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

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

**Section II**

**STANDARD TERMS AND CONDITIONS FOR FIRM-FIXED PRICE COMMERCIAL CONSTRUCTION SUBCONTRACTS**

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# ACCEPTANCE OF TERMS AND CONDITIONS (Ts&Cs)

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

# APPLICABLE LAW

The rights and obligations of the parties hereto shall be governed by this subcontract and construed in accordance with the law of the state of delivery, except for Federal Acquisition Regulation (FAR) and FAR supplement clauses which shall be in accordance with federal law. The parties agree to jurisdiction in the Federal District Court, with venue in the district closest to the delivery point of the items or services giving rise to the claim. In the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in the State Court closest to the delivery point of the 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 30 days. However, the Subcontractor may assign rights to be paid amounts due or to become due if NTESS is promptly furnished an executed Assignment of Payments form. Administration of this subcontract may be transferred from NTESS to 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

Unless specifically authorized in this subcontract, in writing, the Subcontractor shall only furnish items/components provided by authorized distributors and not independent distributors.

Any item/components furnished from an independent distributor shall meet all Original Equipment Manufacturer 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 Subcontracting Professional (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

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

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

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

**(d)** The rights and remedies of NTESS in this clause are in addition to any other rights and remedies provided by law or under this subcontract.

# CHANGES

The SP may at any time, by written notice, make changes within the general scope of this subcontract in any one or more of the following: (1) description of the services to be performed; (2) place of performance; and (3) the amount of services to be furnished. If any such change causes a difference in the cost of, or the time required for performance, an equitable adjustment shall be made in the price and/or delivery schedule and other affected provisions. Such adjustment shall be made by written revision to this subcontract signed by both parties. Any claim for adjustment by Subcontractor must be made within twenty (20) days from the date of receipt of NTESS’ change notice, although NTESS in its sole discretion may receive and act upon any claim for adjustment at any time before final payment. Nothing in this clause, including any disagreement with NTESS about the equitable adjustment, shall excuse Subcontractor from proceeding with the subcontract as changed.

# COMPLIANCE WITH LAWS

Subcontractor shall 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 Statement of Work (SOW) of this subcontract.

# DEFINITIONS

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

**(a)** **AUTHORIZED DISTRIBUTORS** mean distributors who have contractual agreements with manufacturer to represent them in the sales of their parts

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

**(c)** **Independent distributors** (often called brokers) mean distributors who buy and sell parts (note: they have no contractual agreement with manufacturers and get parts where they can)

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

**(h)** **NTESS** means National Technology and Engineering Solutions of Sandia, LLC, the management and operating Subcontractor for the Sandia National Laboratories (SNL) under Prime Contract No. DE-NA0003525 with the U.S. DOE/NNSA.

**(e)** **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.

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

**(g)** **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.

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

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

**(j)** **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.

# DIFFERING SITE CONDITIONS

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; or (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. 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. 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. 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.

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

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

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

# DISPUTES

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. A claim by the Subcontractor shall be made in writing and submitted to the SP within six (6) years of the associated performance, or within one (1) year after the completion of the subcontract, whichever comes first. 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. 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. 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.

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. 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. 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 subcontractor while engaged in work related to the subcontract shall:

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

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

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

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

# EXCUSABLE DELAYS

**(a)** 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, and (10) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor. "Default" includes failure to make progress in the work so as to endanger performance.

**(b)** 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; (2) The SP ordered the Subcontractor in writing to purchase these supplies or services from the other source; and (3) The Subcontractor failed to comply reasonably with this order.

**(c)** 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

**(a)** Any item, technical data, or software furnished by NTESS in connection with this purchase order/subcontract is supplied for use in the U.S. only. Subcontractor agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S. Code (USC) 2751 - 2794, including the International Traffic in Arms Regulation (ITAR), 22 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 item, data, or services, to include transfer to foreign persons employed by or associated with, or under subcontract to Subcontractor or Subcontractor's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception. Subcontractor shall immediately notify the SP if it transfers any export controlled item, data, or services to foreign persons. Diversion contrary to U.S. export laws and regulations is prohibited.

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

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

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

# GOVERNMENT PROPERTY MATERIAL AND EQUIPMENT

Except as provided for in Section I, Subcontractor must list the government material/equipment Subcontractor shall use in the performance of the SOW in this subcontract and provide details concerning its use. Identification, inspection, maintenance, protection, and disposition of government property shall conform with the policies and principles of FAR Part 45, 48 CFR Department of Energy Acquisition Regulation (DEAR) 945, the Federal Property Management Regulations 41 CFR 101, the DOE Property Management Regulations 41 CFR 109, and DEAR 970.5245-1 Property.

