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

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

**SECTION II**

**STANDARD TERMS AND CONDITIONS FOR FIXED PRICE SUBCONTRACTS OUTSIDE OF THE UNITED STATES OF AMERICA**

**THE FOLLOWING CLAUSES APPLY TO REQUESTS FOR QUOTATION AND SUBCONTRACTS AS INDICATED UNLESS SPECIFICALLY DELETED, OR EXCEPT TO THE EXTENT THEY ARE SPECIFICALLY SUPPLEMENTED OR AMENDED IN WRITING IN THE SIGNATURE PAGE OR SECTION I. (CTRL+CLICK ON A LINK BELOW TO ADVANCE DIRECTLY TO THAT SECTION)**

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[**APPLY TO ALL SUBCONTRACTS WHICH INCLUDE ANY EXPERIMENTAL, RESEARCH, DEVELOPMENTAL, OR DEMONSTRATION WORK**](#_APPLY_TO_ALL_2)

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[**REQUIREMENTS FOR ACCESS TO U.S. GOVERNMENT SITES**](#_REQUIREMENTS_FOR_ACCESS)

# ACCEPTANCE OF TERMS AND CONDITIONS

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

# APPLICABLE LAW

The rights and obligations of the parties hereto shall be governed by, and this subcontract shall be interpreted in accordance with laws of New Mexico, and, where appropriate, the United States federal law.

# ASSIGNMENT

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

# BANKRUPTCY

If the Subcontractor enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the SP responsible for this Agreement within five days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing of the agreement numbers for which final payment has not been made.

# BREACH OF SUBCONTRACT

Any Subcontractor personnel who personally violate any requirements of this subcontract may be denied access to any Government site and Subcontractor may be terminated for default of this subcontract.

# Compliance with the Laws of the Country and the United States

Subcontractor Warranties and Certifications Subcontractor warrants and certifies that in performing the duties required under this Subcontract, Subcontractor will comply with the laws, regulations and administrative requirements of the Country in which Subcontractor is operating (“Country”), except to the extent such compliance is inconsistent with, or penalized under, United States law. Further, Subcontractor shall take no action which would subject NTESS to penalties under United States or Country laws, regulations and administrative requirements.

Subcontractor further warrants and certifies that Subcontractor has not and will not offer, pay, promise to pay, or authorize the payment of any money, or offer, give, promise to give, or authorize the giving of anything of value to a foreign official (as defined in the Foreign Corrupt Practices Act (Public Law 95‑213), as amended), to any foreign political party or official thereof or any candidate for foreign political office, or to any person, while knowing or being aware of a high probability that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for the purposes of: influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or inducing such foreign official, political party, party official, or candidate to use his or its influence with the foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist NTESS or Subcontractor in obtaining or retaining business for or with, or directing business to NTESS or Subcontractor.

Subcontractor warrants that Subcontractor is familiar with, and will comply in all respects with, U.S. laws, regulations and administrative requirements applicable to NTESS’s relationship with the Subcontractor, including, the Foreign Corrupt Practices Act (FCPA) (A guide to the FCPA may be found at this U.S. Department of Justice web site: (http://www.justice.gov/criminal/frud/fcpa)

Subcontractor warrants and certifies that Subcontractor has not been charged with or convicted of a felony offense in any jurisdiction or country, or listed by any U.S. Government agency as debarred, suspended, proposed for debarment, or otherwise ineligible for government procurement programs.

Notices:

If subsequent developments cause the certifications and information reported to be no longer accurate or complete, Subcontractor will immediately furnish NTESS with a supplementary report detailing such change in circumstances.

Subcontractor agrees to give prompt written notice in the event that, at any time during the term of this Subcontract, Subcontractor has failed to comply with or has breached any of its warranties or any of the certifications become inaccurate.

Remedies

Failure or refusal to promptly furnish any required certificate or disclosure indicating compliance with this clause upon request from NTESS will be the basis for immediate termination of this Subcontract.

