APPENDIX B-3

STANDARD TERMS AND CONDITIONS FOR

FIXED-PRICE OR FIXED UNIT-PRICE SUBCONTRACTS FOR

(1) SUPPLIES, AND
(2) SERVICES (WHERE SERVICE CONTRACT ACT APPLIES)

January 18, 2010

Subcontractor is hereby placed on notice that the contracting party to this subcontract is the Alliance for Sustainable Energy, LLC, in its capacity as the Managing and Operating Contractor for the National Renewable Energy Laboratory (NREL) under U.S. Department of Energy Contract No. DE-AC36-08GO28308. All references to “NREL” in this subcontract shall mean the Alliance for Sustainable Energy, LLC.

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SECTION I. CLAUSES APPLICABLE TO NREL SUBCONTRACTS

The following clauses are applicable to subcontracts that require the Subcontractor or its lower-tier subcontractors, or other persons representing the Subcontractor, to perform work for NREL.

Clause 1. DEFINITIONS (SPECIAL) (OCT 2009)

Derived from FAR 52.202-1 (JUL 2004) as modified by DEAR 902.200 (MAR 2002)
(Applies to all subcontracts.)

(a) "Head of the Agency" means the Secretary, Deputy Secretary, or Under Secretary of the Department of Energy (DOE).

(b) "Commercial component" means any component that is a commercial item.

(c) "Commercial item (goods or services)" means—

(1) Any item, other than real property, that is of a type customarily used for non-governmental purposes and that—

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public.

(2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a NREL/Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for—

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet NREL or Federal Government requirements. "Minor" modifications mean modifications that do not significantly alter the non-governmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor.

(4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services—

(i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public.

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

(7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(5), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Subcontractor; or

(8) A non-developmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and Local Governments.

(d) "Component" means any item supplied to the Federal Government as part of an end item or of another component, except that for use in FAR 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225.11(a).

(e) "DOE Contracting Officer" means a person with the authority to enter into, administer, and/or terminate DOE Prime Contracts and make related determinations and findings The term includes certain authorized representatives of the DOE Contracting Officer acting within the limits of their authority as delegated by the DOE Contracting Officer.

(f) "NREL Subcontract Administrator" means an employee of the entity that manages and operates the National Renewable Energy Laboratory (NREL) with the authority to enter into, administer, and/or terminate subcontracts and make related determinations and findings. The term includes certain authorized representatives of the NREL acting within the limits of their authority as delegated by the NREL.

(g) "Non-developmental item" means—

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or Local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (g)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of NREL/Government or a procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (f)(1) or (g)(2) solely because the item is not yet in use.

(h) Except as otherwise provided in this subcontract, the terms "subcontracts and lower-tier subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders and changes and modifications to purchase orders.

(i) "DOE" means the Department of Energy.

(j) "Contractor" or "DOE Prime Contractor" means the entity managing and operating the National Renewable Energy Laboratory under prime contract to the U.S. Department of Energy (DOE). The National Renewable Energy Laboratory (NREL) is a Department of Energy-owned national laboratory, managed and operated by the DOE Prime Contractor.

(k) "DOE Directive" means DOE Orders and Notices, modifications thereto, and other forms of directives, including for purposes of this subcontract those portions of

DOE's accounting and procedures handbook applicable to Contractors, issued by DOE. The term does not include temporary written instructions by the DOE Contracting Officer or the NREL Subcontract Administrator for the purpose of addressing short-term or urgent DOE and NREL concerns relating to health, safety, or the environment.

Clause 2. SUBCONTRACT ISSUES AND DISPUTES (SPECIAL) (SEP 2007)
Derived from NREL 08.100-01
(Applies to all subcontracts.)

(a) It is NREL's practice to try to resolve all contractual issues by mutual agreement at the NREL Subcontract Administrator's level, without litigation. Both parties hereby agree to explore all reasonable avenues for negotiations in order to avoid a dispute. Either party may provide written notice to the other party to conduct negotiations for a period not to exceed sixty (60) calendar days. After sixty calendar days, if possibilities for negotiations have failed, either party shall have thirty (30) calendar days to request that the potential dispute be moved to Alternative Dispute Resolution (ADR). Within fifteen (15) calendar days after receiving a request to move to ADR, if ADR procedures are not acceptable to the non-moving party, a written explanation citing specific reasons for rejecting ADR as inappropriate for resolution of the dispute shall be provided to the moving party. If the parties are unable to agree on the application of ADR procedures to resolve the potential dispute or are unable to satisfactorily resolve the dispute using ADR procedures for a period not to exceed ninety (90) calendar days (or such longer period as mutually agreed in writing), the parties shall resume the formal process authorized in this clause.

(b) The parties agree that the appropriate forum for litigation of any dispute pertaining to this subcontract shall be a court of competent jurisdiction as follows:

(1) Subject to paragraph (b) (2) of this clause, any such litigation shall be brought and prosecuted exclusively in Federal District Court; with venue in the United States District Court of Colorado in Denver, Colorado.

(2) Provided, however, that in the event the requirements for jurisdiction in any Federal District Court are not present, such litigation shall be brought in a court of competent jurisdiction in the county of Jefferson and State of Colorado.

(c) Any substantive issue of law in such litigation shall be determined in accordance with the body of applicable Federal law relating to the interpretation and application of clauses derived from Federal Acquisition Regulation (FAR) and the Department of Energy Acquisition Regulation that implement and supplement the FAR. If there is no applicable Federal law, the law of the State of Colorado shall apply in the determination of such issues. Conflict of law provisions shall not determine applicable governing law. Nothing in this clause shall grant the Subcontractor by implication any statutory rights or remedies not expressly set forth in this subcontract.

(d) There shall be no interruption in the prosecution of the work, and the Subcontractor shall proceed diligently with the performance of this subcontract pending final resolution of any contractual issues, disputes, or litigation arising under or related to this subcontract between the parties hereto or between the Subcontractor and lower-tier Subcontractors or suppliers.

(e) The Contract Disputes Act of 1978 (41 U.S.C. Sections 601-613) shall not apply to this subcontract; provided, however, that nothing in this clause shall prohibit NREL,

in its sole discretion, from sponsoring a dispute of the Subcontractor for resolution under the provision of its prime contract with DOE. In the event that NREL so sponsors a dispute at the request of the Subcontractor, the Subcontractor shall be bound by the decision of the cognizant DOE Contracting Officer to the same extent and in the same manner as NREL.

(f) Any disputes relative to intellectual property matters will be governed by other provisions of this subcontract.

Clause 3. LOBBYING RESTRICTIONS (ENERGY & WATER ACT) (SPECIAL) (2007)

Derived from NREL 08.100-04

(Applies to all subcontracts.)

The Subcontractor or awardee agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence Congressional action on any legislative or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

Clause 4. SUBCONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (SPECIAL) (MAY 2003)

Derived from NREL 08.100-05

(Applies to all subcontracts.)

(a) The Subcontractor shall immediately notify the NREL Subcontract Administrator of any notice the Subcontractor may receive including Notice of Violations (NOV) or Notice of Alleged Violations (NOAV) issued by federal, state, or local regulators associated with the operations of NREL and/or performance of work under the Subcontract.

(b) When deemed appropriate by the NREL Subcontract Administrator, the Subcontractor shall conduct negotiations with regulators regarding NOV/NOAVs, fines and penalties, including, if the NREL Subcontract Administrator so requires, accepting NOV/NOAVs in its own name. The Subcontractor shall make no commitments or offers to regulators binding NREL/Government unless approved in advance and in writing by the NREL Subcontract Administrator. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Subcontractor being liable for any excess costs to NREL/Government associated with or resulting from such offers/commitments.

(c) The Subcontractor shall support and provide assistance to the NREL/Government concerning any matter arising under a NOV/NOAV.

Clause 5. SUBCONTRACTOR QUALITY REPRESENTATIONS (SPECIAL) (MAY 2009)

Derived from NREL 08.100-06

(Applies to all subcontracts where items or parts are supplied or delivered.)

(a) New Materials. Unless otherwise specified in this subcontract, all items or parts supplied or delivered by the Subcontractor, or its lower-tier subcontractors, shall consist of new materials. “New materials” means previously unused. The Subcontractor shall not deliver any item or part that is residual inventory resulting

from terminated Government contracts/subcontracts or former Government surplus property.

(b) Recycled or Recovered Materials. The requirement for supply or delivery of items or parts consisting of new materials does not exclude the delivery of recycled or recovered materials as defined by the Environmental Protection Agency in 40 CFR 247.

(c) Used, Refurbished, or Rebuilt Items or Parts. In the event that items or parts consisting of new materials are not reasonably available to the Subcontractor, with prior NREL Subcontract Administrator written approval, the Subcontractor may supply or deliver either: used; or refurbished; or rebuilt items or parts that are not of such an age or so deteriorated as to impair their usefulness or safety and conform to government or industry-accepted specifications or national consensus standards.

(d) Suspect or Counterfeit Items or Parts. "Suspect or counterfeit items or parts" mean (1) items or parts that may be of new manufacture but labeled to represent a different class of items or parts or (2) used and/or refurbished items or parts complete with false labeling, that are represented as new items or parts.

