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

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

**SECTION II**

**STANDARD TERMS AND CONDITIONS FOR**

**ACQUIRING SERVICES OF SANDIA/NTESS RETIREES**

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

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# ACCEPTANCE OF TERMS AND CONDITIONS (Ts&Cs)

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

# APPLICABLE LAW

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

# ASSIGNMENT

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

# BANKRUPTCY

If the Subcontractor enters into any proceeding relating to bankruptcy, it shall provide written notice to the SP within five (5) business 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 OR TERMINATION FOR CONVENIENCE

1. NTESS may cancel this subcontract, in whole or in part, if the Subcontractor fails to comply with any of the terms of this subcontract, or fails to provide adequate assurance of future performance. In that event, NTESS shall not be liable for any amount for item or services not yet accepted by NTESS.
2. NTESS may terminate for the convenience of NTESS or the government this subcontract, in whole or in part, for any item or services not yet accepted by NTESS. In that event NTESS shall be liable for the purchase price of item or services already completed or identified to this subcontract but not yet accepted by NTESS.
3. Subcontractor shall not be liable for delays in performance occasioned by causes beyond Subcontractor's reasonable control and without Subcontractor's fault or negligence.
4. The rights and remedies of NTESS in this clause are subject to the Disputes clause of this subcontract.

# CHANGES

1. The SP may at any time, by written notice, make changes to the SOW of this subcontract in any one or more of the following:
	1. Description of the services to be performed
	2. Place of performance
	3. The amount of services to be furnished
2. 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 if and only if the order has not left Subcontractor’s point of origin for transportation to NTESS.
	1. Such adjustment shall be made by written revision to this subcontract signed by both parties.
	2. Any claim for adjustment by Subcontractor must be made within thirty (30) days 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.
3. Nothing in this clause, including any disagreement with NTESS about the equitable adjustment, shall excuse Subcontractor from proceeding with the subcontract as changed.

# COMPLIANCE WITH LAWS

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

# CONFLICTS OF INTEREST

Subcontractor certifies that neither Subcontractor nor any principal member of Subcontractor is a government official, an official of a political party, a candidate for political office; an officer, director, employee or affiliate of any customer or potential customer of NTESS; and that Subcontractor nor any principal member of Subcontractor has been convicted of or pleaded guilty to any offense involving fraud, corruption or moral turpitude and is not currently listed by any government agency as debarred, suspended, proposed for suspension or debarment or otherwise ineligible for government procurement programs. Subcontractor shall immediately disclose to the SP any and all participation on proposal teams focused on rebid activities related to NTESS' Prime Contract. Participation includes active involvement in preparing bid documents, or merely providing advice or opinions to teams exploring bidding on the opportunity. Upon receiving notification, NTESS legal counsel will determine if a mitigation plan can be executed or, alternatively, that NTESS' contractual relationship with the Subcontractor must be terminated or suspended until the competition is completed.

# DATA TRANSPARENCY REQUIREMENTS

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

# DEFINITIONS

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

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

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

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

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

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

# DISPUTES

Subcontractor and NTESS agree to use the NTESS Acquisition Conflict Resolution Process set forth at <http://www.sandia.gov/working_with_sandia/procurement/current_suppliers/contractor_bidder/> under "Policies" for resolving any and all disputes arising from this subcontract.

# ETHICAL CONDUCT

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

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

# EXCUSABLE DELAYS

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

# EXPORT CONTROL

1. Any item, technical data, or software furnished by NTESS in connection with this subcontract is supplied for use in the United States only. Subcontractor agrees to comply with all applicable U.S. export-control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 USC 2751 - 2794, including the International Traffic in Arms Regulation (ITAR), 22 Code of Federal Regulations (CFR) 120 - 130; the Export Administration Act, 50 USC app. 2401 - 2420, including the Export Administration Regulations (EAR), 15 CFR 730 - 774; and including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Subcontractor agrees that it will not transfer any export-controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under subcontract to Subcontractor or Subcontractor's lower-tier subcontractors, without the authority of an export license, agreement, or applicable exemption or exception. Subcontractor shall immediately notify the SP if it transfers any export-controlled item, data, or services to foreign persons. Diversion contrary to U.S. export laws and regulations is prohibited.
2. Subcontractor shall immediately notify the SP if Subcontractor is, or becomes, listed in any Denied Parties List or if Subcontractor's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.
3. If Subcontractor is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Subcontractor represents that it is registered with the Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.
4. The Subcontractor shall flow down the requirements of this clause to all lower-tier subcontracts.