In the event Subcontractor has not complied or has breached any of its warranties hereunder or any other certifications hereunder become inaccurate, this Subcontractor shall be null and void from the time of such non‑compliance, breach or inaccuracy. The foregoing warranties shall survive the termination of this Subcontract and shall continue in effect with respect to all business activities of NTESS in the Country until all such activities have ceased.

NTESS represents and warrants that Subcontractor does not desire and will not request any service or action by Subcontractor that would or might constitute a violation of the Foreign Corrupt Practices Act or any other law, regulation or administrative requirement of the United States or the Country.

# DEFINITIONS

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

**(a) SUBCONTRACT** means Purchase Order, lower-tier subcontractor, Price Agreement, Ordering Agreement, or modifications thereof.

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

**(c) 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.

**(d) GOVERNMENT** means the United States of America and includes the U.S. Department of Energy/National Nuclear Security Agency (DOE/NNSA), the Secretary of Energy of the United States, or any duly authorized representative thereof.

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

**(f) NTESS** means National Technology and Engineering Solutions of Sandia, LLC, the management and operating contractor for the Sandia National Laboratories under Contract No. DE-NA0003525 with the U.S. Department of Energy/National Nuclear Security Administration (DOE/NNSA).

**(g) 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.

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

**(i) 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.

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

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

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

DEFINITIONS

FLOSS. 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 at:

<http://www.sandia.gov/bus-ops/scm/Contractor/Contractor-info.html> for resolving any and all disputes arising from this subcontract. NTESS Acquisition Conflict Resolution Process available in “Policies” tab.

# ETHICAL CONDUCT

The Subcontractor, including any officers, employees or lower tier subcontractor while engaged in work related to the subcontract shall:

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

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

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

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

# 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 lower-tier 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 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 contract to Subcontractor or Subcontractor's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception. Subcontractor shall immediately notify the SP if it transfers any export controlled item, data, or services to foreign persons. Diversion contrary to U.S. export laws and regulations is prohibited.

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

**(c)** If Subcontractor is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Subcontractor represents that it is registered with the Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR. The Subcontractor shall flow down the requirements of this clause to all lower-tier subcontracts.

# EXTRAS AND VARIATION IN QUANTITY

Except as otherwise provided in this subcontract, no payment for extras shall be made unless such extras and the price therefore have been authorized in writing by the SP. No variation in the quantity of any item called for by this subcontract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this subcontract.

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

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

1. Information identified with any NTESS-applied marking (e.g., Official Use Only (“OUO”) or NTESS Proprietary);

2. Information directly related to subcontract and/or lower tier contract administration, such as: program and planning, project management documentation, electronic or hardcopy correspondence, negotiations, financial, administrative, program office, and personnel information;

3. Technical and design information or guidance derived from or embodied in models, diagrams, drawings or translations, analysis models, manufacturing models, and computer-aided engineering and design, related to subcontract performance, regardless of whether the information is marked; and

4. Information obtained directly from NTESS or Sandia National Laboratories (SNL) owned electronic resources, regardless of whether the information is marked.

I. Handling of Information

Subcontractor shall:

**(a)** Ensure any contract-related information provided by or accessed through NTESS in performance of this subcontract, whether identified by a NTESS-applied marking or not, is used only for purposes of performing this subcontract, and is not used or distributed for any other purpose;

**(b)** Safeguard contract-related information from unauthorized access, use, and disclosure;

**(c)** Inform employees and lower tier suppliers who may require access to contract-related information about obligations to use the information only for performance of this subcontract and requirements to safeguard the information from unauthorized use and disclosure;

**(d)** Require that each employee with access to the information complies with the obligations included in this clause;

**(e)** Maintain any restrictive markings on information from NTESS and on any subsequent copies.

II. Protection of Information

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

**(a)** Protection in Use. Subcontractor shall take precautions to prevent access to contract-related information by persons who do not require the information to perform their jobs.

