**SANDIA NATIONAL LABORATORIES (SNL)**

***MANAGED AND OPERATED BY***

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

**SF 6432-CM (11/2022)**

**SECTION II**

**STANDARD TERMS AND CONDITIONS FOR COMMERCIAL PRODUCTS AND SERVICES**

**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 SECTION I.**

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[**APPLY TO SUBCONTRACTS EXCEEDING $250,000**](#_APPLY_TO_SUBCONTRACTS_6)

**[APPLY TO SUBCONTRACTS EXCEEDING $500,000](#_APPLY_TO_SUBCONTRACTS_7)**

[**APPLY TO SUBCONTRACTS EXCEEDING $6,000,000**](#_APPLY_TO_ALL_2)

[**APPLY TO SUBCONTRACTS THAT MAY INVOLVE ACCESS TO CLASSIFIED INFORMATION**](#_APPLY_TO_ALL_3)

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# ACCEPTANCE OF TERMS AND CONDITIONS (Ts&Cs)

By signing this subcontract, beginning performance, and/or delivering item or services ordered under this subcontract, the Subcontractor agrees to comply with all the Ts&Cs, specifications, and other documents that are incorporated by reference or attachment to this subcontract. NTESS hereby objects to any Ts&Cs contained in any acknowledgment of this subcontract 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.

# ACRONYMS AND DEFINITIONS

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

1. COMMERCIAL COMPONENT, PRODUCT, SERVICE, and COMMERCIALLY AVAILABLE OFF-THE-SHELF (COTS) ITEM as defined in FAR 52.202-1 Definitions and FAR 2.101 Definitions
2. DOE means the U.S. Department of Energy
3. GOVERNMENT means the United States of America and includes the U.S. DOE/NNSA, the Secretary of Energy of the U.S., or any duly authorized representative thereof.
4. HAZARDOUS MATERIALS means any material with the potential to cause illness, injury, or death to a person, or damage to a facility or to the environment, for the categories of radioactive material, biological agents, explosives, and hazardous chemicals.
5. NNSA means the U.S. Department of Energy - National Nuclear Security Administration
6. NTESS means National Technology and Engineering Solutions of Sandia, LLC, the management and operating Contractor for the Sandia National Laboratories under Prime Contract No. DE-NA0003525 with DOE/NNSA.
7. NTESS-DIRECTED WORK means work under a subcontract for which NTESS retains accountability for the outcome of the work performed and routinely provides work direction to the Subcontractor's work force.
8. SANDIA means Sandia National Laboratories operated by NTESS under Prime Contract No. DE-NA0003525 with DOE/NNSA.
9. 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.
10. SELLER means the person or organization that has entered into this subcontract with NTESS.
11. SNL means Sandia National Laboratories operated by NTESS under Prime Contract No. DE-NA0003525 with DOE/NNSA.
12. SP means the Subcontracting Professional or Buyer; the only person authorized to execute and/or administer this subcontract for NTESS.
13. SUBCONTRACT means subcontract at all tiers, Purchase Order, Price Agreement, Ordering Agreement, or modifications thereof.
14. SUBCONTRACTOR means the person or organization that has entered into this subcontract to sell something to NTESS or the Construction Contractor that has entered into this subcontract to perform construction & construction-related work for NTESS. (Construction Specifications may refer to this entity as “Contractor” to avoid confusion.)
15. SUBCONTRACTOR-DIRECTED WORK means work under a subcontract for which the Subcontractor is accountable for the outcome of the work performed and routinely provides work direction to the Subcontractor's work force or lower-tier subcontractors (also referred to as “Subs”).
16. U.S./US means the United States of America

Note: Sandia National Laboratories; SNL; Sandia; National Technology and Engineering Solutions of Sandia, LLC; and NTESS may be used interchangeably throughout Sections I and II of this subcontract or agreement.

# 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 performance/delivery, except for 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 SP within 30 days. However, the Subcontractor may assign rights to be paid, amounts due or to become due, if the SP 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.

# AUDIT REQUIREMENTS

The following clauses are applicable on Fixed Rate - Labor Hour subcontracts or when Labor or Other Direct Costs are called out individually as costs incurred as a factor in determining the amount payable to the Subcontractor. The determination of applicability will be made by NTESS's Contract Audit Department, who will contact the Subcontractor to provide required materials when necessary.