**HANDLING, PROTECTION, AND RELEASE OF INFORMATION**

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

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

Subcontractor shall:

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

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

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

# Under a valid court or government agency order, Subcontractor may release contract-related information necessary to fulfill obligations, provided that Subcontractor send the written notice and a copy of order or other obligating document to NTESS within a reasonable amount of time to provide the owner of the contract-related information notice of such obligation and the opportunity to oppose disclosure.

# INDEPENDENT SUBCONTRACTOR RELATIONSHIP

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

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

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

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

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

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

# NOTICE OF POTENTIAL DELAY

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 NTESS. Such notice shall not relieve the Subcontractor from compliance from of all the requirements of the subcontract.

# NTESS PROVIDED INFORMATION

Any and all physical forms of designs, design data, drawings, specifications, technical, scientific data, and other information furnished by NTESS to the Subcontractor shall remain the property of the government and shall be protected from unauthorized use, reproduction, and disclosure. Subcontractor shall protect the information at least to the same extent it would use to protect its own most valuable and proprietary information. Dissemination or use of such information is limited to such of its employees and lower-tier subcontractors, if any, whose job performance for this specific subcontract requires the information and only for those purposes. No other dissemination or use is permitted without prior written approval of the SP/SDR. Any and all such information provided by NTESS to the Subcontractor shall be used only for the purpose of enabling performance of this subcontract and the Subcontractor shall use its best efforts to prevent disclosure to others except when necessary in the performance of this subcontract.

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

**(a)** Operations. 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. 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.

**(b)** Storage Areas. 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. 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. With the written consent of the SDR, the buildings and utilities may be abandoned and need not be removed.

**(c)** Use of Roadways. 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. The Subcontractor may close streets and remove signs and other material and structures when expressly authorized by the SDR. 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. 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. When it is necessary to cross curbs or sidewalks, the Subcontractor shall protect them from damage. The Subcontractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

**(d)** Utilities. 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.

**(e)** Dismantled Equipment and Material. Dismantled equipment and material removed from the work site shall remain the property of the government. If the dismantled equipment and material is not reused in the performance of this subcontract, the Subcontractor shall:

**i.** label or tag large items and package small items;

**ii.** prepare an inventory in triplicate on NTESS-furnished forms; and

**iii.** deliver the dismantled equipment and material to a location designated by the SDR.

**(f)** Clean Up. The Subcontractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. 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. 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. 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.

# OPERATIONS SECURITY

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

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

# i. Use the OPSEC 5-step process to protect classified, sensitive unclassified, proprietary and critical information on NTESS purchase orders/subcontracts, and all performance thereunder, to preclude the dissemination of such information except as provided for in Section II, Clause titled, "Release of Information."

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

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

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

# (c) References:

# i. FSO Tool cart <http://www.sandia.gov/FSO/>

# (d) Definitions:

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

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

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

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

# (e) Required Training:

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

# ORDER OF PRECEDENCE

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

(1) Cover Page

(2) Section I

(3) SF 6432-CN, Section II

(4) Incorporated specifications

(5) Incorporated construction drawings (in descending order of precedence)

* NTESS standard detail drawings
* Architecture and Engineering supplied detail drawing
* Schematics
* Key notes
* General notes

(6) 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.

# PAYMENT FIRM FIXED PRICE

Subcontractor agrees to provide invoices within sixty (60) calendar days of completion of work and hereby waives any amounts that are not invoiced within calendar sixty (60) days of the completion of work on the subcontract. Unless otherwise provided, terms of payment shall be net calendar thirty (30) days from the latter of (1) receipt of Subcontractor's proper invoice, if required, or (2) delivery of items/completion of work. 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. Any offered discount shall be taken if payment is made within the discount period that the Subcontractor indicates. Payments will be made by electronic funds transfer. Payment shall be deemed to have been made as of the date on which an electronic funds transfer was made.

**TIME & MATERIALS**

**(a)** 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. Invoices or vouchers may be submitted once each month (or at more frequent intervals, if approved by the SP), to the SP or SP's designee. 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 occupational classifications 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. Each time record shall bear the name of the individual, occupational classification, dates and hours worked, and shall segregate total hours worked between: (1) those hours worked hereunder, identified by reference to this subcontract, and (2) each suborder, 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, and (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.

**(b)** 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 "Subcontracts" clause hereof shall be reimbursable costs hereunder, provided such costs are consistent with subparagraph (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.

**(c)** 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. 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 1, 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. 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. 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.

