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

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

**Section II**

**STANDARD TERMS AND CONDITIONS FOR TIME AND MATERIALS LABOR- HOUR SUBCONTRACTS**

**THE FOLLOWING CLAUSES APPLY TO THIS SUBCONTRACT AS INDICATED UNLESS SPECIFICALLY DELETED, OR EXCEPT TO THE EXTENT THEY ARE SPECIFICALLY IDENTIFIED AS BEING CHANGED SUPPLEMENTED OR AMENDED IN WRITING ISSUED BY THE SUBCONTRACTING PROFESSIONAL. (CTRL+CLICK ON A LINK BELOW TO ADVANCE DIRECTLY TO THAT SECTION)**

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

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[**APPLIES TO ANY WORK WHICH WILL BE PERFORMED ON A GOVERNMENT SITE UNDER THIS SUBCONTRACT**](#_APPLIES_TO_ANY)

 **[APPLY TO SUBCONTRACTS TO BE PERFORMED ON A GOVERNMENT SITE WHEVEVER 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 10CFR PART 851](#_APPLY_TO_CONTRACTS_16)**

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# ACCEPTANCE OF TERMS AND CONDITIONS (Ts&Cs)

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

# APPLICABLE LAW

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

# ASSIGNMENT

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

# AUTHORIZED DISTRIBUTORS

Unless specifically authorized in this subcontract, in writing, the subcontractor shall only furnish items/components provided by authorized distributors and not independent distributors. Any item/components furnished from an independent distributor shall meet all OEM specifications and industry standards.

# BANKRUPTCY

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

# CLAIM OF COSTS INCURRED

Subcontractor shall provide a claim of costs incurred (Electronic Cost Claim or “ECC”) to the Sandia National Laboratories Contract Audit Department annually within ninety (90) days after end of the Subcontractor’s fiscal year. An ECC is prepared by the Subcontractor and provided to NTESS Contract Audit in preparation for an audit of the costs incurred and claimed by the Subcontractor. It is used to compare and reconcile previously billed and paid amounts that are shown in NTESS' accounting system. It also provides the Subcontractor with an additional opportunity to review previous billings to ensure there have not been omissions or errors. The ECC serves as the Subcontractor’s representation of incurred costs against a government-funded subcontract. The ECC shall include all costs incurred on this subcontract during the fiscal year just ended. Additionally, an ECC shall be submitted for any adjustment to any previously reported cost for any prior year. The format and acceptability for an ECC shall be determined by the Contract Audit Department. The Subcontractor may obtain templates and instructions for submission of the ECC from the Contract Audit Department upon request and at the following website: <http://www.sandia.gov/working_with_sandia/procurement/current_suppliers/contract_audit/>. With the agreement of the NTESS Auditor assigned to perform the audit, the Subcontractor may provide the required information in a different manner or format.

# COMPLIANCE WITH LAWS

Subcontractor shall procure 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 Statement of Work (SOW) of this subcontract.

# DEFINITIONS

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

**(a) AUTHORIZED DISTRIBUTORS** means distributors who have contractual agreements with manufacturer to represent them in the sales of their parts

**(b) SUBCONTRACT** means Purchase Order, Lower-tier Subcontract, Price Agreement, Ordering Agreement, or modifications thereof.

**(c) GOVERNMENT** means the United States of America and includes the Department of Energy/National Nuclear Security Administration (DOE/NNSA) or any duly authorized representative thereof.

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

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

**(f) 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

**(g) INDEPENDENT DISTRIBUTORS (often called brokers)** – distributors who buy and sell parts (note: they have no contractual agreement with manufacturers and get parts where they can)

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

**(i) 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.

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

**(k) 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.**

**(l) SUBCONTRACT** means any lower tier subcontract under this subcontract.

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

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

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

**DEFINITIONS**

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

1. Open source, publicly available, or "free" software, library or documentation;
2. Software licensed under a FLOSS License;
3. Software provided under a license that (a) subjects the delivered software to any FLOSS License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge.

