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

**SF 6432-FP (07/2018)**

**Section II**

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

**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. (CTRL+CLICK ON A LINK BELOW TO ADVANCE DIRECTLY TO THAT SECTION)**

[**ACCEPTANCE OF TERMS AND CONDITIONS (Ts&Cs)**](#_FP01_-_ACCEPTANCE)

[**APPLICABLE LAW**](#_FP02_-_APPLICABLE)

[**ASSIGNMENT**](#_FP03_-_ASSIGNMENT)

[**BANKRUPTCY**](#_FP04_-_BANKRUPTCY)

# [DATA TRANSPARENCY REQUIREMENTS](#_DATA_TRANSPARENCY_REQUIREMENTS)

[**DEFINITIONS**](#_FP05_-_DEFINITIONS)

[**DISCLOSING\_USE\_OF\_FREE,\_LIBRE\_&\_OPEN\_SOURCE\_SOFTWARE\_(FLOSS)**](#DISCLOSING_USE_OF_FREE_LIBRE_OPEN_SOURCE)

[**DISPUTES**](#_FP06_-_DISPUTES)

[**ETHICAL CONDUCT**](#ETHICAL_CONDUCT)

**[EXCESS FREIGHT CHARGES](#_EXCESS_FREIGHT_CHARGES)**

[**EXCUSABLE DELAYS**](#_FP08_-_EXCUSABLE)

[**EXPORT CONTROL**](#_EXPORT_CONTROL)

[**EXTRAS AND VARIATION IN QUANTITY**](#_FP09_-_EXTRAS)

[**GOVERNMENT PROPERTY MATERIAL AND EQUIPMENT**](#_FP10_-_GOVERNMENT)

[**HANDLING\_PROTECTION\_AND\_RELEASE\_OF\_INFORMATION**](#HANDLING_PROTECTION_AND_RELEASE_OF_INFOR)

[**INDEPENDENT SUBCONTRACTOR RELATIONSHIP**](#_INDEPENDENT_SUBCONTRACTOR_RELATIONS)

[**LOWER-TIER SUBCONTRACTS**](#_LOWER-TIER_SUBCONTRACTS)

[**MANUFACTURING AND TESTING STANDARDS**](#_FP11_-_MANUFACTURING)

[**NOTICE OF POTENTIAL DELAY**](#_NOTICE_OF_POTENTIAL)

**[NTESS-PROVIDED INFORMATION](#_NTESS-PROVIDED_INFORMATION_1)**

[**OPERATIONS SECURITY**](#opsec)

[**ORDER OF PRECEDENCE**](#_ORDER_OF_PRECEDENCE)

[**PAYMENT**](#_FP14_-_PAYMENT)

[**PERFORMANCE EVALUATION PROGRAM**](#_FP15_-_PERFORMANCE)

[**PRICING OF SUBCONTRACT AND LOWER-TIER SUBCONTRACT**](#_FP16_-_PRICING)

[**PRICE-ANDERSON AMENDMENTS ACT (PAAA)**](#_FP17_-_PRICE-ANDERSON)

[**PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION (PII)**](#_PROTECTION_OF_PERSONALLY)

[**QUALITY ASSURANCE PROGRAM**](#_FP18_-_QUALITY)

[**RECYCLED AND/OR NEW MATERIALS**](#_FP19_-_RECYCLED)

[**REPORTS REQUIRED BY THIS SUBCONTRACT**](#_FP22_-_REPORTS)

[**RIGHTS AND INTERESTS**](#_FP23_-_RIGHTS)

[**RISK OF LOSS**](#_FP24_-_RISK)

[**SOFTWARE, SERVICES & INFORMATION SYSTEMS SECURITY ASSURANCE**](#SOFTWARE_SERVICES_INFORMATION_SYSTEMS_SE)

[**SUSPECT/COUNTERFEIT ITEMS (S/CI)**](#SCI)

**[TAXES](#_TAXES)**

[**TRANSPORTATION**](#_FP28_-_TRANSPORTATION)

[**WARRANTY**](#_FP29_-_WARRANTY)

**[WRITTEN NOTICES](#WRITTEN_NOTICES)**

[**WORK FOR HIRE**](#_Work_For_Hire)

