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

**SF 6432-EI (04/2020)**

**SECTION II**

**STANDARD TERMS AND CONDITIONS FOR**

**COST-REIMBURSEMENT SUBCONTRACTS**

**WITH EDUCATIONAL INSTITUTIONS**

**THE FOLLOWING CLAUSES APPLY TO THIS SUBCONTRACT AS INDICATED UNLESS SPECIFICALLY DELETED, OR EXCEPT TO THE EXTENT THEY ARE SPECIFICALLY SUPPLEMENTED OR AMENDED IN WRITING IN THE COVER PAGE OR SECTION I.**

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# ACCEPTANCE OF TERMS AND CONDITIONS (Ts&Cs)

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

# ALLOWABLE COSTS AND FEE - EDUCATIONAL INSTITUTIONS

1. Payment for allowable cost as hereinafter defined shall constitute full and complete compensation for the performance of the work under this subcontract.
2. "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 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 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 1. above and in the absence of a rate or rates acceptable to NTESS as provided for in 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 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 performance/delivery, except for FAR and FAR supplement clauses which shall be in accordance with federal law. The parties agree to jurisdiction in the Federal District Court, with venue in the district closest to the delivery point of the items or services giving rise to the claim. In the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in the State Court closest to the delivery point of the item or services giving rise to the claim.

# ASSIGNMENT

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

# AUTHORIZED DISTRIBUTORS

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

# CLAIMS 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.

# COMPLIANCE WITH LAWS

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

# DATA TRANSPARENCY REQUIREMENTS

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

# DEFINITIONS

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

1. DOE means the U.S. Department of Energy
2. GOVERNMENT means the United States of America and includes the U.S. DOE/NNSA, the Secretary of Energy of the U.S., or any duly authorized representative thereof.
3. HAZARDOUS MATERIALS means any material with the potential to cause illness, injury, or death to a person, or damage to a facility or to the environment, for the categories of radioactive material, biological agents, explosives, and hazardous chemicals.
4. ITEM means commercial items, commercial services, and commercial components as defined in FAR 52.202-1 Definitions.
5. NNSA means the U.S. Department of Energy - National Nuclear Security Administration
6. NTESS means National Technology and Engineering Solutions of Sandia, LLC, the management and operating Contractor for the Sandia National Laboratories under Prime Contract No. DE-NA0003525 with DOE/NNSA.
7. NTESS-DIRECTED WORK means work under a subcontract for which NTESS retains accountability for the outcome of the work performed and routinely provides work direction to the Subcontractor's work force.
8. SANDIA means Sandia National Laboratories operated by NTESS under Prime Contract No. DE-NA0003525 with DOE/NNSA.
9. SDR means Sandia Delegated Representative. The SP may delegate personnel as authorized representatives for such purposes as and to the extent specified in the delegation. Such delegation shall be in writing to the Subcontractor, and shall designate by name the personnel so delegated as authorized representatives. The SDR shall exercise no supervision over the Subcontractor's employees. THE SDR's AUTHORITY IS LIMITED SOLELY TO THE AUTHORITY ENUMERATED IN SUCH WRITTEN DELEGATION. THE SDR HAS NO AUTHORITY TO CHANGE ANY TERM OR CONDITION CONTAINED IN THIS SUBCONTRACT.
10. SELLER means the person or organization that has entered into this subcontract with NTESS.
11. SNL means Sandia National Laboratories operated by NTESS under Prime Contract No. DE-NA0003525 with DOE/NNSA.
12. SP means the Subcontracting Professional or Buyer; the only person authorized to execute and/or administer this subcontract for NTESS.
13. SUBCONTRACT means subcontract at all tiers, Purchase Order, Price Agreement, Ordering Agreement, or modifications thereof.
14. SUBCONTRACTOR means the person or organization that has entered into this subcontract to sell something to NTESS.
15. SUBCONTRACTOR-DIRECTED WORK means work under a subcontract for which the Subcontractor is accountable for the outcome of the work performed and routinely provides work direction to the Subcontractor's work force.
16. U.S./US means the United States of America

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

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

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

1. FLOSS refers to software that incorporates, embeds, uses, bundles, or otherwise associates with any of the following:
	1. Open source, publicly available, or "free" software, library or documentation
	2. Software licensed under a FLOSS License
	3. Software provided under a license that subjects the delivered software to any FLOSS License, or requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge
2. FLOSS License(s) include any Free Software, Open Source and Public License(s). FLOSS License also refers to: General Public License (GPL), Lesser/Library GPL (LGPL), the Affero GPL (APL), the Apache license, the Berkeley Software Distribution (“BSD”) license, the MIT license, the Artistic License (e.g., PERL), the Mozilla Public License (MPL), or variations thereof.