**(b)** Protection in Storage. Subcontractor shall store contract-related information as identified in this clause in a secure manner that prevents unauthorized or inadvertent access. Control of user access privileges shall occur for electronic information and physical storage locations shall be secured in a locked room or other receptacle (e.g., a locked file cabinet, desk);

**(c)** Reproduction. Subcontractor shall limit reproduction of contract-related information (including 3-D print prototypes) and any information with restrictive markings to a minimum, by only reproducing information to the extent necessary for performance of this subcontract;

**(d)** Disposal or Return. Return and/or disposal of contract-related information shall occur via methods specified by NTESS when the information is no longer needed for performance of work under this subcontract or associated business purpose. Hard-copy contract-related information shall be destroyed prior to disposal via a strip cut shredder (strips no more than ¼ inch wide). Disks shall be overwritten using approved software and destroyed. For assistance with authorized disposal methods, please contact the Supply Chain Risk Management Office at scrm\_ds@sandia.gov.

III. Release of Information

**(a)** Disclosure of contract-related information or other NTESS information **to** persons or entities outside of Subcontractor’s organization or authorized lower-tier suppliers is prohibited without advance written approval from NTESS. Disclosure requests may be sought by writing to the Subcontracting Professional (SP) on this contract.

**(b)** 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.

**i.** Subcontractor shall provide NTESS an opportunity to review publication proposals related in whole or in part to work connected to this contract at least forty-five (45) calendar days prior to submission;

**ii.** NTESS will review the proposed publication and provide a response within forty-five (45) calendar days;

**iii.** Subcontractor may assume NTESS has no comments after the response period has elapsed.

**iv.** Subcontractor agrees to address any issues or concerns identified by NTESS before submitting publication proposals.

**(c)** Subcontractor shall ensure its employees and lower tier suppliers comply with this clause.

IV. Clause Interpretation

**(a)** 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.

**(b)** This clause shall not prohibit Subcontractor’s fulfillment of routine internal or external reporting requirements, including the disclosure of the existence and nature of this contract as required by law. External reporting as used in this clause refers to reports submitted to state or federal government offices.

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

# INDEPENDENT SUBCONTRACTOR RELATIONSHIP

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

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

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

**i.** Subcontractor's failure to pay any employee for the Work rendered

under this Subcontract, or

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

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

# NOTICE OF POTENTIAL DELAY

Subcontractor shall strictly comply with the delivery requirements of this Subcontract. Whenever the Subcontractor has knowledge of any actual or potential delay or threatened delay in the timely performance of this Subcontract, the Subcontractor shall immediately give notice thereof, confirmed in writing, including all relevant information with respect thereto, to NTESS.

**OPERATIONS SECURITY**

**(a)** Operations Security (OPSEC) as used herein means a process designed to disrupt or defeat the ability of foreign intelligence or other adversaries to exploit U.S. Department of Energy/National Nuclear Security Administration (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. Department of Energy 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:

**i.**  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."

**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 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 SNL.

**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 POs, and/or 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, NTESS) 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 (CIL): 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.** Sensitive Programs and Activities (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 & LANGUAGE

Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) Signature Page, (2) Section I; (3) SF 6432-FE, Section II, (4) Specifications, drawings, and other documents incorporated in the subcontract.

The English language version of this Subcontract shall be controlling.

All deliverables under this Subcontract shall use and/or be in the English language.

# PAYMENT

Subcontractor agrees to provide invoices within 60 days of completion of work and hereby waives any amounts that are not invoiced within 60 days of the completion of work on the subcontract. Unless otherwise provided, terms of payment shall be net 30 days from the latter of (1) receipt of Subcontractor's proper invoice, if required, or (2) delivery of Items/completion of work. Invoices or vouchers requesting payment for item(s) of Government Property as defined in DEAR 970.5204-21 Property, shall be separately listed on such invoices or vouchers. Any offered discount shall be taken if payment is made within the discount period that the Subcontractor indicates. Payments will be made by electronic funds transfer. Payment shall be deemed to have been made as of the date on which an electronic funds transfer was made.

