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

# SF 6432-El (07/2018)

**SECTION II**

**STANDARD TERMS AND CONDITIONS FOR ALL COST-REIMBURSEMENT OR ORDERING AGREEMENTS WITH EDUCATIONAL INSTITUTIONS**

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# ACCEPTANCE OF TERMS AND CONDITIONS (Ts&Cs)

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

# ALLOWABLE COSTS

**(a)** Payment for allowable cost as hereinafter defined shall constitute full and complete compensation for the performance of the work under this subcontract.

**(b)** "Allowable cost" of performing the work under this subcontract shall be the costs and expenses that are actually incurred by the Subcontractor, which are applicable and properly chargeable, either as directly incident or as allocable through appropriate distribution or apportionment, to the performance of the subcontract work in accordance with its terms, and are determined by the Subcontracting Professional (SP) to be allowable pursuant to this subcontract, including the additional provisions, if any, contained elsewhere in this subcontract relating to Advance Understanding on Particular Cost Items, and pursuant to Federal Acquisition Regulation (FAR) Part 31 as supplemented by Department of Energy Acquisition Regulations (DEAR) Part 931 on the effective date of this subcontract and OMB Circular A21, subject to the following:

1. With respect to billing for indirect cost, Subcontractor shall bill for indirect cost at rates as close as possible to costs being experienced during subcontract performance. Subcontractor understands that subcontract overruns, due to under recovered indirect cost, may not be reimbursed by NTESS; and, over recoveries of indirect cost shall be payable upon demand, at any time, by NTESS. Subcontractor may, with the SP's approval, bill at predetermined overhead and General and Administrative (G&A) rates applied to bases agreed upon by any government agency, which are determined in accordance with FAR Part 31 as supplemented by the DEAR in effect on the effective date of this subcontract; provided, however, that the Subcontractor shall adjust the indirect billing to conform to actual cost within sixty (60) days or the Subcontractor's normal monthly accounting cycle, whichever is earlier.
2. In the absence of predetermined overhead rates as provided for in subparagraph (1) above, if at any time prior to the final determination of costs hereunder there exists a rate or rates established by any government agency, based on audit of actual costs for the period of performance of the work hereunder or any substantial portion thereof, such rate or rates may, at the SP's option, be used (after adjustment by NTESS if deemed appropriate, to reflect the application of cost principles contained in this Allowable Costs Clause and the DEAR and FAR subparts referred to above) in determining allowable indirect costs hereunder.
3. In the absence of predetermined overhead rates as provided for in subparagraph (1) above and in the absence of a rate or rates acceptable to NTESS as provided for in subparagraph (2) above, indirect cost shall be determined in accordance with FAR Part 31 as supplemented by DEAR Part 931 by a NTESS audit.
4. No overtime premium costs, shift differential, holiday, or other premium pay for time worked on direct labor are authorized as direct charges to this subcontract except when paid for work: necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature; by indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting; in the performance of tests, industrial processes, laboratory procedures, loading or unloading of transportation media, and operations in flight or afloat, which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or which will result in lower cost to NTESS.
5. As used in FAR Part 31 and DEAR Part 931 the words: "Contracting Officer" or "Field Office Manager" shall mean the SP, "Department of Energy/National Nuclear Security Administration (DOE/NNSA)" or "Sponsoring Agency" shall mean NTESS; "Federal Government" or "government," in connection with government agencies or government property, shall mean the United States of America.
6. Each individual Subcontractor employee salary amounting to $100,000 or more annually is subject to advance approval of the SP where fifty percent (50%) or more of such salary is to be reimbursed under DOE/NNSA cost-type subcontracts for on-site (NTESS/DOE/NNSA premises) services.

# APPLICABLE LAW

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

point of the item or services giving rise to the claim.

# ASSIGNMENT

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

# 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.

# CLAIM OF COSTS INCURRED

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

# DATA TRANSPARENCY REQUIREMENTS

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

# DEFINITIONS

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

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

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

**(c) NTESS** means NTESS, the Management and Operating (M&O) Subcontractor for the Sandia National Laboratories (SNL) under Prime Contract No. DE-NA0003525 with the U.S. DOE/NNSA

**(d) 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.

**(e) 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.

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

**(g) SUBCONTRACT** means subcontracts at all tiers, Purchase Order, Price Agreement, Ordering Agreement, or modifications thereof.

