**SANDIA NATIONAL LABORATORIES (SNL)**

***MANAGED AND OPERATED BY***

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

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

**SECTION II**

**STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION**

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# ACCEPTANCE OF TERMS AND CONDITIONS (Ts&Cs)

By signing this subcontract beginning performance, and/or delivering items or services ordered under this subcontract, Subcontractor agrees to comply with all the Ts&Cs and all specifications and other documents that this subcontract 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 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 items 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 thirty (30) days. However, the Subcontractor may assign rights to be paid any amounts due, or to become due, if NTESS is promptly furnished an executed Assignment of Payments form. Administration of this subcontract may be transferred from NTESS to the 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.

# 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 give written notice via certified mail to the SP responsible for this subcontract within five (5) days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing of the agreement 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 procure all necessary permits or licenses and abide by all applicable foreign, 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.

# DIFFERING SITE CONDITIONS

1. The Subcontractor shall promptly, and before the conditions are disturbed, give a written notice to the SP of:
   1. Subsurface or latent physical conditions at the site which differ materially from those indicated in this subcontract
   2. Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the subcontract.
2. The SP shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Subcontractor's cost of, or the time required for, performing any part of the work under this subcontract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the subcontract modified in writing accordingly.
3. No request by the Subcontractor for an equitable adjustment to the subcontract under this clause shall be allowed, unless the Subcontractor has given the written notice required; provided, that the time prescribed above for giving written notice may be extended by the SP.
4. No request by the Subcontractor for an equitable adjustment to the subcontract for different site conditions shall be allowed if made after final payment under this subcontract.

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# DISCLOSING USE OF FREE, LIBRE & 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](mailto: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 - CONSTRUCTION

1. Any claim of Subcontractor for any sum of money or other remedial action shall be handled in accordance with the provisions of this clause prior to commencing any form of litigation.
   1. A claim by the Subcontractor shall be made in writing and submitted to the SP within one (1) year after the completion of the subcontract.
   2. The Subcontractor shall provide the certification specified below when submitting any claim exceeding $100,000. The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the subcontract adjustment for which the Subcontractor believes NTESS is liable; and that I am duly authorized to certify the claim on behalf of the Subcontractor.” The certification may be executed by any person duly authorized to bind the Subcontractor with respect to the claim.
   3. For Subcontractor-certified claims over $100,000, the SP must, within sixty (60) days, decide the claim or notify the Subcontractor of the date by which the decision will be made. The SP's decision shall be final unless the Subcontractor appeals the SP decision in writing to the SP.
   4. For Subcontractor claims of $100,000 or less, the SP must, if requested in writing by the Subcontractor, render a decision within sixty (60) days of the request.
2. If the Subcontractor appeals the SP decision, the SP shall have sixty (60) days to reach a mutual agreement with the Subcontractor on a form of alternate dispute resolution that will be employed.
   1. If the parties fail to reach an agreement within the sixty (60) days after written appeal, the SP’s decision stands unless the Subcontractor shall commence litigation in a court of competent jurisdiction in accordance with the Applicable Law clause of this Subcontract.
   2. The Subcontractor shall proceed diligently with performance of this subcontract, pending final resolution of any request for relief, claim, appeal, or action arising under the subcontract, and comply with any decision of the SP pending any final resolution.

# 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](mailto: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.

# 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 any Export Controlled Information under this subcontract to foreign persons. Diversion contrary to U.S. export control 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.

# HANDLING, PROTECTION, AND RELEASE OF INFORMATION

1. Subcontract-related information, as used in this clause, means recorded information, regardless of form or the media, and 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](mailto: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.

