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TO
SUBCONTRACT SCHEDULE

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(SAMPLE)

SUBCONTRACT NO. AFJ-8-88671-01

UNDER

PRIME CONTRACT NO. DE-AC36-99GO10337

CONTRACTING PARTY: MIDWEST RESEARCH INSTITUTE
NATIONAL RENEWABLE ENERGY LABORATORY
DIVISION

SUBCONTRACTOR: *

ADDRESS: *

SUBCONTRACT TITLE: "**"

TYPE OF SUBCONTRACT: FIRM FIXED PRICE

PERIOD OF PERFORMANCE: EXECUTION DATE THROUGH **

SUBCONTRACT AMOUNT: \$*

PAYMENT TERMS: NET 30

**SUBCONTRACTOR'S
REMITTANCE NAME
AND ADDRESS:** *
*

**FUNDED AMOUNT AND
TASK CHARGE NUMBER:** \$*

SUBCONTRACT NO. AFJ-8-88671-01

BETWEEN

MIDWEST RESEARCH INSTITUTE

NATIONAL RENEWABLE ENERGY LABORATORY DIVISION

AND

SCHEDULE

INTRODUCTION

THIS SUBCONTRACT is effective upon execution by the Midwest Research Institute, National Renewable Energy Laboratory Division and is between the Midwest Research Institute, acting through its National Renewable Energy Laboratory Division (hereinafter called "NREL") and * (hereinafter called "Subcontractor"), whose principal offices are located in *.

Midwest Research Institute has entered into Contract No. DE-AC36-99GO10337 (hereinafter called "Prime Contract") with the Department of Energy (hereinafter called "DOE"), an agency of the U.S. Government (hereinafter called "Government"), for the operation and management of the National Renewable Energy Laboratory.

This subcontract is entered into in furtherance of the performance of the work provided for in the Prime Contract.

AGREEMENT

NOW, THEREFORE, the parties hereto agree to the following terms and conditions:

Notice of Assignment

The Alliance for Sustainable Energy, LLC, a limited liability company consisting of Midwest Research Institute and Battelle Memorial Institute, will assume management and operation of the National Renewable Energy Laboratory on October 1, 2008, under a succeeding Prime Contract No. DE-AC3608GO28308 with the Department of Energy. Effective October 1, 2008 and without further written notice to Subcontractor, Midwest Research Institute will assign this Agreement to the Alliance for Sustainable Energy, LLC.

ARTICLE 1 – THE WORK TO BE PERFORMED

- A. The Subcontractor shall perform the work generally described as "Design-Build Support Services, Energy Systems Integration Facility", and specifically provided for in Appendix A, Statement of Work, attached hereto and made a part hereof, pursuant to the provisions of this subcontract.
- B. Specific deliverables, quantities, due dates, reporting requirements, and addresses are set forth in Appendix A hereto.

ARTICLE 2 – THE PERIOD OF PERFORMANCE

The period of performance under this subcontract shall commence upon the date of execution and shall be completed 48 months from such date; provided, however, that this period may be extended for additional periods by mutual written agreement of the parties.

ARTICLE 3 – PRICE AND PAYMENT

- A. In full consideration of the Subcontractor's performance, hereunder, NREL shall pay the Subcontractor the prices stipulated in B below, less any deductions provided in this subcontract. The total price for performance and receipt and acceptance of all deliverables under this subcontract is \$**.
- B. Payments will be made by NREL upon receipt and acceptance of the following deliverables in the amount specified:

<u>Occurrences</u>	<u>Amount</u>
1. *	\$*
Total Price:	\$*

Said payments shall be made after receipt of and acceptance by NREL of the specified deliverables above and upon submission by the Subcontractor of an invoice, in a form satisfactory to the Subcontract Administrator in accordance with the article entitled "Invoices"; provided, however, that said payments shall not be deemed to prejudice any rights which NREL may have by law or under other provisions of this subcontract.