(e) Indemnification of NREL/DOE. The Subcontractor shall indemnify NREL and the DOE, their officers, agents, and employees, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from items or parts that are not genuine, original, and unused, or not otherwise suitable for the intended purpose. This includes, but is not limited to, items or parts that are defective, suspect, or counterfeit; items or parts that have been provided under false pretenses; and items or parts that are materially altered, damaged, deteriorated, degraded, or result in product failure.

(f) Quality Representations. The Subcontractor represents that items and parts supplied or delivered under this Subcontract shall not include suspect or counterfeit items or parts nor shall counterfeit or suspect items or parts be used in performing any work under this Subcontract whether on or off the NREL operated facility. In the event that the Subcontractor or its lower-tier subcontractors supplies or delivers suspect or counterfeit items or parts, such items or parts shall be impounded by NREL, or the Subcontractor shall remove the items or parts as directed by the NREL Subcontract Administrator. The Subcontractor shall promptly replace the counterfeit or suspect items or parts with supplies acceptable to NREL and the Subcontractor shall be liable for all costs relating to impoundment, removal, and replacement.

(g) NREL Rights. The rights of NREL under this clause are in addition to any other rights provided by law or under this Subcontract and such rights shall survive the termination or natural completion of the period of performance of this Subcontract.

Clause 6. RESTRICTIONS ON LOWER-TIER SUBCONTRACTOR SALES TO NREL/GOVERNMENT (SEP 2006)

Derived from FAR 52.203-6 (FD)

(Applies to all subcontracts exceeding $100,000.)

(a) Except as provided in (b) of this clause, the Subcontractor shall not enter into any agreement with an actual or prospective lower-tier Subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such lower-tier Subcontractors directly to NREL/Government of any item or process (including computer software) made or furnished by the lower-tier Subcontractor under this subcontract or under any follow-on production subcontract.

(b) The prohibition in (a) of this clause does not preclude the Subcontractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Subcontractor agrees to incorporate the substance of this clause, including this paragraph (c), in all lower-tier subcontracts under this subcontract which exceed the simplified acquisition threshold.

Clause 7. ANTI-KICKBACK PROCEDURES (JUL 1995)

Derived from FAR 52.203-7 (FD)

(Applies to all subcontracts exceeding $100,000.)

(a) Definitions.

(1) "Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any subcontractor, subcontractor employee, lower-tier subcontractor, or lower-tier subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a subcontract or in connection with a lower-tier subcontract relating to a subcontract.

(2) "Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

(3) "Subcontract," as used in this clause, means a subcontract or contractual action entered into by National Renewable Energy Laboratory (NREL) for the purpose of obtaining supplies, materials, equipment, or services of any kind.

(4) "Subcontractor," as used in this clause, means a person who has entered into a subcontract with the NREL.

(5) "Subcontractor Employee," as used in this clause, means any officer, partner, employee, or agent of a Subcontractor.

(6) "Lower-tier Subcontract," as used in this clause, means a lower-tier subcontract or contractual action entered into by a Subcontractor or lower-tier subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a subcontract.

(7) "Lower-tier Subcontractor," as used in this clause, means—

(i) Any person, other than the Subcontractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a subcontract or a lower-tier subcontract entered into in connection with such subcontract; and

(ii) Any person who offers to furnish or furnishes general supplies to the Subcontractor or a Prime Contractor.

(8) "Lower-tier Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a lower-tier Subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from—

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the subcontract price charged by a Subcontractor to NREL or in the lower-tier subcontract price charged by a lower-tier subcontractor to a subcontractor or Prime Contractor.

(c) (1) The Subcontractor shall have in place and follow reasonable procedures designed to prevent and detect violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Subcontractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the Department of Energy (DOE), the head of the DOE if the agency does not have an inspector general, or the Department of Justice.

(3) The Subcontractor shall cooperate fully with any Federal agency and NREL investigating a possible violation described in paragraph (b) of this clause.

(4) The NREL Subcontract Administrator may—

(i) Offset the amount owed by NREL under the subcontract; and/or

(ii) Direct that the Subcontractor withhold, from sums owed a lower-tier subcontractor under the subcontract, the amount of the kickback.

Under the subcontract the NREL Subcontract Administrator may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to NREL or the Government unless NREL has already offset those monies under subdivision (c)(4)(ii) of this clause be paid over to NREL or the Government unless NREL has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Subcontractor shall notify the NREL Subcontract Administrator when the monies are withheld.

(5) The Subcontractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) except paragraph (c)(1), in all lower-tier subcontracts under this subcontract which exceed $100,000.

Clause 8. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007)

Derived from FAR 52.203-12 (FD)

(Applies to all subcontracts exceeding $100,000.)

(a) Definitions. As used in this clause—

(1) "Agency," as used in this clause, means "executive agency" as defined in Federal Acquisition Regulation (FAR) 2.101.

(2) "Covered Federal action," as used in this clause, means any of the following actions:

(i) The awarding of any Federal contract or at any-tier.

(ii) The making of any Federal grant.

(iii) The making of any Federal loan.

(iv) The entering into any cooperative agreement.

(v) The extension, continuation renewal, amendment, or modification of any Federal contract or a subcontract at any-tier, grant, loan, or cooperative agreement.

(3) "Indian Tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

(4) "Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an

officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(5) "Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(6) "Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

- (i) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (ii) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (iii) A special Government employee, as defined in section 202, Title 18, United States Code.
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

(7) "Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, state, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, subcontracts at any-tier, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

(8) "Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(9) "Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(10) "Recipient," as used in this clause, as used in this clause, includes the Subcontractor and all lower-tier subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, subcontracts at any-tier, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

(11) "Regularly employed," as used in this clause means, with respect to an officer or employee of a person requesting or receiving a Federal contract or subcontract at any-tier, an officer or employee who is employed by such person for at least one hundred thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract or subcontract at

any-tier. An officer or employee who is employed by such person for less than one hundred thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for one hundred thirty (130) working days.

(12) "State," as used in this clause means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition. 31 U.S.C. 1352, among other things, prohibits a recipient of a Federal contract, subcontract, at any-tier, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352 the Subcontractor or lower-tier subcontractors shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this subcontract or lower-tier subcontracts or the extension, continuation, renewal, amendment, or modification of this subcontract or lower-tier subcontracts.

(1) The term appropriated funds does not include profit or fee from a covered Federal action.

(2) To the extent the Subcontractor or lower-tier subcontractor can demonstrate that the Subcontractor or lower-tier subcontractor has sufficient monies, other than Federal appropriated funds, NREL/Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(c) Exceptions. The prohibition in paragraph (b) of this clause does not apply under the following conditions:

(1) Agency and legislative liaison by Subcontractor or lower-tier Subcontractor employees.

(i) Payment of reasonable compensation made to an officer or employee of the Subcontractor or lower-tier subcontractor if the payment is for agency and legislative liaison activities not directly related to this subcontract or lower-tier subcontract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern—

(A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person's products or services for an agency's use.

(iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action.

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(2) Professional and technical services.

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(iii) As used in paragraph (c) (2) of this clause, “professional and technical services” are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a) (2) (iii)).

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(3) Only those communications and services expressly authorized by paragraphs (c) (1) and (2) of this clause are permitted.

(d) Disclosure.

(1) If the Subcontractor or lower-tier subcontractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the subcontractor or lower-tier Subcontractor with respect to this subcontract, the Subcontractor or lower-tier subcontractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Subcontractor or lower-tier subcontractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Subcontractor or lower-tier subcontractor shall, at the end of the calendar quarter in which the change occurs, submit to the NREL Subcontract Administrator within thirty (30) days an updated disclosure using OMB Standard Form LLL.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Subcontractors or lower-tier subcontractors may rely without liability on the representation made by their lower-tier subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(g) Lower-tier Subcontracts.

(1) The Subcontractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract, at any-tier, exceeding $100,000 under this subcontract. The Subcontractor that awards the subcontract, at any-tier, shall retain the declaration.

(2) A copy of each lower-tier subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the Subcontractor. The Subcontractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, at any-tier, submit to the NREL Subcontract Administrator within thirty (30) days a copy of all disclosures. Each lower-tier Subcontractor certification shall be retained in the subcontract file.

(3) The Subcontractor shall include the substance of this clause, including this paragraph (g), in any lower-tier subcontract exceeding $100,000.

Clause 9. PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (SPECIAL) (MAY 2003)

Derived from FAR 52.204-4 (AUG 2000)

(Applies to all subcontracts exceeding $100,000.)

(a) Definitions. As used in this clause—

(1) "Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material." For paper and paper products, postconsumer material means "postconsumer fiber" defined by the U.S. Environmental Protection Agency (EPA).

(2) "Printed or copied double-sided" means printing or reproducing a document so that information is on both sides of a sheet of paper.

(b) When not using electronic commerce methods to submit information or data to NREL, the Subcontractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet a minimum thirty (30) percent postconsumer material standard.

(c) If paper products, including high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, white wove envelopes, writing and office

paper, and cover stock, meeting the recommended thirty (30) percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards, the Subcontractor is encouraged to use paper containing no less than twenty (20) percent postconsumer material for use in submitting paper documents to NREL.