**DEAR 970.5232-3 ACCOUNTS, RECORDS AND INSPECTION (NNSA CLASS DEVIATION)**

Requirement applies to all subcontracts (including fixed-price or fixed-rate subcontracts) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

**CLAIM OF COSTS INCURRED**

Subcontractor shall provide a claim of costs incurred (Electronic Cost Claim or “ECC”) to the NTESS Contract Audit Department annually within ninety (90) days after end of the Subcontractor’s fiscal year. An ECC is prepared by the Subcontractor and provided to the Contract Audit Department in preparation for an audit of the costs incurred and claimed by the Subcontractor. It is used to compare and reconcile previously billed and paid amounts that are shown in NTESS' accounting system. It also provides the Subcontractor with an additional opportunity to review previous billings to ensure there have not been omissions or errors. The ECC shall include all costs incurred on this subcontract during the fiscal year just ended. Additionally, an ECC shall be submitted for any adjustment to any previously reported cost for any prior year within 90 days of the date the adjustment is made. The Subcontractor may obtain templates and instructions for submission of the ECC from the Contract Audit Department upon request the following website: http://www.sandia.gov/working\_with\_sandia/current\_suppliers/contract\_audit/index.html.

# AUTHORIZED DISTRIBUTORS

The Subcontractor shall only furnish items/components provided by distributors duly authorized by the Original Equipment Manufacturer (OEM), not from independent distributors or brokers, unless specifically authorized in writing by the SP.  Items/components furnished by an independent distributor or broker shall still meet all OEM specifications and industry standards.

# BANKRUPTCY

If the Subcontractor enters into any proceeding relating to bankruptcy, it shall provide written notice to the SP within five (5) business 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

1. 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.
2. NTESS may terminate this subcontract for the convenience of NTESS or the government, 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.
3. Subcontractor shall not be liable for delays in performance occasioned by causes beyond Subcontractor's reasonable control and without Subcontractor's fault or negligence.
4. The rights and remedies of NTESS in this clause are subject to the Disputes clause of this subcontract.

# CHANGES

1. The SP may at any time, by written notice, make changes to the SOW of this subcontract in any one or more of the following:
	1. Description of the services to be performed
	2. Place of performance
	3. The amount of services to be furnished.
2. 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.
	1. Such adjustment shall be made by written revision to this subcontract signed by both parties.
	2. Any claim for adjustment by Subcontractor must be made within thirty (30) 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.
3. Nothing in this clause, including any disagreement with NTESS about the equitable adjustment, shall excuse Subcontractor from proceeding with the subcontract as changed.

# CITIZENSHIP STATUS

Unless otherwise approved by NTESS, all personnel of the Subcontractor and its lower-tier subcontractors who will perform work on this subcontract and who will require physical and/or cyber access to NTESS-controlled, government-controlled or government-owned sites, information, technology, or cyber resources, to include remote access must be United States citizens, or foreign nationals who are legal aliens or have the required authorization to perform work in the United States and must meet rules of the site for access to the work areas in place at the time of performance of this subcontract. The Subcontractor agrees and shall ensure that non- United States citizen personnel, to include lower-tier subcontractor personnel, who will require physical and/or cyber access to NTESS-controlled, government-controlled or government- owned sites, information, technology, or cyber resources to perform work on this subcontract are identified and receive prior approval from NTESS Security, in accordance with all laws, regulations, policies, and site access rules, including, but not limited to DOE and NTESS security requirements, before access is granted.

# COMPLIANCE WITH LAWS

Subcontractor shall acquire all necessary permits or licenses and abide by all applicable federal, state, and local laws, ordinances, or regulations, in which any work under this subcontract is performed which are in any way applicable to the SOW of this subcontract.

# DATA TRANSPARENCY REQUIREMENTS

# NTESS is required to report certain information on subcontract awards (classified information is excluded from disclosure) per the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), and other NTESS prime contract clauses. These require reported information be made publicly available; accordingly, NTESS is notifying its subcontractors that the required information will be made public.

# DISCLOSING USE OF FREE, LIBRE AND OPEN SOURCE SOFTWARE (FLOSS) AND THIRD-PARTY SOFTWARE (TPS)

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

Subcontractor shall disclose in writing any FLOSS and/or TPS delivered in connection with this subcontract. Send written disclosures to the SP listed on this first page of this subcontract and contractnotification@sandia.gov.

1. 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 subjects the delivered software to any FLOSS License, or requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge
2. FLOSS License(s) include any Free Software, Open Source and Public License(s). FLOSS License also refers to: 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.

