESS SURRENDER OF LEASE](#_NTESS_SURRENDER_OF_1)**

[**OCCUPANCY PERMIT**](#_CL21_-_OCCUPANCY)

[**OPERATIONS SECURITY**](#OPSEC)

[**ORDER OF PRECEDENCE**](#_CL22_-_ORDER)

[**PAYMENTS**](#_CL23_-_PAYMENTS)

[**PROHIBITED USES**](#_CL24_-_PROHIBITED)

[**RIGHTS AND INTERESTS**](#_CL25_-_RIGHTS)

[**SOFTWARE\_SERVICES\_AND\_INFORMATION\_SYSTEMS\_SECURITY\_ASSURANCE**](#SOFTWARE_SERVICES_AND_INFORMATION_SYSTEM)

**[SUBCONTRACTING](#_SUBCONTRACTING)**

[**SUSPECT/COUNTERFEIT ITEMS (S/CI)**](#_SUSPECT/COUNTERFEIT_ITEMS_(S/CI))

[**PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION (PII)**](#_CL30_-_PROTECTION)

[**SUPERINTENDENT**](#_CL31_-_SUPERINTENDENT)

[**TAXES**](#_CL32_-_TAXES)

[**UTILITIES**](#_CL33_-_UTILITIES)

[**WAIVERS**](#_CL34_-_WAIVERS)

[**WARRANTIES OF TITLE AND QUIET POSSESSION**](#_CL35_-_WARRANTIES)

[**WRITTEN NOTICES**](#WRITTEN_NOTICES)

**[ADDITIONAL TERMS AND CONDITIONS](#_ADDITIONAL_TERMS_AND)**

[**ACCEPTANCE OF SPACE**](#_ACCEPTANCE_OF_SPACE)

**[ACCESS TO NTESS INFORMATION](#_ACCESS_TO_SANDIA)**

[**APPLY TO ALL LEASES**](#_APPLY_TO_ALL)

[**APPLY TO LEASES EXCEEDING $3,500**](#_APPLY_TO_LEASES_3)

# [APPLY TO LEASES EXCEEDING $10,000](#_CL39_–_APPLY)

# [APPLY TO LEASES EXCEEDING $15,000](#APPLY_TO_LEASES_EXCEEDING_15000)

[**APPLY TO LEASES IF $25,000 OR MORE**](#APPLY_TO_LEASES_IF_25000_OR_MORE)

[**APPLY TO LEASES IF $30,000 OR MORE**](#APPLY_TO_LEASES_IF_30000_OR_MORE)

[**APPLY TO LEASES IF $150,000 OR MORE**](#_CL41_–_APPLY)

[**APPLY TO LEASES EXCEEDING $150,000**](#_CL42_–_APPLY)

[**APPLY TO LEASES EXCEEDING $700,000**](#APPLY_TO_LEASES_EXCEEDING_700000)

[**APPLY TO LEASES EXCEEDING $5,500,000**](#_APPLY_TO_LEASES_2)

[**APPLY TO ALL NTESS-CONTROLLED PREMISES**](#APPLY_TO_ALL_PREMISES)

[**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)

**[AUTHORIZED DISTRIBUTORS](#_AUTHORIZED_DISTRIBUTORS_1)**

[**CITIZENSHIP STATUS**](#_CITIZENSHIP_STATUS)

[**CLASSIFIED INFORMATION ACCESS REQUIREMENTS**](#_CLASSIFIED_INFORMATION_ACCESS)

[**ENVIRONMENTAL, SAFETY, AND HEALTH (ES&H) SERVICES**](#_ENVIRONMENTAL,_SAFETY,_AND)

[**FAILURE IN PERFORMANCE**](#_FAILURE_IN_PERFORMANCE)

[**GOVERNMENT PERSONAL PROPERTY PROTECTION**](#_GOVERNMENT_PERSONAL_PROPERTY)

[**HAZARDOUS MATERIALS HANDLING**](#_HAZARDOUS_MATERIALS_HANDLING)

[**HAZARDOUS MATERIALS REMOVAL**](#_HAZARDOUS_MATERIALS_REMOVAL)

[**PERFORMANCE EVALUATION PROGRAM**](#_PERFORMANCE_EVALUATION_PROGRAM)

[**PROGRESSIVE OCCUPANCY**](#_PROGRESSIVE_OCCUPANCY)

[**SPRINKLER SYSTEM**](#_SPRINKLER_SYSTEM)

**[SUBCONTRACTOR, LOWER-TIER SUBCONTRACTOR, AND VISITOR ACCESS REQUIREMENTS](#_SUBCONTRACTOR_AND_VISITOR)**

[**SUBCONTRACTOR, LOWER-TIER SUBCONTRACTOR, AND VISITOR ACCESS TO NTESS-CONTROLLED PREMISES**](#_SUBCONTRACTOR_AND_VISITOR_1)

[**VEHICLE MARKINGS**](#_VEHICLE_MARKINGS)

# ACCEPTANCE OF TERMS AND CONDITIONS (Ts&Cs)

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

# ACCESSIBILITY AND SEISMIC SAFETY

The NTESS-controlled premises shall be accessible to the handicapped in accordance with the Americans With Disabilities Act Accessibility Guidelines (36 Code of Federal Regulations (CFR) Part 36, App. A) and the Uniform Federal Accessibility Standards (41 CFR 101-19.6, App. A). Where standards conflict, the more stringent shall apply. The NTESS-controlled premises shall also meet seismic safety compliance.