# DISPUTES

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

# ESTIMATES OF COST AND LIMITATION OF OBLIGATION, IF APPLICABLE

1. 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 I, if applicable.
2. 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.
3. Limitation of Obligation. Payments on account of costs shall not in the aggregate exceed the amount of funds presently obligated hereunder.
4. 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.
5. 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."
6. 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.
7. 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 via email to the NTESS Procurement Policy and Compliance Department manager at ppqd@sandia.gov

# EXCESS FREIGHT CHARGES

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

# EXCUSABLE DELAYS

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

# EXPORT CONTROL

1. Any item, technical data, or software furnished by NTESS in connection with this 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; 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 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.
2. 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.
3. If Subcontractor is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Subcontractor represents that it is registered with the Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.
4. The Subcontractor shall flow down the requirements of this clause to all lower-tier 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."

# HANDLING, PROTECTION, AND RELEASE OF INFORMATION

1. 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”), NTESS Proprietary, Sandia Proprietary);
	2. Information directly related to subcontract and/or lower-tier subcontract administration, such as: program and planning, project management documentation, electronic or hardcopy correspondence, negotiations, financial, administrative, program office, and personnel information;
	3. Technical and design information or guidance derived from or embodied in models, diagrams, drawings or translations, analysis models, manufacturing models, and computer-aided engineering and design, related to subcontract performance, regardless of whether the information is marked; and
	4. Information obtained directly from NTESS or Sandia National Laboratories (SNL)-owned electronic resources, regardless of whether the information is marked.
2. Handling of Information
Subcontractor shall:
	1. Ensure any subcontract-related information provided by or accessed through NTESS in performance of this subcontract, whether identified by a NTESS-applied marking or not, is used only for purposes of performing this subcontract, and is not used or distributed for any other purpose;
	2. Safeguard subcontract-related information from unauthorized access, use, and disclosure;
	3. Inform employees and lower-tier subcontractors who may require access to subcontract-related information about obligations to use the information only for performance of this subcontract and requirements to safeguard the information from unauthorized use and disclosure;
	4. Require that each employee with access to the information complies with the obligations included in this clause;
	5. Maintain any restrictive markings on information from NTESS and on any subsequent copies.
3. Protection of Information
Subcontractor agrees to implement and maintain safeguards for subcontract-related information that meet or exceed the following requirements:
	1. Protection in Use. Subcontractor shall take precautions to prevent access to subcontract-related information by persons who do not require the information to perform their jobs.
	2. Protection in Storage. Subcontractor shall store subcontract-related information as identified in this clause in a secure manner that prevents unauthorized or inadvertent access. Control of user access privileges shall occur for electronic information and physical storage locations shall be secured in a locked room or other receptacle (e.g., a locked file cabinet, desk);
	3. 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.
4. Release of Information
	1. Disclosure of subcontract-related information or other NTESS information to persons or entities outside of Subcontractor’s organization or authorized lower-tier subcontractors is prohibited without advance written approval from NTESS. Disclosure requests may be sought by writing to the SP on this subcontract.
	2. Publication proposals related to work performed or data obtained under this subcontract shall be coordinated with the SP prior to submission to any scientific, academic, technical, professional, or other publication.
		1. Subcontractor shall provide NTESS an opportunity to review publication proposals related in whole or in part to work connected to this subcontract at least forty-five (45) calendar days prior to submission;
		2. NTESS will review the proposed publication and provide a response within forty-five (45) calendar days;
		3. Subcontractor may assume NTESS has no comments after the response period has elapsed.
		4. Subcontractor agrees to address any issues or concerns identified by NTESS before submitting publication proposals.
	3. Subcontractor shall ensure its employees and lower-tier subcontractors comply with this clause.
	4. In no event shall the interest of NTESS or the DOE or the government in this subcontract be indicated in any advertising or publicity without advance written approval of the SP.
5. Clause Interpretation
	1. In the event of conflict between the provisions of this clause and a Nondisclosure Agreement between NTESS and the Subcontractor, the terms and conditions of the Nondisclosure Agreement shall govern.
	2. This clause shall not prohibit Subcontractor’s fulfillment of routine internal or external reporting requirements, including the disclosure of the existence and nature of this subcontract as required by law. External reporting as used in this clause refers to reports submitted to state or federal government offices.
	3. Under a valid court or government agency order, Subcontractor may release subcontract-related information necessary to fulfill obligations, provided that Subcontractor send the written notice and a copy of order or other obligating document to NTESS within a reasonable amount of time to provide the owner of the subcontract-related information notice of such obligation and the opportunity to oppose disclosure.