# DISPUTES

Subcontractor and NTESS agree to use the NTESS Acquisition Conflict Resolution Process set forth at: <http://www.sandia.gov/working_with_sandia/current_suppliers/contract_information/index.html> for resolving any and all disputes arising from this subcontract. NTESS Acquisition Conflict Resolution Process is available in the “Policies” tab.

# ETHICAL CONDUCT

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

1. Comply with all applicable laws, regulations and the terms of the subcontract
2. Conduct themselves with the highest degree of ethics, integrity and honesty
3. Treat others with respect and dignity, and create an environment free from discrimination, harassment, threats, violence, bullying, intimidating conduct or other similar behavior
4. Promptly report violations via email to the NTESS Procurement Policy and Compliance Department manager at ppqd@sandia.gov
5. Report any concerns relating to fraud, waste, abuse or any other ethical concerns with the Ethics Advisory and Investigative Services Anonymous Helpline (505) 845-9900.

# EXCESS FREIGHT CHARGES

When NTESS pays any amounts for freight charges in connection with this subcontract, the 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.

# EXCUSABLE DELAYS

1. Except for defaults of subcontractors at any tier, the Subcontractor shall not be in default because of any failure to perform this subcontract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of these causes are:
	1. Acts of God or of the public enemy
	2. Acts of NTESS
	3. Acts of the government in either its sovereign or contractual capacity
	4. Fires
	5. Floods
	6. Epidemics
	7. Quarantine restrictions
	8. Strikes
	9. Freight embargoes
	10. Unusually severe weather
2. If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Subcontractor and lower-tier subcontractor, and without the fault or negligence of either, the Subcontractor shall not be deemed to be in default, unless:
	1. The subcontracted supplies or services were obtainable from other sources, or
	2. The SP ordered the Subcontractor in writing to purchase these supplies or services from the other source, or
	3. The Subcontractor failed to comply reasonably with this order.
3. Upon request of the Subcontractor, the SP shall ascertain the facts and extent of the failure. If the SP determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of NTESS or the government under the Termination Clause of this subcontract.

# EXPORT CONTROL

1. Any export controlled item, technical data, software, or services (“Export Controlled Information”) furnished by NTESS in connection with this subcontract is supplied for use in the United States only. “Export Controlled Information” is any item, technical data, information, software, or service that is determined to be greater than Export Administration Regulations (EAR) 99. 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 Code of Federal Regulations (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 Information,, to include transfer to foreign persons (as defined under the EAR Part 722 and ITAR 120.16), without the authority of an export license, agreement, or applicable exemption or exception. Subcontractor shall immediately notify the SP if it transfers Export Controlled Information under this subcontract to foreign persons. Diversion contrary to U.S. export laws and regulations is prohibited.
2. Subcontractor shall immediately notify the SP if Subcontractor is, or becomes, listed in any Denied Parties List (e.g., Denied Persons List, Entity List, Unverified List, Military End User List, AECA Debarred List, Consolidated Screening List, etc.) 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.
3. 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 export/import compliance program in accordance with the provisions of the ITAR.
4. 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