# ALTERATIONS

NTESS shall have the right during the existence of this lease to make alterations, attach fixtures, and erect structures or signs in or upon the NTESS-controlled premises hereby leased, which fixtures, additions or structures so placed in, on, upon, or attached to the said NTESS-controlled premises shall be and remain the property of NTESS and may be removed or otherwise disposed of by NTESS. If the lease contemplates that NTESS is the sole occupant of the building, for purposes of this clause, the leased NTESS-controlled premises include the entire body of land (boundary line to boundary line) on which the building is sited, the building itself, and all appurtenances. NTESS shall have the right to tie into or make any physical connection with any structure located on the property as is reasonably necessary for appropriate utilization of the leased space. Lessor agrees to waive restoration of the NTESS-controlled premises if NTESS agrees to waive removal of alterations which shall be on a case by case basis and in writing as a revision to this lease for such waiver to be effective.

# AMERICANS WITH DISABILITIES ACT

Landlord shall deliver the NTESS-controlled premises to Tenant in compliance in all material respect with Title III of the Americans With Disabilities Act of 1990, any state laws governing handicapped access or architectural barriers, and all rules, regulations, and guidelines promulgated under such laws, as amended from time to time (the “Disabilities Acts”). If a non-compliance with said warranty exists Landlord shall, after receipt of written notice from Tenant setting forth with specificity the nature and extent of such non-compliance, rectify same at Landlord’s expense and not includable in Operating Expenses. Landlord shall be responsible for causing the common areas of the Building (including, without limitation, all restrooms and parking areas) to comply with the Disabilities Acts.

# APPLICABLE LAW

The rights and obligations of the parties hereto shall be governed by this lease and construed in accordance with federal law for Federal Acquisition Regulations (FAR) clauses or Department of Energy Acquisition Regulations (DEAR) clauses incorporated into this lease. State laws, ordinances, regulations and rules as enacted in the state the NTESS-controlled premises are located in shall govern all other clauses Claims shall be brought in the State Court closest to the NTESS-controlled premises giving rise to the claim.

# ASSIGNMENT

Lessor shall not assign rights or obligations to third parties or otherwise alienate any interest of NTESS in the NTESS-controlled premises during the term of this lease 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 SP within 30 days. However, the Lessor may assign rights to be paid amounts due or to become due to a financing institution if NTESS is promptly furnished a properly signed copy of the NTESS Assignment of Payments form. Payments to an assignee shall be subject to setoff or recoupment for any present or future claims of NTESS against Lessor. This lease may be assigned by NTESS to Department of Energy/National Nuclear Security Administration (DOE/NNSA) or its designee, and in case of such transfer and notice thereof to the Lessor, NTESS shall have no further responsibilities hereunder. NTESS may sublet any part of the NTESS-controlled premises but shall not be relieved from any obligations under this lease by reason of any such subletting.

#

# BANKRUPTCY

If the Lessor enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the Subcontracting Professional (SP) responsible for this agreement 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 agreement numbers for which final payment has not been made.

# CANCELLATION OR TERMINATION FOR CONVENIENCE

**(a)** Either party shall have the right to cancel this lease without judicial resolution upon written notice to the other after a breach of any provision by the other party has gone uncorrected for thirty (30) days after the other party has been notified in writing of such breach. In the event of cancellation, NTESS’ payment for this lease shall be prorated based on the months of actual use divided by twelve (12) and multiplied by the annual rent set forth above and NTESS shall not be liable for any other services that were not accepted by NTESS for payment as of the date of such cancellation. **(b)** NTESS may terminate for the convenience of NTESS this lease, upon 120 days of advanced written notice to the Lessor after the initial term of this lease. In that event NTESS shall not be liable for any costs that become due after the effective date of the termination except any stated penalty set forth in Section I of this lease. **(c)** The rights and remedies of NTESS in this clause are in addition to any other rights and remedies provided by law or equity or under this lease.

# COMPLIANCE WITH LAWS

Lessor shall comply with all federal, state, and local laws applicable to the Lessor as owner or Lessor, or both, of the building or premises, including, without limitation, laws applicable to the construction, ownership, alteration or operation of both or either thereof, and will obtain all necessary permits, licenses and similar items at Lessor's expense. NTESS will comply with all federal, state, and local laws applicable to and enforceable against it as a tenant under this lease; provided that nothing in this lease shall be construed as a waiver of any sovereign immunity of the government.

# DEFINITIONS

The following terms and phrases (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this lease shall have the respective meanings hereinafter specified:

**(a)** **Beneficial occupancy** means the occupancy of an uncompleted but functionally usable building, structure, or facility for its intended purpose under circumstances that are advantageous to the occupant and which produce relatively little interference with the Subcontractor in completing construction or alterations. Prior to occupancy by the user, a written agreement between the Subcontractor and NTESS is executed, listing deficiencies, remaining work, and other conditions of occupancy that must be consummated.