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

**(i) 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.

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

*This clause applies to subcontracts 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 SP listed on this first page of this subcontract. NTESS may withhold written consent for use or delivery of FLOSS at its sole discretion.

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

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

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

# DISPUTES

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

# ESTIMATES OF COST AND LIMITATION OF OBLIGATION, IF APPLICABLE

**(a)** Initial Estimate of Cost and Obligation of Funds. The presently estimated cost and the obligation of funds for the work under this Subcontract are set forth in Section 1, if applicable.

**(b)** Revised Estimates of Cost. The presently estimated cost for the work under this subcontract may be increased unilaterally by the SP by written notice to the Subcontractor and may be increased or decreased by written agreement of the parties.

**(c)** Limitation of Obligation. Payments on account of costs shall not in the aggregate exceed the amount of funds presently obligated hereunder.

**(d)** Notice of Costs Approaching Funds Obligated - Subcontractor Excused Pending Increase When Obligation is Reached. Whenever the Subcontractor has reason to believe that the total cost of the work under this subcontract will be greater or substantially less than the presently estimated cost of the work, the Subcontractor shall promptly notify the SP in writing. The Subcontractor shall also notify the SP in writing when the aggregate of expenditures, liabilities, and outstanding commitments allowable under this subcontract is equal to seventy-five percent (75%) (or such other percentage as the SP may from time-to-time establish by notice to the Subcontractor) of the amount of funds presently obligated hereunder. When such expenditures and outstanding commitments equal one hundred percent (100%) of such amount, the Subcontractor shall make no further commitments or expenditures (except to meet existing commitments) and shall be excused from further performance of the work unless and until the SP thereafter shall have notified the Subcontractor in writing that such amount has been increased. No notice, communication or representation in any other form or from any person other than the SP or the person delegated in this subcontract shall affect the estimated cost or funds obligated hereunder. In the absence of the specified notice, NTESS shall not be obligated to reimburse the Subcontractor for any costs in excess of the funds obligated hereunder, whether those excess costs were incurred during the course of the subcontract or as a result of termination. In the event the Subcontractor incurs cost in excess of the funds obligated hereunder without receiving a prior notice from the SP increasing such funds, the funds obligated hereunder may be increased at the sole discretion of the SP to permit the Subcontractor to be reimbursed for all or a portion of such costs. However, the SP is not obligated to increase funding due to an after-the-fact indirect rate adjustment determined by a government audit agency. When and to the extent that the funds obligated hereunder have been increased, any costs incurred by the Subcontractor in excess of the funds obligated hereunder prior to such increase shall be allowable to the same extent as if such costs had been incurred after such increase, unless the SP issues a termination notice and directs that the increase is solely for the purpose of covering termination expenses. In the event this subcontract is terminated or the funds obligated hereunder are not increased enough to cover all costs, the government shall be entitled to all property produced or purchased under the subcontract except that property which the Subcontractor shall demonstrate to have been produced or purchased solely with Subcontractor's funds in excess of the funds obligated hereunder and which can be severed from the government property without damage thereto.

**(e)** NTESS' Right to Terminate Not Affected. The giving of any notice by either party under this clause shall not be construed to waive or impair any right of NTESS to terminate this subcontract under the provisions of the clause entitled "Termination."

**(f)** Cost Information. The Subcontractor shall maintain current actual cost information adequate to reflect the cost of performing the work under this subcontract at all times while the work is in progress, and shall prepare and furnish to NTESS such written estimates of cost and information in support thereof as the SP may request.

**(g)** Correctness of Estimates Not Guaranteed. Neither NTESS nor the Subcontractor guarantees the correctness of any estimate of cost for performance of the work under this subcontract, and Subcontractor shall invoice NTESS at actual cost unless Section I of this subcontract provides otherwise.