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

# DISPUTES

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

**ETHICAL CONDUCT**

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

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

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

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

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

# EXCESS FREIGHT CHARGES

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

# EXPORT CONTROL

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

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

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

# EXTRAS AND VARIATION IN QUANTITY

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

# GOVERNMENT PROPERTY MATERIAL AND EQUIPMENT

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

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

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

1. Information identified with any NTESS-applied marking (e.g., Official Use Only (“OUO”) or NTESS Proprietary);
2. Information directly related to subcontract and/or lower tier contract administration, such as: program and planning, project management documentation, electronic or hardcopy correspondence, negotiations, financial, administrative, program office, and personnel information;
3. Technical and design information or guidance derived from or embodied in models, diagrams, drawings or translations, analysis models, manufacturing models, and computer-aided engineering and design, related to subcontract performance, regardless of whether the information is marked; and
4. Information obtained directly from NTESS or Sandia National Laboratories (SNL) owned electronic resources, regardless of whether the information is marked.
5. Handling of Information

Subcontractor shall:

1. Ensure any contract-related information provided by or accessed through NTESS in performance of this subcontract, whether identified by a NTESS-applied marking or not, is used only for purposes of performing this subcontract, and is not used or distributed for any other purpose;
2. Safeguard contract-related information from unauthorized access, use, and disclosure;
3. Inform employees and lower tier suppliers who may require access to contract-related information about obligations to use the information only for performance of this subcontract and requirements to safeguard the information from unauthorized use and disclosure;
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.
6. Protection of Information

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

1. Protection in Use. Subcontractor shall take precautions to prevent access to contract-related information by persons who do not require the information to perform their jobs.
2. Protection in Storage. Subcontractor shall store contract-related information as identified in this clause in a secure manner that prevents unauthorized or inadvertent access. Control of user access privileges shall occur for electronic information and physical storage locations shall be secured in a locked room or other receptacle (e.g., a locked file cabinet, desk);
3. Reproduction. Subcontractor shall limit reproduction of contract-related information (including 3-D print prototypes) and any information with restrictive markings to a minimum, by only reproducing information to the extent necessary for performance of this subcontract;
4. Disposal or Return. Return and/or disposal of contract-related information shall occur via methods specified by NTESS when the information is no longer needed for performance of work under this subcontract or associated business purpose. Hard-copy contract-related information shall be destroyed prior to disposal via a strip cut shredder (strips no more than ¼ inch wide). Disks shall be overwritten using approved software and destroyed. For assistance with authorized disposal methods, please contact the Supply Chain Risk Management Office at scrm\_ds@sandia.gov.
5. Release of Information
6. Disclosure of contract-related information or other NTESS information to persons or entities outside of Subcontractor’s organization or authorized lower-tier suppliers is prohibited without advance written approval from NTESS. Disclosure requests may be sought by writing to the Subcontracting Professional (SP) on this contract.
7. 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 contract 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.
8. Subcontractor shall ensure its employees and lower tier suppliers comply with this clause.
9. Clause Interpretation
10. 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.
11. This clause shall not prohibit Subcontractor’s fulfillment of routine internal or external reporting requirements, including the disclosure of the existence and nature of this contract as required by law. External reporting as used in this clause refers to reports submitted to state or federal government offices.

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

# INDEPENDENT SUBCONTRACTOR RELATIONSHIP

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

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

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

(1) Subcontractor's failure to pay any employee for the Work rendered under this Subcontract, or

(2) Any claims made by Subcontractor's personnel against NTESS. The Subcontractor shall flow down the requirements of this clause to any applicable subcontracts for services.

# NOTICE OF POTENTIAL DELAY

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

**OPERATIONS SECURITY**

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

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

**i.** Use the OPSEC 5-step process to protect classified, sensitive unclassified, proprietary and critical information on NTESS purchase orders/subcontracts, and all performance thereunder, to preclude the dissemination of such information except as provided for in Section II, Clause titled, "Release of Information."

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

**iii.** Assure all Subcontractor employees given access to NTESS 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-TM, Section II; (4) Specifications, drawings, and other documents incorporated in the subcontract.

# PAYMENT

**(a)** Hourly Rate**.** Subject to approval by the SP of individual invoices or vouchers, and pursuant to FAR Part 31 as supplemented by DEAR Part 931 in effect on the date of this subcontract, the Subcontractor shall be paid as follows:

(1) The amounts computed by multiplying the appropriate hourly rate, or rates, set forth in Section I by the number of direct labor hours performed, which rates shall include wages, indirect cost, general and administrative expense and profit; provided, however, that the fractional parts of an hour shall be payable on a prorated basis. Invoices or vouchers may be submitted once each month (or at more frequent intervals, if approved by the SP), to the SP or SP's designee. Unless otherwise specified in this subcontract, the hourly rate applies to both employees of the Subcontractor and to employees of subcontractors within the stated labor categories only. Other employees of the subcontractor are invoiced per (b) below.