# 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

# PROPERTY

This clause is applicable if this subcontract provides (i) that NTESS will furnish Government-owned property to the Subcontractor (hereinafter referred to as "NTESS-Furnished U.S. Government Property") or (ii) that the Subcontractor will acquire property.

**(a)** NTESS-Furnished U.S. Government Property

1. NTESS shall deliver to the Subcontractor, for use in connection with and under the terms of this subcontract, the NTESS-Furnished U.S. Government Property described in Section I together with any related data and information that the Subcontractor may request and is reasonably required for the intended use of the property (hereinafter referred to as NTESS-Furnished U.S. Government Property").
2. The delivery or performance dates for this subcontract are based upon the expectation that NTESS-Furnished U.S. Government Property suitable for use

(except for property furnished "as-is") will be delivered to the Subcontractor at the times stated in Section I or, if not so stated, in sufficient time to enable the Subcontractor to meet the subcontract's delivery or performance dates.

1. If NTESS-Furnished U.S. Government Property is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt of it, notify the SP, detailing the facts, and, as directed by the SP and at NTESS expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Subcontractor, the CR shall make an equitable adjustment.
2. If NTESS-Furnished U.S. Government Property is not delivered to the Subcontractor by the required time, the SP shall, upon the Subcontractor's timely written request, make a determination of the delay, if any, caused to the Subcontractor and shall make an equitable adjustment.

**(b)** Title in Property

Unless otherwise provided in this subcontract, title to all NTESS-Furnished U.S. Government Property and/or property acquired through funds transferred through this effort, shall pass to the End-user upon the Subcontractor's receipt of the property. All responsibility, including repair or replacement of property for which the Subcontractor holds title, shall be accomplished by the Subcontractor at its own expense.

# RECYCLED AND/OR NEW MATERIALS

Unless otherwise specified in this Agreement, 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.

# 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.

# REPORTING OF ROYALTIES

If this subcontract is in an amount which exceeds $10,000, and any royalty payments are directly involved in the subcontract or are reflected in the subcontract price to NTESS or the Government, the Subcontractor agrees to report in writing to the Patent Counsel (with notification by Patent Counsel to the SP) during the performance of this subcontract and prior to its completion or final settlement, the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this subcontract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit the identification of the patents or other basis on which the royalties are to be paid. The approval of NTESS or of DOE of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made. ("Patent Counsel," as used in this clause, means the Patent Attorney, DOE, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico 87115.)

# 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.

# RISK OF LOSS

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

# 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 Subcontracting Professional/Sandia Delegated Representative. 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.

**SOFTWARE, SERVICES & INFORMATION SYSTEMS SECURITY ASSURANCE**

1. Subcontractor warrants that all items, information systems, software and services, including cloud-based service models (e.g., infrastructure as a service, platform as a service, or software as a service) delivered under this Subcontract only contain features and/or functions that are fully disclosed.

2. If Subcontractor suspects or becomes aware of any threat events, security incidents, or vulnerabilities that may have the potential to affect the functionality, security, or integrity of items or services provided to NTESS, Subcontractor shall immediately give verbal notice to NTESS’ Security Incident Management Program (SIMP) by calling (505) 283-7467, or for subcontracts issued in California call (925)294-2600 (these phone lines are manned 24 hours a day, 7 days a week). Verbal notification shall occur at the time of Subcontractor’s awareness or suspicion, and prior to any follow up investigations. In addition to the immediate verbal notification, Subcontractor shall provide written notification to the Subcontracting Professional and Sandia Delegated Representative (SDR), if an SDR is named in the Subcontract, within 72 hours of Subcontractor’s awareness or suspicion.