# 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 from of all the requirements of the subcontract.

# OPERATIONS, DISMANTLED EQUIPMENT AND MATERIAL, UTILITIES AND STORAGE AREAS

1. Operations
   1. The Subcontractor shall confine all operations (including storage of materials) on NTESS-controlled or government-controlled premises to areas authorized or approved by the SDR/NTESS.
   2. The Subcontractor shall hold and save NTESS and the government, their officers and agents, free and harmless from liability of any nature occasioned by the Subcontractor's performance.
2. Storage Areas
   1. Temporary buildings (e.g., storage sheds, shops, offices, sanitation facilities) and utilities may be erected by the Subcontractor only with the approval of the SDR and shall be built with labor and material furnished by the Subcontractor without expense to NTESS.
   2. The temporary buildings and utilities shall remain the property of the Subcontractor and shall be removed by the Subcontractor at its expense upon completion of the work.
   3. With the written consent of the SDR, the buildings and utilities may be abandoned and need not be removed.
3. Use of Roadways
   1. The Subcontractor shall, under regulations prescribed by the SDR, use only established roadways, or use temporary roadways constructed by the Subcontractor when and as authorized by the SP.
   2. The Subcontractor may close streets and remove signs and other material and structures when expressly authorized by the SDR.
   3. The Subcontractor shall provide and keep in place barricades, signs, markers, flares, and other devices required by the SDR or government site for traffic control and safety.
   4. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation.
   5. When it is necessary to cross curbs or sidewalks, the Subcontractor shall protect them from damage.
   6. The Subcontractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.
4. Utilities
   1. The Subcontractor shall provide all necessary utilities at the work site unless use of existing utilities at the work site is approved in advance by the SDR.
5. Dismantled Equipment and Material
   1. Dismantled equipment and material removed from the work site shall remain the property of the government.
   2. If the dismantled equipment and material is not reused in the performance of this subcontract, the Subcontractor shall:
      1. Label or tag large items and package small items
      2. Prepare an inventory in triplicate on NTESS-furnished forms
      3. Deliver the dismantled equipment and material to a location designated by the SDR.
6. Clean Up
   1. The Subcontractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials.
   2. Before completing the work, the Subcontractor shall remove from the work area and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of NTESS or the government.
   3. If the subcontract requires the modification of areas within buildings or the movement or relocation of furniture or equipment, the Subcontractor shall vacuum and/or sweep and wet mop the area before moving in furniture or equipment and after the move is complete.
   4. Upon completing the work, the Subcontractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the SP or the SDR.

# ORDER OF PRECEDENCE - CONSTRUCTION

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

1. Section I
2. SF 6432-CN, Section II
3. Incorporated specifications
4. Incorporated construction drawings (in descending order of precedence)
   1. NTESS standard detail drawings
   2. Architecture and Engineering supplied detail drawing
   3. General notes
5. Other documents incorporated in the subcontract

# OTHER SUBCONTRACTS

NTESS or the government may undertake or award other subcontracts for additional work at or near the site of the work under this subcontract. The Subcontractor shall fully cooperate with the other Subcontractors and with NTESS or government employees and shall carefully adapt scheduling and performing the work under this subcontract to accommodate the additional work, heeding any direction that may be provided by the SP. The Subcontractor shall not commit or permit any act that will interfere with the performance of work by any other Subcontractor or by NTESS or government employees.

# PAYMENTS - CONSTRUCTION

# *FIRM FIXED PRICE*

1. Subcontractor agrees to provide invoices within sixty (60) calendar days of completion of work.
2. 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.
3. Any offered discount shall be taken if payment is made within the discount period that the Subcontractor indicates.

***TIME & MATERIALS***

1. Hourly Rate.

Subject to approval by the SP of individual invoices or vouchers, and pursuant to FAR Part 31 as supplemented by DEAR Part 931 in effect on the date of this subcontract, the Subcontractor shall be paid as follows:

* 1. The amounts computed by multiplying the appropriate hourly rate, or rates, set forth in Section I by the number of direct labor hours performed, which rates shall include wages, indirect cost, general and administrative expense and profit; provided, however, that the fractional parts of an hour shall be payable on a prorated basis. Unless otherwise specified in this subcontract, the hourly rate applies to both employees of the Subcontractor and to employees of lower-tier subcontractors within the stated labor categories only. Other employees of the Subcontractor are invoiced per (b) below.
  2. Total time paid for all of Subcontractor's personnel chargeable to NTESS in those labor categories set forth in the clause of Section I of this subcontract entitled "Allowable Charges," shall be recorded on readily auditable and certified correct time records.
  3. Each time record shall bear the name of the individual, labor categories, 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 a delegated NTESS representative as authorized by the SP
     3. Unless provisions of Section I hereof otherwise specify, the hourly rate or 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 over-time 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.