**[ADDITIONAL TERMS AND CONDITIONS](#_ADDITIONAL_TERMS_AND)**

**[APPLY TO SUBCONTRACTS AT ANY VALUE](#_APPLY_TO_SUBCONTRACTS_3)**

[**APPLY TO SUBCONTRACTS EXCEEDING $2,000**](#_FP34_-_APPLY)

**[APPLY TO SUBCONTRACTS EXCEEDING $2,500](#_APPLY_TO_SUBCONTRACTS_4)**

[**APPLY TO SUBCONTRACTS EXCEEDING $3,500**](#_FP36_-_APPLY)

[**APPLY TO SUBCONTRACTS EXCEEDING $10,000**](#_APPLY_TO_CONTRACTS_1)

[**APPLY TO SUBCONTRACTS EXCEEDING $15,000**](#_APPLY_TO_CONTRACTS_2)

[**APPLY TO SUBCONTRACTS IF $25,000 OR MORE**](#_FP37_–_APPLY)

**[APPLY TO SUBCONTRACTS EXCEEDING $30,000](#APPLY_TO_30k)**

**[APPLY TO SUBCONTRACTS EXCEEDING $35,000](#_APPLY_TO_SUBCONTRACTS_2)**

[**APPLY TO SUBCONTRACTS EXCEEDING $100,000**](#_FP39_-_APPLY)

**[APPLY TO SUBCONTRACTS EXCEEDING $150,000](#_APPLY_TO_CONTRACTS_4)**

[**APPLY TO SUBCONTRACTS EXCEEDING $250,000**](#_APPLY_TO_SUBCONTRACTS)

**[APPLY TO SUBCONTRACTS EXCEEDING $500,000](#_APPLY_TO_SUBCONTRACTS_1)**

[**APPLY TO SUBCONTRACTS EXCEEDING $700,000**](#_FP44-_APPLY_TO)

[**APPLY TO SUBCONTRACTS EXCEEDING $750,000**](#_FP45_-_APPLY)

**[APPLY TO ALL SUBCONTRACTS EXCEEDING $5,500,000](#_APPLY_TO_ALL_2)**

**[APPLY TO ALL SUBCONTRACTS THAT MAY INVOLVE ACCESS TO CLASSIFIED INFORMATION](#_APPLY_TO_ALL_1)**

[**APPLY TO ALL SUBCONTRACTS WHICH INCLUDE ANY EXPERIMENTAL, RESEARCH, DEVELOPMENTAL, OR DEMONSTRATION WORK**](#_FP47_-_APPLY)

[**APPLY TO ALL SUBCONTRACTS WHERE ANY WORK WILL BE PERFORMED ON A GOVERNMENT SITE**](#_FP48_-_APPLY)

[**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**](#_APPLY_TO_CONTRACTS_3)

[**CERTIFICATE OF INSURANCE**](#_CERTIFICATE_OF_INSURANCE)

**[CITIZENSHIP STATUS](#_CITIZENSHIP_STATUS)**

[**ENVIRONMENTAL, SAFETY, AND HEALTH (ES&H) REQUIREMENTS**](#_FP51_-_ENVIRONMENTAL,)

[**HAZARDOUS MATERIALS**](#_FP52_-_HAZARDOUS)

[**PROTECTION OF GOVERNMENT PROPERTY**](#_FP53_-_PROTECTION)

[**REQUIREMENTS FOR ACCESS**](#_FP54_-_REQUIREMENTS)

**[SUBCONTRACTOR USE OF GOVERNMENT-OWNED VEHICLES](#_SUBCONTRACTOR_USE_OF_1)**

[**VEHICLE INSURANCE**](#_FP55_-_VEHICLE)

[**VEHICLE MARKINGS**](#_FP56_-_VEHICLE)

# ACCEPTANCE OF TERMS AND CONDITIONS (Ts&Cs)

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

# APPLICABLE LAW

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

# ASSIGNMENT

Subcontractor shall not assign rights or obligations to third parties without the prior written consent of NTESS. When the Subcontractor becomes aware that a change in its ownership has occurred, or is likely to occur, the Subcontractor shall notify the Subcontracting Professional (SP) within 30 days. However, the Subcontractor may assign rights to be paid amounts due or to become due if NTESS is promptly furnished an executed Assignment of Payments form. Administration of this subcontract may be transferred from NTESS to 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.