3. Subcontractor shall cooperate fully with NTESS to investigate all potential security incidents, threat events, and/or vulnerabilities.

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

# SUBCONTRACTS

If Seller subcontracts under this Subcontract, Seller shall incorporate into the subcontract all of the requirements set forth in this Subcontract to any and all such lower-tier subcontractors.

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

Notes: One means of distinguishing or tracing an individual’s identity is to include the first name or the first initial and last name of an individual in combination with any information listed above. PII does not include information that is on NTESS computing resources as a result of incidental personal use of computing and information resources or other assets.

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

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

# TRANSPORTATION

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 and the actual total transportation charges paid to the carrier(s) shall be reimbursed by the Government pursuant to Contract No. DE-NA0003525. Confirmation will be made by NTESS

# TAXES

To the extent that this subcontract provides for furnishing supplies or performing services outside the United States and its outlying areas, this clause applies in lieu of an U.S. Federal, State, and local taxes clause of the subcontract.

*Definitions.* As used in this clause—

1. “Subcontract date” means the date set for bid opening or, if this is a negotiated subcontract or a modification, the effective date of this subcontract or modification.
2. “Country concerned” means any country, other than the United States and its outlying areas, in which expenditures under this subcontract are made.
3. “Tax”and “taxes” include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.
4. “All applicable taxes and duties”means all taxes and duties, in effect on the subcontract date, that the taxing authority is imposing and collecting on the transactions or property covered by this subcontract, pursuant to written ruling or regulation in effect on the subcontract date.

Unless otherwise provided in this subcontract, the subcontract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States, or any tax or duty not applicable to this subcontract or any lower-tier subcontracts under this subcontract, pursuant to the laws of the country concerned.

It is the Subcontractor’s responsibility to obtain the exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, NTESS, the Subcontractor, any lower-tier Subcontractor, or the transactions or property covered by this subcontract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable.

# WARRANTY

Subcontractor expressly warrants that Items delivered under this Agreement shall be in accordance with NTESS's description and compliant with all requirements of this Agreement. Subcontractor expressly warrants that no counterfeit Items or components in Items shall be delivered to NTESS on this Agreement. Subcontractor expressly warrants that all Items provided under this agreement shall have a rightful transfer of good title thereto and are delivered free of any rightful claims of any third person by way of infringement of any intellectual property right The warranty shall begin upon receipt of conforming Items and extend for a period of (1) the manufacturer's warranty period or six months, whichever is longer, if the Subcontractor is not the manufacturer and has not modified the Item or (2) one year or the manufacturer's warranty period, whichever is longer, if the Subcontractor is the manufacturer of the Item or had modified it. If any nonconformity with Item appears within that time, Subcontractor shall promptly repair, replace, or re-perform such Items at Subcontractor's election. Transportation of replacement Items and return of nonconforming Items and repeat performance of services shall be at Subcontractor's expense. NTESS shall notify Subcontractor of such nonconformity within a reasonable time after discovery, and Subcontractor shall notify NTESS of whether it chooses to make repairs or replacements within three working days after NTESS's notice of nonconformity. If repair or replacement or re-performance of services is not timely, NTESS may elect to return the nonconforming Items or repair or replace them or re-procure the services at Subcontractor's expense. Subcontractor disclaims the implied warranties of merchantability or fitness for a particular purpose.

# WORK FOR HIRE

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, 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, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government to use that data as well as the use permitted under the pertinent FAR clause, such as FAR 52.227-14 (c)(1).

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, Subcontractor hereby agrees and acknowledges that all duties performed hereunder are specifically ordered or commissioned by NTESS ("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 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).

**WRITTEN NOTICES**

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

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

# ADDITIONAL TERMS AND CONDITIONS

This Subcontract incorporates by reference with the same force and effect as if they were given in full text, the following cited Federal Acquisition Regulation (FAR) clauses and Department of Energy Acquisition Regulation (DEAR) clauses. The full text of these clauses may be found at Title 48 of the Code of Federal Regulations (CFR) at <http://www.ecfr.gov> or at the FARSite at <http://farsite.hill.af.mil> under regs – FAR or DEARS. Where the FAR/DEAR clauses refer to Government and Contracting Officer, substitute NTESS and Subcontracting Professional.