(2) Total time paid for all of Subcontractor's personnel chargeable to NTESS in those occupational classifications set forth in the clause of Section I of this subcontract entitled "Allowable Charges," shall be recorded on readily auditable and certified correct 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:

(i) Those hours worked hereunder, identified by reference to this subcontract, and

(ii) 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 a delegated NTESS representative as authorized by the SP, and

(iii) Unless provisions of Section I hereof otherwise specify, the hourly rate or rates set forth in Section I shall not be varied by virtue of the Subcontractor having performed work on an overtime basis. If Section I provides rates for overtime work, the overtime work will be reimbursable at over-time rates only to the extent the overtime work is authorized in writing by the SP or his/her delegate and any unauthorized overtime work will be reimbursable at the standard time rates.

**(b)** Materials Including Subcontracts. Subject to approval by the SP of individual invoices or vouchers, and pursuant to FAR Part 31 as supplemented by DEAR Subpart 931 in effect on the date of this subcontract, the Subcontractor shall be paid as follows:

(1) Net invoice cost or charges for direct materials as provided in this subcontract. The Subcontractor shall maintain records, which will support all material costs claimed by paid invoices or storeroom requisitions, or by other substantiation acceptable to NTESS. Direct materials as referenced by this clause are defined as those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of such product. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including when appropriate, general and administrative expense, allocated to direct materials.

(2) The cost of subcontracts, which are authorized pursuant to the "Subcontracts" clause hereof shall be reimbursable costs hereunder, provided such costs are consistent with subparagraph (3) below. Reimbursable cost in connection with subcontracts shall be limited to the amounts actually required to be paid by the Subcontractor to the lower-tier subcontractor and shall not include any costs arising from the letting, administration, or supervision of performance of the subcontract if the costs are included in the hourly rates payable under (a) (1) above. The term "subcontracts" does not include the purchase of raw material or commercial stock items. Cost for items of capital property as defined herein if applicable, shall be separately listed in invoices.

(3) The Subcontractor shall, to the extent of its ability, procure materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials, and take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of such benefits, it shall promptly notify the SP to that effect, and give the reason therefore. Credit shall be given to NTESS for cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap when the amount of such scrap is appreciable, commissions, and other amounts, which have been accrued to the benefit of the Subcontractor, or would have so accrued except for the fault or neglect of the Subcontractor. Such benefits lost through no fault or neglect on the part of the Subcontractor, or lost through fault of NTESS or the government, shall not be deducted from gross costs.

(4) When the nature of the work to be performed requires the Subcontractor to furnish material which is regularly sold to the general public in the normal course of business by the Subcontractor, the price to be paid for such material, notwithstanding (b) (1), above, shall be on the basis of an established catalog or list price in effect when the material is furnished, less all applicable discounts to NTESS or the government.

(5) Where under the clause of Section I entitled "Allowable Charges," any equipment usage time is chargeable to this subcontract, the Subcontractor shall record the total working time of such equipment on readily auditable and certified correct time records. Each time record shall identify the equipment, shall show dates and time used, and shall segregate total usage time between that used hereunder, identified by reference to this subcontract and applicable suborder number or numbers, and all other usage.

**(c)** 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 and material costs 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 (75) percent of the ceiling price then set forth in Section 1, 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, the Subcontractor has reason to believe that the total price to NTESS for the performance of this subcontract will be substantially greater or less than the then-stated ceiling price, the Subcontractor shall so notify the SP, giving its revised estimate of the total price 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.

**(d)** 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 and material costs 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 and material costs had been incurred after such increase in the LO ceiling price.

**(e)** Audit of Invoices or Vouchers**.** At any time or times, as deemed necessary by the SP, but not later than three (3) years after final payment under this subcontract, NTESS may perform an audit of the invoices or vouchers submitted for labor, material, travel, and any other charges. 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. Prior to final payment under this subcontract, the Subcontractor shall execute and deliver to NTESS a release in form and substance satisfactory to the SP, discharging NTESS and the government, their officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this subcontract, other than claims in stated amounts as may be specifically excepted by the Subcontractor from the operation of the release. NTESS may, at its own discretion, perform an administrative close of subcontracts upon completion of the period of performance; such an action does not relieve either party of any rights or responsibilities with respect to final audit activities and settlements.

**(f)** Reports. The Subcontractor shall furnish such progress reports and schedules, and such other reports concerning the work under this subcontract as the SP may from time to time require.