**(d)** Limitation of Obligation (LO). NTESS shall not be obligated to pay the Subcontractor any amount in excess of the LO ceiling price set forth in Section I and the Subcontractor shall not be obligated to continue performance if to do so would exceed the LO ceiling price set forth in Section I, unless and until the SP shall have notified the Subcontractor in writing that such LO ceiling price has been increased and shall have specified in such notice a revised LO ceiling which shall thereupon constitute the LO ceiling price for performance under this subcontract. 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.

**(e)** Audit of Invoices or Vouchers. At any time or times, 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. 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. 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.

**(f)** 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.

**(g)** Method of Payments. Payments may be made either by check or electronic funds transfer, at the option of NTESS. Payment shall be deemed to have been made as of the date of mailing or the date on which an electronic funds transfer was made.

**(h)** 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 in the office specified in the subcontract, 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.

**(i)** 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

**(a)** 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. 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).), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitledWage Rate Requirements (Construction)., 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)., 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. 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.

**(b)** (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:

**i.** 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;

**ii.** 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; and

**iii.** 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.

**(c)** 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. 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. 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. 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’ goals of continuous improvement, and promoting and creating an environment for superior Subcontractor performance, NTESS has established a collaborative feedback process through the NTESS Subcontractor Review and Evaluation (SCORE) 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.

# 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.

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

**(a)** 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.

**(b)** 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. 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. 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.

**(c)** 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.

**(d)** 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, or (3) could not reasonably have been known by the Subcontractor. 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 to make 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 agrees that the Subcontractor shall take all reasonable steps and precautions to ensure this provided PII is adequately controlled, protected and only used to perform work called for under this subcontract. For the purposes of this agreement PII is defined as: Any of the information listed below that can be used to distinguish or trace an individual's identity, is collected and maintained for the purpose of conducting official NTESS business, and is not solely comprised of information that is available to the general public: social security number, driver's license number, passport number, other federal- or state-issued identification card number, bank account number (with or without routing number, access code, or Personal Identification Number [PIN]), financial or benefit account number in combination with any required code permitting access, background information or verification reports or credit report, including consumer reports, medical or health information, including biometric, biomonitoring, or genetic information, employment history including ratings, salary, wage, deduction information, and disciplinary actions, security clearance history or related information, criminal history, date of birth or age, place of birth, mother’s maiden name, race or ethnicity.

Notes: 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. PII does not include information that is on NTESS computing resources as a result of incidental personal use of computing and information resources or other assets.

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

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

# 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 items, NTESS shall compensate Subcontractor the lesser of (1) the agreed price of such items, or (2) the Subcontractor's cost of replacing such items; and such loss shall entitle the Subcontractor to an equitable adjustment in delivery schedule obligations.

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# SUBCONTRACTS

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

# SOFTWARE, SERVICES & INFORMATION SYSTEMS SECURITY ASSURANCE

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

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

# SUBSTITUTIONS

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:

* the name of the manufacturer,
* the model number,
* any other information concerning the performance, capacity, nature and rating of the machinery,
* the specifications of any other equipment being substituted.

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.

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. 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.

# SUSPECT/COUNTERFEIT ITEMS (S/CI)

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

**Definitions**

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

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

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

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

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

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

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

# TITLE AND ADMINISTRATION

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

# TRANSPORTATION

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

**WRITTEN NOTICES**

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

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

# ADDITIONAL TERMS AND CONDITIONS

This subcontract incorporates by reference with the same force and effect as if they were given in full text, the following cited FAR clauses and DEAR clauses. The full text of these clauses may be found at Title 48 of the CFR at <http://www.ecfr.gov> or at the FARSite at <http://farsite.hill.af.mil> under Regs - FAR or DEARS. Where the FAR/DEAR clauses refer to Government and Contracting Officer, substitute NTESS and SP.

# APPLY TO SUBCONTRACTS AT ANY VALUE

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

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

FAR 52.209-10 Prohibition on Contracting with Inverted Domestic Corporations

FAR 52.211-5 Material Requirements

FAR 52.211-15 Defense Priority and Allocation Requirement

FAR 52.215-2 Audit and Records – Negotiation

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

FAR 52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts

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

FAR 52.223-14 Acquisition of EPEAT®-Registered Televisions

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

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

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

FAR 52.225-8 Duty-Free Entry

FAR 52.225-9 Buy American - Construction Materials

FAR 52.225-13 Restrictions on Certain Foreign Purchases

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

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

FAR 52.227-3 Patent Indemnity

FAR 52.227-4 Patent Indemnity - Construction Contracts

FAR 52.227-14 Rights in Data - General is modified in accordance with DEAR 927.409(a) and including Alternate V

