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

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

**SECTION II**

**STANDARD TERMS AND CONDITIONS FOR PURCHASES WHERE THE PRINCIPAL PURPOSE IS TO PURCHASE COMMERCIAL ITEMS OR SERVICES NOT TO EXCEED $250,000.00**

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

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# [APPLY TO SUBCONTRACTS EXCEEDING $30,000](#_APPLY_TO_PURCHASE_6)

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

[**REQUIREMENTS FOR ACCESS**](#_REQUIREMENTS_FOR_ACCESS)

**[VEHICLE INSURANCE](#_VEHICLE_INSURANCE)**

# [VEHICLE MARKINGS](#_VEHICLE_MARKINGS)

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# ASSIGNMENT

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

# BANKRUPTCY

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

# CANCELLATION OR TERMINATION FOR CONVENIENCE

**(a)** NTESS may cancel this subcontract, in whole or in part, if the Seller 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 Items or services not yet accepted by NTESS.

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

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

**(d)** The rights and remedies of NTESS in this clause are subject to Sellers Rights to invoke the Disputes clause of this subcontract.

# 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. **SP** means Subcontracting Professional; the only person authorized to execute and/or administer this subcontract for NTESS.
2. **SUBCONTRACT** means subcontracts at all tiers, Purchase Order, Price Agreement, Ordering Agreement, or modifications thereof.

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

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

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

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

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

2. Software licensed under a FLOSS License;

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

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

# DISPUTES

Seller 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 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.

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

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

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

# [HANDLING, PROTECTION, AND RELEASE OF INFORMATION](#HANDLING_PROTECTION_AND_RELEASE_OF_INFOR)

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

1. Information identified with any NTESS-applied marking (e.g., Official Use Only (“OUO”) or NTESS Proprietary);
2. Information directly related to subcontract and/or lower-tier subcontract administration, such as: program and planning, project management documentation, electronic or hardcopy correspondence, negotiations, financial, administrative, program office, and personnel information;
3. Technical and design information or guidance derived from or embodied in models, diagrams, drawings or translations, analysis models, manufacturing models, and computer-aided engineering and design, related to subcontract performance, regardless of whether the information is marked; and
4. Information obtained directly from NTESS or Sandia National Laboratories (SNL)-owned electronic resources, regardless of whether the information is marked.
5. 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 subcontracts 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.
6. 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.
5. Release of Information
6. 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 Subcontracting Professional (SP) on this subcontract.
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 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.
8. Subcontractor shall ensure its employees and lower-tier subcontracts comply with this clause.
9. 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.
10. Clause Interpretation
11. 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.
12. 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.

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

# INDEPENDENT SUBCONTRACTOR RELATIONSHIP

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

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

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

**i.** Subcontractor's failure to pay any employee for the Work rendered under this subcontract, or

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

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

# 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](#_FP13_-_ORDER)

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

# PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION (PII)

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

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

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

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

# RECYCLED AND/OR NEW MATERIALS

Unless otherwise specified in this Purchase Order, 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. Seller 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

# RIGHTS AND INTERESTS

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

**RISK OF LOSS**

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

# SOFTWARE, SERVICES & INFORMATION SYSTEMS SECURITY ASSURANCE

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

# 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:

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

b. 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 DOE and the Office of the Inspector General.

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

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

For questions or to report suspect or counterfeit items, materials, services, or software email the 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 (OIG) by phone (800) 541-1625, or by email ighotline@hq.doe.gov. Additional information is available at: <http://energy.gov/ig/office-inspector-general>.

# TAXES

For many purchases, NTESS can provide Transaction Exemption Certificates for both New Mexico and California, and certificates for other states may also be available. Direct any request for Transaction Exception Certificates to taxes@sandia.gov. 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.