Clause 10. PROTECTING NREL'S/GOVERNMENT'S INTEREST WHEN SUBCONTRACTING AT ANY TIER WITH CONTRACTORS AND SUBCONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEP 2006)

Derived from FAR 52.209-6 (FD)

(Applies to all subcontracts with lower-tier subcontracts exceeding $30,000)

(a) The Government suspends or debars Contractors to protect the Government's interests. The Subcontractor shall not enter into any lower-tier subcontract in excess of $30,000 with a lower-tier subcontractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Subcontractor shall require each proposed lower-tier subcontractor, whose lower-tier subcontract will exceed $30,000, to disclose to the Subcontractor, in writing, whether as of the time of award of the lower-tier subcontract, the lower-tier subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Subcontractor shall notify the NREL Subcontract Administrator , in writing, before entering into a lower-tier subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the Excluded Parties List System). The notice must include the following:

(1) The name of the lower-tier subcontractor.

(2) The Subcontractor's knowledge of the reasons for the lower-tier subcontractor being in the Excluded Parties List System.

(3) The compelling reason(s) for doing business with the lower-tier subcontractor notwithstanding its inclusion in the Excluded Parties List System.

(4) The systems and procedures the Subcontractor has established to ensure that it is fully protecting NREL/Government's interests when dealing with such lower-tier subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

Clause 11. AUDIT AND RECORDS NEGOTIATION (JUN 1999) AND ALTERNATE II (MAR 2009)

Derived from FAR 52.215-2 (FD)

(Applies to all subcontracts exceeding $100,000.)

(Alternate I applies to all subcontracts and purchase orders where work performed is funded in whole or in part under the American Recovery and Reinvestment Act of 2009.)

(Alternate II applies to cost type subcontracts with State and Local Governments, educational institutions, and other nonprofit organizations.)

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Examination of costs. If this is a cost reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable subcontract, or any combination of these, the Subcontractor shall maintain and the DOE Contracting Officer, the cognizant Federal Agency Official, or the NREL Subcontract Administrator, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this subcontract. This right of examination shall include inspection at all reasonable times of the Subcontractor's plants, or parts of them, engaged in performing the subcontract.

(c) Cost or pricing data. If the Subcontractor has been required to submit cost or pricing data in connection with any pricing action relating to this subcontract, the DOE Contracting Officer, the cognizant Federal Agency Official, or the NREL Subcontract Administrator, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Subcontractor's records, including computations and projections, related to—

(1) The proposal for the subcontract, lower-tier subcontract, or modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the subcontract, lower-tier subcontract, or modification; or

(4) Performance of the subcontract, lower-tier subcontract or modification.

(d) Comptroller General.—

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this subcontract or a lower-tier subcontract hereunder and to interview any current employee regarding such transactions.

(2) This paragraph may not be construed to require the Subcontractor or lower-tier subcontractor to create or maintain any record that the Subcontractor or lower-tier subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports. If the Subcontractor is required to furnish cost, funding, or performance reports, the DOE Contracting Officer, the cognizant Federal Agency Official, or the NREL Subcontract Administrator shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—

(1) The effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports; and

(2) The data reported.

(f) Availability. The Subcontractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until three (3) years after final payment under this subcontract or for any shorter period specified in Subpart 4.7, Subcontractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this subcontract. In addition—

(1) If this subcontract is completely or partially terminated, the Subcontractor shall make available the records relating to the work terminated until three (3) years after any resulting final termination settlement; and

(2) The Subcontractor shall make available records relating to appeals under the Subcontract Issues and Disputes clause or to litigation or the settlement of claims arising under or relating to this subcontract until such appeals, litigation, or claims are finally resolved.

(g) The Subcontractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all lower-tier subcontracts under this subcontract that exceed the simplified acquisition threshold, and—

(1) That are cost reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the lower-tier subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the DOE Contracting Officer or NREL Subcontract Administrator under the Government Prime Contract.

ALTERNATE I (MAR 2009).

For all subcontracts and purchase orders where work performed is funded in whole or in part, under the American Recovery and Reinvestment Act of 2009, substitute the following paragraphs (d)(1) and (g) for paragraphs (d)(1) and (g) of the basic clause:

(d) Comptroller General or Inspector General. (1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, shall have access to and the right to—

(1) Examine any of the Subcontractor's or any lower-tier subcontractor's records that pertain to and involve transactions relating to this subcontract or any subcontract hereunder; and

(2) Interview any officer or employee regarding such transactions.

(g) (g)(1) Except as provided in paragraph (g)(2) of this clause, the Subcontractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all lower-tier subcontracts under this subcontract. The clause may be altered only as necessary to identify properly the contracting parties and the DOE Contracting Officer or NREL Subcontract Administrator under the Government Prime Contract.

(1) The authority of the Inspector General under paragraph (d)(1)(ii) of this clause does not flow down to subcontracts.

ALTERNATE II (APR 1998).

For cost type subcontracts with State and Local Governments, educational institutions, and other nonprofit organizations, the following paragraph (h) shall be added.

(h) The provisions of OMB Circular No.A-133, "Audits of States, Local Governments, and Nonprofit Organizations," apply to this subcontract.

Clause 12. NOTIFICATION OF CHANGE IN OWNERSHIP AND/OR NAME (SPECIAL) (OCT 2008)

Derived from FAR 52.215-19 (FD) (OCT 1997)

(Applies to all subcontracts.)

(a) The Subcontractor shall make the following notifications in writing:

(1) When the Subcontractor becomes aware that a change in its ownership or name has occurred, or is certain to occur, the Subcontractor shall provide such notification in accordance with NREL's novation and name change procedures.

(2) When a change that could result in changes in the valuation of the Subcontractor's capitalized assets in the accounting records or any other asset valuations or cost changes, the Subcontractor shall provide such notification to the NREL Subcontract Administrator within thirty (30) days.

(b) In the event of change in ownership, the Subcontractor shall—
  (1) Maintain current, accurate, and complete inventory records of assets and their costs;
  (2) Provide the NREL Subcontract Administrator or designated representative ready access to the records upon request;
  (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives, are identified accurately before and after each of the Subcontractor's ownership changes; and
  (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Subcontractor ownership change.

(c) The Subcontractor shall include the substance of this clause in all lower-tier subcontracts where it is contemplated that cost or pricing data will be required or for which any pre-award or post-award cost determination is subject to FAR 31.2, cost principles and procedures applicable to commercial organizations. The Subcontractor shall notify the NREL Subcontract Administrator of the change in ownership or name of any lower-tier subcontractor subject to the terms of this clause.

Clause 13. UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)
Derived from FAR 52.219-8 (FD)
(Applies to all subcontracts exceeding $100,000.)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing subcontracts let by any Federal agency, including subcontracts and lower-tier subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors and Subcontractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts, at any tier, with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Subcontractor hereby agrees to carry out this policy in the awarding of lower-tier subcontracts to the fullest extent consistent with efficient subcontract performance. The Subcontractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Subcontractor's compliance with this clause.

(c) Definitions. As used in this subcontract—
  (1) "HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
  (2) "Service-disabled veteran-owned small business concern"—
    (i) Means a small business concern—
      (A) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned

business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(B) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(3) "Service-disabled veteran" means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

(4) "Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(5) "Small disadvantaged business concern" means a small business concern that represents, as part of its offer that—

(i) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;

(ii) No material change in disadvantaged ownership and control has occurred since its certification;

(iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

(6) "Veteran-owned small business concern" means a small business concern—

(i) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(ii) The management and daily business operations of which are controlled by one or more veterans.

(7) "Women-owned small business concern" means a small business concern—

(i) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(ii) Whose management and daily business operations are controlled by one or more women.

(d) Subcontractors acting in good faith may rely on written representations by their lower-tier Subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

Clause 14. NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

Derived from FAR 52.222-1

(Applies to subcontracts for services and construction.)

If the Subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this subcontract, the Subcontractor shall

immediately give notice, including all relevant information, to the NREL Subcontract Administrator.

Clause 15. CONVICT LABOR (JUN 2003)
Derived from FAR 52.222-3
(Applies to all subcontracts.)

(a) Except as provided in paragraph (b) of this clause, the Subcontractor shall not employ in the performance of this subcontract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Subcontractor is not prohibited from employing persons—

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

Clause 16. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (JUL 2005)
Derived from FAR 52.222-4 (FD)
(Applies to subcontracts exceeding $100,000 involving the substantial employment of laborers or mechanics.)

(a) Overtime requirements. No Subcontractor or lower-tier Subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over forty (40) hours in any workweek unless they are paid at least one and a half (1½) times the basic rate of pay for each hour worked over forty (40) hours.

(b) Violation; liability for unpaid wages; liquidated damages. The responsible Subcontractor and lower-tier Subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Subcontractor and lower-tier

Subcontractor are liable for liquidated damages payable to NREL/Government. The NREL Subcontract Administrator will assess liquidated damages at the rate of $10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of forty (40) hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) Withholding for unpaid wages and liquidated damages. The NREL Subcontract Administrator will withhold from payments due under the subcontract sufficient funds required to satisfy any Subcontractor or lower-tier Subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the subcontract are insufficient to satisfy Subcontractor or lower-tier Subcontractor liabilities, the NREL Subcontract Administrator through the DOE Contracting Officer will withhold payments from other Federal or Federally assisted contracts/subcontracts held by the same Subcontractor or lower-tier Subcontractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) Payrolls and basic records.