**(b)** **Commencement date** means the first day of the term.

**(c)** **"Subcontract" and "Subcontractor"** means "lease" and "Lessor," respectively.

**(d)** **Delivery date** means the date specified in or determined pursuant to the provisions of this lease for delivery of the premises to Sandia, improved in accordance with the provisions of this lease and substantially complete, as such date may be modified in accordance with the provisions of this lease.

**(e)** **Delivery time** means the number of days provided by this lease for delivery of the premises to NTESS, as such number may be modified in accordance with the provisions of this lease.

**(f)** **Excusable delays** mean delays arising without the fault or negligence of Lessor and Lessor's subcontractors and suppliers at any tier, and shall include, without limitation: (1) acts of God or of the public enemy; (2) acts of the U.S.A. in either its sovereign or contractual capacity; (3) acts of another Subcontractor in the performance of a subcontract with NTESS; (4) fires; (5) floods; (6) epidemics’ (7) quarantine restrictions; (8) strikes; (9) freight embargoes’ (10) unusually severe weather; or (11) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Lessor and any such subcontractor or supplier.

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

**(h) Lease** means this agreement which includes a cover page, a Section I, a Section II, and all other documents incorporated into this agreement by reference thereto.

**(i)** **Lessee** means NTESS.

**(j) Lessor** **shall provide** means the Lessor shall furnish and install at Lessor's expense.

**(k)** **Lessor** means the person or organization that has entered into this lease.

**(l)** **Normal wear and tear** means the physical deterioration that occurs with the normal use of a property without negligence, carelessness, accident with, or abuse of the NTESS-controlled premises, equipment, or personal property by NTESS. Time of occupancy shall be taken into account to determine normal wear and tear.

**(m)** **Notice** means written notice sent by certified or registered mail, express mail or comparable service, or delivered by hand. Notice shall be effective on the date delivery is accepted or refused.

**(n) NTESS** means National Technology and Engineering Solutions of Sandia, LLC which manages and operates the Sandia National Laboratories (SNL) under Prime Contract No. DE-NA0003525 with the U.S. DOE/NNSA.

**(o) NTESS-controlled premises** mean the subject of this lease as set forth in Section I of this lease.

**(p)** **Operating cost** means the expenses incurred by the Lessor as part of the operation and management of office buildings. The major costs include: interior and exterior cleaning; snow removal; maintenance of building systems; light bulb and tube replacement; replacement of minor parts to building systems; security systems and guard services; electricity for lighting and operation of mechanical systems; natural gas or oil for heating; water and sewage expenses; and payments for professional property management.

**(q)** **Rentable area** means the area for which a tenant is charged rent. It is determined by measuring to the inside finish of permanent outer building walls to the inside finish of corridor walls (actual or proposed) or to other permanent partitions. The rental space may include a share of building support/common areas such as elevator lobbies, building corridors, and floor service areas. It does not include vertical building penetrations and their enclosing wall, such as stairs, elevator shafts, and vertical ducts.

**(r) SP** means Subcontracting Professional, the only person authorized to negotiate, execute and/or administer this lease for Sandia.

**(s)** **SDR** means Sandia Delegated Representative, the person(s) who has been delegated limited authority as defined in Section I of this lease.

**(t)** **Substantially complete and "substantial completion"** means that the work, the common and other areas of the building, and all other things necessary for NTESS’ access to the premises and occupancy, possession, use and enjoyment thereof, as provided in this lease, have been completed or obtained, excepting only such minor matters as do not interfere with or materially diminish such access, occupancy, possession, use or enjoyment. A building, space, or facility is deemed substantially complete if it can be used or occupied for its intended purpose despite the fact that some items remain uncompleted.

**(u) Usable square feet** mean the area where a tenant normally houses personnel and/or furniture.

**(v)** **Work** means all alterations, improvements, modifications, and other things required for the preparation or continued occupancy of the premises by NTESS as specified in this lease.

# DISCLOSING USE OF FREE, LIBRE & OPEN SOURCE SOFTWARE (FLOSS)

*This clause applies to contracts that include the delivery of software (including software residing on hardware).*

Subcontractor shall disclose in writing, and obtain NTESS written consent, before using any FLOSS licenses or delivering any FLOSS in connection with this subcontract. Send written disclosures to the Subcontracting Professional listed on this first page of this contract. NTESS may withhold written consent for use or delivery of FLOSS at its sole discretion.

**DEFINITIONS**

FLOSS. FLOSS refers to software that incorporates, embeds, uses, bundles, or otherwise associates with any of the following:

1. Open source, publicly available, or "free" software, library or documentation;
2. Software licensed under a FLOSS License;
3. Software provided under a license that (a) subjects the delivered software to any FLOSS License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge.

FLOSS License(s). Include any Free Software, Open Source and Public License(s). FLOSS License also refers to: the General Public License (GPL), Lesser/Library GPL (LGPL), the Affero GPL (APL), the Apache license, the Berkeley Software Distribution (“BSD”) license, the MIT license, the Artistic License (e.g., PERL), the Mozilla Public License (MPL), or variations thereof.