ARTICLE 4 – APPLICABLE DOCUMENTATION

In addition to the terms and conditions contained in this Schedule, the following documents are attached hereto and made a part of this subcontract:

- A. Appendix A, entitled "Statement of Work," dated 09/10/08;
- B. Appendix B-3, entitled "Standard Terms and Conditions" dated 10/01/03;
- C. Appendix B-3 Addendum, entitled "Standard Terms and Conditions" dated 10/1/07;
- D. Appendix C-3, entitled "Intellectual Property Provisions" dated 10/22/98;

- E. Appendix D-1, entitled “Terms and Conditions for Subcontracts in excess of \$500,000, dated 11/1/03;
- F. Appendix F, entitled “Small Business (Lower-tier) Subcontracting Plan” dated **/**/**; and
- G. Subcontractor’s technical proposal number * dated * together with any revisions, is hereby incorporated by reference. In the event there is a conflict between the Subcontractor’s technical proposal and any other provisions of this subcontract, the latter shall prevail.

ARTICLE 5 – ORDER OF PRECEDENCE

Any inconsistency in this subcontract shall be resolved by giving precedence in the following order:

- A. This Schedule;
- B. Statement of Work (Appendix A);
- C. Standard Terms and Conditions (Appendix B-3);
- D. Standard Terms and Conditions (Appendix B-3 Addendum);
- E. Intellectual Property Provisions (Appendix C-3);
- F. Terms and Conditions for Subcontracts in excess of \$500,000 (Appendix D-1);
- G. Small Business (Lower-tier) Subcontracting Plan, dated **/**/**;
- H. Other provisions of this subcontract whether incorporated by reference or otherwise; and
- I. The Subcontractor’s technical proposal, if incorporated in this subcontract by reference or otherwise.

ARTICLE 6 – RIGHTS TO PROPOSAL DATA

Except for technical data contained on pages ** of the subcontractor's proposal dated ** which are asserted by the Subcontractor as being proprietary data, it is agreed that, as a condition of the award of this subcontract, and notwithstanding the provisions of any notice appearing on the proposal, the Government and NREL shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this subcontract is based.

ARTICLE 7 - SUBCONTRACT ADMINISTRATION RESPONSIBILITIES (SUBCONTRACT FOR DESIGN/BUILD, CONSTRUCTION, A&E SERVICES, AND SERVICES – SITE OPERATIONS) (SEPTEMBER 2007)

A. Signature Authority:

This Subcontract may only be modified or changed by a binding direction signed by an authorized official of NREL.

B. Subcontract Administration Responsibilities:

1. The authorized official of NREL has designated * as the Subcontract Administrator for this Subcontract with the responsibilities for administering the subcontract and directing binding modifications and changes to this subcontract. The Subcontract Administrator's telephone number is *.
2. The Subcontract Administrator is the only individual authorized to direct to the Subcontractor binding modifications and changes under this Subcontract and such authority shall remain solely with the Subcontract Administrator regardless of any other provisions of this Subcontract. With Project Manager's concurrence, the Subcontract Administrator shall direct such binding modifications and changes in writing to the Subcontractor. The Subcontractor shall address all contractual and administrative correspondence directly to the Subcontract Administrator.
3. Except for changes resulting from an emergency described in subparagraph 4 below, no written or verbal statement from the Project Manager or any other individual shall be construed to be a binding direction unless or until the Subcontract Administrator directs to the Subcontractor a written modification or change to this Subcontract. **The Subcontractor assumes the risk and sole expense of any such unauthorized changes and hereby waives all rights to costs and time extensions that stem directly from changes made without prior written direction from the Subcontract Administrator. NREL shall make no adjustment to the subcontract price and/or performance period for changes made by the Subcontractor without the binding direction of the Subcontract Administrator.**
4. In the event that the Subcontractor is directed by the Project Manager or any individual to make a change resulting from an emergency that requires the Subcontractor to take immediate action, the Subcontractor shall be entitled to an equitable adjustment in subcontract price and performance period (if any) covering only that period up to and no later than the second working day after the date on which the emergency occurred.

C. Project Management Responsibilities:

1. The authorized official of NREL has designated * as the Project Manager for this Subcontract with the accountability for stewardship of the Subcontractor's technical project performance with respect to the scope, schedule, and budget under this Subcontract. The Project Manager's telephone number is *. The Subcontractor shall address all technical project performance correspondence to the Project Manager, with an informational copy sent to the Subcontract Administrator.
2. The Project Manager is accountable for stewardship of the Subcontractor's technical project performance, but is not authorized to direct to the Subcontractor binding modifications and changes to the Subcontractor's technical project performance, including scope of work, schedule, budget, performance period, or terms and conditions under this Subcontract.
3. **Except for changes resulting from an emergency that requires the Subcontractor to take immediate action, any change made by the Subcontractor based on a statement from the Project Manager shall be at the risk and sole expense of the Subcontractor.** The Subcontractor shall immediately refer all such changes to the Subcontract Administrator designated in Paragraph B above.