# INDEPENDENT SUBCONTRACTOR RELATIONSHIP

1. 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, agents or subcontractors, without any relation whatsoever to NTESS.
2. 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.
3. 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:
	1. Subcontractor's failure to pay any employee for the Work rendered under this subcontract
	2. Any claims made by Subcontractor's personnel against NTESS
4. Subcontractor is not authorized to represent NTESS in any way or to bind NTESS by any promise, agreement, or obligation.
5. Subcontractor shall flow down the requirements of this clause to any applicable lower-tier subcontracts for services.

# LOWER-TIER SUBCONTRACTING

All lower-tier subcontracts shall be made in the name of the Subcontractor and shall not bind nor purport to bind NTESS or shall not relieve Subcontractor of any obligation under this purchase order/subcontract. If Subcontractor subcontracts any work in the performance of this subcontract, Subcontractor shall incorporate into every such lower-tier subcontract an appropriate set of NTESS Ts&Cs found at <http://www.sandia.gov/working_with_sandia/current_suppliers/contract_information/index.html> under the Section II Terms and Conditions Tab.

# OPERATIONAL SECURITY

1. 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.
2. 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 (POs) or subcontract, OPSEC requires the Subcontractor to:
	1. Use the OPSEC 5-step process to protect classified, sensitive unclassified, proprietary and critical information on NTESS POs, subcontracts, and all performance thereunder, to preclude the dissemination of such information except as provided for in Section II, Clause titled, "Release of Information."
	2. 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 subcontractor, 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.
	3. Assure all Subcontractor employees given access to NTESS’ POs, 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.
	4. 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 POs, and/or subcontracts not directly related to that needed for subcontract performance.
3. References:
	1. FSO Tool cart http://www.sandia.gov/FSO/
4. Definitions:
	1. Critical Information means 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.
	2. Critical Information List (CIL) is a compilation of critical information topics, generally organized by SP&A.
	3. OPSEC Measure means anything that effectively negates or mitigates an adversary's ability to exploit vulnerabilities.
	4. Sensitive Programs and Activities (SP&A) means 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.
5. Required Training:
	1. 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 - EDUCATIONAL INSTITUTIONS

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

Specifications, drawings, and other documents incorporated in the subcontract

# PAYMENTS - COST REIMBURSEMENT

1. 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.
2. 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.
3. Costs for items of Capital Property (48 CFR Part 45, 48 CFR 945, the Federal Property Management Regulations 41 CFR Chapter 101, the DOE Property Management Regulations 41 CFR Chapter 109,) if applicable, shall be separately listed in invoices.
4. Discount time will be computed from the date the 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 electronic funds transfer was made NTESS may take subcontract or invoice prompt payment discount.
5. 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.
6. Payments on Account of Fee, if any. The fee shall become due and payable in periodic installments in amounts based on the proportion of the work then completed as determined by the SP.
7. 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 theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the SP, 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.
8. 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 and fee. 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.
9. 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.
10. 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
	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:
		1. specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Subcontractor
		2. 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
		3. 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 NTESS shall be deemed to be and shall have the same effect as a release as set forth above, including a release of all claims set forth in i. and ii. above.
11. 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.