# APPLY TO SUBCONTRACTS AT ANY VALUE

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

FAR 52.209-10 Prohibition on Contracting With Inverted Domestic Corporations

# FAR 52.211-5 Material Requirements

# FAR 52.211-15 Defense Priority and Allocation Requirement

FAR 52.222.29 Notification of VISA Denial

FAR 52.222-50 Combating Trafficking in Persons

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

FAR 52.225-8 Duty Free Entry

FAR 52.225-9 Buy American - Construction Materials

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

FAR 52.225-13 Restrictions on Certain Foreign Purchases

FAR 52.227-3 Patent Indemnity

FAR 52.227-23 Rights to Proposal Data (Technical). This clause applies only in any subcontract awarded based on consideration of a technical proposal.

FAR 52.232-39 Unenforceability of Unauthorized Obligations

FAR 52.242-15 Stop Work Order with Alternate I

FAR 52.244-6 Subcontracts for Commercial Items

FAR 52.245-1 Government Property

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

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

FAR 52.249-2 Termination For Convenience of the government (Fixed-Price)

FAR 52.249-8 Default (Fixed-Price Supply and Service)

DEAR 952.204-71 Sensitive Foreign Nations Controls

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 970.5243-1 Changes

# APPLY TO SUBCONTRACTS EXCEEDING $3,500

FAR 52.225-1 Buy American - Supplies

# APPLY TO SUBCONTRACTS EXCEEDING $35,000

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

**APPLY TO SUBCONTRACTS EXCEEDING $100,000**

DEAR 970.5227-4 Authorization and Consent

# APPLY TO ALL SUBCONTRACTS EXCEEDING $150,000

FAR 52.203-6 Restrictions on Subcontractor Sales to the Government

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

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

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

FAR 52.215-2 Audit and Records--Negotiation

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

# APPLY TO ALL SUBCONTRACTS EXCEEDING $750,000

FAR 52.215.11 Price Reduction for Defective Certified Cost or Pricing Data Modifications

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

FAR 52.215-19 Notification of Ownership Changes

FAR 52.230-4 Disclosure and Consistency of Cost Accounting Practices--Foreign Concerns

# APPLY TO ALL 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 52.210-1 Market Research

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

FAR 52-227-16 Additional Data Requirements

FAR 52.227-14 Rights in Data -Rights in modified in accordance with

DEAR 952.227-14 and including Alternate V.

FAR 52.246-7 Inspection of Research and Development - Fixed Price

DEAR 952.227-11 Patent Rights, Retention by the Contractor (Short Form) This clause is to be used in all contracts in which the Contractor is a domestic small business or nonprofit organization as defined at FAR, 48 CFR 27.301.

DEAR 952.227-13 Patent Rights Acquisition by the Government This clause shall be used in all other contracts.

DEAR 970.5204-82 Rights in Data--Facilities is included in subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under an M&O Contract under 48 CFR 970 with DOE.

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

# CITIZENSHIP STATUS

All personnel of the Subcontractor and its lower-tier subcontractors, who require access to U.S. Government sites must be United States citizens, or foreign nationals who are legal aliens or have the required authorization to perform work in the Unites States.

# PROTECTION OF U.S. GOVERNMENT PROPERTY

All NTESS information, information technologies and information systems are United States Government Property. Please read the Protection of United States Government Property notice at: <http://www.sandia.gov/working_with_sandia/procurement/current_suppliers/contractor_bidder/index.html> under the tab titled “Policies”. All facilities, personal property, existing vegetation, structures, equipment, utilities, improvements, materials and work at NTESS 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 U.S. 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.