ARTICLE 8 – KEY PERSONNEL

- A. It having been determined that the individuals, whose names appear below, are necessary for the successful performance of this subcontract, the Subcontractor agrees to assign or have assigned such individuals to the performance of the work under this subcontract and shall not reassign or remove any of them without the consent of the Subcontract Administrator by modification to this subcontract:

<u>Name</u>	<u>Project Title</u>	<u>Telephone No.</u>
*	*	*

- B. Whenever, for any reason, one or more of the designated key personnel designated above, is unavailable for assignment for work under this subcontract, the Subcontractor shall, with the approval of the Subcontract Administrator, replace such individual with an individual of substantially equal abilities and qualifications.

ARTICLE 9 – INVOICES

Invoices for work accomplished under this subcontract shall be submitted in an original and one copy to:

National Renewable Energy Laboratory
Attn: *, M/S*
1617 Cole Boulevard
Golden, CO 80401-3393

To facilitate processing and payment each invoice shall include as applicable the following: (1) the date of the invoice, (2) the subcontract number which appears on the cover sheet of this subcontract, (3) the occurrence number associated with the requested payment as contained in Article 3 or a description of the supplies, or services covered by the invoice; and (4) any other information or documentation required by other provisions of this subcontract.

Payments under this subcontract shall be made in accordance with the payment terms and to the Subcontractor's remittance name and address shown on the cover sheet of this subcontract. Final payment under this subcontract shall be made upon receipt of any required patent clearance from DOE.

The payment terms of this subcontract shall mean net days from the date of receipt of an acceptable invoice or the date of receipt and acceptance of all deliverables, reporting requirements or closeout documentation covered by the invoice, whichever is later.

The Subcontractor shall submit its invoices in reasonable detail in accordance with the payment schedule contained in the Article 3 showing the total fixed price invoiced both currently and cumulatively. An authorized representative of the Subcontractor shall sign the following certification on each invoice submitted for payment:

SHALL ENSURE THAT ALL WORK IS PERFORMED IN ACCORDANCE WITH NREL'S DOE-APPROVED SAFETY MANAGEMENT SYSTEM. THE SUBCONTRACTOR IS SUBJECT TO ALL APPLICABLE PROCEDURES FOR INVESTIGATING VIOLATIONS, ENFORCING COMPLIANCE WITH REQUIREMENTS, AND ASSESSING CIVIL PENALTIES OR FEE REDUCTIONS FOR VIOLATIONS UNDER THE DOE'S "WORKER SAFETY AND HEALTH" RULE. WHEN THESE "WORKER SAFETY AND HEALTH REQUIREMENTS" ARE MADE APPLICABLE TO THE WORK TO BE PERFORMED UNDER AN NREL SUBCONTRACT OR PURCHASE ORDER, THE SUBCONTRACTOR SHALL ALSO COMPLY WITH THE CLAUSE "INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION" (DEAR 970.5223-1). SUCH CLAUSE (DEAR 970.5223-1) IS INCLUDED IN NREL SUBCONTRACT APPENDIX B TERMS AND CONDITIONS AND INCORPORATED BY REFERENCE IN NREL PURCHASE ORDERS.