# PERFORMANCE EVALUATION PROGRAM

In keeping with NTESS' goal of continuous improvement, and promoting and creating an environment for superior Subcontractor performance, NTESS has established a collaborative feedback process through the Performance Evaluation Program. This program is intended to create an environment, which fosters dialog, provides feedback, and improves communication. Any subcontract awarded by NTESS is a candidate for evaluation under this program. Details on the evaluation program are internally tracked via the NextGen SCORE program. Please contact the SP for additional information.

# PRICE-ANDERSON AMENDMENTS ACT (PAAA)

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

# 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 PERSONALLY IDENTIFIABLE INFORMATION (PII)

In performing this subcontract, the Subcontractor may be provided with PII relating to NTESS employees, subcontractor employees, and any other individuals related to the work under this subcontract. The Subcontractor shall take all reasonable steps and precautions to ensure all PII provided to the Subcontractor is adequately controlled, protected, and used only to perform work called for under this subcontract.

1. For the purposes of this subcontract, PII is defined as:
	1. Any of the information listed below that can be used to distinguish or trace an individual's identity, is collected and maintained for the purpose of conducting official NTESS business, and is not solely comprised of information that is available to the general public:
		1. social security number
		2. driver's license number
		3. passport number
		4. other federal- or state-issued identification card number
		5. bank account number (with or without routing number, access code, or Personal Identification Number [PIN])
		6. financial or benefit account number in combination with any required code permitting access; background information; verification report
		7. credit report, including consumer reports
		8. medical or health information, including biometric, bio-monitoring, or genetic information
		9. employment history including ratings, salary, wage, deduction information, and disciplinary actions
		10. security clearance history or related information
		11. criminal history
		12. date of birth or age
		13. place of birth
		14. mother’s maiden name
		15. and race or ethnicity
	2. One means of distinguishing or tracing an individual’s identity is to include the first name or the first initial and last name of an individual in combination with any information listed above.
	3. PII does not include information that is on NTESS computing resources as a result of incidental personal use of computing and information resources or other assets.
2. Loss of Control of PII. If the Subcontractor becomes aware or suspects that any NTESS-provided PII, has been inappropriately, taken, used, disclosed, and/or released or that the controls for access to the information have been compromised, the Subcontractor will immediately take steps to prohibit further disclosure and preserve related documents, records, and communications. Subcontractor shall notify NTESS of the incident within 48 hours by providing written notice to contractnotification@sandia.gov and contacting the named SP. Subcontractor shall cooperate with NTESS and provide information needed to allow NTESS to evaluate the nature and extent of the release or loss of control.
3. The provisions of this clause shall survive and continue in force following the completion of work under this subcontract until such time that any PII provided to the Subcontractor is either destroyed in its entirety in a manner that ensures it is not readable or decipherable through any means, or that the PII, including any copies, is returned to NTESS. The Subcontractor shall ensure that these provisions shall be made applicable to any lower-tier subcontractor or non-governmental third party who receives PII provided through this subcontract.

# RECYCLED OR NEW MATERIALS

Unless otherwise specified in this subcontract, all Items delivered shall consist of recycled and/or new materials. New is defined as previously unused which may include residual inventory or unused former government surplus property. Subcontractor shall give preference to the use of recycled materials in support of NTESS’ Sustainable Acquisition Program as set forth in Department of Energy Acquisition Regulation (DEAR) 970.5223-7 SUSTAINABLE ACQUISITION PROGRAM.

# 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 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, as requested by the SDR.

**RIGHTS IN DATA - EDUCATIONAL INSTITUTIONS**

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.

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

# SOFTWARE, SERVICES & INFORMATION SYSTEMS SECURITY ASSURANCE

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

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

# 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.

# TAXES

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

# TRANSPORTATION

1. All transportation shall be "FOB Destination" unless otherwise specified in this subcontract.
2. If transportation is specified "Freight on Board (FOB) Origin":
	1. No insurance cost shall be allowed unless authorized in writing; and
	2. The bill of lading shall indicate that transportation is for DOE/NNSA and the actual total transportation charges paid to the carrier(s) shall be reimbursed by the government pursuant to Prime Contract No. DE-NA0003525. Confirmation will be made by NTESS.