# HANDLING, PROTECTION, AND RELEASE OF INFORMATION

1. Subcontract-related information, as used in this clause, means recorded information, regardless of form or the media, computer software. Examples of subcontract-related information include, but are not limited to:
	1. Information identified with any NTESS-applied marking (e.g., Official Use Only (“OUO”), Controlled Unclassified Information ("CUI"), NTESS Proprietary, Sandia Proprietary);
	2. Information directly related to subcontract and/or lower-tier subcontract 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;
	4. Information obtained directly from NTESS or SNL-owned electronic resources, regardless of whether the information is marked; and
	5. Computer software, in either executable or source code form, delivered to Subcontractor and related to this subcontract.
2. Handling of Information
Subcontractor shall:
	1. Ensure any subcontract-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 subcontract-related information from unauthorized access, use, and disclosure;
	3. Inform employees and lower-tier subcontractors who may require access to subcontract-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.
3. Protection of Information
Subcontractor agrees to implement and maintain safeguards for subcontract-related information that meet or exceed the following requirements:
	1. Protection in Use. Subcontractor shall take precautions to prevent access to subcontract-related information by persons who do not require the information to perform their jobs.
	2. Protection in Storage. Subcontractor shall store subcontract-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. Review of Storage Methods. Subcontractor shall allow and participate in Operations Security (OPSEC) reviews conducted when new construction or major modifications are planned for a facility that will process or store classified or sensitive information or matter. For assistance regarding conduct of OPSEC reviews, please contact opsec@sandia.gov;
		1. Sensitive information is defined as classified or unclassified information that has been determined to have national security, governmental, proprietary, or personal privacy restrictions. Stewards of sensitive information must ensure that persons granted access have proper authorization (i.e., clearance) and Need-to-Know.
	4. Reproduction. Subcontractor shall limit reproduction of subcontract-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;
	5. Disposal or Return. Return and/or disposal of subcontract-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 subcontract-related information shall be destroyed prior to disposal via a cross-cut shredder (residue not to exceed 1mmx5mm). 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.
4. Release of Information
	1. Disclosure of subcontract-related information or other NTESS information to persons or entities outside of Subcontractor’s organization or authorized lower-tier subcontractors is prohibited without advance written approval from NTESS. Disclosure requests may be sought by writing to the SP on this subcontract.
	2. 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 subcontract 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.
	3. NTESS critical information shall not be released outside of the security boundary (virtual or physical) and is considered to have passed the security boundary once it is no longer under direct or exclusive control of the Subcontractor’s or NTESS’s personnel or infrastructure. NTESS critical information is identified and recorded at the program or operational level and provision of such material will be disclosed by NTESS. For assistance regarding NTESS critical information, please contact opsec@sandia.gov.
		1. Critical information is defined as specific facts about friendly (e.g., U.S., DOE, Sandia) intentions, capabilities, or activities that are vitally needed by adversaries for them to plan and act effectively in their attempts to guarantee failure of, or unacceptable consequences to, friendly objectives.
	4. Subcontractor shall ensure its employees and lower-tier subcontractors comply with this clause.
	5. 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.
5. Clause Interpretation
	1. 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.
	2. 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 subcontract as required by law. External reporting as used in this clause refers to reports submitted to state or federal government offices.
	3. Under a valid court or government agency order, Subcontractor may release subcontract-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 subcontract-related information notice of such obligation and the opportunity to oppose disclosure.

# INSPECTION AND ACCEPTANCE

NTESS and the government may inspect all deliverables at reasonable times and places, including, when practicable, during manufacture and before shipment. Subcontractor shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge. No inspection shall relieve Subcontractor of its obligations to furnish all items in accordance with the requirements of this subcontract. NTESS' final inspection and final acceptance shall be at destination. Subcontractor shall not re-tender rejected items without disclosing the corrective actions taken.

# INVENTION REPORTING

If the Subcontractor creates any subject invention in the performance of this subcontract as defined in the applicable Patent Rights clause, such as 48 CFR 952.227-13 or 37 CFR 401.14, Subcontractor shall inform NTESS of each subject invention within two months after inventor discloses it in writing to Subcontractor personnel responsible for patent matters. The disclosure shall be made to the SDR on this subcontract in writing and shall identify the subcontract under which the invention was made and the inventor(s). The disclosure shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure.

# 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 is responsible for reviewing NTESS's Section II Terms and Conditions applicable to this subcontract found at <http://www.sandia.gov/working_with_sandia/current_suppliers/contract_information/index.html> and incorporating all required NTESS's Section II Terms and Conditions into their lower-tier subcontracts.

# NOTICE OF POTENTIAL DELAY

Subcontractor shall strictly comply with the delivery requirements of this subcontract. Whenever the Subcontractor has knowledge of any actual or potential delay or threatened delay in the timely performance of this subcontract, the Subcontractor shall immediately give notice thereof, confirmed in writing, including all relevant information with respect thereto, to the SP. Such notice shall not relieve the Subcontractor from compliance with all of the requirements of the subcontract.

# ORDER OF PRECEDENCE - COMMERCIAL PRODUCTS AND SERVICES

Any inconsistencies shall be resolved in accordance with the following descending order of precedence:

1. Section I
2. SF 6432-CM, Section II
3. Specifications, drawings, and other documents incorporated in the subcontract

# PAYMENTS

1. Firm-Fixed Price Subcontracts.
	1. Invoices or vouchers requesting payment for item(s) of government property as defined in DEAR 970.5245-1 Property shall be separately listed on such invoices or vouchers.
	2. Any offered discount shall be taken if payment is made within the discount period that the Seller indicates.
2. Fixed-Rate Subcontracts.