# ETHICAL CONDUCT

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

1. Comply with all applicable laws, regulations and the terms of the subcontract
2. Conduct themselves with the highest degree of ethics, integrity and honesty
3. Treat others with respect and dignity, and create an environment free from discrimination, harassment, threats, violence, bullying, intimidating conduct or other similar behavior
4. Promptly report violations to the NTESS Ethics organization and the NTESS Procurement Policy and Compliance department manager

# EXCESS FREIGHT CHARGES

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

# 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 United States only. Subcontractor agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 USC 2751 - 2794, including the International Traffic in Arms Regulation (ITAR), 22 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; the Atomic Energy Act of 1954, as amended (AEA);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 lower-tier subcontractors, 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.

# FREIGHT CHARGE

Freight and Parcel Bills. The Subcontractor shall transmit to the SP, each calendar quarter, a legible copy of paid freight and parcel bills covering property transported to the Subcontractor for NTESS' account and for which NTESS will assume the freight or parcel charges under the direct cost provisions of this subcontract. However, the following paid bills shall not be submitted to the SP but shall be retained by the Subcontractor: rail freight forwarder, air, steamship, motor truck, and parcel bills amounting to less than $500. All bills shall be marked on the face, "This shipment is for the U.S. Department of Energy. It is subject to the Ts&Cs of the U.S. Government Bill of Lading form and to any available special rates or charges."

# GOVERNMENT PROPERTY, MATERIAL, AND EQUIPMENT

Except as provided for in Section I, Subcontractor must list the government material/equipment Subcontractor will 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 (DEAR) 945, the Federal Property Management Regulations 41 CFR 10 1, the DOE Property Management Regulations 41 CFR 109, and DEAR 970.5245-1 Property (Alteration).

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

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

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

Subcontractor shall:

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

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

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

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

# 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 subcontractors at any tier, in the performance of any of its obligations under this Subcontract.

**(c) To the extent permitted by law,** 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.

# LOWER-TIER SUBCONTRACTS

All subcontracts shall be made in the name of the subcontractor and shall not bind nor purport to bind NTESS or shall not relieve Subcontractor of any obligation under this purchase order/subcontract. If Subcontractor subcontracts any work in the performance of this subcontract, Subcontractor shall incorporate into every such subcontract an appropriate set of NTESS Ts&Cs found at: [http://www.sandia.gov/working\_with\_sandia/procurement/current\_suppliers/contractor\_bidder/](http://www.sandia.gov/working_with_sandia/procurement/current_suppliers/contractor_bidder/%20) 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 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 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.

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

# PAYMENTS

**(a)** Payments on Account of Allowable Costs. Once each month (or at more frequent intervals, if approved by the SP) the Subcontractor may submit to NTESS, Accounts Payable Department, in such form and reasonable detail as may be required by the SP, an invoice or voucher supported by a statement of costs incurred by the Subcontractor in the performance of this subcontract and claimed to constitute allowable costs. "Allowable costs" includes, but is not limited to, actual indirect rate cost experience during the period of performance unless Section I of this subcontract indicates otherwise. Promptly after receipt of each invoice or voucher NTESS shall, subject to the provisions of (b) below, make payment thereon in accordance with subcontract provisions. 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. Costs for items of Capital Property (defined in FAR Part 45) if applicable, shall be separately listed in invoices. 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 on which an electronic funds transfer was made. NTESS may take subcontract or invoice prompt payment discount. The SDR will obtain any required approvals and authorize both foreign and domestic travel. ALL foreign travel must have DOE approval in accordance with ISS100.4.2, Control International Travel. The Subcontractor is prohibited from traveling until the SDR has notified the Subcontractor in writing that DOE approval for foreign travel has been granted. The notification from the SDR will include the approved foreign destinations, time frames, and other applicable information. After travel is completed, Subcontractor shall, if requested by the SDR, provide written post-travel trip report regarding foreign contacts, destinations, and purpose.

**(b)** Audit Adjustments. At any time or times prior to settlement under this subcontract the SP may have invoices or vouchers and statements of cost audited. Each payment made shall be subject to reduction for amounts included in the related invoice or voucher which are found by NTESS, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

**(c)** Completion Voucher. On receipt and approval of the invoice or voucher designated by the Subcontractor as the "completion invoice" or "completion voucher" and upon compliance by the Subcontractor with all the provisions of this subcontract (including, without limitation, the provisions relating to patents and provisions of (e) below) NTESS shall promptly pay to the Subcontractor any balance of allowable cost. The completion invoice or voucher shall be submitted by the Subcontractor promptly following completion of the work under this subcontract but in no event later than sixty (60) days (unless the SP grants a further specific period of time) from the date of such completion. 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.