**(g)** Method of Payments. 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.

**(h)** Prompt Payment Discounts.NTESS may take subcontract or invoice prompt payment discount. Discount time will be computed from the date correct invoice or voucher is received in the office specified in the subcontract, or date of completion of work under this subcontract, whichever is later. Payment is deemed to be made, for the purpose of earning the discount, on the date on which the electronic funds transfer was made.

**(i)** 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 DEAR Part 931 in effect on the date of this subcontract.

# PERFORMANCE EVALUATION PROGRAM

In keeping with NTESS' goals 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 SCORE program

# PRICING OF SUBCONTRACT MODIFICATIONS

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

# PRICE-ANDERSON AMENDMENTS ACT (PAAA)

**(a)** Regulatory Liability. If the item(s) or service(s) required by the Purchase Order/Subcontract is related to nuclear or radiological safety, then the item(s) or service(s) are regulated by the Department of Energy/National Nuclear Security Administration (DOE/NNSA) under the provisions of Federal Regulations 10 CFR 820, 10 CFR 830, and 10 CFR 835 (Price-Anderson Amendments Act – 1988). The supplier shall incorporate all applicable subcontract requirements into all supplier-issued procurement documents. Flow-down of subcontract requirements shall be verbatim, i.e., without change or modification. Lower-tier subcontracting requires flow-down of all applicable requirements to each supplier at any tier.

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

# RECYCLED AND/OR NEW MATERIALS

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

**RELEASES VOID**

Neither NTESS personnal nor any government representatives shall be required to waive or release any personal rights to Subcontractor under this subcontract. Subcontractor agrees that no such waiver or release shall be pleaded by Subcontractor in any action or proceeding.

# REPORTS REQUIRED BY THIS SUBCONTRACT

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

# RIGHTS AND INTERESTS

Any rights and interests that may result from this subcontract shall pass directly from the Subcontractor to the government. FAR 52.227-17 Rights in Data -- Special Works applies to all deliverables which are copyrightable works produced as part of the performance of this subcontract.

# RISK OF LOSS

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

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# NTESS PROVIDED INFORMATION

Any and all physical forms of designs, design data, drawings, specifications, technical, scientific data, and other information furnished by NTESS to the Subcontractor shall remain the property of the government and shall be protected from unauthorized use, reproduction, and disclosure. Subcontractor shall protect the information at least to the same extent it would use to protect its own most valuable and proprietary information. Dissemination or use of such information is limited to such of its employees and Subcontractors, if any, whose job performance for this specific subcontract requires the information and only for those purposes. No other dissemination or use is permitted without prior written approval of the Subcontracting Professional/Sandia Delegated Representative. Any and all such information provided by NTESS to the Subcontractor shall be used only for the purpose of enabling performance of this subcontract and the Subcontractor shall use its best efforts to prevent disclosure to others except when necessary in the performance of this subcontract.

# SOFTWARE, SERVICES & INFORMATION SYSTEMS SECURITY ASSURANCE

1. Subcontractor warrants that all items, information systems, software and services, including cloud-based service models (e.g., infrastructure as a service, platform as a service, or software as a service) delivered under this Subcontract only contain features and/or functions that are fully disclosed.
2. If Subcontractor suspects or becomes aware of any threat events, security incidents, or vulnerabilities that may have the potential to affect the functionality, security, or integrity of items or services provided to NTESS, Subcontractor shall immediately give verbal notice to NTESS’ Security Incident Management Program (SIMP) by calling (505) 283-7467, or for subcontracts issued in California call (925)294-2600 (these phone lines are manned 24 hours a day, 7 days a week). Verbal notification shall occur at the time of Subcontractor’s awareness or suspicion, and prior to any follow up investigations. In addition to the immediate verbal notification, Subcontractor shall provide written notification to the Subcontracting Professional and Sandia Delegated Representative (SDR), if an SDR is named in the Subcontract, within 72 hours of Subcontractor’s awareness or suspicion.
3. Subcontractor shall cooperate fully with NTESS to investigate all potential security incidents, threat events, and/or vulnerabilities.

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

# SUBCONTRACTS

All subcontracts shall be made in the name of the subcontractor and shall not bind nor purport to bind NTESS or shall not relieve Subcontractor of any obligation under this purchase order/subcontract If Subcontractor subcontracts any work in the performance of this subcontract, Subcontractor shall incorporate into every such subcontract an appropriate set of NTESS Ts&Cs found at [http://www.sandia.gov/working\_with\_sandia/procurement/current\_suppliers/contractor\_bidder](http://www.sandia.gov/working_with_sandia/procurement/current_suppliers/contractor_bidder/)/ or may use the latest revision of SF 6432-CI for the purchase of Commercial Items that are products or SF 6432-CS for commercial services, into any such subcontract.