(1) The Subcontractor and its lower-tier Subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the subcontract during the subcontract and shall make them available to the NREL/Government until three (3) years after subcontract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a) (3) implementing the Davis-Bacon Act.

(2) The Subcontractor and its lower-tier Subcontractors shall allow authorized representatives of the NREL Subcontract Administrator or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Subcontractor or lower-tier Subcontractor also shall allow authorized representatives of the NREL Subcontract Administrator or Department of Labor to interview employees in the workplace during working hours.

(e) Lower-tier subcontracts. The Subcontractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in lower-tier subcontracts that may require or involve the employment of laborers and mechanics and require lower-tier Subcontractors to include these provisions in any such sub-tier subcontracts. The Subcontractor shall be responsible for compliance by any lower-tier subcontractor or sub-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

Clause 17. WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)

Derived from FAR 52.222-20 (FD)

(Applies to all subcontracts exceeding $10,000 for manufacturing or furnishing of materials, supplies, articles or equipment subject to the Walsh Healey Public Contracts Act.)

If this subcontract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed $10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

(a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this subcontract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

Clause 18. PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

Derived from FAR 52.222-21 (FD)

(Applies to subcontracts where the "Equal Opportunity Clause" is applicable.)

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Subcontractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Subcontractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Subcontractor shall include this clause in every lower-tier subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

Clause 19. EQUAL OPPORTUNITY (MAR 2007)

Derived from FAR 52.222-26 (FD)

(Applies to all subcontracts unless exempt from Executive Order 11246 (See FAR 22.807(a).)

(a) Definition. "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) (1) If, during any twelve (12) month period (including the twelve (12) months preceding the award of this subcontract), the Subcontractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000, the Subcontractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Subcontractor shall provide information necessary to determine the applicability of this clause.

(1) If the Subcontractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform

work connected with the carrying on of the Subcontractor's activities (41 CFR 60-1.5).

(c) (1) The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Subcontractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Subcontractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—

(i) Employment;
(ii) Upgrading;
(iii) Demotion;
(iv) Transfer;
(v) Recruitment or recruitment advertising;
(vi) Layoff or termination;
(vii) Rates of pay or other forms of compensation; and
(viii) Selection for training, including apprenticeship.

(3) The Subcontractor shall post in conspicuous places available to employees and applicants for employment the notices that explain this clause.

(4) The Subcontractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Subcontractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice advising the labor union or workers' representative of the Subcontractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Subcontractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Subcontractor shall furnish to NREL all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Subcontractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Subcontractor has filed within the twelve (12) months preceding the date of subcontract award, the Subcontractor shall, within thirty (30) days after subcontract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Subcontractor shall permit access to its premises, during normal business hours, by NREL/Government or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Subcontractor shall permit the NREL/Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Subcontractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this subcontract may be canceled, terminated, or suspended in whole or in part and the Subcontractor may be declared ineligible for further NREL/Government contracts/subcontracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Subcontractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Subcontractor shall include the terms and conditions of this clause in every lower-tier subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each lower-tier subcontractor or vendor.

(11) The Subcontractor shall take such action with respect to any lower-tier subcontract or purchase order as the NREL Subcontract Administrator may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Subcontractor becomes involved in, or is threatened with, litigation with a lower-tier Subcontractor or vendor as a result of any direction, the Subcontractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this subcontract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

Clause 20. EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)

Derived from FAR 52.222-35 (FD)

(Applies to all subcontracts exceeding $100,000.)

(a) Definitions. As used in this clause—

(1) "All employment openings" means all positions except executive and top management, those positions that will be filled from within the Subcontractor's organization, and positions lasting three (3) days or less. This term includes full-time employment, temporary employment of more than three (3) days duration, and part-time employment.

(2) "Executive and top management" means any employee—

(i) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

(ii) Who customarily and regularly directs the work of two (2) or more other employees;

(iii) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(iv) Who customarily and regularly exercises discretionary powers; and

(v) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of

the work described in paragraphs (i) through (iv) of this definition. This paragraph (v) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

(3) "Other eligible veteran" means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

(4) "Positions that will be filled from within the Subcontractor's organization" means employment openings for which the Subcontractor will give no consideration to persons outside the Subcontractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Subcontractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

(5) "Qualified special disabled veteran" means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

(6) "Special disabled veteran" means—

(i) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability—

(A) Rated at 30 percent or more; or

(B) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (i.e., a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or

(ii) A person who was discharged or released from active duty because of a service-connected disability.

(7) "Veteran of the Vietnam era" means a person who—

(i) Served on active duty for a period of more than one hundred eighty (180) days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—

(A) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(B) Between August 5, 1964, and May 7, 1975, in all other cases; or

(ii) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed—

(A) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(B) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) General.

(1) The Subcontractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant

for employment is qualified. The Subcontractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

(i) Recruitment, advertising, and job application procedures;
(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
(iii) Rate of pay or any other form of compensation and changes in compensation;
(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
(v) Leaves of absence, sick leave, or any other leave;
(vi) Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor;
(vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
(viii) Activities sponsored by the Subcontractor including social or recreational programs; and
(ix) Any other term, condition, or privilege of employment.

(2) The Subcontractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) Listing openings.

(1) The Subcontractor shall immediately list all employment openings that exist at the time of the execution of this subcontract and those which occur during the performance of this subcontract, including those not generated by this subcontract, and including those occurring at an establishment of the Subcontractor other than the one where the subcontract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

(2) The Subcontractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Subcontractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(3) Whenever the Subcontractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Subcontractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts/subcontracts. The

Subcontractor may advise the State agency when it is no longer bound by this subcontract clause.

(d) Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) Postings.

(1) The Subcontractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall—

(i) State the rights of applicants and employees as well as the Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor).

(3) The Subcontractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Subcontractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

(4) The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Subcontractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

(f) Noncompliance. If the Subcontractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(g) Lower-tier subcontracts. The Subcontractor shall insert the terms of this clause in all lower-tier subcontracts or purchase orders of $100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Subcontractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

Clause 21. AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

Derived from FAR 52.222-36 (FD)

(Applies to all subcontracts exceeding $10,000.)

(a) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Subcontractor shall not discriminate against any employee or applicant because of physical or mental disability. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as—

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
(iii) Rates of pay or any other form of compensation and changes in compensation;
(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
(v) Leaves of absence, sick leave, or any other leave;
(vi) Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor;
(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
(viii) Activities sponsored by the Subcontractor, including social or recreational programs; and
(ix) Any other term, condition, or privilege of employment.

(2) The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C.793) (the Act), as amended.

(b) Postings.

(1) The Subcontractor agrees to post employment notices stating—
(i) The Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Subcontractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Subcontractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary).

(3) The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Subcontractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance.

If the Subcontractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Lower-tier Subcontracts.

The Subcontractor shall include the terms of this clause in every subcontract or purchase order in excess of $10,000 unless exempted by rules, regulations, or orders of the Secretary. The Subcontractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

Clause 22. EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)

Derived from FAR 52.222-37 (FD)

(Applies to all subcontracts exceeding $100,000.)

(a) Unless the Subcontractor is a State or local government agency, the Subcontractor shall report at least annually, as required by the Secretary of Labor, on—
  (1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Subcontractor by job category and hiring location; and
  (2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and
  (3) The maximum number and the minimum number of employees of the Subcontractor during the period covered by the report.

(b) The Subcontractor shall report the above items by completing the Form VETS-100, entitled "Federal Contractor Veterans' Employment Report (VETS-100 Report)."

(c) The Subcontractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent twelve (12) month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Subcontractors may select an ending date—
  (1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or
  (2) As of December 31, if the Subcontractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The Subcontractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Subcontractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Subcontractor. The invitation shall state that—
  (1) The information is voluntarily provided;
  (2) The information will be kept confidential;
  (3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and
  (4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) The Subcontractor shall insert the terms of this clause in all lower-tier subcontracts or purchase orders of $100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

Clause 23. SERVICE CONTRACT ACT OF 1965 (NOV 2007)

Derived from FAR 52.222-41 (FD)

(Applies to all subcontracts exceeding $2,500 for services as defined in Service Contract Act.)

(a) Definitions.
  (1) "Act," as used in this clause, means the Service Contract of 1965, (41 U.S.C. 351, et seq.).

(2) “Contractor” when this clause is used or in any subcontract, shall be deemed to refer to the Subcontractor, except in the term “Government Prime Contractor.”

(3) "Service employee," as used in this clause, means any person engaged in the performance of this subcontract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between the Subcontractor or any lower-tier Subcontractor and such persons.

(b) Applicability.

This subcontract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to subcontracts or lower-tier subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

(c) Compensation.

(1) Each service employee employed in the performance of this subcontract by the Subcontractor or any lower-tier Subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this subcontract.