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# TRANSPORTATION

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

# WARRANTY

Seller expressly warrants that no counterfeit items or components in items shall be delivered to NTESS on this subcontract. Seller expressly warrants that all items provided under this subcontract shall have a rightful transfer of good title thereto and are delivered free of any rightful claims of any third person by way of infringement of any intellectual property right. The warranty shall begin upon 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 Seller 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 Seller is the manufacturer of the item or had modified it. If any nonconformity with item appears within that time, Seller shall promptly repair, replace, or re-perform such items at Seller's election. Transportation of replacement items and return of nonconforming items and repeat performance of services shall be at Seller's expense. NTESS shall notify Seller of such nonconformity within a reasonable time after discovery, and Seller shall notify NTESS of whether it chooses to make repairs or replacements within three (3) working days after NTESS' notice of nonconformity. If repair or replacement or reperformance of services is not timely, NTESS may elect to return the nonconforming items or repair or replace them or reprocure the services at Seller's expense. Seller disclaims the implied warranties of merchantability or fitness for a particular purpose.

**WRITTEN NOTICES**

**(a)** 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.

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

# ADDITIONAL TERMS AND CONDITIONS

This subcontract incorporates by reference, with the same force and effect as if they were given in full text, the following cited 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 CFR at <http://www.ecfr.gov> or at the FARSite at <http://farsite.hill.af.mil> within the “Regs” tab. Where the FAR/DEAR clauses refer to Government and Contracting Officer, substitute NTESS and Subcontracting Professional (SP).

# APPLY TO SUBCONTRACTS AT ANY VALUE

FAR 52.204-9 Personal Identity Verification of Contractor Personnel

FAR 52.204-21 Basic Safeguarding of Covered Contractor Information Systems

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

FAR 52.209-10 Prohibition on Contracting With Inverted Domestic Corporations

FAR 52.211-15 Defense Priority and Allocation Requirement

FAR 52.222-50 Combating Trafficking in Persons

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

FAR 52.223-11 Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons

FAR 52.223-12 Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners

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

FAR 52.223-14 Acquisition of EPEAT® - Registered Televisions

FAR 52.223-15 Energy Efficiency in Energy-Consuming Products

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

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

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

FAR 52.224-2 Privacy Act

FAR 52.224-3 Privacy Training

FAR 52.225-13 Restrictions on Certain Foreign Purchases

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

FAR 52.232-39 Unenforceability of Unauthorized Obligations

FAR 52.232-40 Providing Accelerated Payments to Small Business Contractors

FAR 52.237-11 Accepting and Dispensing of $1 Coin (Applies to any work performed on a Government Site)

FAR 52.244-6 Subcontracts for Commercial Items Alternate I

FAR 52.245-1 Government Property

FAR 52.246-1 Contractor Inspection Requirements.

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

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

DEAR 952.204-77 Computer Security

DEAR 952.211-71 Priorities and Allocations (Atomic Energy)

This clause applies only if Section I designates a Government Priority.

DEAR 952.217-70 Acquisition of Real Property

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

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

# APPLY TO SUBCONTRACTS EXCEEDING $2,500

FAR 52.222-55 Minimum Wages Under Executive Order 13658

# APPLY TO SUBCONTRACTS EXCEEDING $3,500

FAR 52.222-54 Employment Eligibility Verification

# APPLY TO SUBCONTRACTS EXCEEDING $10,000

FAR 52.222-21 Prohibition of Segregated Facilities

FAR 52.222-26 Equal Opportunity

# FAR 52.225-1 Buy American Supplies

FAR 52.225-9 Buy American Construction Materials

# APPLY TO SUBCONTRACTS EXCEEDING $15,000

FAR 52.222-36 Equal Opportunity for Workers with Disabilities

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

Equipment exceeding $15,000

# APPLY TO SUBCONTRACTS EXCEEDING $30,000

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

# 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

# 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, subcontractors at all tiers or their agents and employees, having access to government sites shall be covered by at least $200,000/$500,000 public liability and $20,000 property damage insurance.

# VEHICLE MARKINGS

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