# ELECTRICAL AND MECHANICAL SYSTEMS

Lessor agrees to have the most energy efficient operation of the Heating, Ventilation and Air Conditioning (HVAC) equipment in the NTESS-controlled premises capable of maintaining temperatures between 65-70 degrees Fahrenheit during the heating season, and 76-80 degrees during the cooling season, regardless of outside temperatures, during the hours of operation specified in the lease. In addition, there shall be a means of setting back the thermostats during nonoperational times as specified in the lease (e.g., 60 degrees in winter, 80 degrees in summer). (a) Lessor agrees to maintain the landscape in the most water efficient manner by only planting drought tolerant plantings and to minimize irrigation when possible. Local watering restrictions shall be followed. (b) Lessor agrees to use the most water efficient plumbing fixtures (toilets, urinals, faucets) in the NTESS-controlled premises when replacement is required. At a minimum, new fixtures shall meet Energy Policy Act of 1992:

1. Toilets: 1.6 gallons per flush
2. Urinals: 1.0 gallons per flush
3. Faucets: 2.2 gallons per minute

In existing facilities, where it is feasible, change out the fixtures and/or flush valves to meet these criteria. In many locations, this can be accomplished via rebate programs. (c) Lessor shall be responsible for the total maintenance and repair of the NTESS-controlled premises. Such maintenance and repairs include site and private access roads. All equipment and systems shall be maintained to provide reliable, energy efficient service without interruption, disturbing noises, exposure to fire or safety hazards, uncomfortable drafts, excessive air velocities, or unusual emissions of dirt. Lessor's maintenance responsibility includes initial supply and replacement of all supplies, materials, and equipment necessary for such maintenance. Consider purchasing Energy Star ™ products or products that are in the top twenty percent (20%) of their field in energy efficiency. Maintenance, testing, and inspection of appropriate equipment and systems must be done in accordance with applicable codes, and inspection certificates must be displayed as appropriate. Copies of all documentation of such maintenance and testing shall be forwarded to the SP. Without any additional charge, NTESS reserves the right to require documentation of proper operations or testing prior to occupancy of such systems as fire alarm, sprinkler, emergency generator, HVAC, etc. to ensure proper operation. These tests shall be witnessed by the SDR.

# ENTIRE AGREEMENT

Lessor and NTESS represent that the execution and delivery of this lease has not been induced by any promises, representations, warranties or other agreements, other than those specifically expressed. This lease embodies the entire understanding between the parties with respect to the subject matter described herein. This lease shall bind and inure to the benefit of the parties to this lease and their respective heirs, executors, administrators, successors, and assigns.

# ETHICAL CONDUCT

# The Subcontractor, including any officers, employees or lower-tier subcontractor while engaged in work related to the 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.

# 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 U.S. 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 U.S. Code (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 subcontracts.

# FIRE AND CASUALTY DAMAGE

If the entire NTESS-controlled premises are destroyed by fire or other casualty, this lease will immediately terminate. In case of partial destruction or damage, so as to render the NTESS-controlled premises uninhabitable, as determined by NTESS, NTESS shall be entitled to terminate the lease by giving written notice to the Lessor within fifteen (15) calendar days of the fire or other casualty; if so terminated, no rent will accrue to the Lessor after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately on a prorata basis based on the percentage of the loss and the time period of the loss of use effective from the date of such partial destruction or damage. Nothing in this lease shall be construed as relieving Lessor from liability for damage to or destruction of government property caused by the willful or negligent act or omission of Lessor.

# GOVERNMENT PERSONAL PROPERTY

The NTESS-controlled premises will contain personal property all of which is government property which shall be removed by NTESS at the conclusion of the lease. Lessor agrees to make no claims of any ownership or any interest in any government property.

# HANDLING, PROTECTION, AND RELEASE OF INFORMATION

**Contract-related information,** as used in this clause, means recorded information, regardless of form or the media. Examples of contract-related information include, but are not limited to:

1. Information identified with any NTESS-applied marking (e.g., Official Use Only (“OUO”) or NTESS Proprietary);
2. Information directly related to subcontract and/or lower tier contract administration, such as: program and planning, project management documentation, electronic or hardcopy correspondence, negotiations, financial, administrative, program office, and personnel information;
3. Technical and design information or guidance derived from or embodied in models, diagrams, drawings or translations, analysis models, manufacturing models, and computer-aided engineering and design, related to subcontract performance, regardless of whether the information is marked; and
4. Information obtained directly from NTESS or Sandia National Laboratories (SNL) owned electronic resources, regardless of whether the information is marked.
5. Handling of Information

Subcontractor shall:

1. Ensure any contract-related information provided by or accessed through NTESS in performance of this subcontract, whether identified by a NTESS-applied marking or not, is used only for purposes of performing this subcontract, and is not used or distributed for any other purpose;
2. Safeguard contract-related information from unauthorized access, use, and disclosure;
3. Inform employees and lower tier suppliers who may require access to contract-related information about obligations to use the information only for performance of this subcontract and requirements to safeguard the information from unauthorized use and disclosure;
4. Require that each employee with access to the information complies with the obligations included in this clause;
5. Maintain any restrictive markings on information from NTESS and on any subsequent copies.
6. Protection of Information

Subcontractor agrees to implement and maintain safeguards for contract-related information that meet or exceed the following requirements:

1. Protection in Use. Subcontractor shall take precautions to prevent access to contract-related information by persons who do not require the information to perform their jobs.
2. Protection in Storage. Subcontractor shall store contract-related information as identified in this clause in a secure manner that prevents unauthorized or inadvertent access. Control of user access privileges shall occur for electronic information and physical storage locations shall be secured in a locked room or other receptacle (e.g., a locked file cabinet, desk);
3. Reproduction. Subcontractor shall limit reproduction of contract-related information (including 3-D print prototypes) and any information with restrictive markings to a minimum, by only reproducing information to the extent necessary for performance of this subcontract;
4. Disposal or Return. Return and/or disposal of contract-related information shall occur via methods specified by NTESS when the information is no longer needed for performance of work under this subcontract or associated business purpose. Hard-copy contract-related information shall be destroyed prior to disposal via a strip cut shredder (strips no more than ¼ inch wide). Disks shall be overwritten using approved software and destroyed. For assistance with authorized disposal methods, please contact the Supply Chain Risk Management Office at scrm\_ds@sandia.gov.
5. Release of Information
6. Disclosure of contract-related information or other NTESS information to persons or entities outside of Subcontractor’s organization or authorized lower-tier suppliers is prohibited without advance written approval from NTESS. Disclosure requests may be sought by writing to the Subcontracting Professional (SP) on this contract.
7. Publication proposals related to work performed or data obtained under this subcontract shall be coordinated with the SP prior to submission to any scientific, academic, technical, professional, or other publication.
	1. Subcontractor shall provide NTESS an opportunity to review publication proposals related in whole or in part to work connected to this contract at least forty-five (45) calendar days prior to submission;
	2. NTESS will review the proposed publication and provide a response within forty-five (45) calendar days;
	3. Subcontractor may assume NTESS has no comments after the response period has elapsed.
	4. Subcontractor agrees to address any issues or concerns identified by NTESS before submitting publication proposals.
8. Subcontractor shall ensure its employees and lower tier suppliers comply with this clause.
9. Clause Interpretation
10. In the event of conflict between the provisions of this clause and a Nondisclosure Agreement between NTESS and the Subcontractor, the terms and conditions of the Nondisclosure Agreement shall govern.
11. This clause shall not prohibit Subcontractor’s fulfillment of routine internal or external reporting requirements, including the disclosure of the existence and nature of this contract as required by law. External reporting as used in this clause refers to reports submitted to state or federal government offices.
12. Under a valid court or government agency order, Subcontractor may release contract-related information necessary to fulfill obligations, provided that Subcontractor send the written notice and a copy of order or other obligating document to NTESS within a reasonable amount of time to provide the owner of the contract-related information notice of such obligation and the opportunity to oppose disclosure.

# HAZARDOUS MATERIALS

**(a)** The NTESS-controlled premises shall be free of hazardous materials according to applicable federal, state, and local environmental regulations, except those materials that may be brought to the NTESS-controlled premises by NTESS as part of its work at the NTESS-controlled premises. NTESS shall be responsible for proper handling and disposal of hazardous materials brought by NTESS onto the NTESS-controlled premises.

**(b)** The NTESS-controlled premises shall be free of all asbestos containing materials, except undamaged asbestos flooring or undamaged boiler or pipe insulation, in which case an asbestos management program conforming to Environmental Protection Agency guidance shall be implemented by Lessor. Copies of all documentation regarding the Lessor’s asbestos abatement program for the NTESS-controlled premises shall be sent to the SP.

**(c)** If the NTESS-controlled premises are on the second floor above grade or lower, the Lessor shall, prior to occupancy, test the NTESS-controlled premises for 2 to 3 days using charcoal canisters or Electret Ion Chambers to ensure radon in air levels are below the Environmental Protection Agency’s action concentration of 4 Pico Curies/liter. After the initial testing, a follow up test for a minimum of ninety (90) days using Alpha Track Detectors or Electret Ion Chambers must be completed. Copies of all documentation of these tests shall be sent to the SP.

# HEADINGS

The headings used in this lease are for reference purposes only and shall not be used to restrict the meaning or interpretation of the provisions of this lease.

# INDEPENDENT SUBCONTRACTOR 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 Corporation.

**(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 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.

#

# JANITORIAL SERVICES

Lessor shall provide janitorial services for the NTESS-controlled premises, public areas, entrances, and all other common areas and provide replacement of supplies necessary for such janitorial services.

# LIABILITY

It is mutually understood and agreed that the Lessor and NTESS shall not be liable for any damage or injury, to the person or property of Lessor, NTESS, any third party, or any of the NTESS' employees, guests, or invitees due to the act or negligence of any other person, or as may be caused by fire, water, steam, gas, snow, ice, frost, sewerage or electric current, or by the breaking, leaking or obstruction of pipes, or resulting from any other cause whatsoever. All government property which is placed on the NTESS-controlled premises by NTESS shall be at NTESS' sole risk. NTESS shall not be liable for any damage or loss to Lessor’s NTESS-controlled premises except in the event of NTESS' tortious conduct proximately causing such damage to Lessor’s property.