# BANKRUPTCY

If the Subcontractor enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the SP responsible for this subcontract within five (5) days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing of the agreement numbers for which final payment has not been made.

# DATA TRANSPARENCY REQUIREMENTS

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

# DEFINITIONS

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

**(a)** **GOVERNMENT** means the United States of America and includes the U.S.

DOE/NNSA or any duly authorized representative thereof.

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

# (c) NTESS means NTESS, LLC the management and operating subcontractor for the Sandia National Laboratories (SNL) under Prime Contract No. DE-NA0003525 with the U.S. DOE/NNSA.

**(d)** **NTESS-DIRECTED WORK** means work under a subcontract for which NTESS retains accountability for the outcome of the work performed and routinely provides work direction to the subcontractor's work force.

**(e)** **SDR** means Sandia Delegated Representative. The SP may delegate personnel as authorized representatives for such purposes as and to the extent specified in the delegation. Such delegation shall be in writing to the subcontractor, and shall designate by name the personnel so delegated as authorized representatives. The SDR shall exercise no supervision over the subcontractor's employees. THE SDR's AUTHORITY IS LIMITED SOLELY TO THE AUTHORITY ENUMERATED IN SUCH WRITTEN DELEGATION. THE SDR HAS NO AUTHORITY TO CHANGE ANY TERM OR CONDITION CONTAINED IN THIS SUBCONTRACT.

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

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

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

**(i)** **SUBCONTRACTOR-DIRECTED WORK** means work under a subcontract for which the Subcontractor is accountable for the outcome of the work performed and routinely provides work direction to the subcontractor's work force.

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

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

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

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

# 1. Open source, publicly available, or "free" software, library or documentation;

# 2. Software licensed under a FLOSS License;

# 3. Software provided under a license that (a) subjects the delivered software to any FLOSS License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge.

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

# DISPUTES

Subcontractor and NTESS agree to use the NTESS Acquisition Conflict Resolution Process set forth at: <http://www.sandia.gov/working_with_sandia/procurement/current_suppliers/contractor_bidder/> under "Policies" 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 Subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of Subcontractor(s), and without the fault or negligence of either, the Subcontractor shall not be deemed to be in default, unless- (1) The subcontracted supplies or services were obtainable from other sources; (2) The SP ordered the Subcontractor in writing to purchase these supplies or services from the other source; and (3) The Subcontractor failed to comply reasonably with this order.

**(c)** Upon request of the Subcontractor, the SP shall ascertain the facts and extent of the failure. If the SP determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of NTESS or the Government under the Termination Clause of this subcontract.

# EXPORT CONTROL

**(a)** Any item, technical data, or software furnished by NTESS in connection with this purchase order/subcontract is supplied for use in the United States only. Subcontractor agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 USC 2751 - 2794, including the International Traffic in Arms Regulation (ITAR), 22 Code of Federal Regulations (CFR) 120 - 130; the Export Administration Act, 50 USC app. 2401 - 2420, including the Export Administration Regulations (EAR), 15 CFR 730 – 774;the Atomic Energy Act of 1954, as amended (AEA)and including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Subcontractor agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under subcontract to Subcontractor or lower-tier subcontractors, without the authority of an export license, agreement, or applicable exemption or exception. Subcontractor shall immediately notify the SP if it transfers any export controlled item, data, or services to foreign persons. Diversion contrary to U.S. export laws and regulations is prohibited.

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

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

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

# 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.

# GOVERNMENT PROPERTY MATERIAL AND EQUIPMENT

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

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

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

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

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

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

# 4. Information obtained directly from NTESS or SNL-owned electronic resources, regardless of whether the information is marked.

# I. Handling of Information

# Subcontractor shall:

# (a) 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;

# (b) Safeguard subcontract-related information from unauthorized access, use, and disclosure;

# (c) 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;

# (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 subcontract-related information that meet or exceed the following requirements:

# (a) 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.

# (b) 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);

# (c) 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;

# (d) 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](mailto:scrm_ds@sandia.gov).

# III. Release of Information

# (a) 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.

# (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 subcontract 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 subcontractors comply with this clause.