Upon submittal of individual invoices or vouchers, and pursuant to the Allowable Charges Clause in Section I of the subcontract the Subcontractor shall be paid as follows:

* 1. The amounts computed by multiplying the appropriate fixed-rate, or rates, set forth in Section I by the number units performed. The fixed rates shall include wages, indirect cost, general and administrative expense and profit; provided; however, that the fractional parts of a unit shall be payable on a prorated basis. Unless otherwise specified in this subcontract, the fixed rate applies to both employees of the Subcontractor and to employees of subcontractors within the stated labor categories only.
	2. Total time paid for Subcontractor's personnel chargeable to NTESS in those labor categories set forth in the clause of Section I of this subcontract entitled "Allowable Charges," and shall be recorded on readily verifiable time records. Each time record shall bear the name of the individual, labor category, dates, and hours worked, and shall segregate total hours worked between:
		1. Those hours worked hereunder, identified by reference to this subcontract,
		2. Each task order, if any, issued hereunder, and those hours worked on all other subcontracts. In addition, when work is performed on NTESS-controlled premises, the time involved shall be recorded on NTESS' form (or equivalent Subcontractor-supplied form acceptable to the SP) which shall be certified by Subcontractor's representative and approved by an SDR as authorized by the SP, and
		3. Unless provisions of Section I hereof otherwise specify, the fixed rates set forth in Section I shall not be varied by virtue of the Subcontractor having performed work on an overtime basis. If Section I provides rates for overtime work, the overtime work will be reimbursable at overtime rates only to the extent the overtime work is authorized in writing by the SP or his/her delegate and any unauthorized overtime work will be reimbursable at the standard time rates.
	3. Notice of Cost Approaching Ceiling Price.

It is estimated that the total cost to NTESS for the performance of this subcontract will not exceed the ceiling price set forth in Section I and the Subcontractor agrees to use its best efforts to perform the work specified in Section I and all obligations under this subcontract within such ceiling price.

* + 1. If at any time the Subcontractor has reason to believe the hourly rate payments and material costs which will accrue in the performance of this subcontract in the next succeeding thirty (30) days, when added to all other payments and costs previously accrued, will exceed seventy-five percent (75%) of the ceiling price then set forth in Section I, the Subcontractor shall notify the SP to that effect giving its revised estimate of the total price to NTESS for the performance of this subcontract, together with supporting reasons and documentation.
		2. If at any time during the performance of this subcontract, the Subcontractor has reason to believe that the total price to NTESS for the performance of this subcontract will be substantially greater or less than the then-stated ceiling price, the Subcontractor shall so notify the SP, giving its revised estimate of the total price for the performance of this subcontract, together with supporting reasons and documentation.
		3. If at any time during the performance of this subcontract, NTESS has reason to believe that the work to be required in the performance of this subcontract will be substantially greater or less than the stated ceiling price, the SP will so advise the Subcontractor, giving the then-revised estimate of the total amount of effort to be required under the subcontract and the ceiling amount shall be revised accordingly.
	1. Audit of Invoices or Vouchers.
		1. At any time, as deemed necessary by the SP or his designee but not later than three (3) years after final payment under this subcontract, NTESS may perform an audit of the invoices or vouchers billed for labor, material, travel and any other charges identified in the allowable charges clause of Section I of the subcontract.
		2. Each payment theretofore made shall be subject to reduction to the of amounts which are found by NTESS not to have been properly payable, and shall also be subject to reduction for overpayments, or to increase for underpayments, on preceding invoices or vouchers.
		3. Prior to final payment under this subcontract, the Subcontractor shall execute and deliver to NTESS a release in form and substance satisfactory to the SP, discharging NTESS and the government, their officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this subcontract, other than claims in stated amounts as may be specifically excepted by the Subcontractor from the operation of the release.
		4. NTESS may, at its own discretion, perform an administrative close of subcontracts upon completion of the period of performance; such an action does not relieve either party of any rights or responsibilities with respect to final audit activities and settlements.
	2. Reports. The Subcontractor shall furnish such progress reports and schedules, and such other reports concerning the work under this subcontract as the SP may from time-to-time require.
	3. Prompt Payment Discounts. NTESS may take subcontract or invoice prompt payment discount. Discount time will be computed from the date correct invoice or voucher is received by NTESS, or date of completion of work under this subcontract, whichever is later. Payment is deemed to be made, for the purpose of earning the discount, on the date on which the electronic funds transfer was made.
	4. Travel and Other Direct Costs. The Subcontractor shall be paid net invoice cost or charge for travel and other direct cost as provided in this subcontract subject to approval by the SP of individual invoices or vouchers and pursuant to FAR Part 31 as supplemented by the Department of Energy Acquisition Regulation (DEAR) Part 931 in effect on the date of this subcontract.

# PERFORMANCE EVALUATION PROGRAM

In keeping with NTESS' goal 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. Details on the evaluation program are internally tracked via the NexGen Score program. Please contact the SP for additional information.