(2) (i) If a wage determination is attached to this subcontract, the Subcontractor shall classify any class of service employee which is not listed therein and which is to be employed under the subcontract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Subcontractor prior to the performance of subcontract work by the unlisted class of employee. The Subcontractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the NREL Subcontract Administrator no later than thirty (30) days after the unlisted class of employee performs any subcontract work. The NREL Subcontract Administrator shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employee's authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within thirty (30) days of receipt or will notify the NREL Subcontract Administrator within thirty (30) days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the NREL Subcontract Administrator who shall promptly notify the Subcontractor of the action taken. Each affected employee shall be furnished by the Subcontractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination, depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General subcontract schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(A) In the case of a subcontract modification, an exercise of an option, or extension of an existing subcontract, or in any other case where a Subcontractor succeeds a subcontract under which the classification in question was previously conformed pursuant to the paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the subcontract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of subcontract work by the unlisted class of employees, the Subcontractor shall advise the NREL Subcontract Administrator of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(B) No employee engaged in performing work on this subcontract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this paragraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which subcontract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division

retroactive to the date such class of employees commenced subcontract work shall be a violation of the Act and this subcontract.

(vi) Upon discovery of failure to comply with paragraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced subcontract work.

(3) Adjustment of Compensation.
If the term of this subcontract is more than one (1) year, the minimum monetary wages and fringe benefits required to be paid or furnished there under to service employees under this subcontract shall be subject to adjustment after one (1) year and not less often than once every two (2) years, under wage determinations issued by the Wage and Hour Division.

(d) Obligation to Furnish Fringe Benefits.
The Subcontractor or lower-tier Subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) Minimum Wage.
In the absence of a minimum wage attachment for this subcontract, neither the Subcontractor nor any lower-tier Subcontractor under this subcontract shall pay any person performing work under this subcontract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Subcontractor or any lower-tier Subcontractor of any other obligation under law or subcontract for payment of a higher wage to any employee.

(f) Successor Subcontracts.
If this subcontract succeeds a subcontract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this subcontract setting forth such collectively bargained wage rates and fringe benefits, neither the Subcontractor nor any lower-tier Subcontractor under this subcontract shall pay any service employee performing any of the subcontract work (regardless of whether or not such employee was employed under the predecessor subcontract), less than the wages and fringe benefits provided for in such collective bargaining agreement to which such employee would have been entitled if employed under the predecessor subcontract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. Neither the Subcontractor nor any lower-tier Subcontractor may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor subcontract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Subcontractor's

collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor subcontract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the subcontract or lower-tier subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a subcontract or lower-tier subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) Notification to Employees.
The Subcontractor and any lower-tier Subcontractor under this subcontract shall notify each service employee commencing work on this subcontract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this subcontract, or shall post the wage determination attached to this subcontract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a) (4) of the Act and of this subcontract.

(h) Safe and Sanitary Working Conditions.
The Subcontractor or lower-tier Subcontractor shall not permit any part of the services called for by this subcontract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Subcontractor or lower-tier Subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Subcontractor or lower-tier Subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) Records.

(1) The Subcontractor and each lower-tier Subcontractor performing work subject to the Act shall make and maintain for three (3) years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act—

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this subcontract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c) (2) (ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Subcontractor's employees which had been furnished to the Subcontractor as prescribed by paragraph (n) of this clause.

(2) The Subcontractor shall also make available a copy of this subcontract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this subcontract, and in the case of failure to produce these records, the NREL Subcontract Administrator, upon direction of the Department of Labor and notification to the Subcontractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Subcontractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) Pay Periods.

The Subcontractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) Withholding of Payments and Termination of Subcontract.

The NREL Subcontract Administrator shall withhold or cause to be withheld from the Subcontractor under this or any other NREL subcontract with the Subcontractor such sums as an appropriate official of the Department of Labor requests or such sums as the NREL Subcontract Administrator decides may be necessary to pay underpaid employees employed by the Subcontractor or lower-tier Subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the NREL Subcontract Administrator may, after authorization or by direction of the Department of Labor and written notification to the Subcontractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the subcontract work. In such event, NREL/Government may enter into other subcontracts or arrangements for completion of the work, charging the Subcontractor in default with any additional cost.

(l) Lower-tier Subcontracts.

The Subcontractor agrees to insert this clause in all lower-tier subcontracts subject to the Act.

(m) Collective Bargaining Agreements Applicable to Service Employees.

If wages to be paid or fringe benefits to be furnished any service employees employed by the Subcontractor or any lower-tier Subcontractor under the subcontract are provided for in a collective bargaining agreement which is or will be effective during any period in which the subcontract is being performed, the Subcontractor shall report such fact to the NREL Subcontract Administrator, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the subcontract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the subcontract, in the case of collective bargaining agreements effective at such time, and in the case of such

agreements or provisions or amendments thereof effective at a later time during the period of subcontract performance such agreements shall be reported promptly after negotiation thereof.

(n) Seniority List.

Not less than ten (10) days prior to completion of any subcontract being performed at a Federal facility where service employees may be retained in the performance of the succeeding subcontract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Subcontractor (predecessor) or successor (29 CFR 4.173), the incumbent Subcontractor shall furnish the NREL Subcontract Administrator a certified list of the names of all service employees on the Subcontractor's or lower-tier Subcontractors' payroll during the last month of subcontract performance. Such list shall also contain anniversary dates of employment on the subcontract either with the current or predecessor Subcontractors of each such service employee. The NREL Subcontract Administrator shall turn over such list to the successor Subcontractor at the commencement of the succeeding subcontract.

(o) Rulings and Interpretations.

Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) Subcontractor's Certification.

(1) By entering into this subcontract, the Subcontractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Subcontractor's firm is a person or firm ineligible to be awarded Government contracts or subcontracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this subcontract shall be further subcontracted to any person or firm ineligible for award of a Government contract or subcontract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) Variations, Tolerances, and Exemptions Involving Employment.

Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements

concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(r) Apprentices.

Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Office of Apprenticeship Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the subcontract work in any craft classification shall not be greater than the ratio permitted to the Subcontractor as to his entire work force under the registered program.

(s) Tips.

An employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a) (1) or section 2(b) (1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed $1.34 per hour beginning January 1, 1981. To use this provision—

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) Disputes Concerning Labor Standards.

The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the disputes clause of this subcontract. Disputes within the meaning of this clause include disputes between the Subcontractor (or any of its lower-tier Subcontractors) and NREL, the DOE, the U.S. Department of Labor, or the employees of their representatives.

Clause 24. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)

Derived from FAR 52.223-3

(Applies to subcontracts for supplies, services, and construction that require the delivery of hazardous materials.)

(a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the subcontract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this subcontract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this subcontract.

Material (If none, insert "None")	Identification No.
_____	_____
_____	_____
_____	_____

(c) This list must be updated during performance of the subcontract whenever the Subcontractor determines that any other material to be delivered under this subcontract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Subcontractor shall promptly notify the NREL Subcontract Administrator and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by NREL shall relieve the Subcontractor of any responsibility or liability for the safety of Government, Subcontractor, or lower-tier Subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Subcontractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) NREL/Government's rights in data furnished under this subcontract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to--

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for NREL/ Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h) (1) of this clause, in precedence over any other clause of this subcontract providing for rights in data.

(3) NREL/Government is not precluded from using similar or identical data acquired from other sources.

(i) Except as provided in paragraph (i) (2), the Subcontractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Subcontractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Subcontractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the NREL Subcontract Administrator.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Subcontractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

Clause 25. BUY AMERICAN ACT-BALANCE OF PAYMENTS PROGRAM-SUPPLIES (FEB 2009)

Derived from FAR 52.225-1

(Applies to subcontracts for supplies exceeding $3,000)

(a) Definitions. As used in this clause—

"Commercially available off-the-shelf (COTS) item"—

(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to NREL/Government, under a csubcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into an end product.

"Cost of components" means—

(1) For components purchased by the Subcontractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Subcontractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs,

but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic end product" means—

(1) An unmanufactured end product mined or produced in the United States;

(2) An end product manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(ii) The end product is a COTS item.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) The Buy American Act (41 U.S.C. 10a-10d) provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for an end product that is a COTS item (See 12.505(a)(1)).

(c) Subcontractors may obtain from NREL Subcontract Administrator a list of foreign articles that the NREL Subcontract Administrator will treat as domestic for this subcontract.

(d) The Subcontractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Act Certificate."

Clause 26. RESERVED

Clause 27. DUTY-FREE ENTRY (FEB 2000)

Derived from FAR 52.225-8 (FD)

(Applies to subcontracts exceeding $100,000 where supplies are imported into the United States and duty-free entry may be obtained or subcontract value is less than $100,000 and savings from waiving the duty is anticipated to be more than the administrative cost of waiving the duty.)

(a) Definition.

(1) "Customs territory of the United States" means the States, the District of Columbia, and Puerto Rico.

(b) Except as otherwise approved by the NREL Subcontract Administrator, the Subcontractor shall not include in the subcontract price any amount for duties on supplies specifically identified in the subcontract schedule to be accorded duty-free entry.

(c) Except as provided in paragraph (d) of this clause or elsewhere in this subcontract, the following procedures apply to supplies not identified in the subcontract schedule to be accorded duty-free entry:

(1) The Subcontractor shall notify the NREL Subcontract Administrator in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of $10,000 that are to be imported into the customs territory of the United States for delivery to NREL under this subcontract, either as end products or for incorporation into end products. The Subcontractor shall furnish the notice to the NREL Subcontract Administrator at least twenty (20) calendar days before the importation. The notice shall identify the—
   (i) Foreign supplies;
   (ii) Estimated amount of duty; and
   (iii) Country of origin.