- B. The Subcontractor shall have a structured approach to worker safety and health requirements that at a minimum include provisions for any of the following functional areas applicable to the work to be performed: (a) construction safety; (b) fire protection; (c) firearms safety; (d) explosives safety; (e) pressure safety; (f) electrical safety; (g) industrial hygiene; (h) occupational medicine; (i) biological safety; and (j) motor vehicle safety.
- C. The Subcontractor shall be responsible for full compliance (inclusive of its lower-tier subcontractors) with all applicable worker safety and health standards of DOE and NREL to provide subcontract work that is free from recognized hazards that are causing or have the potential to cause death or serious physical harm to workers. The Subcontractor shall comply with all Safety and Health Standards applicable to the hazards of the work to be performed, including but not limited to: (a) 29 CFR 1904 Recording and Reporting Occupational Injuries and Illnesses; (b) 29 CFR 1910 Occupational Safety and Health Standards and ACGIH Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices; (c) 29 CFR 1926 Safety and Health Regulations for Construction; (d) ANSI Z88.2 Respiratory Protection; (e) ANSI Z136.1 Safe Use of Lasers; (f) ANSI Z49.1 Welding, Cutting, and Allied Processes; (g) NFPA 70 National Electrical Code; and (h) NFPA 70E Standard for Electrical Safety in the Workplace. Nothing in this Paragraph (C) shall be construed as relieving the Subcontractor from complying with any additional specific safety and health requirements necessary to protect the safety and health of workers.
- D. In conforming to the worker safety and health requirements identified the Subcontractor shall provide at least worker safety and health supervision in the following areas : (a) management responsibilities; (b) worker rights and responsibilities; (c) hazard identification and assessment; (d) hazard prevention and abatement; (e) training and information; and (f) recordkeeping and reporting.
- E. NREL may inspect the Subcontractor's operation as work proceeds, from time to time, for compliance with worker safety and health requirements contained in this subcontract or purchase order. The NREL Subcontract Administrator shall direct the Subcontractor to make the necessary corrections commensurate with deficiencies found. The Subcontractor shall make these corrections at no additional expense to NREL. The Subcontractor shall participate in NREL's fact-finding investigations of accidents, injuries, occurrences, and near-misses. The Subcontractor shall participate in fact-finding investigations at no additional expense to NREL. The Subcontractor shall remove from the work site any employee that NREL identifies in writing as unsafe, incompetent, careless, or otherwise objectionable. The Subcontractor shall replace the removed employee at no additional expense to NREL. Any NREL representatives, NREL subcontractors, or DOE representatives, including but not limited to the NREL Technical Monitor or Project Manager, the

DOE Federal Project Director, the NREL Subcontract Administrator and NREL and DOE ESH&Q representatives have authority to stop work if unsafe conditions exist. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of or in connection with any unsafe conditions work stoppage. The Subcontractor's violation, refusal, or failure to abate violations, or applicable deficiencies may be justification for subcontract or purchase order termination in accordance with the termination or default clauses of the subcontract or purchase order terms and conditions.

- F. The Subcontractor shall complete and post the Form DOE-F-5480.4 at the work site. The Subcontractor shall make available Form DOE-F-5480.4, "[Sub]Contractor Employee Occupational Safety or Health Complaint" to its employees. The Subcontractor shall maintain specific records and submit the information covering experience of both its direct employees and that of its lower-tier subcontractors: The Subcontractor shall immediately provide to the NREL Technical Monitor or Project Manager and the NREL Subcontract Administrator notification of any injury or property damage incident and provide sufficient information necessary for NREL to complete DOE-F-5484.3 "The Individual Accident/Incident Report." Such information shall be submitted, as appropriate, for any period of time prior to final payment and closeout of this subcontract.

ARTICLE 12 – SMALL BUSINESS (LOWER-TIER) SUBCONTRACTING PLAN (FEB 2007)

The Subcontractor's Small Business (Lower-Tier) Subcontracting Plan dated **/**/** is incorporated as Appendix F in this subcontract. The Subcontractor shall electronically submit the "Individual Subcontract Report" (ISR) semi-annually during subcontract performance for the periods ended March 31st and September 30th, based on the Government's fiscal year (October 1 through September 30). The ISR is due on or before the twenty-fifth (25th) day of the month following the close of the applicable period. The Subcontractor shall also electronically submit the "Summary Subcontract Report" (SSR) annually for the twelve months ended September 30th, at the close of each Government fiscal year. The ISR and SSR submissions shall be made electronically through the Electronic Subcontracting Reporting System (eSRS) at www.esrs.gov.

Additional instructions can be found at http://www.nrel.gov/business_opportunities/related_docs.html, under the document entitled "Instructions for Submitting Small Business Subcontracting Reports through the Electronic Subcontracting Reporting System (eSRS)".