# PRICE-ANDERSON AMENDMENTS ACT (PAAA)

1. Regulatory Liability. If the item(s) or service(s) required by the subcontract is related to nuclear or radiological safety, then the item(s) or service(s) are regulated by the DOE/NNSA under the provisions of Federal Regulations 10 CFR 820, 10 CFR 830 10 CFR 830, 10 CFR 835 (Price-Anderson Amendments Act – 1988), and DOE O 414.1D. The Subcontractor shall incorporate all applicable subcontract requirements into all supplier-issued procurement documents. Flow-down of subcontract requirements shall be verbatim, i.e., without change or modification. Lower-tier subcontracting requires flow-down of all applicable requirements to each subcontractor or supplier at any tier.
2. Occupational Radiation Protection. The Subcontractor shall comply with applicable requirements in NTESS' Radiation Protection Procedures Manual, (RPPM) unless the Subcontractor’s activities specified in the SOW shall be regulated through a license by the Nuclear Regulatory Commission or a State under an Agreement with the Nuclear Regulatory Commission. (Upon request the SP will make the RPPM available.)

# PROHIBITED ACTIVITIES

In addition to prohibitions elsewhere stated in this subcontract, the following activities are prohibited under this Subcontract:

1. Subcontractor does not have authority to act on behalf of NTESS. At no time shall the Subcontractor say or do anything that suggests that Subcontractor is acting with authority for NTESS or on its behalf.
2. Subcontractor shall not transfer or offer to transfer anything of value to any employee, officer, or representative of any customer or potential customer of NTESS for any purpose related to any NTESS activity or performance of this subcontract. Subcontractor commits to adhere to U.S. and foreign laws with respect to such activities, including but not limited to U.S. laws prohibiting conduct in violation of the Foreign Corrupt Practices Act, 15 U.S.C. 78dd et seq.
3. Subcontractor shall not directly solicit work or tasks for NTESS from customers or potential customers and shall not engage in the negotiation of any statement of work requirements, cost estimates or prices, or any other terms or conditions.
4. Subcontractor shall adhere to the requirements of FAR clause 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, which prohibits the expenditure of federal appropriations for lobbying or lobbying-related activities.

# 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 shall take all reasonable steps and precautions to ensure all PII provided to the Subcontractor is adequately controlled, protected, and used only to perform work called for under this subcontract.

1. For the purposes of this subcontract, PII is defined as:
	1. 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:
		1. social security number
		2. driver's license number
		3. passport number
		4. other federal- or state-issued identification card number
		5. bank account number (with or without routing number, access code, or Personal Identification Number [PIN])
		6. financial or benefit account number in combination with any required code permitting access; background information; verification report
		7. credit report, including consumer reports
		8. medical or health information, including biometric, bio-monitoring, or genetic information
		9. employment history including ratings, salary, wage, deduction information, and disciplinary actions
		10. security clearance history or related information
		11. criminal history
		12. date of birth or age
		13. place of birth
		14. mother’s maiden name
		15. and race or ethnicity
	2. 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.
	3. 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.
2. 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 will immediately take steps to prohibit further disclosure and preserve related documents, records, and communications. Subcontractor shall notify NTESS of the incident within 48 hours by providing written notice to contractnotification@sandia.gov and contacting the named SP. 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.
3. The provisions of this clause shall survive and continue in force following the completion of work under this subcontract until such time that any PII provided to the Subcontractor is either destroyed in its entirety in a manner that ensures it is not readable or decipherable through any means, or that the PII, including any 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 subcontract.

# 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 Department of Energy Acquisition Regulation (DEAR) 970.5223-7 SUSTAINABLE ACQUISITION PROGRAM.

# RIGHTS IN DATA

FAR 52.227-14 – Rights in Data – General, as modified in accordance with 48 CFR 927.409(a) and including Alternate V, applies to all deliverables which are copyrightable works produced as part of the performance of this agreement.

# 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/Seller's cost of replacing such item.

Such loss shall entitle the Subcontractor to an equitable adjustment in delivery schedule obligations.