**WRITTEN NOTICES**

1. The Subcontractor shall immediately notify the SP in writing of:
	1. Any action, including any proceeding before an administrative agency, filed against the Subcontractor arising out of the performance of this subcontract
	2. Any claim against the Subcontractor, the cost and expense of which is allowable under the terms of this subcontract
2. If, at any time during the performance of this subcontract, the Subcontractor becomes aware of any circumstances which may jeopardize its performance of all or any portion of the subcontract, it shall immediately notify the SP in writing of such circumstances, and the Subcontractor shall take whatever action is necessary to cure such defect within the shortest possible time.

**ADDITIONAL TERMS AND CONDITIONS**

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

# APPLY TO SUBCONTRACTS OF ANY VALUE

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

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

FAR 52.204-9 Personal Identity Verification of Contractor Personnel

FAR 52.204-21 Basic Safeguarding of Covered Contractor Information Systems

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

FAR 52.209-10 Prohibition on Contracting with Inverted Domestic Corporation

FAR 52.211-5 Material Requirements

FAR 52.211-15 Defense Priority and Allocation Requirement

FAR 52.219-8 Utilization of Small Business Concerns

FAR 52.222-1 Notice to the Government of Labor Disputes

FAR 52.222-29 Notification of Visa Denial

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

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

FAR 52.223-11 Ozone-Depleting Substance and High Global Warming Potential Hydrofluorocarbons

FAR 52.223-12 Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners

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 52.225-8 Duty-Free Entry

FAR 52.225-9 Buy American Act – Construction Materials, (d) “use” is replaced with the word “deliver”

FAR 52.225-13 Restrictions on Certain Foreign Purchases

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

FAR 52.227-3 Patent Indemnity

FAR 52.227-16 Additional Data Requirements

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 (Alternate I)

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 52.247-1 Commercial Bill of Lading Notations

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

FAR 52.247-67 Submission of Transportation Documents for Audit

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 952.235-71 Research Misconduct

DEAR 952.247-70 Foreign Travel

DEAR 952.250-70 Nuclear Hazards Indemnity Agreement

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

DEAR 970.5208-1 Printing

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

DEAR 970.5227-6 Patent Indemnity

DEAR 970.5227-8 Refund of Royalties

DEAR 970.5232-3 Accounts, Records, and Inspection (Alternate II)

DEAR 970.5243-1 Changes

DEAR 970.5245-1 Property Proposed Deviation

# APPLY TO SUBCONTRACTS EXCEEDING $2,000

FAR 52.222-5 Construction Wage Rate Requirements – Secondary Site of the Work

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

FAR 52.222-16 Approval of Wage Rates

FAR 52.222-30 Construction Wage Rate Requirements – Price Adjustment (None of Separately Priced Method)

FAR 52.222-31 Construction Wage Rate Requirements – Price Adjustment (Percentage Method)

FAR 52.222-32 Construction Wage Rate Requirements – Price Adjustments (Actual Method)

FAR 52.222-55 Minimum Wages Under Executive Order 13658

FAR 52.222-62 Paid Sick Leave Under Executive Order 13706

# APPLY TO SUBCONTRACTS EXCEEDING $2,500

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

FAR 52.222-41 Service Contract Labor Standards

FAR 52.222-42 Statement of Equivalent Rates for Federal Hires

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 52.222-48 Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Certification

FAR 52.222-49 Service Contract Labor Standards – Place of Performance Unknown

FAR 52.222-51 Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements

FAR 52.222-52 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services – Certification

FAR 52.222-53 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services – Requirements

# APPLY TO SUBCONTRACTS EXCEEDING $3,500

FAR 52.222-54 Employment Eligibility Verification

# APPLY TO SUBCONTRACTS EXCEEDING $10,000

FAR 52.222-21 Prohibition of Segregated Facilities

FAR 52.222-26 Equal Opportunity

FAR 52.225-1 Buy American – Supplies

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

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

FAR 52.222-36 Affirmative Action for Workers with Disabilities

# APPLY TO SUBCONTRACTS IF $25,000 OR MORE

DEAR 970.5223-4 Workplace Substance Abuse Programs at Government 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