(2) The NREL Subcontract Administrator will determine whether any of these supplies should be accorded duty-free entry and will notify the Subcontractor within ten (10) calendar days after receipt of the Subcontractor's notification.

(3) Except as otherwise approved by the NREL Subcontract Administrator, the subcontract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.

(d) The Subcontractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if—

(1) The supplies are identical in nature to items purchased by the Subcontractor or any lower-tier Subcontractor in connection with its commercial business; and

(2) Segregation of these supplies to ensure use only on NREL/Government subcontracts containing duty-free entry provisions is not economical or feasible.

(e) The Subcontractor shall claim duty-free entry only for supplies to be delivered to NREL under this subcontract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the NREL Subcontract Administrator, diverted to nongovernmental use.

(f) NREL will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Subcontractor in obtaining duty-free entry for these supplies.

(g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to NREL/DOE in care of the Subcontractor and shall include the—

(1) Delivery address of the Subcontractor (or NREL/DOE, if appropriate);

(2) NREL's DOE prime contract number and the NREL subcontract number;

(3) Identification of carrier;

(4) Notation "UNITED STATES GOVERNMENT, _____ [agency], _____ Duty-free entry to be claimed pursuant to Item No(s) _____ [from Tariff subcontract schedules] _____, Harmonized Tariff subcontract schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify [cognizant subcontract administration office] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.";

(5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(6) Estimated value in United States dollars.

(h) The Subcontractor shall instruct the foreign supplier to—

(1) Consign the shipment as specified in paragraph (g) of this clause;

(2) Mark all packages with the words "UNITED STATES GOVERNMENT" and “NREL/DOE”; and

(3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.

(i) The Subcontractor shall provide written notice to the NREL Subcontract Administrator immediately after notification that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the subcontract schedule, upon award by the Subcontractor to the overseas supplier. The notice shall identify the—

(1) Foreign supplies;

(2) Country of origin;

(3) Subcontract number; and

(4) Subcontract schedule delivery date(s).

(j) The Subcontractor shall include the substance of this clause in any lower-tier subcontract if—

(1) Supplies identified in the subcontract schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or

(2) Other foreign supplies in excess of $10,000 may be imported into the customs territory of the United States.

Clause 28. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)

Derived from FAR 52.225-13 (FD)

(Applies to all subcontracts.)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Subcontractor shall not acquire, for use in the performance of this subcontract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC’s implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC’s List of Specially Designated Nationals and Blocked Persons at http://www.treas.gov/offices/enforcement/ofac/sdn. More information about these restrictions, as well as updates, is available in the OFAC’s regulations at 31 CFR Chapter V and/or on OFAC’s website at http://www.treas.gov/offices/enforcement/ofac.

(c) The Subcontractor shall insert this clause, including this paragraph (c), in all lower-tier subcontracts.

Clause 29. FEDERAL, STATE, AND LOCAL TAXES (APR 2003)

Derived from FAR 52.229-3

(Applies to fixed price subcontracts exceeding $100,000.)

(a) Definitions, as used in this clause—

(1) “After-imposed Federal tax” means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the subcontract date but whose exemption was later revoked or reduced during the subcontract

period, on the transactions or property covered by this subcontract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the subcontract date. It does not include social security tax or other employment taxes.

(2) "After-relieved Federal tax" means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this subcontract, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

(3) "All applicable Federal, State, and local taxes and duties" means all taxes and duties, in effect on the subcontract date, that the taxing authority is imposing and collecting on the transactions or property covered by this subcontract.

(4) "Subcontract date" means the date set for bid opening or, if this is a negotiated subcontract or a modification, the effective date of this subcontract or modification.

(5) "Local taxes" includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the subcontract is performed wholly or partly in any of those areas.

(b) The subcontract price includes all applicable Federal, State, and local taxes and duties.

(c) The subcontract price shall be increased by the amount of any after-imposed Federal tax, provided the Subcontractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the subcontract price, as a contingency reserve or otherwise.

(d) The subcontract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The subcontract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Subcontractor is required to pay or bear, or does not obtain a refund of, through the Subcontractor's fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator.

(f) No adjustment shall be made in the subcontract price under this clause unless the amount of the adjustment exceeds $250.

(g) The Subcontractor shall promptly notify the NREL Subcontract Administrator of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate action as the NREL Subcontract Administrator directs.

(h) The Government through NREL shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Subcontractor requests such evidence and a reasonable basis exists to sustain the exemption.

Clause 30. TAXES—FOREIGN FIXED PRICE SUBCONTRACTS (JUN 2003)

Derived from FAR 52.229-6

(Applies to fixed price subcontracts exceeding $100,000 performed wholly or partly in a foreign country.)

(a) To the extent that this subcontract provides for furnishing supplies or performing services outside the United States and its outlying areas, this clause applies in lieu of any Federal, State, and local taxes clause of the subcontract.

(b) Definitions, as used in this clause—

(1) "Subcontract date" means the date set for bid opening or, if this is a negotiated subcontract or a modification, the effective date of this subcontract or modification.

(2) "Tax and "taxes" include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

(3) "All applicable taxes and duties" means all taxes and duties, in effect on the subcontract date, that the taxing authority is imposing and collecting on the transactions or property covered by this subcontract, pursuant to written ruling or regulation in effect on the subcontract date.

(4) "After-imposed tax" means any new or increased tax or duty, or tax that was exempted or excluded on the subcontract date but whose exemption was later revoked or reduced during the subcontract period, other than excepted tax, on the transactions or property covered by this subcontract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

(5) "After-relieved tax" means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this subcontract, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

(6) Excepted tax" means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this subcontract, or any tax assessed on the Subcontractor's possession of, interest in, or use of property, title to which is in the U.S. Government

(c) Unless otherwise provided in this subcontract, the subcontract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(d) The subcontract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the subcontract price by a provision of this subcontract that the Subcontractor is required to pay or bear, including any interest or penalty, if the Subcontractor states in writing that the subcontract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Subcontractor's fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator or to comply with the provisions of paragraph (I) of this clause.

(e) The subcontract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States/NREL shall be entitled to interest received by the Subcontractor incident to a refund of taxes to

the extent that such interest was earned after the Subcontractor was paid by NREL for such taxes. The Government of the United States/NREL shall be entitled to repayment of any penalty refunded to the Subcontractor to the extent that the penalty was paid by NREL.

(f) The subcontract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the subcontract and that the Subcontractor is required to pay or bear, or does not obtain a refund of, through the Subcontractor's fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator or to comply with the provisions of paragraph (I) of this clause.

(g) No adjustment shall be made in the subcontract price under this clause unless the amount of the adjustment exceeds $250.

(h) If the Subcontractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the subcontract price or was the basis of an increase in the subcontract price, the amount of the reduction shall be paid or credited to the Government of the United States/NREL as the NREL Subcontract Administrator directs.

(i) The Subcontractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, NREL, the Subcontractor, any lower-tier Subcontractor, or the transactions or property covered by this subcontract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(j) The Subcontractor shall promptly notify the NREL Subcontract Administrator of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate action as the NREL Subcontract Administrator directs. The subcontract price shall be equitably adjusted to cover the costs of action taken by the Subcontractor at the direction of the NREL Subcontract Administrator, including any interest, penalty, and reasonable attorneys' fees.

Clause 31. ASSIGNMENT OR TRANSFER (SPECIAL) (OCT 2008)

Derived from 52.232-24 (JAN 1986)
(Applies to all subcontracts.)

(a) Except as expressly authorized in writing by the NREL Subcontract Administrator, this subcontract or any interest therein or claim under this subcontract shall not be assigned or transferred by the Subcontractor.

(b) In the event of any authorization of assignment or transfer, the parties shall file written notice together with a true copy of the instrument of the assignment or transfer with the NREL Subcontract Administrator. Such assignment or transfer shall cover all amounts payable under the subcontract not already paid, shall not be made to more than one party, and shall not be subject to further assignment or transfers.

(c) When directed by DOE, the Prime Contractor, may assign or transfer all its rights and obligations under this subcontract to DOE or its designee.

Clause 32. BANKRUPTCY (JUL 1995)
Derived from FAR 52.242-13
(Applies to all subcontracts.)
In the event the Subcontractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Subcontractor agrees to furnish, by certified mail or electronic commerce method authorized by the subcontract, written notification of the bankruptcy to the NREL Subcontract Administrator responsible for administering the subcontract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of other NREL subcontract numbers and Government contract numbers and contracting offices for all NREL/Government subcontracts and contracts against which final payment has not been made. This obligation remains in effect until final payment under this subcontract.

Clause 33. STOP WORK ORDER (AUG 1989) AND ALTERNATE 1 - COST REIMBURSEMENT (APR 1984)
Derived from FAR 52.242-15
(Applies to all subcontracts.)
(Alternate I applies to cost type subcontracts.)