ARTICLE 13 – ALTERATIONS TO TERMS AND CONDITIONS

Appendix B-3 and Addendum are hereby modified by adding the following clause thereto:

“CLAUSE 61 - ORGANIZATIONAL CONFLICTS OF INTEREST (SPECIAL) (MAY 2004)
(Derived from DEAR 952.209-72 - JUNE 1997)

A. Purpose

The purpose of this clause is to ensure that the Subcontractor: (1) is not biased because of its financial, contractual, organizational, or other interests that relate to the work under this subcontract and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this subcontract.

B. Scope

The restrictions described herein shall apply to performance or participation by the Subcontractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Subcontractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

1. Use of Subcontractor's Work Product

- (i) The Subcontractor shall be ineligible to participate in any capacity in NREL or DOE contracts, subcontracts, or proposals therefor (solicited and unsolicited) that stem directly from the Subcontractor's work product under this subcontract for a period of five years after the completion of this subcontract. Furthermore, unless so directed in writing by the NREL Subcontract Administrator, the Subcontractor shall not perform any advisory and assistance services work under this subcontract on any of the Subcontractor's products or services or the products or services of another firm, if the Subcontractor is or has been substantially involved in the development or marketing of the firm's products or services. Nothing in this subparagraph shall preclude the Subcontractor from competing for follow-on subcontracts for advisory and assistance services.
- (ii) If, under this subcontract, the Subcontractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Subcontractor shall be ineligible to perform or participate in any capacity in any contractual effort that is based on such statement of work or specifications. The Subcontractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the NREL Subcontract Administrator, in which case the restriction in this subparagraph shall not apply.
- (iii) Nothing in this paragraph shall preclude the Subcontractor from offering or selling its standard and commercial items to NREL or the Government.

2. Access to and use of information

- (i) If the Subcontractor, in the performance of this subcontract, obtains access to information, such as NREL or DOE plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data that has not been released or otherwise made available to the public, the Subcontractor agrees that without prior written approval of the NREL Subcontract Administrator it shall not:
 - a. Use such information for any private purpose unless the information has been released or otherwise made available to the public;
 - b. Compete for work for NREL or the Government based on such information for a period of six (6) months after either the completion of this subcontract or until such information is released or otherwise made available to the public, whichever is first;

- c. Submit an unsolicited proposal to NREL or the Government that is based on such information until one year after such information is released or otherwise made available to the public; and
 - d. Release such information unless such information has previously been released or otherwise made available to the public by NREL or the Government.
- (ii) In addition, the Subcontractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this subcontract, it shall treat such information in accordance with any restrictions imposed on such information.
 - (iii) The Subcontractor may use technical data it first produces under this subcontract for its private purposes consistent with subparagraphs (B) (2) (i) (a) and (d) of this clause and the patent, rights in data, and security provisions of this subcontract.

C. Disclosure after award

1. The Subcontractor agrees that if changes, including additions, to the facts disclosed by it prior to award of this subcontract occur during the performance of this subcontract, it shall make an immediate and full disclosure of such changes in writing to the NREL Subcontract Administrator. Such disclosure may include a description of any action that the Subcontractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. NREL may, however, terminate the subcontract for convenience if it deems such termination to be in the best interest of NREL and the Government.
2. In the event that the Subcontractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the NREL Subcontract Administrator, NREL may terminate this subcontract for default.

D. Remedies

For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this subcontract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, NREL may terminate the subcontract for default, disqualify the Subcontractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this subcontract.

E. Modification

Request for a modification of the requirements under this clause shall be directed in writing to the NREL Subcontract Administrator and shall include a full description of the requested modification and the reasons in support thereof. If it is determined to be in the best interests of NREL and the Government, the NREL Subcontract Administrator will notify the Subcontractor in writing that such modification is accepted.

ARTICLE 14 – INTEGRATION

This subcontract contains the entire understanding between the parties, and there are no understandings or representations except those set forth or incorporated by reference herein. No subsequent modifications of this subcontract shall be of any force or effect unless in writing signed by a duly authorized official of NREL.

IN WITNESS WHEREOF, the parties hereto have executed this subcontract as of the date fully signed below.

ACCEPTED: *

AUTHORIZED: MIDWEST RESEARCH INSTITUTE
NATIONAL RENEWABLE ENERGY LABORATORY DIVISION

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____