FAR 52.228-13 Alternative Payment Protections - Construction

# 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 for Veterans

# APPLY TO SUBCONTRACTS EXCEEDING $150,000

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

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

FAR 52.228-15 Performance and Payment Bonds – Construction

DEAR 952.209-72 Organizational Conflicts of Interest (Alternate I)

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# APPLY TO SUBCONTRACTS EXCEEDING $250,000

FAR 52.203-6 Restrictions on Subcontractor Sales to the Government

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

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

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

FAR 52.204-14 Service Contract Reporting Requirements

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 52.222-17 Nondisplacement of Qualified Workers

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

FAR 52.227-1 Authorization and Consent (Alternate I)

FAR 52.244-5 Competition in Subcontracting

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

DEAR 970.5223-7 Sustainable Acquisition Program

# APPLY TO SUBCONTRACTS EXCEEDING $500,000

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

FAR 52.227-16 Additional Data Requirements

DEAR 952.226-74 Displaced Employee Hiring Preference

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

# APPLY TO SUBCONTRACTS EXCEEDING $700,000

FAR 52.219-9 Small Business Subcontracting Plan – Non-Construction

FAR 52.219-10 Incentive Subcontracting Program – Non-Construction

FAR 52.219-16 Liquidated Damages – Subcontracting – Non-Construction

# 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 52.215-15 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

FAR 52.219-9 Small Business Subcontracting Plan – Construction

FAR 52.219-10 Incentive Subcontracting Program – Construction

FAR 52.219-16 Liquidated Damages – Subcontracting – Construction

# APPLY TO SUBCONTRACTS EXCEEDING $5,500,000

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)

FAR 52.210-1 Market Research

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

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

DEAR 952.204-2 Security Requirements

DEAR 952.204-70 Classification/Declassification

# APPLY TO SUBCONTRACTS WHICH INCLUDE ANY EXPERIMENTAL, RESEARCH, DEVELOPMENTAL, OR DEMONSTRATION WORK

DEAR 952.227-11 Patent Rights – Retention by the Contractor (Short Form). Applies only if subcontractor is a domestic nonprofit organization or small business.

DEAR 952.227-13 Patent Rights - Acquisition by the Government. Applies to any subcontractor other than a domestic nonprofit organization or small business.

**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 SUBCONTRACTS WHERE ANY WORK WILL PERFORMED ON A GOVERNMENT SITE

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

# CITIZENSHIP STATUS

All personnel of the Subcontractor and its lower-tier 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 United States and must meet rules of the site for access to the work areas in place at the time of performance of this subcontract.

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

1. 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.
2. Service Providers - 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.
3. 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/working\_with\_sandia/current\_suppliers/contract\_information/index.html under the “Forms” tab, 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

1. Handling Requirements.
	1. 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.
	2. The Subcontractor shall notify the SDR of all hazardous and/or radioactive waste generated during performance of work.
	3. Such materials become NTESS-owned waste and the Subcontractor shall notify the SDR for proper disposal by NTESS.
	4. Subcontractor's assistance in disposal may be required by NTESS.
2. Removal Requirements.
	1. 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.
	2. 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 NTESS 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 “Policies”. 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.

# 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.

1. 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:
	1. The use of such government-owned vehicles with limits of at least $200,000/$500,000 public liability and $20,000 property damage.
	2. 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.
2. All Subcontractor's agents, employees and subcontractors of any tier shall obey all rules and regulations pertaining to the use of government-owned vehicles.
3. 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.
4. Subcontractor's personnel shall ensure that a GSA Form Packet 1627 is available in a GSA vehicle prior to accepting and driving a GSA vehicle.

