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

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

**SECTION II**

**STANDARD TERMS AND CONDITIONS FOR**

**INTERNATIONAL COMMERCIAL TRANSACTIONS**

**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)**

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# ACCEPTANCE OF TERMS AND CONDITIONS

This Subcontract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties. Seller, by signing this Subcontract, delivering Items ordered under this Subcontract, and/or acceptance of payment shall constitute Seller’s unqualified acceptance of this Subcontract. 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.

# APPLICABLE LAW

The rights, obligations, claims, and disputes of the parties hereto shall be governed by this Subcontract and construed in accordance with the laws of the State of New Mexico and the United States. The parties agree to jurisdiction and venue in the United States Federal District Court for the District of New Mexico.

# ASSIGNMENT

Seller shall not assign rights or obligations to third parties without the prior written consent of NTESS. When the Subcontractor becomes aware that a change in its ownership has occurred, or is likely to occur, the Subcontractor shall notify the SP within 30 days. This Subcontract may be transferred from NTESS to Department of Energy (DOE) or its designee, and in case of such transfer and notice thereof to the Seller, NTESS shall have no further responsibilities hereunder.

# BANKRUPTCY

If the Seller enters into any proceeding relating to bankruptcy, it shall give written notice to the Subcontracting Professional (SP) responsible for this Subcontract 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 Subcontract numbers for which final payment has not been made.

# CANCELLATION FOR DEFAULT

**(a)** NTESS may cancel this Subcontract, in whole or in part, if the Seller fails to comply with any of the provisions of this Subcontract, or fails to provide adequate assurance of future performance. In that event, NTESS shall not be liable for any amount for Items not yet accepted by NTESS.

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

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

# CHANGES

The SP may at any time, by written notice, make changes to the Statement of Work (SOW) of this Subcontract. If any such change causes a difference in the cost of, or the time required for performance, an equitable adjustment shall be made in the price and/or delivery schedule and other affected provisions. Such adjustment shall be made by written amendment to this Subcontract signed by both parties. Any claim for adjustment by Seller must be made within a reasonable time from the date of receipt of NTESS' change notice, although NTESS in its sole discretion may receive and act upon any claim for adjustment at any time before final payment. Nothing in this clause, including any dispute with NTESS about the equitable adjustment, shall excuse Seller from proceeding with the Subcontract as changed.

# COMPLIANCE WITH LAWS

Seller shall comply with all applicable laws, codes, ordinances, orders, or other legal requirements of the country, and any subdivision thereof in which Seller is an established business entity or where any work under this Subcontract is performed.

# 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)or any duly authorized representative thereof.

**(b)** **Item** means commercial goods, commercial services, commercial software and commercial components thereof that are to be deliverables to NTESS under this Subcontract.

**(c)** **NTESS** means National Technology and Engineering Solutions of Sandia, LLC under Subcontract No. NA0003525 with the U.S. DOE for the management and operation of the Sandia National Laboratories.

**(d)** **SDR** means Sandia Delegated Representative, the person(s) who has been delegated only the limited authority as defined in Section I of this Subcontract.

**(e)** **Seller** means the person or organization that has entered into this Subcontract with NTESS.

**(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.

**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.

# ETHICAL CONDUCT

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

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

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

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

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

# EXCUSABLE DELAYS

**(a)** Except for defaults of subcontractors at any tier, the Subcontractor shall not be in default because of any failure to perform this subcontract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of NTESS, (3) acts of the Government in either its sovereign or contractual capacity, (4) fires, (5) floods, (6) epidemics, (7) quarantine restrictions, (8) strikes, (9) freight embargoes, and (10) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor. "Default" includes failure to make progress in the work so as to endanger performance.

**(b)** If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Subcontractor and lower-tier subcontractor, and without the fault or negligence of either, the Subcontractor shall not be deemed to be in default, unless- (1) The subcontracted supplies or services were obtainable from other sources; (2) The SP ordered the Subcontractor in writing to purchase these supplies or services from the other source; and (3) The Subcontractor failed to comply reasonably with this order.

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

# EXPORT CONTROL

**(a)** Any item, technical data, or software furnished by NTESS in connection with this purchase order/subcontract is supplied for use in the 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

requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Subcontractor agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under subcontract to Subcontractor or Subcontractor's lower-tier subcontractors, without the authority of an export license, agreement, or applicable exemption or exception. Subcontractor shall immediately notify the SP if it transfers any export controlled item, data, or services to foreign persons. Diversion contrary to U.S. export laws and regulations is prohibited.

**(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

Items shall not be supplied in excess of quantities specified in this Subcontract. Seller shall be liable for handling charges and return shipment costs for any excess quantities.