# (d) 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.

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

# INDEPENDENT SUBCONTRACTOR RELATIONSHIP

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

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

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

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

under this subcontract, or

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

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

# LOWER-TIER SUBCONTRACTS

All subcontracts shall be made in the name of the Subcontractor and shall not bind or purport to bind NTESS or shall not relieve Subcontractor of any obligation under this purchase order/subcontract. If Subcontractor subcontracts any work in the performance of this subcontract, Subcontractor shall incorporate into every such subcontract an appropriate set of NTESS Ts&Cs found at: <http://www.sandia.gov/working_with_sandia/current_suppliers/contract_information/index.html> under the Section II Terms and Conditions Tab or may use the latest revision of SF 6432-CI for the purchase of Commercial Items that are products or SF 6432-CS for commercial services; into any such subcontract.

# MANUFACTURING AND TESTING STANDARDS

Unless excluded or modified elsewhere in this subcontract/order, Subcontractor warrants that all equipment, components, fasteners, tools and products of any nature whatsoever, furnished under this subcontract, shall be manufactured and/or tested in accordance with standards normally associated with such items when they are sold to users in the United States. Examples of such manufacturing and/or testing standards include, but are not limited to: Underwriter's Laboratory (UL) Listing, National Fire Protection Association Approval, Occupational Safety and Health Act (OSHA) Approval, American Society for Testing Material (ASTM) Certification, Nationally Recognized Testing Laboratory (NRTL) Approvals. All items furnished under this subcontract shall be clearly marked and/or labeled, as appropriate; and, if applicable, all items shall be accompanied by installation and/or operating instruction normally associated with such items.

# NOTICE OF POTENTIAL DELAY

Whenever the Subcontractor has knowledge of any actual or potential delay or threatened delay in the timely performance of this subcontract, the Subcontractor shall immediately give notice thereof, confirmed in writing, including all relevant information with respect thereto, to NTESS. Such notice shall not relieve the Subcontractor from compliance from of all the requirements of the subcontract.

# NTESS-PROVIDED INFORMATION

Any and all physical forms of designs, design data, drawings, specifications, technical, scientific data, and other information furnished by NTESS to the Subcontractor shall remain the property of the government and shall be protected from unauthorized use, reproduction, and disclosure. Subcontractor shall protect the information at least to the same extent it would use to protect its own most valuable and proprietary information. Dissemination or use of such information is limited to such of its employees and 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 NTESS SP/SDR. Any and all such information provided by NTESS to the Subcontractor shall be used only for the purpose of enabling performance of this subcontract and the Subcontractor shall use its best efforts to prevent disclosure to others except when necessary in the performance of this subcontract.

**OPERATIONS SECURITY**

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

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

**i.** Use the OPSEC 5-step process to protect classified, sensitive unclassified, proprietary and critical information on NTESS purchase orders/subcontracts, and all performance thereunder, to preclude the dissemination of such information.

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

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

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

**(c)** References:

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

**(d)** Definitions:

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

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

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

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

**(e)** Required Training:

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

# ORDER OF PRECEDENCE

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

# PAYMENT

Subcontractor agrees to provide invoices within 60 (sixty) days of completion of work and hereby waives any amounts that are not invoiced within 60 (sixty) days of the completion of work on the subcontract. Unless otherwise provided, terms of payment shall be Net 30 (thirty) 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 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.

# PERFORMANCE EVALUATION PROGRAM

In keeping with NTESS' goals of continuous improvement, and promoting and creating an environment for superior Subcontractor performance, Sandia has established a collaborative feedback process through the NTESS Subcontractor Review and 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.

# PRICING OF SUBCONTRACT MODIFICATIONS

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

# PRICE-ANDERSON AMENDMENTS ACT (PAAA)

**(a)** Regulatory Liability. If the item(s) or service(s) required by the Purchase Order (PO) 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 supplier shall incorporate all applicable PO requirements into all supplier-issued procurement documents. Flow-down of PO requirements shall be verbatim, i.e., without change or modification. Lower-tier subcontracting requires flow-down of all applicable requirements to each subcontractor at any tier.