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

1. Government-Controlled and Government-Owned sites. The Subcontractor agrees and shall ensure that Subcontractor and lower-tier subcontractor personnel entering government-controlled and government-owned sites for any activity related to this subcontract 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 government-controlled and government-owned sites, the Security and ES&H requirements can be obtained by contacting the SDR. The government requirements include, but are not limited to, those set forth in this clause for any work to be performed on a government-controlled or government-owned site.
	1. To obtain access to government-controlled or government-owned site, the Subcontractor shall submit an email request to the SDR or SP stating the company designation to be used by the Subcontractor and each lower-tier subcontractor and furnishing the following information on each Subcontractor and lower-tier subcontractor personnel requiring access to the government-controlled and government-owned site:
		1. Name
		2. Date of birth
		3. Citizenship status
		4. Completed ES&H training requirements set forth in the SOW of this subcontract
	2. Access will be granted for the period of performance as stated in Section I of this subcontract.
	3. Subcontractor shall withdraw and replace any Subcontractor or lower-tier subcontractor personnel, assigned to perform work under this subcontract, who in the judgment of NTESS or DOE/NNSA, is to be denied access to any government-controlled or government-owned site.
	4. Subcontractor shall submit to the SDR any proposed working schedules for its personnel and that of each lower-tier subcontractor that deviate from NTESS' normal workday or work week schedule as noted in Section I of this subcontract. The schedules shall show proposed daily working hours and proposed work weeks. Schedules that deviate from NTESS' normal workday or work week must be approved by the SDR.
	5. In the absence of a written authorization from the SP or SDR, use of government-controlled or government-owned sites by the Subcontractor and its lower-tier subcontractors, pursuant to access granted under this clause, shall be limited to work as set forth in the SOW of this subcontract to be performed on government-controlled or government-owned.
	6. THE USE OF THE ACCESS PRIVILEGE FOR ANY PURPOSE OTHER THAN TO PERFORM WORK AS SET FORTH IN THE SOW OF THIS SUBCONTRACT IS PROHIBITED AND MAY BE GROUNDS FOR TERMINATING THIS SUBCONTRACT FOR DEFAULT OR DENYING ACCESS TO ANY SUBCONTRACTOR OR LOWER-TIER SUBCONTRACTOR PERSONNEL.
2. SNL Site Access. 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, NTESS, Innovation Parkway Office Complex (IPOC).
	2. Sandia National Laboratories, Livermore, California - Visitor Control and Administration Section, NTESS, Building 911.
	3. Tonopah Test Range, Tonopah, Nevada - Office of the Tonopah Test Range Manager.
3. Subcontractor shall ensure that its and its lower-tier subcontractor personnel assigned to work on government-controlled or government-owned sites comply with all applicable site access requirements. In addition, the Subcontractor and its lower-tier subcontractor personnel, shall:
	1. Not bring weapons of any kind onto government-controlled or government-owned sites
	2. Not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages while on government-controlled or government-owned
	3. Not possess hazardous materials of any kind on government-controlled or government-owned sites without SP or SDR authorization or as stated in the SOW of this subcontract
	4. Not venture into unauthorized/restricted areas
4. All persons, property, and vehicles entering or leaving government-controlled or government-owned sites are subject to search by site Security Policy Officers.

# 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

All vehicles used by either the Subcontractor or its lower-tier 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 shall be 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.
3. Non-government commercial vehicles must be marked in accordance with Department of Transportation regulations.
4. Personally-owned 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.

Operators of all vehicles must have, in their possession, valid registration, insurance, licensing and related documentation applicable to the vehicle.

# WARRANTY OF CONSTRUCTION

1. 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 subcontractor or supplier at any tier.
2. 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.
3. The Subcontractor shall remedy at the Subcontractor's expense any failure to conform, or any defect. In addition, the Subcontractor shall remedy at the Subcontractor’s expense any damage to government-owned or controlled real or personal property, when that damage is the result of:
	1. The Subcontractor's failure to conform to subcontract requirements
	2. Any defect of equipment, material, workmanship, or design furnished
4. 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.
5. NTESS shall notify the Subcontractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
6. 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.
7. 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
	3. Enforce all warranties for the benefit of the government, if directed by NTESS
8. 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.
9. Unless a defect is caused by the negligence of the Subcontractor or lower-tier subcontractor or supplier at any tier, the Subcontractor shall not be liable for the repair of any defects of material or design furnished by NTESS nor for the repair of any damage that results from any defect in Government-Furnished Material/Property or design.
10. 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.
11. 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.