# HANDLING, PROTECTION, AND RELEASE OF INFORMATION

1. Subcontract-related information, as used in this clause, means recorded information, regardless of form or the media. Examples of subcontract-related information include, but are not limited to:
	1. Information identified with any NTESS-applied marking (e.g., Official Use Only (“OUO”), NTESS Proprietary, Sandia Proprietary);
	2. Information directly related to subcontract and/or lower-tier subcontract administration, such as: program and planning, project management documentation, electronic or hardcopy correspondence, negotiations, financial, administrative, program office, and personnel information;
	3. Technical and design information or guidance derived from or embodied in models, diagrams, drawings or translations, analysis models, manufacturing models, and computer-aided engineering and design, related to subcontract performance, regardless of whether the information is marked; and
	4. Information obtained directly from NTESS or Sandia National Laboratories (SNL)-owned electronic resources, regardless of whether the information is marked.
2. Handling of Information
Subcontractor shall:
	1. Ensure any subcontract-related information provided by or accessed through NTESS in performance of this subcontract, whether identified by a NTESS-applied marking or not, is used only for purposes of performing this subcontract, and is not used or distributed for any other purpose;
	2. Safeguard subcontract-related information from unauthorized access, use, and disclosure;
	3. Inform employees and lower-tier subcontractors who may require access to subcontract-related information about obligations to use the information only for performance of this subcontract and requirements to safeguard the information from unauthorized use and disclosure;
	4. Require that each employee with access to the information complies with the obligations included in this clause;
	5. Maintain any restrictive markings on information from NTESS and on any subsequent copies.
3. Protection of Information
Subcontractor agrees to implement and maintain safeguards for subcontract-related information that meet or exceed the following requirements:
	1. Protection in Use. Subcontractor shall take precautions to prevent access to subcontract-related information by persons who do not require the information to perform their jobs.
	2. Protection in Storage. Subcontractor shall store subcontract-related information as identified in this clause in a secure manner that prevents unauthorized or inadvertent access. Control of user access privileges shall occur for electronic information and physical storage locations shall be secured in a locked room or other receptacle (e.g., a locked file cabinet, desk);
	3. Reproduction. Subcontractor shall limit reproduction of subcontract-related information (including 3-D print prototypes) and any information with restrictive markings to a minimum, by only reproducing information to the extent necessary for performance of this subcontract;
	4. Disposal or Return. Return and/or disposal of subcontract-related information shall occur via methods specified by NTESS when the information is no longer needed for performance of work under this subcontract or associated business purpose. Hard-copy subcontract-related information shall be destroyed prior to disposal via a strip cut shredder (strips no more than ¼ inch wide). Disks shall be overwritten using approved software and destroyed. For assistance with authorized disposal methods, please contact the Supply Chain Risk Management Office at scrm\_ds@sandia.gov.
4. Release of Information
	1. Disclosure of subcontract-related information or other NTESS information to persons or entities outside of Subcontractor’s organization or authorized lower-tier subcontractors is prohibited without advance written approval from NTESS. Disclosure requests may be sought by writing to the SP on this subcontract.
	2. Publication proposals related to work performed or data obtained under this subcontract shall be coordinated with the SP prior to submission to any scientific, academic, technical, professional, or other publication.
		1. Subcontractor shall provide NTESS an opportunity to review publication proposals related in whole or in part to work connected to this subcontract at least forty-five (45) calendar days prior to submission;
		2. NTESS will review the proposed publication and provide a response within forty-five (45) calendar days;
		3. Subcontractor may assume NTESS has no comments after the response period has elapsed.
		4. Subcontractor agrees to address any issues or concerns identified by NTESS before submitting publication proposals.
	3. Subcontractor shall ensure its employees and lower-tier subcontractors comply with this clause.
	4. In no event shall the interest of NTESS or the DOE or the government in this subcontract be indicated in any advertising or publicity without advance written approval of the SP.
5. Clause Interpretation
	1. In the event of conflict between the provisions of this clause and a Nondisclosure Agreement between NTESS and the Subcontractor, the terms and conditions of the Nondisclosure Agreement shall govern.
	2. This clause shall not prohibit Subcontractor’s fulfillment of routine internal or external reporting requirements, including the disclosure of the existence and nature of this subcontract as required by law. External reporting as used in this clause refers to reports submitted to state or federal government offices.
	3. Under a valid court or government agency order, Subcontractor may release subcontract-related information necessary to fulfill obligations, provided that Subcontractor send the written notice and a copy of order or other obligating document to NTESS within a reasonable amount of time to provide the owner of the subcontract-related information notice of such obligation and the opportunity to oppose disclosure.