#

# LIENS AND ENCUMBRANCES

Lessor agrees to hold NTESS harmless and indemnify NTESS from and against any and all liens or encumbrances that may attach to any government property by virtue of it being on the premises.

# LOWER-TIER SUBCONTRACTING

All lower-tier subcontracts shall be made in the name of the Subcontractor and shall not bind nor purport to bind NTESS or shall not relieve Subcontractor of any obligation under this purchase order/subcontract. 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/working_with_sandia/procurement/current_suppliers/contractor_bidder/terms-conditions.html> or may use the latest revision of SF6432-CI for the purchase of Commercial Items that are products or SF 6432-CS for commercial services.

# MODIFICATIONS

No modification of this lease shall be valid or binding upon any party, unless the modification is made in writing and signed by duly authorized representatives of both parties to this lease.

# NTESS ACCESS

NTESS shall have access to and use of the NTESS-controlled premises 24 hours per day for every day of the year. NTESS agrees to pay for excessive use of utilities consumed if ordered by the SP in writing from Lessor at the negotiated cost set forth in Section I of this lease and billed to NTESS on a monthly basis within sixty (60) days of such actual excessive consumption.

# NTESS INGRESS AND EGRESS RIGHTS

Lessor agrees to grant sufficient rights of ingress and egress as to permit the intended use of the NTESS-controlled premises as contemplated in this lease.

# NTESS SURRENDER OF LEASE

At the conclusion of the lease, NTESS agrees to remove any and all government property from Lessor’s property. NTESS agrees to return the NTESS-controlled premises to Lessor less ordinary wear and tear and alternations mutually agreed to in writing by both parties.

# OCCUPANCY PERMIT

The Lessor shall provide to the SP a valid Occupancy Permit for the intended use set forth in Section I of this lease. If the local jurisdiction does not issue occupancy permits, Lessor shall consult the SP to determine if other documentation may be needed.

# 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 SNL or its Subcontractors, which, if disclosed, could reasonably be expected to adversely affect national security interests.

**(e)** Required Training:

The Subcontractor shall complete any training that may be required, in the future, as a result of possible changes in the Security requirements, as directed by the SDR.

# 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-CL, Section II; (4); Specifications, drawings, and other documents incorporated in the subcontract.

# PAYMENTS

**(a)** Unless otherwise specified in Section I, invoices shall be submitted monthly for 1/12 of the fixed-price owed on this lease to be paid in the arrears. Unless otherwise provided, terms of payment shall be Net thirty (30) days from the receipt of Lessor's proper invoice. Payments will be made by electronic funds transfer. Payment shall be deemed to have been made as of the date on which an electronic funds transfer was made.

**(b)** When space is offered and accepted, the usable square footage (USF) delivered will be confirmed by:

1. NTESS’ measurement of plans submitted by the successful Offeror as approved by NTESS, and an inspection of the space to verify that the delivered space is in conformance with such plans, or
2. a mutual on-site measurement of the space, if the SP determines that it is necessary.

**(c)** Payment will not be made for space which is in excess of the amount of (USF) stated in the lease.

**(d)** If it is determined that the amount of USF actually delivered is less than the amount agreed to in the lease, the lease will be modified to reflect the amount of usable space delivered and the annual rental will be adjusted as follows:

USF not delivered multiplied by the USF rate equals the reduction in annual rent. The rate per USF is determined by dividing the total annual rental by the USF set forth in the lease. USF Not Delivered X Rate per USF = Reduction in Annual Rent.

#

# PROHIBITED USES

NTESS agrees that NTESS’ uses of the NTESS-controlled premises shall be in accordance with laws and regulations governing the uses of property in the jurisdiction in which the NTESS-controlled premises are located.

# RIGHTS AND INTERESTS

All rights and interests resulting from this lease shall pass directly from the Lessor to the government. The NTESS-controlled premises shall be operated as government premises in accordance with this lease.

# SOFTWARE, SERVICES & INFORMATION SYSTEMS SECURITY ASSURANCE

1. Subcontractor warrants that all items, information systems, software and services, including cloud-based service models (e.g., infrastructure as a service, platform as a service, or software as a service) delivered under this Subcontract only contain features and/or functions that are fully disclosed.
2. If Subcontractor suspects or becomes aware of any threat events, security incidents, or vulnerabilities that may have the potential to affect the functionality, security, or integrity of items or services provided to NTESS, Subcontractor shall immediately give verbal notice to NTESS’ Security Incident Management Program (SIMP) by calling (505) 283-7467, or for subcontracts issued in California call (925)294-2600 (these phone lines are manned 24 hours a day, 7 days a week). Verbal notification shall occur at the time of Subcontractor’s awareness or suspicion, and prior to any follow up investigations. In addition to the immediate verbal notification, Subcontractor shall provide written notification to the Subcontracting Professional and Sandia Delegated Representative (SDR), if an SDR is named in the Subcontract, within 72 hours of Subcontractor’s awareness or suspicion.
3. Subcontractor shall cooperate fully with NTESS to investigate all potential security incidents, threat events, and/or vulnerabilities.