**(d)** Applicable Credits. The Subcontractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Subcontractor or any assignee under this subcontract shall be paid by the Subcontractor to NTESS to the extent that they are properly allocable to costs for which the Subcontractor has been reimbursed by NTESS under this subcontract. Reasonable expenses incurred by the Subcontractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the SP.

**(e)** Financial Settlement. Prior to final payment under this subcontract, the Subcontractor and each assignee whose assignment is in effect at the time of final payment under this subcontract shall execute and deliver:

1. An assignment to NTESS in form and substance satisfactory to the SP of refunds, rebates, credits or other amounts (including any interest thereon) properly allocable to costs for which the Subcontractor has been reimbursed by NTESS under this subcontract; and
2. A release discharging NTESS and the government, their officers, agents and employees from all liabilities, obligations, and claims arising out of or under this subcontract, subject only to the following exceptions:

**i.** Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Subcontractor

**ii.** Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Subcontractor to third parties arising out of performance of this subcontract; provided that such claims are not known to the Subcontractor on the date of the execution of the release; and provided further that the Subcontractor gives notice of such claims in writing to the SP not more than three (3) years after the date of the release or the date of any notice to the Subcontractor that NTESS is prepared to make final payment, whichever is earlier

**iii.** Claims for reimbursement of costs (other than expenses of the Subcontractor by reason of any indemnification of NTESS or the government against patent liability), including reasonable expenses incidental thereto, incurred by the Subcontractor under the provisions of this subcontract relating to patents. The Subcontractor and each such assignee hereby agree that the failure to execute and deliver the aforesaid assignment and release within sixty (60) days of a written request therefore by the SP shall be deemed to be and shall have the same effect as a release as set forth above in Item (2), including a release of all claims set forth in sub Items (i) and (iii) of Item (2)

# PERFORMANCE EVALUATION PROGRAM

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

# PRICE-ANDERSON AMENDMENTS ACT (PAAA)

**(a)** Regulatory Liability. If the item(s) or service(s) required by the Purchase Order/Subcontract is related to nuclear or radiological safety, then the item(s) or service(s) are regulated by the DOE/NNSA under the provisions of Federal Regulations 10 CFR 820, 10 CFR 830, and 10 CFR 835 (Price-Anderson Amendments Act). The supplier shall incorporate all applicable Subcontract requirements into all supplier-issued procurement documents. Flow-down of Subcontract requirements shall be verbatim, i.e., without change or modification. Lower-tier subcontracting requires flow-down of all applicable requirements to each supplier at any tier.

**(b)** Occupational Radiation Protection. The Subcontractor shall comply with applicable requirements in NTESS' Radiation Protection Procedures Manual (RPPM) unless the Subcontractor’s activities specified in the SOW shall be regulated through a license by the Nuclear Regulatory Commission or a state under an agreement with the Nuclear Regulatory Commission. (Upon request the SP will make the RPPM available.)

# PRICING OF 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 PERSONALLY IDENTIFIABLE INFORMATION (PII)

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

Notes: 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 shall give verbal notice to NTESS' Security Incident Management Program (SIMP) by calling and reporting the incident at either at SNL/NM: 505-238-7467 or for subcontracts issued in California SNL/CA: 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 shall be provided to the SP and SDR (if one is identified in the subcontract,) within 72 hours of the Subcontractor’s learning of the situation. The Subcontractor shall cooperate with NTESS and provide information needed to allow NTESS to evaluate the nature and extent of the release or loss of control.

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

# QUALITY ASSURANCE PROGRAM

If Section I of this subcontract includes Standard Clause 109-QSP- Quality Significant Purchase, the Subcontractor shall have a Quality Assurance (QA) program, which provides for control of activities affecting quality of the item(s) or service(s) specified in the SOW to an extent consistent with their importance. Such program shall be documented by written policies, procedures, or instructions and shall be carried out by the Subcontractor in accordance with those policies, procedures, or instructions. The Subcontractor’s QA program shall be in accordance with 10 CFR 830 and DOE O 414.1D located at <http://www.directives.doe.gov>.