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# INDEPENDENT SUBCONTRACTOR RELATIONSHIP

1. Subcontractor is an independent subcontractor in all its operations and activities related to this subcontract. The employees used by Subcontractor to perform Work under this subcontract shall be Subcontractor's employees, agents or subcontractors, without any relation whatsoever to NTESS.
2. Subcontractor shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Subcontractor, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this subcontract.
3. Subcontractor shall indemnify and hold harmless NTESS from and against any actual or alleged liability, loss, costs, damages, fees of attorneys, and other expenses which NTESS may sustain or incur in consequence of:
	1. Subcontractor's failure to pay any employee for the Work rendered under this subcontract
	2. Any claims made by Subcontractor's personnel against NTESS
4. Subcontractor is not authorized to represent NTESS in any way or to bind NTESS by any promise, agreement, or obligation.
5. Subcontractor shall flow down the requirements of this clause to any applicable lower-tier subcontracts for services.

**OPERATIONS SECURITY**

1. Operations Security (OPSEC) as used herein means a process designed to disrupt or defeat the ability of foreign intelligence or other adversaries to exploit U.S. DOE/NNSA sensitive programs and activities (SP&A) or OPSEC Critical Information and to prevent the unauthorized disclosure of such information. OPSEC is meant to prevent the inadvertent release of critical information that our adversaries want to collect.
2. Subcontractor agrees to participate in the U.S. DOE OPSEC program defined in National Security Decision Directive 298, National Operations Security Program, and DOE O 471.6, Information Security, current version. In addition to security requirements that may be contained elsewhere in the Purchase Order (POs) or subcontract, OPSEC requires the Subcontractor to:
	1. Use the OPSEC 5-step process to protect classified, sensitive unclassified, proprietary and critical information on NTESS POs, subcontracts, and all performance thereunder, to preclude the dissemination of such information except as provided for in Section II, Clause titled, "Release of Information."
	2. NTESS critical information supporting Subcontractor operations must be shared solely by the supported NTESS organization with the Subcontractor and critical information must be protected. The Subcontractor should develop and keep up to date, its own critical information related to any NTESS subcontractor, especially when NTESS developed critical information is not available or provided. Critical information must be shared with all personnel working on the subcontract, including support personnel, to ensure the personnel are aware and the information is to be protected from inadvertent release.
	3. Assure all Subcontractor employees given access to NTESS’ POs, subcontracts, and information concerning the performance of work thereunder, shall be made aware of the need to protect such documents and information. Ensure OPSEC risk management decisions are made by those who are responsible for mission accomplishment and implement OPSEC measures, if appropriate. This may mean contacting the responsible program manager at NTESS.
	4. Notify the NTESS OPSEC Program Office by calling 505/844-OPSEC (6773) of any request for critical information for SP&A, critical information recommendations, or OPSEC implementation questions (roles and responsibilities, indicators, vulnerabilities, training, OPSEC plan, risk assessments, OPSEC awareness, definitions, etc.) on NTESS POs, and/or subcontracts not directly related to that needed for subcontract performance.
3. References:
	1. FSO Tool cart <http://www.sandia.gov/FSO/>
4. Definitions:
	1. Critical Information means specific facts about friendly (e.g., U.S., DOE, SNL) intentions, capabilities, or activities vitally needed by adversaries for them to plan and act effectively so as to guarantee failure or unacceptable consequences for accomplishment of friendly objectives.
	2. Critical Information List (CIL) is a compilation of critical information topics, generally organized by SP&A.
	3. OPSEC Measure means anything that effectively negates or mitigates an adversary's ability to exploit vulnerabilities.
	4. Sensitive Programs and Activities (SP&A) means classified or unclassified facilities, materials, programs, operations, inquiries, investigations, research and development, exercises, tests, training, and other functions at SNL or its subcontractors, which, if disclosed, could reasonably be expected to adversely affect national security interests.
5. Required Training:
	1. The Subcontractor shall complete any training that may be required, in the future, as a result of possible changes in the Security requirements, as directed by the SDR.