1. Materials (Including Subcontracts).

Subject to approval by the SP of individual invoices or vouchers, and pursuant to FAR Part 31 as supplemented by DEAR Subpart 931 in effect on the date of this subcontract, the Subcontractor shall be paid as follows:

* 1. Net invoice cost or charges for direct materials as provided in this subcontract. The Subcontractor shall maintain records which will support all material costs claimed by paid invoices or storeroom requisitions, or by other substantiation acceptable to NTESS. Direct materials as referenced by this clause are defined as those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of such product. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including when appropriate, general and administrative expense, allocated to direct materials.
  2. The cost of subcontracts which are authorized pursuant to the "Allowable Charges - T&M/LH - Lower-Tier Subcontracts, Material, & Other Direct Costs" clause hereof shall be reimbursable costs hereunder, provided such costs are consistent with 3. below. Reimbursable cost in connection with subcontracts shall be limited to the amounts actually required to be paid by the Subcontractor to the lower-tier subcontractor and shall not include any costs arising from the letting, administration, or supervision of performance of the subcontract if the costs are included in the hourly rates payable under (a) 1. above. The term "subcontracts" does not include the purchase of raw material or commercial stock items. Cost for items of capital property as defined herein if applicable, shall be separately listed in invoices.
  3. The Subcontractor shall, to the extent of its ability, procure materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials, and take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of such benefits, it shall promptly notify the SP to that effect, and give the reason therefore. Credit shall be given to NTESS for cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap when the amount of such scrap is appreciable, commissions, and other amounts which have been accrued to the benefit of the Subcontractor or would have so accrued except for the fault or neglect of the Subcontractor. Such benefits lost through no fault or neglect on the part of the Subcontractor, or lost through fault of NTESS or the government, shall not be deducted from gross costs.
  4. When the nature of the work to be performed requires the Subcontractor to furnish material which is regularly sold to the general public in the normal course of business by the Subcontractor, the price to be paid for such material, notwithstanding (b) 1., above, shall be on the basis of an established catalog or list price in effect when the material is furnished, less all applicable discounts to NTESS or the government.
  5. Where under the clause of Section I entitled "Allowable Charges," any equipment usage time is chargeable to this subcontract, the Subcontractor shall record the total working time of such equipment on readily auditable and certified correct time records. Each time record shall identify the equipment, shall show dates and time used, and shall segregate total usage time between that used hereunder, identified by reference to this subcontract and applicable suborder number or numbers, and all other usage.
  6. With respect to billing for indirect cost, Subcontractor shall bill for indirect cost at rates as close as possible to costs being experienced during subcontract performance. Subcontractor understands that subcontract overruns, due to under recovered indirect cost, may not be reimbursed by NTESS; and, over recoveries of indirect cost shall be payable upon demand, at any time, by the SP. Subcontractor may, with the SP’s approval, bill at predetermined indirect rates applied to bases agreed upon by any government agency, which are determined in accordance with FAR Part 31 as supplemented by the DEAR in effect on the effective date of this subcontract; provided, however, that the Subcontractor shall adjust the indirect billing to conform to actual cost within sixty (60) days or the Subcontractor's normal monthly accounting cycle, whichever is earlier.

1. 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 (75) percent 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.
2. Limitation of Obligation (LO).
   1. When and to the extent that the LO ceiling price set forth in Section I has been increased, any hours expended and material costs incurred by the Subcontractor in excess of the LO ceiling price prior to the increase shall be allowable to the same extent as if such hours expended and material costs had been incurred after such increase in the LO ceiling price.
3. Audit of Invoices or Vouchers.
   1. At any time, as deemed necessary by the SP, but not later than three (3) years after final payment under this subcontract, NTESS may perform an audit of the invoices or vouchers submitted for labor, material, travel, and any other charges.
   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. 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.
4. 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.
5. 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 of mailing of NTESS’ check or the date on which the electronic funds transfer was made.
6. 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 DEAR Part 931 in effect on the date of this subcontract.

# PAYROLLS AND BASIC RECORDS

1. Payrolls and basic records relating thereto shall be maintained by the Subcontractor during the course of work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work.
   1. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Wage Rate Requirements (Construction) statute), daily and weekly number of hours worked, deductions made, and actual wages paid.
   2. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitledWage Rate Requirements (Construction) statute, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Wage Rate Requirements (Construction) statute, the Subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.
   3. Subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
2. Submittal.
   1. The Subcontractor shall submit a copy of all payrolls weekly, including the payrolls of all lower-tier subcontractors, to the Electronic Certified Payroll Administrator. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information must be submitted electronically in accordance with section I clause titled Davis Bacon Certified Payroll and Compliance Statement.
   2. Each payroll submitted shall be accompanied by a "Statement of Compliance," electronically signed by the Subcontractor or lower-tier subcontractor or his or her agent who pays or supervises the payment of the persons employed under the subcontract and shall certify:
      1. That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete
      2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the subcontract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3
      3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the subcontract.
   3. The falsification of any of the certifications in this clause may subject the Subcontractor or lower-tier subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the USC.
3. The Subcontractor or lower-tier subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the SP or authorized representatives of the SP or the Department of Labor.
   1. The Subcontractor or lower-tier subcontractor shall permit the SP or representatives of the SP or the Department of Labor to interview employees during working hours on the job.
   2. If the Subcontractor or lower-tier subcontractor fails to submit required records or to make them available, the SP may, after written notice to the Subcontractor, take such action as may be necessary to cause the suspension of any further payments.
   3. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

# 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 NextGen Score program. Please contact the SP for additional information.