# RECYCLED OR NEW MATERIALS

Except as otherwise provided in the SOW or Subcontractor's quotation, the quoter certifies that any products to be furnished are new (not used or reconditioned) and not of such age or so deteriorated as to impair their usefulness or safety.

# 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.

# REPORTS REQUIRED BY THIS SUBCONTRACT

Final reports following completion of the work required by this subcontract and interim reports as may be required by this subcontract constitute deliverables under this subcontract and shall be submitted in an electronic format such as Microsoft Word or other format commonly used at NTESS along with any paper format required by this subcontract and shall be submitted on CD ROM or other media requested by the SDR.

**RIGHTS IN DATA**

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

NTESS recognizes that the Subcontractor has pre-existing intellectual property embedded in its deliverables, and that Subcontractor retains any and all ownership rights in that pre-existing intellectual property. For the purposes of this Subcontract, the data subject to Subcontractor’s pre-existing intellectual property rights are considered to be Limited Rights Data under the pertinent FAR clause, such as per FAR 52.227-14(a), and that Subcontractor retains any and all ownership rights in such data.

If Subcontractor asserts and gains ownership to the copyright on data first produced in the performance of this Subcontract via FAR 52.227-14(c)(1)(i) and (ii), the Subcontractor grants to NTESS and the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute, prepare and distribute derivative works, perform, display, and to use that data as well as the use permitted under the pertinent FAR clause, such as FAR 52.227-14 (c)(1)(iii).

If the Subcontractor does not assert copyright or does not gain ownership to the copyright on data first produced in the performance of this Subcontract, per FAR 52.227-14(c)(1)(i) and (ii), Subcontractor hereby agrees and acknowledges that all duties performed hereunder are specifically ordered or commissioned by NTESS LLC ("Work"); that Subcontractor has required all of its employees who will do the Work to assign all intellectual property generated in the course of employment to the Subcontractor; that the Work constitutes and shall constitute a work-made-for-hire as defined in the United States Copyright Act of 1976; that NTESS LLC is and shall be the author of said work-made-for-hire and the owner of all rights in and to the Work. To the extent that the Work is not recognized as a work-made-for-hire, Subcontractor hereby assigns, transfers, and conveys to NTESS, without reservation, all of Subcontractor's rights, title and interest in the Work, including, without limitation, all rights of copyright and copyright renewal in said Work or any part thereof. Subcontractor agrees to execute all papers and to perform such other proper acts as NTESS may deem necessary to secure for NTESS the rights herein assigned.

For data not first produced in the performance of the Subcontract, the Subcontractor grants to NTESS and the Government and others acting on its behalf a license as per the pertinent FAR clause, such as FAR 52.227-14(c)(2).

# RISK OF LOSS

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

# 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 SP and 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.

# SUBCONTRACTOR'S INFORMATION

No specifications, drawings, sketches, models, samples, tools, technical information, or data, written, oral or otherwise, furnished by Subcontractor to NTESS hereunder, or in contemplation hereof, shall be considered to be proprietary information of Subcontractor.

**SUSPECT COUNTERFEIT ITEMS (S/CI)**

Suspect/counterfeit items or services are a serious concern to NTESS because they present a potential threat to personal safety, equipment and system reliability and/or compliance with regulatory environmental standards. Failure of a safety or mission critical system due to an S/CI could also have security implications at DOE facilities. Notwithstanding other warranty provisions of this Subcontract, Subcontractor expressly warrants that all items provided under this Subcontract are suitable for the intended or specified use and that no suspect or counterfeit items, component parts or materials have been furnished or delivered to NTESS under this Subcontract. Unless otherwise specified in this subcontract the subcontractor shall purchase directly from product manufacturers or authorized manufacturer distributors.

Subcontractor's warranty also extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied or delivered to the NTESS. In the event that a suspect or counterfeit item, as defined herein, is identified and/or delivered to NTESS, Subcontractor agrees to comply with all requirements stated in this Clause.

Definitions

Suspect Item: A suspect item is an item of which there is an indication by visual inspection, testing, or other verifiable information, that the item may not conform to established U.S. Government or industry-accepted specifications and national consensus standards.