(a) The NREL Subcontract Administrator may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all or any part of the work called for by this subcontract for a period of ninety (90) days after the order is delivered to the Subcontractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a stop-work is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, the NREL Subcontract Administrator shall either—
  (1) Cancel the stop-work order; or
  (2) Terminate the work covered by the order as provided in the Default or the Termination clause of this subcontract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume work. The NREL Subcontract Administrator shall make an equitable adjustment and the subcontract shall be modified, in writing, accordingly, if—
  (1) The stop-work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this subcontract; and
  (2) The Subcontractor asserts its right to the adjustment within thirty (30) days after the end of the period of work stoppage provided that, if the NREL Subcontract Administrator decides the facts justify the action, the NREL Subcontract Administrator may receive and act upon the claim submitted at any time before final payment under this subcontract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of NREL/Government, the NREL Subcontract Administrator shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the NREL Subcontract Administrator shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

ALTERNATE I (APR 1984)

If this clause is inserted in a cost reimbursement subcontract, substitute in paragraph (a) (2) the words, "the Termination clause of this subcontract" for the words "the Default, or the Termination for Convenience of NREL/Government clause of this subcontract." In paragraph (b) substitute the words "an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the subcontract that may be affected" for the words, "an equitable adjustment in the delivery subcontract schedule or subcontract price, or both."

Clause 34. CHANGES - FIXED PRICE (AUG 1987) AND ALTERNATES I THROUGH V (APR 1984)

Derived from FAR 52.243-1
(Applies to fixed price subcontracts.)
(Alternate I applies to subcontracts for services where no supplies are to be furnished--other than architect-engineer or other professional services subcontracts.)
(Alternate II applies to subcontracts for services where supplies are to be furnished--other than architect-engineer services, transportation, or research and development.)
(Alternate III applies to subcontracts for architect-engineer or other professional services.)
(Alternate IV applies to subcontracts for transportation services.)
(Alternate V applies to fixed price research and development subcontracts.)

(a) The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
  (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for NREL/Government, in accordance with the drawings, designs, or specifications.
  (2) Method of shipment or packing or supplies.
  (3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this subcontract, whether or not changed by the order, the NREL Subcontract Administrator shall make an equitable adjustment in the subcontract price, the delivery schedule, or both, and shall modify the subcontract.

(c) The Subcontractor must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order. However, if the NREL Subcontract Administrator decides that the facts justify it, the NREL Subcontract Administrator may receive and act upon a proposal submitted before final payment of the subcontract.

(d) If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, the NREL Subcontract Administrator shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.

ALTERNATE I (APR 1984)
If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, substitute the following paragraph (a) in the basic clause:

(a) The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
  (1) Description of services to be performed.
  (2) Time of performance (i.e., hours of the day, days of the week, etc.).
  (3) Place of performance of the services.

ALTERNATE II (APR 1984)
If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, substitute the following paragraph (a) in the basic clause:

(a) The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
  (1) Description of services to be performed.
  (2) Time of performance (i.e., hours of the day, days of the week, etc.).
  (3) Place of performance of the services.
  (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for NREL/Government, in accordance with the drawings, designs, or specifications.
  (5) Method of shipment or packing of supplies.
  (6) Place of delivery.

ALTERNATE III (APR 1984)
If the requirement is for architect-engineer or other professional services, substitute the following paragraph (a) in the basic clause and add the following paragraph (f):

(a) The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in the services to be performed.
  * * * * *

(f) No services for which an additional cost or fee will be charged by the Subcontractor shall be furnished without the prior written authorization of the NREL Subcontract Administrator.

ALTERNATE IV (APR 1984)
If the requirement is for transportation services, substitute the following paragraph (a) in the basic clause.

(a) The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
  (1) Specifications.
  (2) Work or services.
  (3) Place of origin.
  (4) Place of delivery.
  (5) Tonnage to be shipped.
  (6) Amount of Government furnished property.

ALTERNATE V (APR 1984)
If the requirement is for fixed price research and development, substitute the following subparagraphs (a) (1) and (a) (3) and paragraph (b) in the basic clause.

(a) * * * *

(1) Drawings, designs, or specifications.

* * * * *

(2) Place of inspection, delivery, or acceptance.

(b) If any such change causes an increase or decrease in the cost of, or time required for, performing this subcontract, whether or not changed by the order, the NREL Subcontract Administrator shall make an equitable adjustment in—

(1) The subcontract price, the time of performance, or both; and

(2) Other affected terms of the subcontract, and shall modify the subcontract accordingly.

Clause 35. LOWER-TIER SUBCONTRACTS (JUN 2007) INCORPORATING ALTERNATE I (JUN 2007)

Derived from FAR 52.244-2

(Applies to all cost type subcontracts. Applies to letter, fixed price, time and material, and labor hour subcontracts exceeding $100,000.)

(a) Definitions.

(1) "Approved purchasing system," as used in this clause, means a Subcontractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

(2) "Consent to lower-tier subcontract," as used in this clause, means the NREL Subcontract Administrator's written consent for the Subcontractor to enter into a particular lower-tier subcontract.

(3) "Lower-tier subcontract," as used in this clause, means any contract, as defined in FAR Subpart 2.1, entered into by a lower-tier Subcontractor to furnish supplies or services for performance of the prime contract or a lower-tier subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) When this clause is included in a fixed price type subcontract, consent to lower-tier subcontracts is required only on unpriced subcontract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Subcontractor does not have an approved purchasing system, consent to lower-tier subcontract is required for any lower-tier subcontract that—

(1) Is of the cost reimbursement, time and materials, or labor hour type; or

(2) Is fixed price and exceeds the simplified acquisition threshold ($100,000) or five (5) percent of the total estimated cost of the subcontract.

(d) If the Subcontractor has an approved purchasing system, the Subcontractor nevertheless shall obtain the NREL Subcontract Administrator’s written consent before placing any of the lower-tier subcontracts identified in the subcontract schedule.

(e) (1) The Subcontractor shall notify the NREL Subcontract Administrator reasonably in advance of placing any lower-tier subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:

(i) A description of the supplies or services to be lower-tier subcontracted.

(ii) Identification of the type of lower-tier subcontract to be used.

(iii) Identification of the proposed lower-tier Subcontractor.

(iv) The proposed lower-tier subcontract price.

(v) The lower-tier Subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other subcontract provisions.

(vi) The lower-tier Subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this subcontract.

(vii) A negotiation memorandum reflecting—

(A) The principal elements of the lower-tier subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Subcontractor did not rely on the lower-tier Subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the lower-tier Subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Subcontractor and the lower-tier Subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Subcontractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) If the Subcontractor has an approved purchasing system and consent is not required under paragraph (c) or (d) of this clause, the Subcontractor nevertheless shall notify the NREL Subcontract Administrator reasonably in advance of entering into any:

(i) cost plus-fixed-fee subcontract, or

(ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (e) (1) (i) through (e) (1) (iv) of this clause.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the NREL Subcontract Administrator to any lower-tier subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination—

(1) Of the acceptability of any lower-tier subcontract terms or conditions;

(2) Of the allowability of any cost under this subcontract; or

(3) To relieve the Subcontractor of any responsibility for performing this subcontract.

(g) No lower-tier subcontract or modification thereof placed under this subcontract shall provide for payment on a cost plus a percentage of cost basis, and any fee payable under cost reimbursement type lower-tier subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(h) The Subcontractor shall give the NREL Subcontract Administrator immediate written notice of any action or suit filed and prompt notice of any claim made against the Subcontractor by any lower-tier Subcontractor or vendor that, in the opinion of the

Subcontractor, may result in litigation related in any way to this subcontract, with respect to which the Subcontractor may be entitled to reimbursement from NREL/Government.

(i) NREL/Government reserves the right to review the Subcontractor's purchasing system as set forth in FAR Subpart 44.3.

(j) Paragraphs (d) and (f) of this clause do not apply to any of the lower-tier subcontracts identified in the subcontract schedule that were evaluated during negotiations.

Clause 36. LOWER-TIER SUBCONTRACTS FOR COMMERCIAL ITEMS (SPECIAL) (AUG 2009)

Derived from FAR 52.244-6 (FD)

(Applies to subcontracts for supplies or services other than commercial items.)

(a) Definitions. As used in this clause—

(1) "Commercial item" has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

(2) "Lower-tier Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Subcontractor or lower-tier subcontractors.

(b) To the maximum extent practicable, the Subcontractor shall incorporate, and require its lower-tier subcontractors, commercial items or non-developmental items as components of items to be supplied under this subcontract.

(c) (1) The Subcontractor shall insert the following clauses in lower-tier subcontracts for commercial items:

(i) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(ii) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), if the lower-tier subcontract offers further subcontracting opportunities. If the lower-tier subcontract (except subcontracts to small business concerns) exceeds $550,000 ($1,000,000 for construction of any public facility), the lower-tier subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iii) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(iv) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212(a)).

(v) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(vi) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201). Flow down is required in accordance with paragraph (g) of FAR clause 52.222-39).

(vii) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, et seq.).

(viii) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).

(ix) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), flow

down is required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Subcontractor may flow down to lower-tier subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Subcontractor shall include the terms of this clause, including this paragraph (d), in lower-tier subcontracts awarded under this subcontract.

Clause 37. INSPECTION OF SUPPLIES-FIXED PRICE (AUG 1996)

Derived from FAR 52.246-2

(Applies to fixed price subcontracts for supplies and fixed price subcontracts for services where supplies are furnished.)