# 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) provided under this subcontract are free of code or other mechanisms that: collect personal information, assert control of the system without NTESS’ consent, or which may restrict NTESS’ access to or use of company data. Subcontractor further warrants that it will not knowingly introduce, via any means, spyware, adware, ransomware, rootkit, keylogger, virus, trojan, worm, or other code or mechanism designed to permit unauthorized access to the NTESS data, or which may restrict NTESS access to, or use of NTESS data or compromise NTESS data.
2. Subcontractor shall use due diligence to verify that features, functions, and capabilities of deliverables conform to specifications. Subcontractor represents that deliverables only contain features and/or functions that are disclosed.
3. If Subcontractor suspects or becomes aware of any threat events, security incidents, or vulnerabilities in Subcontractor’s operations, products, and/or services, Subcontractor shall provide written notice to contractnotification@sandia.gov within 48 hours.
4. 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.

**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. FAR 52.229-10 State of New Mexico Gross Receipts and Compensating Tax as modified by DEAR 970.2904-1 (a) is applicable in New Mexico. 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

1. All transportation shall be "FOB Destination" unless otherwise specified in this subcontract.
2. If transportation is specified "Freight on Board (FOB) Origin":
	1. No insurance cost shall be allowed unless authorized in writing; and
	2. 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 Prime Contract No. DE-NA0003525. Confirmation will be made by NTESS.

# WARRANTY

1. Subcontractor expressly warrants that no counterfeit item or components shall be delivered to NTESS on this subcontract.
2. Subcontractor warrants, except for exclusions elsewhere in this clause, that work performed under this subcontract conforms to the subcontract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Subcontractor or any subcontractor or supplier at any tier.
3. Subcontractor expressly warrants that all items 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.
4. Warranty period
	1. The warranty for products delivered under this subcontract shall begin upon receipt of conforming items 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 has modified it.
	2. The warranty for services performed under this subcontract shall:
		1. Continue for a period of one (1) year from date of final acceptance of the work.
		2. If NTESS or the government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one (1) year from the date NTESS takes possession.
5. Within the warranty period, Subcontractor shall
	1. Promptly repair or replace any nonconforming product at Subcontractor's election, or
	2. Re-perform any nonconforming or defective service.
6. Subcontractor shall remedy, at Subcontractor's expense, any damage to government-owned or controlled real or personal property, when that damage is the result of:
	1. Subcontractor's failure to conform to subcontract requirements, or
	2. Any defect of equipment, material, workmanship, or design furnished.
7. Transportation of replacement item(s), return of nonconforming item(s), and reperformance of nonconforming services shall be at Subcontractor's expense.
8. Subcontractor's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement.
9. NTESS will notify Subcontractor within a reasonable time after the discovery of any nonconformance, failure, defect, or damage. Subcontractor shall notify NTESS of whether it chooses to make repairs, furnish replacements, or schedule for reperformance of services within three (3) working days after receiving NTESS' notice of nonconformity.
10. If repair, replacement, or re-performance of services is not timely, NTESS may elect to return the nonconforming item, re-procure or repair a nonconforming product or re-procure or self-perform nonconforming services at Subcontractor's expense.
11. With respect to all warranties, express or implied, from lower-tier subcontractors, manufacturers, or suppliers for work performed and/or materials furnished under this subcontract, the Subcontractor shall:
	1. Obtain all warranties that would be given in standard commercial practice;
	2. Require all warranties to be executed, in writing, for the benefit of the government, if directed by NTESS; and
	3. Enforce all warranties for the benefit of the government, if directed by NTESS
12. In the event the Subcontractor's warranty under this clause has expired, the government or NTESS may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty at any tier.
13. Unless a defect is caused by the negligence or intentional of the Subcontractor or lower-tier subcontractor or supplier at any tier, the Subcontractor shall not be liable for the repair of any defects of material or design furnished by NTESS nor for the repair of any damage that results from any defect in Government-Furnished Material/Property or design.
14. This warranty shall not limit NTESS' rights under the "Inspection and Acceptance" clause, if included, in this subcontract with respect to latent defects, gross mistakes, or fraud.
15. Defects in design or manufacture of equipment specified by NTESS on a "brand name and model" basis, shall not be included in this warranty. In this event, the Subcontractor shall require any lower-tier subcontractors, manufacturers, or suppliers at any tier thereof to execute their warranties, in writing, directly to NTESS.

# WORK FOR HIRE

Subcontractor hereby acknowledges that:

1. All duties performed hereunder are specifically ordered or commissioned by NTESS ("Work")
2. Subcontractor has required all of its employees who will do the Work to assign all intellectual property generated in the course of employment to the Subcontractor
3. The Work constitutes and shall constitute a work-made-for-hire as defined in the U.S. Copyright Act of 1976
4. NTESS is and shall be the author of said work-made-for-hire and the owner of all rights in and to the Work.
5. To the extent that the Work is not recognized as a work-made-for-hire, Subcontractor hereby assigns, transfers, and conveys to NTESS, without reservation, all of Subcontractor's rights, title and interest in the Work, including, without limitation, all rights of copyright and copyright renewal in said Work or any part thereof.
6. Subcontractor agrees to execute all papers and to perform such other proper acts as NTESS may deem necessary to secure for NTESS the rights herein assigned.