Counterfeit Item: A counterfeit item is one that has been copied or substituted without legal right or authority or whose material, performance, or characteristics have been misrepresented by the vendor, supplier, distributor, or manufacturer.

Subcontractor shall only provide items and services that meet or exceed all requirements specified in this Subcontract including verifiable compliance with all applicable quality, safety and manufacturing standards including all U.S. Government or industry-accepted specifications and national consensus standards. Examples of such standards include, but are not limited to: Underwriter's Laboratory (UL) Listing, National Fire Protection Association (NFPA), Standard of Mechanical Engineers (ASME), Institute of Electrical and Electronics Engineers (IEEE), Occupational Safety and Health Act (OSHA), American Society for Testing Material (ASTM), Nationally Recognized Testing Laboratory (NRTL), etc.

Additional detailed information is available at the DOE

Training Manual on [Suspect/Counterfeit Awareness](http://energy.gov/ehss/downloads/suspectcounterfeit-items-awareness-training-manual.)

Subcontractor shall have a quality assurance program that detects and prevents suspect/counterfeit items from being furnished or used in the performance of work under this Subcontract. If requested by NTESS, Subcontractor shall furnish a certificate of compliance with delivery stating that all items fully comply with all requirements of this Subcontract.

The Subcontractor may choose to identify to SNL certifications held to applicable standards such as ISO/IEC 20243, *Mitigating Maliciously Tainted and Counterfeit products* or other similar standards*,* to satisfy this subcontract requirement. This can be completed by sending the certification to the Suspect/Counterfeit Items Program Coordinator at sqasci@sandia.gov.

In the event that the Subcontractor identifies or suspects that a suspect/counterfeit item may have been delivered under this Subcontract, Subcontractor shall immediately notify the SP. Subcontractor shall document and provide all available information regarding any item or service furnished under this Subcontract that is suspected to be a suspect/counterfeit item, component, subcomponent part or material. NTESS shall impound the item(s). The Subcontractor may be required to replace such item(s) with item(s) acceptable to NTESS and shall be liable for all costs relating to the impoundment, removal, and replacement of the item(s). To the extent permitted by law, Subcontractor shall indemnify NTESS, its agents, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts that are not genuine, original, and unused, or not otherwise suitable for the intended purpose. This includes, but is not limited to, materials that are defective, suspect, or counterfeit; materials that have been provided under false pretenses; and materials or items that are materially altered, damaged, deteriorated, degraded, or result in product failure.

Detection of any or suspect/counterfeit item(s) leading to evidence of deliberate misrepresentation of any supplied item(s), including components, subcomponent parts or materials used in the item(s), may result in an investigation into the validity of certification, fraud, and/or forgery. Because falsification of information or documentation may constitute criminal conduct; NTESS will notify cognizant DOE officials and the Office of the Inspector General.

Note: 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 Clause.

For questions or to report suspect or counterfeit items or materials email the SNL Suspect/Counterfeit Items Program Coordinator at sqasci@sandia.gov.

# TAXES

For many purchases, NTESS can provide Transaction Exemption Certificates for both New Mexico and California, and certificates for other states may also be available. Direct any request for Transaction Exception Certificates to taxes@sandia.gov. FAR 52.229-10 State of New Mexico Gross Receipts and Compensating Tax as modified by DEAR 970.2904-1 (a) is applicable in New Mexico. NTESS holds California Contractor's Permit Number OH-98033576. Purchases made under this subcontract are exempt from California Sales and Use Taxes if performance occurs in California. Prices include all applicable federal taxes.

# TRANSPORTATION

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

**WRITTEN NOTICES**

**(a)** The Subcontractor shall immediately notify the NTESS SP in writing of:

(1) any action, including any proceeding before an administrative agency, filed against the Subcontractor arising out of the performance of this Subcontract; 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 SP in writing of such circumstances, and the Subcontractor shall take whatever action is necessary to cure such defect within the shortest possible time.