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

# PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION (PII)

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

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

Loss of Control of PII: If the Subcontractor becomes aware or suspects that any NTESS provided Personally identifiable Information, has been inappropriately, taken, used, disclosed, and/or released or that the controls for access to the information have been compromised, the Subcontractor shall immediately take steps to prohibit further disclosure and shall give verbal notice to NTESS’ Security Incident Management Program (SIMP) by calling and reporting the incident at either at (505) 283-7467 or for subcontracts issued in California call 1-(925)294-2600 ( these are manned 7 days a week 24 hours a day). After notifying SIMP, also verbally notify the SP and SDR (if one is identified in this subcontract). In addition to the immediate verbal notifications, written notification shall be provided to the SP and SDR (if one is identified in the subcontract,) within 72 hours of the Subcontractors learning of the situation. The Subcontractor shall cooperate with NTESS and provide information needed to allow NTESS to evaluate the nature and extent of the release or loss of control.

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

# QUALITY ASSURANCE PROGRAM

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

# RECYCLED AND/OR NEW MATERIALS

Unless otherwise specified in this subcontract, all Items delivered shall consist of recycled and/or new materials. New is defined as previously unused which may include residual inventory or unused former government surplus property.

Subcontractor shall give preference to the use of recycled materials.

# RELEASES VOID

NTESS and the government’s representatives shall not be required to waive or release any personal rights to Subcontractor in connection with the Subcontractor’s performance under this subcontract. Subcontractor agrees that no such waiver or release shall be pleaded by Subcontractor in any action or proceeding.

# REPORTS REQUIRED BY THIS SUBCONTRACT

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

# RIGHTS AND INTERESTS

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

# 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.

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

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

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

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

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

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

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

Definitions

* Suspect Item(s). An item is suspect when inspection or testing indicates that it may not conform to established Government or industry-accepted specifications or standards; and/or the item’s documentation, appearance, performance, material, or other characteristics may have been misrepresented by the vendor, supplier, distributor, or manufacturer.
* Counterfeit Item(s). A counterfeit item is one that has been copied, substituted, or appended without legal right or authority or whose material, performance, or characteristics have been misrepresented or not fully disclosed by the vendor, supplier, distributor, or manufacturer.
* Suspect/Counterfeit Items (S/CI) include but are not limited to:

1. items that are intentionally manufactured, refurbished, appended, or altered to imitate original products without authorization in order to be passed off as genuine;
2. unlawful or unauthorized substitution or addition of component parts;
3. false identification of grade, lot number, serial number, or performance characteristics,
4. fraudulent services;
5. misrepresented items and services,
6. items that introduce unintended features such as surveillance, transmissions, or other malicious characteristics.

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

1. Subcontractor expressly warrants that all items, services, or software provided under this subcontract are suitable for the intended or specified use, and do not include unintended or unspecified characteristics.

2. Subcontractor warrants and shall ensure that counterfeit items, including component parts, and/or materials will not be furnished or delivered to NTESS.

3. Subcontractor warrants authorized and lawful use of any labels, trademarks, or logos designed for/affixed to items supplied or delivered to NTESS.

4. Subcontractor warrants that all items, goods, or services provided to NTESS are verifiably compliant with applicable quality, and/or safety and manufacturing standards including, but not limited to U.S. Government or industry-accepted specifications and national consensus standards.

5. Subcontractor shall use counterfeit prevention and/or quality assurance procedures, that include a S/CI detection program.

6. Subcontractor shall immediately notify NTESS if Subcontractor suspects, or becomes aware of used or counterfeit goods furnished to NTESS. Subcontractor is required to disclose the source of the S/CI to NTESS and shall provide documentation authenticating traceability of affected item(s). Subcontractor must immediately notify NTESS by either:

a. contacting the SP (listed on the first page of this subcontract); or

b. emailing the NTESS Suspect/Counterfeit Items Program Coordinator at [sqasci@sandia.gov](mailto:sqasci@sandia.gov).

7. Unless otherwise specified, subcontractor shall purchase directly from product manufacturers or authorized manufacturer distributors whenever possible.

8. Suspect/counterfeit items furnished under this subcontract will be impounded by NTESS. Subcontractor may be required to replace such items, at no cost, with items acceptable to NTESS. Subcontractor shall be liable for all costs relating to discovery, removal, impoundment, and replacement of materials and equipment that exhibit suspect or counterfeit item characteristics or conditions.

9. Subcontractor shall indemnify NTESS, its agents, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from any and all suspect or counterfeit services, goods, software, materials, components, or parts.

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

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

Additional detailed information is available at the DOE webpage and in the DOE Suspect/Counterfeit Items Resource [Handbook](https://www.standards.doe.gov/standards-documents/1200/1221-BHdbk-2016-CN1-2017).