# WRITTEN NOTICES

1. The Subcontractor shall immediately notify the SP 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
	2. Any claim against the Subcontractor, the cost and expense of which is allowable under the terms of this subcontract
2. 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 SP 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 FAR clauses and DEAR clauses. The FAR and DEAR clauses which are flowed down to subcontracts are as dated in Section I of the NTESS Prime Contract in effect at “Revision 0 – award” of this subcontract; available at <http://www.sandia.gov/working_with_sandia/current_suppliers/contract_information/index.html> under the “Policies” tab. The NTESS Prime Contract (DE-NA0003525) is available for reference at <https://nnsa.energy.gov/aboutus/ouroperations/apm/mosupportdept/sandia-national-laboratories>. The full text of these clauses may be found under Title 48 of the CFR at <http://www.ecfr.gov> or at Acquisition.gov at <https://www.acquisition.gov/content/regulations>. Where the FAR/DEAR clauses refer to Government and Contracting Officer, substitute NTESS and SP.

1. In the phrases “Government Property,” “Government-Furnished Property,” and “Government-Owned Property”;
2. In any patent clauses incorporated herein;
3. When a right, act, authorization or obligation can be granted or performed only by the Government or the Prime Contract Contracting Officer or his/her duly authorized representative;
4. When title to property is to be transferred directly to the Government;
5. In any duty-free entry clauses incorporated herein; and
6. Where specifically modified herein.

For authorized audit rights, the term “Contracting Officer or an authorized representative of the Contracting Officer” shall also include “NTESS, or an authorized representative of NTESS”.

# APPLY TO SUBCONTRACTS AT ANY VALUE

FAR 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009

FAR 52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements

FAR 52.204-21 Basic Safeguarding of Covered Contractor Information Systems

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

FAR 52.219-8 Utilization of Small Business Concerns

FAR 52.222-50 Combating Trafficking in Persons (Alternate I)

FAR 52.224-3 Privacy Training

FAR 52.225-26 Contractors Performing Private Security Functions Outside the United States

FAR 52.227-3 Patent Indemnity

FAR 52.232-39 Unenforceability of Unauthorized Obligations

FAR 52.232-40 Providing Accelerated Payments to Small Business Subcontractors (Deviation)

FAR 52.244-6 Subcontracts for Commercial Products and Commercial Services

FAR 52.245-1 Government Property

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

FAR 52.252-6 Authorized Deviations in Clauses

DEAR 952.247-70 Foreign Travel

# APPLY TO SUBCONTRACTS EXCEEDING $10,000

FAR 52.222-21 Prohibition of Segregated Facilities

FAR 52.222-26 Equal Opportunity

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

FAR 52.225-1 Buy American—Supplies

# APPLY TO SUBCONTRACTS EXCEEDING $15,000

FAR 52.222-36 Equal Opportunity for Workers with Disabilities

# APPLY TO SUBCONTRACTS IF $25,000 OR MORE

DEAR 970.5223-4 Workplace Substance Abuse Programs at DOE Sites

# APPLY TO SUBCONTRACTS IF $150,000 OR MORE

FAR 52.222-35 Equal Opportunity for Veterans

FAR 52.222-37 Employment Reports on Veterans

# APPLY TO SUBCONTRACTS EXCEEDING $250,000

FAR 52.215-2 Audit and Records--Negotiation

FAR 52.227-1 Authorization and Consent

# APPLY TO SUBCONTRACTS EXCEEDING $500,000

FAR 52.204-14 Service Contract Reporting Requirements - Fixed Price

# APPLY TO SUBCONTRACTS EXCEEDING $6,000,000

FAR 52.203-13 Contractor Code of Business Ethics and Conduct

FAR 52.203-14 Display of Hotline Poster(s)

# APPLY TO SUBCONTRACTS THAT MAY INVOLVE ACCESS TO CLASSIFIED INFORMATION OR MATERIAL

DEAR 952.204-2 Security Requirements

DEAR 952.204-70 Classification/Declassification

DEAR 970.5227-12 Patent Rights-Management and Operating Contracts, For-Profit Contractor, Advance Class Waiver Alternate I (NNSA Class Deviation)