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

FAR 52.242-14 Suspension of Work

FAR 52.244-6 Subcontracts for Commercial Items

FAR 52.245-1 Government Property

FAR 52.246-12 Inspection of Construction

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

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 (DEC 2000) (Deviation)

DEAR 970.5208-1 Printing

DEAR 970.5232-3 ACCOUNTS, RECORDS, AND INSPECTION

DEAR 970.5243-1 Changes

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# APPLY TO SUBCONTRACTS EXCEEDING $2,000

FAR 52.222-6 Construction Wage Rate Requirements

FAR 52.222-7 Withholding of Funds

FAR 52.222-8 Payrolls and Basic Records

FAR 52.222-9 Apprentices and Trainees

FAR 52.222-10 Compliance with Copeland Act Requirements

FAR 52.222-11 Subcontracts (Labor Standards)

FAR 52.222-12 Contract Termination-Debarment

FAR 52.222-13 Compliance with Construction Wage Rate Requirements and Related Regulations

FAR 52.222-14 Disputes Concerning Labor Standards

FAR 52.222-15 Certification of Eligibility

# APPLY TO SUBCONTRACTS EXCEEDING $2,500

FAR 52.222-41 Service Contract Labor Standards

FAR 52.222-43 Fair Labor Standards Act and Service Contract Labor Standards -- Price Adjustment (Multiple Year and Option Contracts)

FAR 52.222-44 Fair Labor Standards Act and Service Contract Labor Standards -- Price Adjustment

FAR 52.222-55 Minimum Wages Under Executive Order 13658

# APPLY TO SUBCONTRACTS EXCEEDING $3,500

FAR 52.222-54 Employment Eligibility Verification

FAR 52.225-1 Buy American - Supplies

# APPLY TO SUBCONTRACTS EXCEEDING $10,000

FAR 52.222-21 Prohibition of Segregated Facilities

FAR 52.222-26 Equal Opportunity

FAR 52.222-27 Affirmative Action Compliance Requirements for Construction

# APPLY TO SUBCONTRACTS EXCEEDING $15,000

FAR 52.222-36 Equal Opportunity for Workers With Disabilities

FAR 52.222-20 Contracts for Materials, Supplies, Articles and Equipment Exceeding $10,000

# 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 EXCEEDING $100,000

DEAR 970.5227-4 Authorization and Consent

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

# APPLY TO SUBCONTRACTS IF $150,000 OR MORE

FAR 52.222-35 Equal Opportunity for Veterans

FAR 52.222-37 Employment Reports on Veterans

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

# APPLY TO SUBCONTRACTS EXCEEDING $150,000

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 52.203-12 Limitation on Payments to Influence Certain Federal Transactions

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

FAR 52.219-8 Utilization of Small Business Concerns

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

FAR 52.227-1 Authorization and Consent Alt I

FAR 52.228-15 Performance and Payment Bonds - Construction

FAR 52.244-5 Competition in Subcontracting

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

FAR 52.249-10 Default (Fixed-Priced Construction)

# APPLY TO SUBCONTRACTS EXCEEDING $500,000

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

FAR 52.204-14 Service Contract Reporting Requirements

# APPLY TO SUBCONTRACTS EXCEEDING $750,000

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

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 Business

FAR 52.219-9 Small Business Subcontracting Plan Alternate II

FAR 52.219-10 Incentive Subcontracting Program

FAR 52.219-16 Liquidated Damages - Subcontracting Plan

# APPLY TO SUBCONTRACTS EXCEEDING $5,500,000

FAR 52.203-13 Contractor Code of Business Ethics and Conduct

FAR 52.203-14 Display of Hotline Poster(s)

FAR 52.210-1 Market Research

# APPLY TO ALL SUBCONTRACTS THAT MAY INVOLVE ACCESS TO

# CLASSIFIED INFORMATION

DEAR 952.204-2 Security

DEAR 952.204-70 Classification/Declassification

# APPLIES TO ANY WORK PERFORMED ON A GOVERNMENT SITE UNDER THIS CONTRACT

DEAR 952.203-70 Whistleblower Protection for Contractor Employees

DEAR 970.5222-1 Collective Bargaining Agreements-Management and Operating Contracts

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

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

DEAR 970.5204-3 Access to and Ownership of Records (OCT 2014) (DEVIATION)

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

# CERTIFICATE OF INSURANCE

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

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

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

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

# CITIZENSHIP STATUS

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

# SUBCONTRACTOR OR LOWER-TIER SUBCONTRACTOR USE OF GOVERNMENT-OWNED VEHICLES

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

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

**(a)** Service Providers. NTESS-directed work, NTESS shall provide those workers with any and all necessary safety authorization documents, personal protective equipment, industrial hygiene monitoring, medical surveillance, and radiation protection services. For Subcontractor employees performing Subcontractor-directed work, Subcontractor shall provide its workers with all ES&H services, with the exception of Subcontractor employees performing Subcontractor-directed work on government sites for whom NTESS shall provide radiation dosimetry services and survey of record, as appropriate.