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

# 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](mailto:taxes@sandia.gov). NTESS holds California Subcontractor's Permit Number OH-98033576. Purchases made under this subcontract are exempt from California Sales and Use Taxes if performance occurs in California. Prices include all applicable federal taxes.

# TRANSPORTATION

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

# WARRANTY

Subcontractor expressly warrants that no counterfeit items or components in items shall be delivered to NTESS on this subcontract. Subcontractor expressly warrants that all items provided under this subcontract shall have a rightful transfer of good title thereto and are delivered free of any rightful claims of any third person by way of infringement of any intellectual property right. The warranty shall begin upon receipt of conforming items and extend for a period of:

1. the manufacturer's warranty period or six (6) months, whichever is longer, if the Subcontractor is not the manufacturer and has not modified the item, or
2. one (1) year or the manufacturer's warranty period, whichever is longer, if the Subcontractor is the manufacturer of the item or had modified it. If any nonconformity with item appears within that time, Subcontractor shall promptly repair, replace, or reperform 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
3. working days after NTESS' notice of nonconformity. If repair or replacement or reperformance of services is not timely, NTESS may elect to return the nonconforming items or repair or replace them or reprocure the services at Subcontractor's expense. Subcontractor disclaims the implied warranties of merchantability or fitness for a particular purpose.

**WRITTEN NOTICES**

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

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

# WORK FOR HIRE

Subcontractor hereby 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 U.S. 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.

# ADDITIONAL TERMS AND CONDITIONS

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

# APPLY TO SUBCONTRACTS AT ANY VALUE

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

FAR 52.204-9 Personal Identity Verification of Contractor Personnel

FAR 52.204-21 Basic Safeguarding of Covered Contractor Information Systems

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

FAR 52.209-10 Prohibition on Contracting With Inverted Domestic Corporations

FAR 52-211-5 Material Requirements

FAR 52.211-15 Defense Priority and Allocation Requirement

FAR 52.219-8 Utilization of Small Business Concerns

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 52.223-11 Ozone-Depleting Substances 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 52.223-15 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 52.224-2 Privacy Act

FAR 52.224-3 Privacy Training

FAR 52.225-8 Duty-Free Entry

FAR 52.225-13 Restrictions on Certain Foreign Purchases

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

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

FAR 52.227-3 Patent Indemnity.

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

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 52.232-40 Providing Accelerated Payments to Small Business Subcontractors

FAR 52.242-14 Suspension of Work

FAR 52.242-15 Stop Work Order

FAR 52.244-6 Subcontracts for Commercial Items Alternate I

FAR 52.245-1 Government Property

FAR 52.246-1 Contractor Inspection Requirements

Subcontractor shall allow for DOE/NNSA and NTESS to perform quality surveys and inspections at Subcontractor locations where materials or services are rendered.

FAR 52.247-1 Commercial Bill of Lading Notations

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 952.204-77 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 970.5227-8 Refund of Royalties

DEAR 970.5243-1 Changes

# APPLY TO SUBCONTRACTS EXCEEDING $2,000

FAR 52.222-1 Notice to the Government of Labor Disputes

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 52.222-11 Contracts (Labor Standards)