# SUSPECT/COUNTERFEIT ITEMS(S/CI)

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

Definitions

* Suspect Item(s). An item is suspect when inspection or testing indicates that it **may not** conform to established Government or industry-accepted specifications or standards; and/or the item’s documentation, appearance, performance, material, or other characteristics **may have been** misrepresented by the vendor, supplier, distributor, or manufacturer.
* Counterfeit Item(s). A counterfeit item is one that has been copied, substituted, or appended without legal right or authority or whose material, performance, or characteristics **have been** misrepresented or not fully disclosed by the vendor, supplier, distributor, or manufacturer.
* Suspect/Counterfeit Items (S/CI) include but are not limited to: (i) items that are intentionally manufactured, refurbished, appended, or altered to imitate original products without authorization in order to be passed off as genuine; (ii) unlawful or unauthorized substitution or addition of component parts; (iii) false identification of grade, lot number, serial number, or performance characteristics, (iv) fraudulent services; (v) misrepresented items and services, (vi) items that introduce unintended features such as surveillance, transmissions, or other malicious characteristics.

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

1. Subcontractor expressly warrants that all items, services, or software provided under this Subcontract are suitable for the intended or specified use, and do not include unintended or unspecified characteristics.
2. Subcontractor warrants and shall ensure that counterfeit items, including component parts, and/or materials will not be furnished or delivered to NTESS.
3. Subcontractor warrants authorized and lawful use of any labels, trademarks, or logos designed for/affixed to items supplied or delivered to NTESS.
4. Subcontractor warrants that all items, goods, or services provided to NTESS are verifiably compliant with applicable quality, and/or safety and manufacturing standards including, but not limited to U.S. Government or industry-accepted specifications and national consensus standards.
5. Subcontractor shall use counterfeit prevention and/or quality assurance procedures, that include a S/CI detection program.
6. Subcontractor shall immediately notify NTESS if Subcontractor suspects, or becomes aware of used or counterfeit goods furnished to NTESS. Subcontractor is required to disclose the source of the S/CI to NTESS and shall provide documentation authenticating traceability of affected item(s). Subcontractor must immediately notify NTESS by either:
	1. contacting the Subcontracting Professional (listed on the first page of this contract); or
	2. emailing the SNL Suspect/Counterfeit Items Program Coordinator at sqasci@sandia.gov.
7. Unless otherwise specified, Subcontractor shall purchase directly from product manufacturers or authorized manufacturer distributors whenever possible.
8. Suspect/counterfeit items furnished under this Subcontract will be impounded by NTESS. Subcontractor may be required to replace such items, at no cost, with items acceptable to NTESS. Subcontractor shall be liable for all costs relating to discovery, removal, impoundment, and replacement of materials and equipment that exhibit suspect or counterfeit item characteristics or conditions.
9. Subcontractor shall indemnify NTESS, its agents, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from any and all suspect or counterfeit services, goods, software, materials, components, or parts.

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

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

Additional detailed information is available at the Department of Energy (DOE) webpage and in the DOE Suspect/Counterfeit Items Resource [Handbook](http://www.energy.gov/sites/prod/files/2016/08/f33/DOE-HDBK-1221-2016.pdf).

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

# PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION (PII)

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

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

Loss of Control of PII: If the Subcontractor becomes aware or suspects that any NTESS provided Personally identifiable Information, has been inappropriately, taken, used, disclosed, and/or released or that the controls for access to the information have been compromised, the Subcontractor shall immediately take steps to prohibit further disclosure and shall give verbal notice to NTESS' Security Incident Management Program (SIMP) by calling and reporting the incident at either at SNL/NM pager: 505-238-7467 (283-SIMP) or for subcontracts issued in California SNL/CA: 925-294-2600 ( these are manned 7 days a week 24 hours a day). After notifying SIMP, also verbally notify the SP and SDR (if one is identified in this subcontract). In addition to the immediate verbal notifications, written notification shall be provided to the SP and SDR (if one is identified in the subcontract,) within 72 hours of the Subcontractor’s learning of the situation. The Subcontractor shall cooperate with NTESS and provide information needed to allow NTESS to evaluate the nature and extent of the release or loss of control.