**(b)** Training Requirements. Any Subcontractor personnel who will enter a government site to perform work shall have completed all of the ES&H training required by the SOW or Government site where work is to be performed, prior to any attempts to enter a government site as shown by written records of such training furnished to the SDR or to the Requester if no SDR is named in Section I of this subcontract. Subcontractor shall certify to NTESS completion of all required training on the Completion Record for Subcontractor Administered Training form. This Form is located on the Web at <http://www.sandia.gov/working_with_sandia/procurement/current_suppliers/contractor_bidder/> under “Forms” or obtained from the SDR. Subcontractor shall provide the completion record form for the initial ESH100 training to the SDR on the first day of work. Subcontractor shall provide the completion records for any other training required above to the SDR before starting the affected work activity. Any person not having completed all ES&H training requirements may be denied access to any government site and Subcontractor may be terminated for default of this subcontract as well as every other subcontract the Subcontractor has with NTESS.

# HAZARDOUS MATERIALS

**(a)** Handling Requirements. For subcontracts that require the performance of work on government sites, the Subcontractor shall coordinate with the SDR all activities associated with the acquisition (including reporting hazardous materials used on government sites), handling, storage, accidental spills, and/or disposal of hazardous materials and/or waste. The Subcontractor shall notify the SDR of all hazardous and/or radioactive waste generated during performance of work. Such materials become NTESS-owned waste and the Subcontractor shall notify the SDR for proper disposal by NTESS. Subcontractor's assistance in disposal may be required by NTESS.

**(b)** Removal Requirements. Those hazardous materials brought onto NTESS-controlled premises by the Subcontractor which are job-related consumables and have not been removed from their original packaging and which have not been purchased by NTESS, shall remain the property of the Subcontractor and shall be removed from NTESS after completion of the work. Hazardous materials in the original, labeled container are not hazardous waste if the material is usable and the full or partially full container is intact and properly closed. Those scrap items which are not hazardous and which have not become hazardous through co-mingling with hazardous items are owned by the Subcontractor and shall also be removed.

# PROTECTION OF GOVERNMENT PROPERTY

All SNL information, information technologies and information systems are U.S. government property. Please read the notice at <http://www.sandia.gov/working_with_sandia/procurement/current_suppliers/contractor_bidder/> under “Policies”. All facilities, personal property, existing vegetation, structures, equipment, utilities, improvements, materials and work at SNL are U.S. government property. Acts of theft, improper use and/or unlawful destruction of U.S. government property are punishable under one or more Federal Criminal Laws.

# REQUIREMENTS FOR ACCESS

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

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

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

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

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

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

# VEHICLE INSURANCE

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

# VEHICLE MARKINGS

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

# WARRANTY OF CONSTRUCTION

**(a)** In addition to any other warranties in this subcontract, the Subcontractor warrants, except as provided in paragraph (j) of 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 lower-tier subcontractor or supplier at any tier.

**(b)** This warranty shall continue for a period of 1 year from date of final acceptance of the work. If NTESS or the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date NTESS takes possession.

**(c)** The Subcontractor shall remedy at the Subcontractor's expense any failure to conform, or any defect. In addition, the Subcontractor shall remedy at the personal property, when that damage is the result of:

The Subcontractor's failure to conform to subcontract requirements; or

Any defect of equipment, material, workmanship, or design furnished.

**(d)** The Subcontractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Subcontractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

**(e)** NTESS shall notify the Subcontractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

**(f)** If the Subcontractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, NTESS shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Subcontractor's expense.

**(g)** With respect to all warranties, express or implied, from lower-tier subcontractors, manufacturers, or suppliers for work performed and materials furnished under this subcontract, the Subcontractor shall:

1. Obtain all warranties that would be given in normal 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.

**(h)** In the event the Subcontractor's warranty under paragraph (b) of 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.

**(i)** 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 or design.

**(j)** This warranty shall not limit NTESS’ rights under the "Inspection and Acceptance" clause of this subcontract with respect to latent defects, gross mistakes, or fraud.

**(k)** 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.