# PRICING OF SUBCONTRACT AND LOWER-TIER SUBCONTRACT MODIFICATIONS

# The cost principles and procedures set forth in FAR Part 31 as modified by DEAR Part 931 shall be used to price subcontract and lower-tier subcontract modifications, if any, whenever cost analysis is performed to negotiate the price of any such modification.

# 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 EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, IMPROVEMENTS, MATERIALS, AND WORK

1. The Subcontractor shall preserve and protect all structures, equipment, traffic signs, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this subcontract. The Subcontractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place.
2. The Subcontractor shall protect from damage or interruption of service all existing improvements and utilities, including underground property or underground utilities the location of which are properly indicated in the specifications and/or drawings, or the existence of which is otherwise made known to the Subcontractor by written notice signed by the SP, or the locations of which should be known by the Subcontractor, (1) at or near the work site and (2) on adjacent property of a third party.
   1. The Subcontractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this subcontract or failure to exercise reasonable care in performing the work.
   2. If the Subcontractor fails or refuses to repair the damage promptly, the SP may have the necessary work performed and charge the cost to the Subcontractor.
3. Subcontractor shall preserve and protect all work performed under this subcontract, materials, supplies, and equipment of every description, including property which may be NTESS-furnished or government-owned.
4. Subcontractor immediately shall repair all damage, caused by Subcontractor's work under this subcontract, to any utilities, the existence of which:
   1. Is not made known by written notice signed by the SP
   2. Is not indicated in the specifications and/or drawings
   3. Could not reasonably have been known by the Subcontractor.
   4. Subcontractor shall submit a claim for and enter into good faith negotiations to arrive at a fair price for such repair work. Upon written request of the Subcontractor, the SP shall determine the extent that subcontract performance was delayed making the required repairs, and the SP shall modify the subcontract performance date accordingly.

# 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](mailto: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 DEAR 970.5223-7 Sustainable Acquisition Program.

# RELEASES VOID

Neither NTESS personnel nor any government representatives shall be required to waive or release any personal rights to Subcontractor under this subcontract. Subcontractor agrees that no such waiver or release shall be pleaded by Subcontractor in any action or proceeding.

# RISK OF LOSS

If NTESS is responsible for the risk of loss during transportation of compliant item, NTESS shall compensate Subcontractor the lesser of:

1. The agreed price of such item or
2. The Subcontractor's cost of replacing such item

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

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# 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](mailto: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.

# SUBSTITUTIONS

1. Written authorization of the SP is required, for inclusion in the work, of items proposed to be substituted in lieu of those specified or referenced in the subcontract. When requesting approval, the Subcontractor shall furnish to the SP:
   1. The name of the manufacturer
   2. The model number
   3. Any other information concerning the performance, capacity, nature and rating of the machinery
   4. The specifications of any other equipment being substituted
2. When directed to do so, the Subcontractor shall submit samples for approval at the Subcontractor’s expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
3. At NTESS’ discretion, NTESS may make an equitable adjustment and revise the subcontract in writing for any increase or decrease in the Subcontractor’s cost of, or the time required for the performance of any part of the work under this subcontract, whether or not changed by any such order, as a result of any substitution.
4. No proposal by the Subcontractor for an equitable adjustment, as a result of a substitution shall be allowed if asserted after final payment under this subcontract.

# 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.

# TITLE AND ADMINISTRATION

All property rights and interests resulting from this subcontract shall pass directly from the seller to the government.

# 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 in item shall be delivered to NTESS on this subcontract
2. Subcontractor warrants, except for exclusions provided 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
    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.
13. Unless a defect is caused by the negligence 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 thereof to execute their warranties, in writing, directly to NTESS.