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

# TAXES

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

# TRANSPORTATION

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

# WARRANTY

Subcontractor expressly warrants that no counterfeit items or components in items shall be delivered to NTESS on this subcontract. Subcontractor expressly warrants that all items provided under this subcontract shall have a rightful transfer of good title thereto and are delivered free of any rightful claims of any third person by way of infringement of any intellectual property right. The warranty shall begin upon receipt of conforming items and extend for a period of: (1) the manufacturer's warranty period or six (6) months, whichever is longer, if the Subcontractor is not the manufacturer and has not modified the item, or (2) one (1) year or the manufacturer's warranty period, whichever is longer, if the Subcontractor is the manufacturer of the item or had modified it. If any nonconformity with item appears within that time, Subcontractor shall promptly repair, replace, or re-perform such items at Subcontractor's election. Transportation of replacement items and return of nonconforming items and repeat performance of services shall be at Subcontractor's expense. NTESS shall notify Subcontractor of such nonconformity within a reasonable time after discovery, and Subcontractor shall notify NTESS of whether it chooses to make repairs or replacements within three (3) working days after NTESS' notice of nonconformity. If repair, replacement, or re-performance of services is not timely, NTESS may elect to return the nonconforming items, repair, or replace them or reprocure the services at Subcontractor's expense.

**WORK FOR HIRE**

NTESS recognizes that the Subcontractor has pre-existing intellectual property embedded in its deliverables, and that Subcontractor retains any and all ownership rights in that pre-existing intellectual property. For the purposes of this subcontract, the data subject to Subcontractor’s pre-existing intellectual property rights are considered to be Limited Rights Data under the pertinent FAR clause, such as per FAR 52.227-14(a), and that Subcontractor retains any and all ownership rights in such data.

If Subcontractor asserts  and gains ownership to the copyright on data first produced in the performance of this subcontract, the Subcontractor grants to NTESS and the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government to use that data as well as the use permitted under the pertinent FAR clause, such as FAR 52.227-14 (c)(1).

If the Subcontractor does not assert copyright or does not gain ownership to the copyright on data first produced in the performance of this subcontract, Subcontractor hereby agrees and acknowledges that all duties performed hereunder are specifically ordered or commissioned by NTESS ("Work"); that Subcontractor has required all of its employees who will do the Work to assign all intellectual property generated in the course of employment to the Subcontractor; that the Work constitutes and shall constitute a work-made-for-hire as defined in the United States Copyright Act of 1976; that NTESS is and shall be the author of said work-made-for-hire and the owner of all rights in and to the Work. To the extent that the Work is not recognized as a work-made-for-hire, Subcontractor hereby assigns, transfers, and conveys to NTESS, without reservation, all of Subcontractor’s rights, title and interest in the Work, including, without limitation, all rights of copyright and copyright renewal in said Work or any part thereof. Subcontractor agrees to execute all papers and to perform such other proper acts as NTESS may deem necessary to secure for NTESS the rights herein assigned.

For data not first produced in the performance of the subcontract, the subcontractor grants to NTESS and the Government and others acting on its behalf a license as per the pertinent FAR clause, such as FAR 52.227-14 (c)(2).

**WRITTEN NOTICES**

1. The Subcontractor shall immediately notify the NTESS Subcontracting Professional 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.
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 NTESS Subcontracting Professional in writing of such circumstances, and the Subcontractor shall take whatever action is necessary to cure such defect within the shortest possible time.

# ADDITIONAL TERMS AND CONDITIONS

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

# APPLY TO SUBCONTRACTS AT ANY VALUE

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

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

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

FAR 52.209-10 Prohibition on Contracting with Inverted Domestic Corporations

FAR 52.211-5 Material Requirements

FAR 52.211-15 Defense Priority and Allocation Requirement

FAR 52.222-29 Notification of Visa Denial

FAR 52.222-50 Combating Trafficking in Persons

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

FAR 52.223-3 Hazardous Material Identification and Material Safety Data with Alt.I

FAR 52.223-13 Acquisition of EPEAT - Registered Imaging Equipment Alt I

FAR 52.223-14 Acquisition of EPEAT - Registered Televisions

FAR 52.223-16 Acquisition of EPEAT - Registered Personal Computer Products Alt I

FAR 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts

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

FAR 52.224-3 Privacy Training

FAR 52.225-8 Duty-Free Entry

FAR 52.225-13 Restrictions on Certain Foreign Purchases

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

FAR 52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises FAR 52.227-3 Patent Indemnity