NOTE: As used in this clause, the terms “threat event” and “vulnerability” have the meanings defined in NIST SP 800-30. The term “security incident” has the meaning defined in NIST SP 800-53. Security incidents include, but are not limited to: malfunctions due to design/implementation errors and omissions, targeted malicious attacks, untargeted malicious attacks, insider threats, unintended capabilities, and compromises/breaches involving information system components, information technology products, and development processes or personnel.

# SUBCONTRACTING

All lower-tier subcontracts shall be made in the name of the Subcontractor and shall not bind nor purport to bind NTESS or shall not relieve Subcontractor of any obligation under this purchase order/contract. If Subcontractor subcontracts any work in the performance of this subcontract, Subcontractor shall incorporate into every such lower-tier subcontract an appropriate set of Sandia Ts&Cs found at <http://www.sandia.gov/working_with_sandia/procurement/current_suppliers/contractor_bidder/terms-conditions.html> or may use the latest revision of SF6432-CI for the purchase of Commercial Items that are products or SF 6432-CS for commercial services, into any such lower-tier subcontract.

# 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.
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 Department of Energy 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 Department of Energy (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. 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. 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 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, biomonitoring, 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 PII, 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-SIMP (7467) or for subcontracts issued in California call (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 lower-tier subcontractor or non-governmental third party who receives PII provided through this agreement.

# SUPERINTENDENT

Lessor agrees to have a NTESS-controlled premises superintendent or a locally designated representative available to promptly correct deficiencies upon notification from the SDR.

# TAXES

Lessor shall pay any taxes, use fees, or assessments levied against the NTESS-controlled premises by any governmental entity.

# UTILITIES

The Lessor shall ensure that utilities necessary for operation of the NTESS-controlled premises are provided and all associated costs are included as a part of the established lease rate.

# WAIVERS

No failure by either Lessor or NTESS to insist upon strict performance of any provision of this lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or other performance by Lessor or NTESS during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

# WARRANTIES OF TITLE AND QUIET POSSESSION

Lessor covenants that Lessor is the legal owner of premises and that Lessor has the right to make this lease and that NTESS shall enjoy quiet and peaceful possession of the premises during the term of this lease. Lessor expressly warrants that there are no other agreements in force that conflict with this lease. Lessor and any successors in interest shall agree not to enter into any arrangement that could interfere with NTESS’ quiet and peaceful possession of the NTESS-controlled premises during the term of this lease. Lessor expressly warrants that the premises delivered under this lease are in accordance with the description set forth in Section I and compliant with all requirements of this lease.

**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 lease incorporates by reference with the same force and effect as if they were given in full text, the following FAR clauses and DEAR clauses. The full text of these clauses may be found at Title 48 of the 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 SP. Where the FAR/DEAR clauses refer to Contractor, substitute Lessor.

# ACCEPTANCE OF SPACE

**(a)** When the Lessor has completed all alterations, improvements, and repairs necessary to meet the requirements of the lease, the Lessor shall notify the SP. The SP or designated representative shall promptly inspect the space.

**(b)** NTESS will accept the space and the lease term will begin after determining that the space is substantially complete and contains the required USF as indicated in the Request for Proposals.

# ACCESS TO NTESS INFORMATION

Lessor or lower-tier subcontractor personnel who enter the NTESS-controlled premises may be exposed to NTESS or third party information and as part of the access requirements shall cause each person assigned to work in the NTESS-controlled premises to execute a proprietary information agreement that will be furnished by the SDR to Lessor or their lower-tier subcontractors before such persons will be allowed to enter the NTESS-controlled premises.

# APPLY TO ALL LEASES

# FAR 52.202-1 Definitions

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

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 52.226-1 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 52.244-6 Subcontracts for Commercial Items

FAR 52.245-1 Government Property

FAR 52.247-64 Preference for Privately Owned U.S. Flag Commercial Vessels

DEAR 952.211-71 Priorities and Allocations (Atomic Energy)

DEAR 952.217-70 Acquisition of Real Property

# APPLY TO LEASES EXCEEDING $3,500

FAR 52.222-54 Employment Eligibility Verification

# APPLY TO LEASES EXCEEDING $10,000

FAR 52.222-21 Prohibition of Segregated Facilities

FAR 52.222-26 Equal Opportunity

# APPLY TO LEASES EXCEEDING $15,000

FAR 52.222-36 Equal Opportunity for Workers with Disabilities

# APPLY TO LEASES IF $25,000 OR MORE

DEAR 970.5223-4 Workplace Substance Abuse Programs at DOE Sites

# APPLY TO LEASES IF $30,000 OR MORE

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

# APPLY TO LEASES IF $150,000 OR MORE

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

FAR 52.222-35 Equal Opportunity for Veterans

FAR 52.222-37 Employment Reports on Veterans

# APPLY TO LEASES EXCEEDING $150,000

# FAR 52.203-17 Contactor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights

# FAR 52.219-8 Utilization of Small Business Concerns

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

FAR 52.244-5 Competition in Subcontracting

**APPLY TO LEASES EXCEEDING $700,000**

FAR 52.219-9 Small Business Subcontracting Plan Alternate II

FAR 52.219-10 Incentive Subcontracting Program

# APPLY TO LEASES EXCEEDING $5,500,000

FAR 52.203-13 Contractor Code of Business Ethics and Conduct

**APPLY TO ALL NTESS-CONTROLLED PREMISES**

DEAR 952.203-70 Whistleblower Protection for Contractor Employees

DEAR 952.223-75 Preservation of Individual Occupational Radiation Exposure

Records

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

**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 2014) (DEVIATION)

# AUTHORIZED DISTRIBUTORS

Unless specifically authorized by the SP in writing, the Subcontractor shall only furnish items/components provided by authorized distributors and not independent distributors. Any item/components furnished from an independent distributor shall meet all OEM specifications and industry standards.