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# ORDER OF PRECEDENCE - RETIREE

Any inconsistencies shall be resolved in accordance with the following descending order of precedence:

1. Cover Page
2. Section I
3. SF 6432-RT, Section II
4. Specifications, drawings, and other documents incorporated in the subcontract

# PAYMENTS - RETIREE

1. Payments shall 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.
2. Fixed-Rate Subcontract. Upon submittal of individual invoices or vouchers, and pursuant to the Allowable Charges Clause in Section I of the subcontract the Subcontractor shall be paid as follows:
	1. The amounts computed by multiplying the appropriate fixed-rate, or rates, set forth in Section I by the number units performed. The fixed rates shall include wages, indirect cost, general and administrative expense and profit; provided; however, that the fractional parts of a unit shall be payable on a prorated basis. Invoices or vouchers may be submitted per the invoicing instructions in the Section I terms of the subcontract. Unless otherwise specified in this subcontract, the fixed rate only applies to the Subcontractor.
	2. Total time paid for occupational classifications set forth in the clause of Section I of this subcontract entitled "Allowable Charges," and shall be recorded on readily verifiable time records. Each time record shall bear the name of the individual, occupational classification, dates, and hours worked, and shall segregate total hours worked between those hours worked hereunder, identified by reference to this subcontract and each suborder, if any, issued hereunder, and those hours worked on all other subcontracts. In addition, when work is performed on NTESS-controlled premises, the time involved shall be recorded on NTESS' form (or equivalent Subcontractor-supplied form acceptable to the SP) which shall be certified by Subcontractor's representative and approved by an SDR as authorized by the SP.
	3. Unless provisions of Section I hereof otherwise specify, the fixed rates set forth in Section I shall not be varied by virtue of the Subcontractor having performed work on an overtime basis.
	4. Notice of Cost Approaching Ceiling Price. It is estimated that the total cost to NTESS for the performance of this subcontract will not exceed the ceiling price set forth in Section I and the Subcontractor agrees to use its best efforts to perform the work specified in Section I and all obligations under this subcontract within such ceiling price. If at any time the Subcontractor has reason to believe the hourly rate payments which will accrue in the performance of this subcontract in the next succeeding thirty (30) days, when added to all other payments and costs previously accrued, will exceed seventy-five percent (75%) of the ceiling price then set forth in Section I, the Subcontractor shall notify the SP to that effect giving its revised estimate of the total price to NTESS for the performance of this subcontract, together with supporting reasons and documentation. If at any time during the performance of this subcontract, NTESS has reason to believe that the work to be required in the performance of this subcontract will be substantially greater or less than the stated ceiling price, the SP will so advise the Subcontractor, giving the then-revised estimate of the total amount of effort to be required under the subcontract and the ceiling amount shall be revised accordingly.
	5. Limitation of Obligation (LO). NTESS shall not be obligated to pay the Subcontractor any amount in excess of the LO ceiling price set forth in Section I and the Subcontractor shall not be obligated to continue performance if to do so would exceed the LO ceiling price set forth in Section I, unless and until the SP shall have notified the Subcontractor in writing that such LO ceiling price has been increased and shall have specified in such notice a revised LO ceiling which shall thereupon constitute the LO ceiling price for performance under this subcontract. When and to the extent that the LO ceiling price set forth in Section I has been increased, any hours expended incurred by the Subcontractor in excess of the LO ceiling price prior to the increase shall be allowable to the same extent as if such hours expended had been incurred after such increase in the LO ceiling price.
	6. Travel and Other Direct Costs. The Subcontractor shall be paid net invoice cost or charge for travel and other direct cost as provided in this subcontract subject to approval by the SP of individual invoices or vouchers and pursuant to FAR Part 31 as supplemented by the Department of Energy Acquisition Regulation (DEAR) Part 931 in effect on the date of this subcontract.
	7. At any time or times, as deemed necessary by the SP or his designee but not later than three years after final payment under this subcontract, NTESS may validate the invoices or vouchers billed for labor, travel and any other charges identified in the allowable charges clause of Section I of the subcontract. Each payment theretofore made shall be subject to reduction to the of amounts which are found by NTESS not to have been properly payable, and shall also be subject to reduction for overpayments, or to increase for underpayments, on preceding invoices or vouchers.