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

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

FAR 52.229-8 Taxes – Foreign Cost-Reimbursement Contracts

FAR 52.229-10 State of New Mexico Gross Receipts and Compensating Tax as modified by DEAR 970.2904-1

FAR 52.232-39 Unenforceability of Unauthorized Obligations

FAR 52.232-40 Providing Accelerated Payments to Small Business Subcontractors

FAR 52.242-15 Stop Work Order with Alternate I

FAR 52.244-6 Subcontracts for Commercial Items

FAR 52.245-1 Government Property

FAR 52.246-1 Contractor Inspection Requirements

FAR 52.246-6 Inspection – Time and Material and Labor Hours

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

FAR 52.247-67 Submission of Transportation Documents for Audit

FAR 52.249-6 Termination (Cost-Reimbursement)

DEAR 952.204-71 Sensitive Foreign Nations Controls

DEAR 952.211-71 Priorities and Allocations (Atomic Energy). (This clause applies only if Section I designates a government priority.)

DEAR 952.217-70 Acquisition of Real Property

DEAR 952.247-70 Foreign Travel

DEAR 952.250-70 Nuclear Hazards Indemnity Agreement

DEAR 970.5204-2 Laws, Regulations, and DOE Directives (Deviation Dec 2000)

DEAR 970.5232-3 Accounts, Records and Inspections -Alternate II

DEAR 970.5208-1 Printing

DEAR 970.5243-1 Changes

DEAR 970.5245-1 Property (Alteration)

# APPLY TO SUBCONTRACTS EXCEEDING $2,000

FAR 52.222-6 Wage Rate Requirements (Construction).

FAR 52.222-7 Withholding of Funds (where Wage Rate Requirements (Construction) Applies)

FAR 52.222-8 Payrolls and Basic Records (where Wage Rate Requirements (Construction) Applies)

FAR 52.222-9 Apprentices and Trainees (where Wage Rate Requirements (Construction) Applies)

FAR 52.222-1 Compliance with Copeland Act Requirements (where Wage Rate Requirements (Construction) Applies)

FAR 52.222-11 Subcontracts (Labor Standards) (where Wage Rate Requirements (Construction) Applies)

FAR 52.222-12 Contract Termination-Debarment (where Wage Rate Requirements (Construction) applies)

FAR 52.222-13 Compliance with Davis-Bacon and Related Act Regulations (where Wage Rate Requirements (Construction) applies)

FAR 52.222-14 Disputes Concerning Labor Standards (where Wage Rate Requirements (Construction) applies)

FAR 52.222-15 Certification of Eligibility (where Wage Rate Requirements (Construction) applies)

# APPLY TO SUBCONTRACTS EXCEEDING $2,500

FAR 52.222-41 Service Contract Labor Standards.

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

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

FAR 52.222-55 Minimum Wages Under Executive Order 13658

# APPLY TO SUBCONTRACTS EXCEEDING $3,500

FAR 52.222-54 Employment Eligibility Verification

FAR 52.225-1 Buy American -Supplies

# APPLY TO SUBCONTRACTS EXCEEDING $10,000

FAR 52.222-21 Prohibition of Segregated Facilities

FAR 52.222-26 Equal Opportunity

# APPLY TO SUBCONTRACTS EXCEEDING $15,000

FAR 52.222-36 Equal Opportunity for Workers with Disabilities

FAR 52.222-20 Contracts for Materials, Supplies, Articles and Equipment Exceeding $10,000.

# APPLY TO SUBCONTRACTS IF $25,000 OR MORE

DEAR 970.5223-4 Workplace Substance Abuse Programs at DOE Sites (applies if contract is for management and operation of DOE owned or controlled sites)

# APPLY TO SUBCONTRACTS EXCEEDING $30,000

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

# APPLY TO SUBCONTRACTS EXCEEDING $35,000

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

# APPLY TO SUBCONTRACTS EXCEEDING $100,000

DEAR 970.5227-4 Authorization and Consent

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

# APPLY TO SUBCONTRACTS EXCEEDING $150,000

FAR 52.203-6 Restrictions on Subcontractor Sales to the Government

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

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

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

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

FAR 52.204-14 Service Contract Reporting Requirements

FAR 52.215-2 Audit and Records--Negotiation

FAR 52.219-8 Utilization of Small Business Concerns

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

FAR 52.222-17 Nondisplacement of Qualified Workers

FAR 52.222-35 Equal Opportunity for Veterans

FAR 52.222-37 Employment Reports on Veterans

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

FAR 52.227-1 Authorization and Consent Alternate I

FAR 52.228-15 Performance & Payment of Bonds (Construction)