# CITIZENSHIP STATUS

All personnel of the Lessor and its lower-tier subcontractors who require access to the NTESS-controlled premises must be U.S. citizens, or foreign nationals who are legal aliens or have the required authorization to perform work in the U.S. and must meet rules of the site for access to the work areas in place at the time of performance of this subcontract.

# CLASSIFIED INFORMATION ACCESS REQUIREMENTS

DEAR 952.204-2 Security Requirements

DEAR 952.204-70 Classification/Declassification

DEAR 970.5204-1 Counterintelligence

#

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

Lessor shall provide all ES&H services for Lessor or Lessor lower-tier subcontractor employees performing work in the NTESS-controlled premises.

# FAILURE IN PERFORMANCE

The covenant to pay rent and the covenant to provide any service, utility, maintenance, or repair required under this lease are interdependent. In the event of any failure by the Lessor to provide any service, utility, maintenance, repair or replacement required under this lease when such failure remains uncured for a period of ten (10) days after receipt of notice of the failure NTESS may, by subcontract or otherwise, perform the requirement and deduct from any payment or payments under this lease, then or thereafter due, the resulting cost to NTESS including all administrative costs. If NTESS elects to perform any such requirement, NTESS and each of its Subcontractors shall be entitled to access to any and all areas of the building, access to which is necessary to perform any such requirement, and the Lessor shall afford and facilitate such access. Alternatively, NTESS may deduct from any payments under this lease, then or thereafter due, an amount which reflects the reduced value of the subcontract requirement not performed. No deduction from rent pursuant to this clause shall constitute a default by NTESS under this lease. These remedies are not exclusive and are in addition to any other remedies which may be available under this lease or at law.

# GOVERNMENT PERSONAL PROPERTY PROTECTION

All personal property, equipment and materials on the NTESS-controlled premises are government owned. Acts of theft, illegal possession and unlawful destruction or use of government property are violations punishable under Federal laws. Every user of government property is responsible for its physical protection and for reporting to the SDR immediately the loss, theft, destruction, or damage of such property.

# HAZARDOUS MATERIALS HANDLING

The Lessor shall be responsible for any environmental waste, hazardous waste, discharge, contamination or other condition which either exists or is known to exist, or which may be discovered at some time in the future on the NTESS-controlled premises and its appurtenances (e.g. oil from HVAC units).

#

# HAZARDOUS MATERIALS REMOVAL

Those hazardous materials brought in to the NTESS-controlled premises by the Lessor 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 Lessor and shall be removed from the NTESS-controlled premises 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 Lessor and shall also be removed.

# 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 Performance 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. Please contact your buying representative for additional information.

# PROGRESSIVE OCCUPANCY

NTESS shall have the right to elect to occupy the space in partial increments prior to the substantial completion of the entire leased NTESS-controlled premises, and the Lessor agrees to schedule its work so as to deliver the space incrementally as elected by NTESS. NTESS shall pay rent commencing with the first business day following substantial completion of the entire NTESS-controlled premise unless NTESS has elected to occupy the leased premises incrementally. In case of incremental occupancy, NTESS shall pay rent pro rata upon the first business day following substantial completion of each incremental unit. Rental payments shall become due on the first workday of the month following the month in which an increment of space is substantially complete, except that should an increment of space be substantially completed after the fifteenth day of the month, the payment due date will be the first workday of the second month following the month it was substantially complete. The commencement date of the firm lease term will be a composite determined from all rent commencement dates.

# SPRINKLER SYSTEM

**(a)** Below-grade space to be occupied by NTESS and all areas in a building referred to as "hazardous areas" in National Fire Protection Association Standard 101, known as the "Life Safety Code," or any successor standard thereto, must be protected by an automatic sprinkler system or an equivalent level of safety.

**(b)** If offered space is three (3) stories or more above grade, the Lessor shall provide written documentation that the building meets egress and fire alarm requirements as established by NFPA Standard No. 101 or equivalent. However, if:

1. offered space is 5 stories or less above grade,
2. the total NTESS leased space in the building (all leases combined) will be less than 35,000 square feet, and
3. the building has a sprinkler system, this documentation is not required.

**(c)** If offered space is six (6) stories or more above grade, additional fire and life safety requirements may apply. Therefore, the Offeror must advise NTESS in its offer whether or not the offered space or any part thereof, is on or above the sixth floor of the offered building.

# SUBCONTRACTOR, LOWER-TIER SUBCONTRACTOR, AND VISITOR ACCESS REQUIREMENTS

**(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 MARKINGS

Non-government commercial vehicles must be marked in accordance with Department of Transportation regulations. Operators of all vehicles must have, in their possession, valid registration, insurance, licensing and related documentation applicable to the vehicle.