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# PERFORMANCE EVALUATION PROGRAM

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

# PROHIBITED ACTIVITIES

In addition to prohibitions elsewhere stated in this subcontract, the following activities are prohibited under this Subcontract:

1. Subcontractor does not have authority to act on behalf of NTESS. At no time shall the Subcontractor say or do anything that suggests that Subcontractor is acting with authority for NTESS or on its behalf.
2. Subcontractor shall not transfer or offer to transfer anything of value to any employee, officer, or representative of any customer or potential customer of NTESS for any purpose related to any NTESS activity or performance of this subcontract. Subcontractor commits to adhere to U.S. and foreign laws with respect to such activities, including but not limited to U.S. laws prohibiting conduct in violation of the Foreign Corrupt Practices Act, 15 U.S.C. 78dd et seq.
3. Subcontractor shall not directly solicit work or tasks for NTESS from customers or potential customers, and shall not engage in the negotiation of any statement of work requirements, cost estimates or prices, or any other terms or conditions.
4. Subcontractor shall adhere to the requirements of FAR clause 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, which prohibits the expenditure of federal appropriations for lobbying or lobbying-related activities.

# PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION (PII)

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

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

# REPORTS REQUIRED BY THIS SUBCONTRACT

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

# RIGHTS AND INTERESTS

FAR 52.227-14 Rights in Data - 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 subcontract.

# SOFTWARE, SERVICES & INFORMATION SYSTEMS SECURITY ASSURANCE

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

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

# 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. 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.

# WORK FOR HIRE

Subcontractor hereby acknowledges that:

1. All duties performed hereunder are specifically ordered or commissioned by NTESS ("Work")
2. 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
3. The Work constitutes and shall constitute a work-made-for-hire as defined in the U.S. Copyright Act of 1976
4. NTESS is and shall be the author of said work-made-for-hire and the owner of all rights in and to the Work.
5. 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.
6. 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**

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

# ADDITIONAL TERMS AND CONDITIONS

This subcontract incorporates by reference, with the same force and effect as if they were given in full text, the following cited FAR clauses and 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 Acquisition.gov at <https://www.acquisition.gov/content/regulations>. Where the FAR/DEAR clauses refer to government and Contracting Officer, substitute NTESS and SP.

# APPLY TO SUBCONTRACTS AT ANY VALUE

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

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

FAR 52.204-9 Personal Identity Verification of Contractor Personnel

FAR 52.204-21 Basic Safeguarding of Covered Contractor Information Systems

FAR 52.209-10 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 52.222-50 Combating Trafficking in Persons (Alternate I)

FAR 52.223-18 Encouraging Subcontractor Policies to Ban Text Messaging While Driving

FAR 52.224-2 Privacy Act

FAR 52.224-3 Privacy Training

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

FAR 52.227-3 Patent Indemnity

FAR 52.232-39 Unenforceability of Unauthorized Obligation

FAR 52.232-40 Providing Accelerated Payments to Small Business Subcontractors

FAR 52.242-15 Stop-Work Order (Alternate I)

FAR 52.244-6 Subcontracts for Commercial Items Alternate I

FAR 52.245-1 Government Property

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

DEAR 952.204-77 Computer Security

DEAR 952.211-71 Priorities and Allocations (Atomic Energy)