FAR 52.244-5 Competition in Subcontracting

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

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

# APPLY TO SUBCONTRACTS EXCEEDING $500,000

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

FAR 52.222-60 Paycheck Transparency (Executive Order 13673

DEAR 952.226-74 Displaced Employee Hiring Preference

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

# APPLY TO SUBCONTRACTS EXCEEDING $700,000 AWARDED TO A LARGE BUSINESS

FAR 52.219-9 Small Business Subcontracting Plan including Alternate II

FAR 52.219-10 Incentive Subcontracting Program

FAR 52.219-16 Liquidated Damages - Subcontracting Plan

# APPLY TO SUBCONTRACTS EXCEEDING $750,000

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

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

FAR 52.215-12 Subcontractor Certified Cost or Pricing Data.

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

FAR 52.215-15 Pension Adjustments and Asset Reversions

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

FAR 52.215-19 Notification of Ownership Changes

FAR 52.230-2 Cost Accounting Standards

FAR 52.230-6 Administration of Cost Accounting Standards

**Compliance with cost accounting standards:**

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

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# APPLY TO SUBCONTRACTS EXCEEDING $2,000,000

DEAR 970.5204-3 Access to and Ownership of Records

# APPLY TO SUBCONTRACTS EXCEEDING $5,000,000

FAR 52.203-14 Display of Hotline Poster(s)

# APPLY TO SUBCONTRACTS EXCEEDING $5,500,000

FAR 52.203-13 Contractor Code of Business Ethics and Conduct

52.210-1 Market Research

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

DEAR 952 204-2 Security

DEAR 952.204-70 Classification/Declassification

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

FAR 52.227-14 Rights in Data -Rights is modified in accordance with DEAR 927.409 and including Alternate V

FAR 52.227-16 Additional Data Requirements

FAR 52.246-8 -- Inspection of Research and Development -- Cost-Reimbursement

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

DEAR 952.227-13 Patent Rights Acquisition by the Government. (This clause shall be used in all that are not covered by the pro-visions of DEAR 952.227-11.

DEAR 952.235-71 Research Misconduct

DEAR 970.5227-12 Patent Rights Management and Operating Contracts For-Profit Contractor, Advance Class Waiver Alternate I (Deviation Oct 2011)

# APPLIES TO ANY WORK WHICH WILL BE PERFORMED ON A GOVERNMENT SITE UNDER THIS SUBCONTRACT

DEAR 970.5222-1 Collective Bargaining Agreement M&O Contracts

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

DEAR 952.203-70 Whistleblower Protection for Contractor Employees

#  APPLY TO SUBCONTRACTS TO BE PERFORMED ON A GOVERNMENT SITE WHEVEVER 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 10CFR PART 851

DEAR 970.5204-3 Access to and Ownership of Records (Deviation Oct 2014)

**REMAINING CLAUSES APPLY TO ALL WORK PERFORMED ON A GOVERNMENT SITE UNDER THIS SUBCONTRACT.**

# CERTIFICATE OF INSURANCE

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

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

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

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

# CITIZENSHIP STATUS

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

# SUBCONTRACTOR USE OF GOVERNMENT-OWNED VEHICLES

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

# ENVIRONMENTAL SAFETY AND HEALTH (ES&H) REQUIREMENTS

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

# (b) Training Requirements. Any Subcontractor personnel who will enter a government site to perform work shall have completed all of the ES&H training required by the SOW prior to any attempts to enter a government site as shown by written records of such training furnished to the SDR or to the Requester if no SDR is named in Section I of this subcontract. Subcontractor shall certify to NTESS completion of all required training on the Completion Record for Subcontractor Administered Training form. This form is available from the SDR. Subcontractor shall provide the completion record form for the initial ESH100 training to the SDR on the first day of work. Subcontractor shall provide the completion records for any other training required above to the SDR before starting the affected work activity. Any person not having completed all ES&H training requirements may be denied access to any government site and Subcontractor may be terminated for default of this subcontract as well as every other subcontract the Subcontractor has with NTESS.

# HAZARDOUS MATERIALS

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

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

# PROTECTION OF GOVERNMENT PROPERTY

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

# REQUIREMENTS FOR ACCESS

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

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

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

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

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

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

# VEHICLE INSURANCE

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

# VEHICLE MARKINGS

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