# 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, except:

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 52.204-9 Personal Identity Verification of Contractor Personnel

FAR 52.204-21 Basic Safeguarding of Covered Contractor Information Systems

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

FAR 52.209-10 Prohibition on Contracting with Inverted Domestic Corporations

FAR 52.211-5 Material Requirements

FAR 52.219-8 Utilization of Small Business Concerns

FAR 52.222-1 Notice to the Government of Labor Disputes

FAR 52.222-29 Notification of Visa Denial

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

FAR 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving

FAR 52.225-8 Duty-Free Entry

FAR 52.225-13 Restrictions on Certain Foreign Purchases

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

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

FAR 52-227-16 Additional Data Requirements

FAR 52.227-23 Rights to Proposal Data (Technical)

FAR 52.232-39 Unenforceability of Unauthorized Obligations

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

FAR 52.242-15 Stop-Work Order (Alternate I)

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 952.204-77 Computer Security

DEAR 952.211-71 Priorities and Allocations (Atomic Energy)

DEAR 952.217-70 Acquisition of Real Property

DEAR 952.250-70 Nuclear Hazards Indemnity Agreement

DEAR 970.5204-2 Laws, Regulations, and DOE Directives (Class Deviation)

DEAR 970.5208-1 Printing

DEAR 970.5225-1 Compliance with Export Control Laws and Regulations (Export Clause)

DEAR 970.5227-1 Rights in Data - Facilities

DEAR 970.5227-6 Patent Indemnity

DEAR 970.5227-8 Refund of Royalties

DEAR 970.5232-3 Accounts, Records, and Inspection

DEAR 970.5243-1 Changes

DEAR 970.5245-1 Property Proposed Deviation

# APPLY TO SUBCONTRACTS EXCEEDING $3,500

FAR 52.222-54 Employment Eligibility Verification

# 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

FAR 52.225-9 Buy American - Construction Materials

# 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 $30,000 OR MORE

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

# APPLY TO SUBCONTRACTS EXCEEDING $35,000

FAR 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment

# 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 $150,000

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

FAR 52.222-4 Contract Work Hours and Safety Standards - Overtime Compensation

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# APPLY TO SUBCONTRACTS EXCEEDING $250,000

FAR 52.203-6 Restrictions on Subcontractor Sales to the Government

FAR 52.203-7 Anti-Kickback Procedures excluding paragraph (c)(1)

FAR 52.203-10 Price or Fee Adjustment for Illegal of Improper Activity

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

FAR 52.204-14 Service Contract Reporting Requirements - Cost Type

FAR 52.215-2 Audit and Records – Negotiation

FAR 52.227-1 Authorization and Consent

FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement

FAR 52.244-5 Competition in Subcontracting

FAR 52.247-63 Preference for U.S. Flag Air Carriers

DEAR 970.5227-4 Authorization and Consent

DEAR 970.5227-5 Notice of Assistance Regarding Patent and Copyright Infringement (Deviation)

# APPLY TO SUBCONTRACTS EXCEEDING $500,000

FAR 52.204-14 Service Contract Reporting Requirements - Fixed Price

FAR 52.227-16 Additional Data Requirements - Universities

DEAR 952.226-74 Displaced Employee Hiring Preference

DEAR 970.5226-2 Workforce Restructuring under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993

# APPLY TO SUBCONTRACTS EXCEEDING $550,000

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

# APPLY TO SUBCONTRACTS EXCEEDING $750,000

FAR 52.230-2 Cost Accounting Standards

FAR 52.230-6 Administration of Cost Accounting Standards

DEAR 970.5232-5 Liability with Respect to Cost Accounting Standards

# APPLY TO SUBCONTRACTS EXCEEDING $1,500,000 AWARDED TO LARGE BUSINESSES

FAR 52.219-9 Small Business Subcontracting Plan, Alt II - Construction

FAR 52.219-10 Incentive Subcontracting Program - Construction

FAR 52.219-16 Liquidated Damages - Subcontracting Plan - Construction

# APPLY TO SUBCONTRACTS EXCEEDING $2,000,000

FAR 52.215-10 Price Reduction for Defective Cost or Pricing Data

FAR 52.215-11 Price Reduction for Defective Certified Cost or Pricing Data - Modifications

FAR 52.215-12 Subcontractor Certified Cost or Pricing Data

FAR 52.215-13 Subcontractor Certified Cost or Pricing Data - Modifications

FAR 52.215-15 Pension Adjustments and Asset Reversions

FAR 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions

FAR 52.215-19 Notification of Ownership Changes

# 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

DEAR 952.204-2 Security

DEAR 952.204-70 Classification/Declassification