**ADDITIONAL TERMS AND CONDITIONS**

This subcontract incorporates by reference, with the same force and effect as if they were given in full text, the following cited FAR clauses and DEAR clauses. The FAR and DEAR clauses which are flowed down to subcontracts are as dated in Section I of the NTESS Prime Contract in effect at “Revision 0 – award” of this subcontract; available at <http://www.sandia.gov/working_with_sandia/current_suppliers/contract_information/index.html> under the “Policies” tab. The NTESS Prime Contract (DE-NA0003525) is available for reference at <https://nnsa.energy.gov/aboutus/ouroperations/apm/mosupportdept/sandia-national-laboratories>. The full text of these clauses may be found under Title 48 of the CFR at <http://www.ecfr.gov> or at the FARSite at <http://farsite.hill.af.mil> within the “Regs” tab. Where the FAR/DEAR clauses refer to Government and Contracting Officer, substitute NTESS and SP.

# APPLY TO SUBCONTRACTS OF ANY VALUE

FAR 52.204-9 Personal Identity Verification of Contractor Personnel

FAR 52.204-21 Basic Safeguarding of Covered Contractor Information Systems

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

FAR 52.209-10 Prohibition on Contracting with Inverted Domestic Corporation

FAR 52.211-5 Material Requirements

FAR 52.211-15 Defense Priority and Allocation Requirement

FAR 52.216-7 Allowable Cost and Payment Substitute FAR Subpart 31.3 in subcontracts with educational institutions and FAR Subpart 31.7 in subcontracts with nonprofit organizations for FAR Subpart 31.2 in Paragraph (a).

FAR 52.216-15 Predetermined Indirect Costs Rates

FAR 52.219-8 Utilization of Small Business Concerns

FAR 52.222-21 Prohibition of Segregated Facilities

FAR 52.222-50 Combating Trafficking in Persons

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

FAR 52.223-3 Hazardous Material Identification and Material Safety Data Sheets and Alternate I.

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

FAR 52.223-14 Acquisition of EPEAT - Registered Televisions

FAR 52.223-15 Energy Efficiency in Energy-Consuming Products

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 52.224-3 Privacy Training

FAR 52.225-13 Restrictions on Certain Foreign Purchases

FAR 52.227-10 Filing of Patent Applications – Classified Subject Matter

FAR 52.227-14 Rights in Data-General modified in accordance with 48 CFR 927.409(a) and including Alternate IV

FAR 52.227-23 Rights to Proposal Data (Technical)

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

FAR 52.232-39 Unenforceability of Unauthorized Obligations

FAR 52.232-40 Providing Accelerated Payments to Small Business Subcontractors

FAR 52.242-15 Stop-Work Order with Alternate I

FAR 52.243-2 Changes – Cost-Reimbursement with Alternate V

FAR 52.244-6 Subcontracts for Commercial Items

FAR 52.245-1 Government Property with Alternate II

FAR 52.246-9 Inspection of Research and Development (Short Form)

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

FAR 52.247-67 Submission of Transportation Documents for Audit

FAR 52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions)

DEAR 952.204-71 Sensitive Foreign Nations Controls.

DEAR 952.204-77 Computer Security

DEAR 952.211-71 Priorities and Allocations (Atomic Energy)

This clause applies only if Section I designates a Government Priority.

DEAR 952.217-70 Acquisition of Real Property.

DEAR 952.227-11 Patent Rights – Retention by the Contractor (Short Form). Applies only if subcontractor is a nonprofit organization as set forth in 48 CFR 27.301- If subcontractor does not qualify in accordance with 48 CFR 27.301, it may request a patent waiver pursuant to 10 CFR 784.

DEAR 952.235-71 Research Misconduct

DEAR 952.247-70 Foreign Travel

DEAR 952.250-70 Nuclear Hazards Indemnity Agreement

DEAR 970.5204-3 Access to and Ownership of Records

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

DEAR 970.5227-4 Authorization and Consent Paragraph (a)

DEAR 970.5227-6 Patent Indemnity

DEAR 970.5232-3 Accounts, Records, and Inspection

# APPLY TO SUBCONTRACTS EXCEEDING $2,500

If Section I indicates that this is a subcontract for services under the Services Contract Labor Standards