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

DEAR 970.5227-6 Patent Indemnity

DEAR 970.5227-8 Refund of Royalties

DEAR 970.5245-1 Property

# APPLY TO SUBCONTRACTS EXCEEDING $3,500

FAR 52.222-54 Employment Eligibility Verification

# APPLY TO SUBCONTRACTS EXCEEDING $10,000

FAR 52.222-21 Prohibition of Segregated Facilities

FAR 52.222-26 Equal Opportunity

FAR 52.225-1 Buy American—Supplies

# APPLY TO SUBCONTRACTS EXCEEDING $15,000

FAR 52.222-36 Equal Opportunity for Workers with Disabilities

# APPLY TO SUBCONTRACTS IF $25,000 OR MORE

DEAR 970.5223-4 Workplace Substance Abuse Programs at DOE Sites

**APPLY TO SUBCONTRACTS IF $30,000 OR MORE**

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

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# APPLY TO SUBCONTRACTS EXCEEDING $35,000

FAR 52.209-6 Protecting the Government’s Interest When Subcontracting with Subcontractors Debarred, Suspended, Or Proposed for Debarment

# APPLY TO SUBCONTRACTS IF $150,000 OR MORE

FAR 52.222-35 Equal Opportunity for Veterans

FAR 52.222-37 Employment Reports on Veterans

# APPLY TO SUBCONTRACTS EXCEEDING $150,000

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

DEAR 952.209-72 Organizational Conflicts of Interest. It is the responsibility of Subcontractor to determine if this clause is applicable and to report any potential conflicts to the SP under DEAR 952.209-8. The term for paragraph (b)(1) is five (5) years.

# APPLY TO SUBCONTRACTS EXCEEDING $250,000

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

FAR 52.215-2 Audit and Records--Negotiation

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

# APPLY TO SUBCONTRACTS EXCEEDING $500,000

FAR 52.204-14 Service Contract Reporting Requirements

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

# APPLY TO SUBCONTRACTS THAT MAY INVOLVE ACCESS TO CLASSIFIED INFORMATION

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

DEAR 952.204-2 Security Requirements

DEAR 952.204-70 Classification/Declassification

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

DEAR 952.203-70 Whistleblower Protection for Subcontractor Employees

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

# CITIZENSHIP STATUS

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

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

1. Service Providers - NTESS-directed work. NTESS shall provide those workers with any and all necessary safety authorization documents, personal protective equipment, industrial hygiene monitoring, medical surveillance, and radiation protection services.
2. Service Providers - Subcontractor-directed work. Subcontractor shall provide its workers with all ES&H services, with the exception of Subcontractor employees performing Subcontractor-directed work on government sites for whom NTESS shall provide radiation dosimetry services and survey of record, as appropriate.
3. Training Requirements. Any Subcontractor personnel who will enter a government site to perform work shall have completed all of the ES&H training required by the SOW prior to any attempts to enter a government site as shown by written records of such training furnished to the SDR or to the Requester if no SDR is named in Section I of this subcontract. Subcontractor shall certify to NTESS completion of all required training on the Completion Record for Subcontractor Administered Training form. This form is located on the Web at <http://www.sandia.gov/working_with_sandia/current_suppliers/contract_information/index.html> under the “Forms” tab, or obtained from the SDR. Subcontractor shall provide the completion record form for the initial ESH100 training to the SDR on the first day of work. Subcontractor shall provide the completion records for any other training required above to the SDR before starting the affected work activity. Any person not having completed all ES&H training requirements may be denied access to any government site and Subcontractor may be terminated for default of this subcontract as well as every other subcontract the Subcontractor has with NTESS.

# PROTECTION OF GOVERNMENT PROPERTY

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

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

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

# VEHICLE INSURANCE

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

# VEHICLE MARKINGS

All vehicles used by either the Subcontractor or its lower-tier subcontractors shall be marked clearly to indicate company name of user. Vehicles which do not bear permanent markings may be temporarily marked as follows:

1. Signs shall be no longer than the vehicle door is wide, with a white or lighter background, showing the Subcontractor's name in one-inch-high, or larger, dark colored letters, may be made from sheet metal, cardboard or other suitable material and temporarily attached to the vehicle's front door panels so that the signs appear in the approximate center of each door panel. Words such as "Company," "Corporation" or "Division" may be abbreviated.
2. No signs shall be attached to the vehicle's glass area for safety reasons.
3. Non-government commercial vehicles must be marked in accordance with Department of Transportation regulations.
4. Personally-owned vehicles must be marked in accordance with Department of Transportation regulations. Operators of all vehicles must have, in their possession, valid registration, insurance, licensing and related documentation applicable to the vehicle.

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