# GRATUITIES OR KICKBACKS

No gratuities (in the form of entertainment, gifts, of otherwise) or kickbacks shall be offered or given by Seller, to any employee of NTESS with a view toward securing favorable treatment as a supplier. Seller shall not accept for or otherwise assist any employee of NTESS in transferring anything of value to any foreign government official of any country, with a view toward obtaining, retaining or facilitating any business with any government.

**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 Sandia National Laboratories (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.

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

Subcontractor is an independent contractor in all its operations and activities related to this subcontract. The workers used by Subcontractor to perform Work under this Subcontract shall be Subcontractor's employees, agents or lower-tier subcontractors, 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.

# INFORMATION OF SELLER

Seller shall not provide any proprietary information to NTESS without prior execution by NTESS of a Proprietary Information Agreement.

# INSPECTION AND ACCEPTANCE

NTESS and the Government may inspect all deliverables at reasonable times and places, including, when practicable, during manufacture and before shipment. Seller shall provide all information, facilities and assistance necessary for safe and convenient inspection without additional charge. No inspection shall relieve Seller of its obligations to furnish all Items in accordance with the requirements of this Subcontract. NTESS’ final inspection and final acceptance shall be at destination. Seller shall not re-tender rejected Items without disclosing the corrective actions taken.

# LANGUAGE

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

# LOWER-TIER SUBCONTRACTS

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

# 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/ National Nuclear Security Administration (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-IN, (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

Unless otherwise provided, terms of payment shall be net 30 days from the latter of (1) receipt of Seller's proper invoice, if required, or (2) delivery of Items/completion of work. Any offered discount shall be taken if payment is made within the discount period that the Seller indicates. All payments will be made in U.S. Dollars in accordance with the laws of the country where performance of this Subcontract takes place.

# 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’ 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.

# QUALITY CONTROL SYSTEM

Seller shall provide and maintain a quality control system to an industry recognized Quality Standard for any work performed under this subcontract. Records of all quality control inspections performed by Seller shall be kept complete and available to NTESS during the performance of this Subcontract and for a period of three (3) years form the final payment under this Subcontract.

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# 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 Seller the lesser of (1) the agreed price of such Items, or (2) the Seller's cost of replacing such Items; and such loss shall entitle the Seller 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.

# 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.

# TERMINATION FOR CONVENIENCE

NTESS may terminate for the convenience of NTESS or the Government this Subcontract, in whole or in part, for any Items not yet accepted by NTESS. In that event NTESS shall be liable for the purchase price of Items already completed or identified to this Subcontract but not yet accepted by NTESS.

# TIMELY PERFORMANCE

Seller’s timely performance is a critical element of this Subcontract. Seller shall not make delivery in advance of the scheduled delivery date without advance written approval of the SP. If Seller becomes aware of difficulty performing this Subcontract, Seller shall timely notify NTESS in writing, giving pertinent details.

# 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 Prime Contract No. DE-NA0003525. Confirmation will be made by NTESS.

# WAIVERS

Failure of NTESS or Seller 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 Seller to enforce each and every provision. All rights and obligations shall survive final performance of this Subcontract.

# WARRANTY

Seller expressly warrants that no counterfeit Items or components in Items shall be delivered to NTESS on this Subcontract. Seller 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 final acceptance of conforming Items and extend for a period of 365 days. If any nonconformity is discovered in that time, Seller shall promptly repair, replace, or reperform such Items at Seller's election. Transportation of replacement Items and return of nonconforming Items and repeat performance of services shall be at Seller's expense. NTESS shall notify Seller of such nonconformity within a reasonable time after discovery, and Seller shall notify NTESS of whether it chooses to make repairs or replacements within a reasonable time 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 Seller's expense.

# 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.

**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.

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# 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 Department of Energy Acquisition Regulation (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 52.203-3 Gratuities

FAR 52.204-9 Personal Identity Verification of Contractor Personnel

FAR 52.204-21 Basic Safeguarding of Covered Contractor Information Systems

FAR 52.209-10 Prohibition on Contracting With Inverted Domestic Corporations

FAR 52.210-1 Market Research

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 52.225-13 Restrictions on Certain Foreign Purchases

FAR 52.232-39 Unenforceability of Unauthorized Obligations

FAR 52.244-6 Subcontracts for Commercial Items

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), including Alternate I when construction

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

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 952.247-70 Foreign Travel

DEAR 952.250-70 Nuclear Hazards Indemnity Agreement

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

DEAR 970.5243-1 Changes

# 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

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# APPLY TO SUBCONTRACTS EXCEEDING $150,000

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

FAR 52.203-13 Contractor Code of Business Ethics and Conduct

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

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

# APPLY TO SUBCONTRACTS EXCEEDING $5,500,000

FAR 52.203-13 Ethics and Business Conduct