FAR 52.222-17 Nondisplacement of Qualified Workers

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

# APPLY TO SUBCONTRACTS EXCEEDING $10,000

FAR 52.221-21 Prohibition of Segregated Facilities

FAR 52.222-26 Equal Opportunity

FAR 52.222-36 Affirmative Action for Workers with Disabilities

FAR 52.225-1 Buy American – Supplies

**APPLY TO SUBCONTRACTS EXCEEDING $15,000**

FAR 52.222-36 Affirmative Action for Workers with Disabilities

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

# APPLY TO SUBCONTRACTS EXCEEDING $30,000

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

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 EXCEEDING $150,000

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

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

FAR 52.204-14 Service Contract Reporting Requirements

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

FAR 52.222-35 Equal Opportunity for Veterans

FAR 52.222-37 Employment Reports for Veterans

# APPLY TO SUBCONTRACTS EXCEEDING $250,000

FAR 52.203-6 Restrictions on Subcontractor Sales to the Government

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

FAR 52.203-16 Preventing Personal Conflicts of Interest

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

FAR 52.215-2 Audit and Records--Negotiation

FAR 52.215-22 Limitations on Pass-Through Charges – Identification of Subcontract Effort

FAR 52.215-23 Limitations on Pass Through Charges

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

FAR 52.227-1 Authorization and Consent Alt I

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

# APPLY TO SUBCONTRACTS EXCEEDING $500,000

FAR 52.227-16 Additional Data Requirements

# APPLY TO SUBCONTRACTS EXCEEDING $700,000

FAR 52.219-9 Small Business Subcontracting Plan

FAR 52.219-10 Incentive Subcontracting Program

FAR 52.219-16 Liquidated Damages - Subcontracting

FAR 52.230-3 Disclosure and Consistency of Cost Accounting Practices, excluding paragraph (b). Applies to nonprofit organizations if they are subject to modified CAS coverage as set forth in 48 CFR Chapter 99, Subpart 9903.201-2 (FAR Appendix B).

FAR 52.230-5 Cost Accounting Standards – Educational Institution, excluding Paragraph (b).

# 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 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 52.215-18 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

# APPLY TO SUBCONTRACTS EXCEEDING $5,000,000

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

FAR 52.203-14 Display of Hotline Poster(s) (b) (3) Required poster is: DOE Hotline Poster <https://www.energy.gov/ig/ig-hotline>

# APPLY TO SUBCONTRACTS EXCEEDING $5,500,000

FAR 52.210-1 Market Research

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

DEAR 952.204-2 Security Requirements

DEAR 952.204-70 Classification/Declassification

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

DEAR 952.203-70 Whistleblower Protection for Contractor Employees

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

DEAR 970.5204-3 Access to and Ownership of Records

DEAR 970.5223-4 Workplace Substance Abuse Programs at Government Sites, applies to subcontracts valued at $25,000 or more

**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 10 CFR PART 851**

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

**THE REMAINING CLAUSES APPLY TO ALL SUBCONTRACTS WHERE ANY WORK WILL PERFORMED ON A U.S. GOVERNMENT SITE.**

# CITIZENSHIP STATUS

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

# 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 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/bus-ops/scm/Contractor/Contractor-info.html> under tab titled “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 United States government property. Please read the notice at: <http://www.sandia.gov/working_with_sandia/procurement/current_suppliers/contractor_bidder/> under the tab titled “Polices”. All facilities, personal property, existing vegetation, structures, equipment, utilities, improvements, materials, and work at SNL are United States government property. Acts of theft, improper use, and/or unlawful destruction of United States government property are punishable under one or more Federal Criminal Laws.

# REQUIREMENTS FOR ACCESS TO GOVERNMENT SITES

**(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.

# SUBCONTRACTOR USE OF GOVERNMENT-OWNED VEHICLES

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

# VEHICLE INSURANCE

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

# VEHICLE MARKINGS

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

# VISITOR ACCESS TO GOVERNMENT SITES

The organizations listed below are responsible for coordinating and administering the provisions of visitor access and control for the sites as listed.

1. Sandia National Laboratories, Albuquerque, New Mexico

Badge Office

Innovations Parkway Office Center (IPOC)

1611 Innovation Parkway SE, Suite A-1

Albuquerque, NM 87123

1. Sandia National Laboratories, Livermore, California

Visitor Control Center

7011 East Avenue

Livermore, CA 94551

1. NTESS,

Office of the Tonopah Test Range Manager

Building 911 Tonopah Test Range, Tonopah, Nevada