FAR 52.222-12 Contract Termination – Debarment

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

FAR 52.222-14 Disputes Concerning Labor Standards

FAR 52.222-15 Certification of Eligibility

# APPLY TO SUBCONTRACTS EXCEEDING $2,500

FAR 52.222-17 Nondisplacement of Qualified Workers

FAR 52.222-41 Service Contract Labor Standards as Amended

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

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

FAR 52.222-55 Minimum Wages Under Executive Order 13658

# APPLY TO SUBCONTRACTS EXCEEDING $3,500

FAR 52.222-54 Employment Eligibility Verification

# APPLY TO SUBCONTRACTS EXCEEDING $10,000

FAR 52.222-21 Prohibition of Segregated Facilities

FAR 52.222-26 Equal Opportunity

FAR 52.225-1 Buy American—Supplies

FAR 52.225-9 Buy American -Construction Materials

# APPLY TO SUBCONTRACTS EXCEEDING $15,000

FAR 52.222-36 Equal Opportunity for Workers With Disabilities

FAR 52.222-20 Contracts for Materials, Supplies, Articles and

Equipment exceeding $15,000

# APPLY TO SUBCONTRACTS IF $25,000 OR MORE

DEAR 970.5223-4 Workplace Substance Abuse Programs at DOE Sites

**APPLY TO SUBCONTRACTS EXCEEDING $30,000**

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

# APPLY TO SUBCONTRACTS EXCEEDING $35,000

FAR 52.209-6 Protecting the Government's Interest when Subcontracting with

Contractors Debarred, Suspended, or Proposed for Debarment

# APPLY TO SUBCONTRACTS EXCEEDING $100,000

DEAR 970.5227-4 Authorization and Consent

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

# APPLY TO SUBCONTRACTS EXCEEDING $150,000

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

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

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

FAR 52.222-35 Equal Opportunity for Veterans

FAR 52.222-37 Employment Reports on Veterans

FAR 52.246-2 Inspection of Supplies - Fixed Price

FAR 52.246-4 Inspection of Services - Fixed Price

DEAR 952.209-72 Organizational Conflicts of Interest Alt 1

It is the responsibility of the Subcontractor to determine if this clause is applicable and to report any potential conflicts to the SP under DEAR 952.209-8.

# APPLY TO SUBCONTRACTS EXCEEDING $250,000

FAR 52.203-6 Restrictions on Subcontractor Sales to the Government

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

FAR 52.203-16 Preventing Personal Conflicts of Interest

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

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

FAR 52.227-1 Authorization and Consent Alt 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

DEAR 952.226-74 Displaced Employee Hiring Preference

DEAR 970-5226-2 Workforce Restructuring under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993

FAR 52.204-14 Service Contract Reporting Requirements

FAR 52.222-59 Compliance with Labor Laws (Executive Order 13673)

FAR 52.222-60 Paycheck Transparency (Executive Order 13673)

# APPLY TO SUBCONTRACTS EXCEEDING $700,000

FAR 52.219-9 Small Business Subcontracting Plan

FAR 52.219-10 Incentive Subcontracting Program

FAR 52.219-16 Liquidated Damages - Subcontracting Plan

# APPLY TO SUBCONTRACTS EXCEEDING $750,000

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

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

FAR 52.215-12 Subcontractor Certified Cost or Pricing Data

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

FAR 52.215-15 Pension Adjustments and Asset Reversions

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

FAR 52.215-19 Notification of Ownership Changes

FAR 52.230-2 Cost Accounting Standards

FAR 52.230-6 Administration of Cost Accounting Standards

In accordance with DEAR 970.5232-5 Liability with Respect to Cost Accounting Standards, the Subcontractor shall be liable to the government for increased costs or interest resulting from the subcontractor's failure to comply with the clauses at FAR 52.230-2, "Cost Accounting Standards," and FAR 52.230-6, "Administration of Cost Accounting Standards."

DEAR 970.5232-3 Accounts, Records, and Inspection, applicable when Cost and Pricing Data are required

# APPLY TO ALL SUBCONTRACTS EXCEEDING $5,500,000

FAR 52.203-13 Contractor Code of Business Ethics and Conduct

FAR 52.203-14 Display of Hotline Poster(s)

FAR 52.210-1 Market Research

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

DEAR 952.204-2 Security Requirements

DEAR 952.204-70 Classification/Declassification

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

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

FAR 52-227-16 Additional Data Requirements

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 subcontracts in which the Subcontractor 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 subcontracts.

DEAR 970.5227-1 Rights in Data--Facilities (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 Prime Contract under 48 CFR 970 with DOE.)

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

DEAR 952.203-70 Whistleblower Protection for Contractor Employees

DEAR 970.5222-1 Collective Bargaining Agreement M&O Contracts

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

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

DEAR 970.5204-3 Access to and Ownership of Records

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

# CERTIFICATE OF INSURANCE

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

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

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

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

# CITIZENSHIP STATUS

All personnel of the Subcontractor and its 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

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

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

# HAZARDOUS MATERIALS

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

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

# PROTECTION OF GOVERNMENT PROPERTY

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

# REQUIREMENTS FOR ACCESS

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

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

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

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

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

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

# SUBCONTRACTOR USE OF GOVERNMENT-OWNED VEHICLES

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

# VEHICLE INSURANCE

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

# VEHICLE MARKINGS

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