(a) Definition.

(1) "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

(b) The Subcontractor shall provide and maintain an inspection system acceptable to NREL covering supplies under this subcontract and shall tender to NREL for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Subcontractor to be in conformity with subcontract requirements. As part of the system, the Subcontractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to NREL/Government during subcontract performance and for as long afterwards as the subcontract requires. NREL/Government may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the subcontract work. The right of review, whether exercised or not, does not relieve the Subcontractor of the obligations under the subcontract.

(c) NREL/Government has the right to inspect and test all supplies called for by the subcontract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. NREL/Government shall perform inspections and tests in a manner that will not unduly delay the work. NREL/Government assumes no contractual obligation to perform any inspection and test for the benefit of the Subcontractor unless specifically set forth elsewhere in this subcontract.

(d) If NREL/Government performs inspection(s) or test(s) on the premises of the Subcontractor or a lower-tier Subcontractor, the Subcontractor shall furnish, and shall require lower-tier Subcontractors to furnish, at no increase in subcontract price, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the subcontract, NREL/Government shall bear the expense of NREL/Government inspections or tests made at other than the Subcontractor's or lower-tier Subcontractor's premises; provided, that in case of rejection, the NREL/Government shall not be liable for any reduction in the value of inspection or test samples.

(e) (1) When supplies are not ready at the time specified by the Subcontractor for inspection(s) or test(s), the NREL Subcontract Administrator may charge to the Subcontractor the additional costs of inspection(s) or test(s).

(2) The NREL Subcontract Administrator may also charge the Subcontractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

(f) NREL has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with subcontract requirements. NREL may reject nonconforming supplies with or without disposition instructions.

(g) The Subcontractor shall remove supplies rejected or required to be corrected. However, the NREL Subcontract Administrator may require or permit correction in place, promptly after notice, by and at the expense of the Subcontractor. The Subcontractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

(h) If the Subcontractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, NREL may either—

(1) By subcontract or otherwise, remove, replace, or correct the supplies and charge the cost to the Subcontractor; or

(2) Terminate the subcontract for default. Unless the Subcontractor corrects or replaces the supplies within the delivery subcontract schedule, the NREL Subcontract Administrator may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

(i) (1) If this subcontract provides for the performance of quality assurance at source, and if requested by NREL/Government, the Subcontractor shall furnish advance notification of the time—

(i) When Subcontractor inspection or tests will be performed in accordance with the terms and conditions of the subcontract; and

(ii) When the supplies will be ready for inspection.

(2) NREL/Government’s request shall specify the period and method of the advance notification and the NREL/Government representative to whom it shall be furnished. Requests shall not require more than two (2) workdays of advance notification if NREL/Government representative is in residence in the Subcontractor's plant, nor more than seven (7) workdays in other instances.

(j) NREL shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the subcontract. NREL's failure to inspect and accept or reject the supplies shall not relieve the Subcontractor from responsibility, nor impose liability on NREL/Government, for nonconforming supplies.

(k) Inspections and tests by NREL/Government do not relieve the Subcontractor of responsibility for defects or other failures to meet subcontract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the subcontract.

(l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, NREL/Government, in addition to any other rights and remedies provided by law, or under other provisions of this subcontract, shall have the right to require the Subcontractor—

(1) To correct or replace the defective or nonconforming supplies at the original point of delivery or at the Subcontractor's plant at the NREL Subcontract Administrator's election, at no increase in subcontract price, and in accordance with a reasonable delivery schedule as may be agreed upon between the Subcontractor and the NREL Subcontract Administrator;

provided, that the NREL Subcontract Administrator may require a reduction in subcontract price if the Subcontractor fails to meet such delivery schedule; or

(2) Within a reasonable time after receipt by the Subcontractor of notice of defects or nonconformance, to repay such portion of the subcontract as is equitable under the circumstances if the NREL Subcontract Administrator elects not to require correction or replacement. When supplies are returned to the Subcontractor, the Subcontractor shall bear the transportation cost from the original point of delivery to the Subcontractor's plant and return to the original point when that point is not the Subcontractor's plant. If the Subcontractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of ten (10) days (or such longer period as the NREL Subcontract Administrator may authorize in writing) after receipt of notice from the NREL Subcontract Administrator specifying such failure, NREL shall have the right by subcontract or otherwise to replace or correct such supplies and charge to the Subcontractor the cost occasioned NREL thereby.

Clause 38. INSPECTION OF SERVICES-FIXED PRICE (AUG 1996)

Derived from FAR 52.246-4

(Applies to fixed price subcontracts for services and fixed price subcontracts for supplies where services are furnished.)

(a) Definition.

(1) "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Subcontractor shall provide and maintain an inspection system acceptable to NREL covering the services under this subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to NREL/Government during subcontract performance and for as long afterwards as the subcontract requires.

(c) NREL/Government has the right to inspect and test all services called for by the subcontract, to the extent practicable at all times and places during the term of the subcontract. NREL/Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If NREL/Government performs inspections or tests on the premises of the Subcontractor or a lower-tier Subcontractor, the Subcontractor shall furnish, and shall require lower-tier Subcontractors to furnish, at no increase in subcontract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform to subcontract requirements, NREL may require the Subcontractor to perform the services again in conformity with subcontract requirements, at no increase in subcontract amount. When the defects in services cannot be corrected by reperformance, NREL may—

(1) Require the Subcontractor to take necessary action to ensure that future performance conforms to subcontract requirements; and

(2) Reduce the subcontract price to reflect the reduced value of the services performed.

(f) If the Subcontractor fails to promptly perform the service(s) again or to take the necessary action to ensure future performance in conformity with subcontract requirements, NREL may—
  (1) By subcontract or otherwise, perform the services and charge to the Subcontractor any cost incurred by NREL that is directly related to the performance of such service; or
  (2) Terminate the subcontract for default.

Clause 39. COMMERCIAL BILL OF LADING NOTATIONS (SPECIAL) (OCT 2009)
Derived from FAR 52.247-1 (FEB 2006) (FD)
(Applies to all cost reimbursement subcontracts where transportation is a direct charge to the subcontract.) (Applies to all fixed price subcontracts where direct and actual transportation cost is a separate item in the invoice (e.g. F.O.B. origin) and not included in the delivered price (e.g. F.O.B. destination).
When the NREL Subcontract Administrator authorizes supplies to be shipped on a commercial bill of lading and the Subcontractor will be reimbursed these transportation costs as direct allowable costs, the Subcontractor shall ensure before shipment is made that the commercial shipping documents are annotated with the following notation:

> "Transportation is for the U.S. Department of Energy, acting through its National Renewable Energy Laboratory (NREL) and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by NREL on behalf of the Government pursuant to cost reimbursement contract No. DE-AC36-08GO28308. This may be confirmed by contacting the DOE, Golden Field Office, 1617 Cole Blvd, Golden, CO 80401."

Clause 40. PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003)
Derived from FAR 52.247-63 (FD)
(Applies to subcontracts that involve international air transportation.)

(a) Definitions. As used in this clause—
  (1) "International air transportation," means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
  (2) "United States" means the 50 States, the District of Columbia, and outlying areas.
  (3) "U.S.-flag air carrier," means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and Subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) If available, the Subcontractor, in performing work under this subcontract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

(d) In the event that the Subcontractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Subcontractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers
International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [State reasons].

Clause 41. PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006)

Derived from FAR 52.247-64 (FD)
(Applies to subcontracts that involve ocean transportation of supplies subject to the Cargo Preference Act of 1954.)

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. App. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—

(1) Acquired for a U.S. Government agency account;

(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Subcontractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this subcontract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) of this clause, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c) (1) The Subcontractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both—

(i) The NREL Subcontract Administrator, and

(ii) The Office of Cargo Preference
Maritime Administration (MAR-590)
400 Seventh Street, SW
Washington, DC 20590
Lower-tier Subcontractor bills of lading shall be submitted through the Subcontractor.

(2) The Subcontractor shall furnish these bill of lading copies

(i) Within twenty (20) working days of the date of loading for shipments originating in the United States, or

(ii) Within thirty (30) working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

(A) Sponsoring U.S. Government agency
(B) Name of vessel
(C) Vessel flag of registry
(D) Date of loading
(E) Port of loading
(F) Port of final discharge
(G) Description of commodity
(H) Gross weight in pounds and cubic feet if available, and
(I) Total ocean freight revenue in U.S. dollars.

(d) The Subcontractor shall insert the substance of this clause, including this paragraph (d), in all lower-tier subcontracts or purchase orders under this subcontract, except those described in paragraph (e)(4).

(e) The requirement in paragraph (a) does not apply to—

(1) Cargoes carried in vessels as required or authorized by law or treaty;

(2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);

(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and

(4) Lower-tier subcontracts or purchase orders for the acquisition of commercial items unless—

(i) This subcontract is—

(A) A subcontract or agreement for ocean transportation services; or
(B) A construction subcontract; or

(ii) The supplies being transported are—

(A) Items the Subcontractor is reselling or distributing to the NREL/Government without adding value generally, the Subcontractor does not add value to the items when it lower-tier subcontracts items for f.o.b. destination shipment); or

(B) Shipped in direct support of U.S. military—

(1) Contingency operations;
(2) Exercises; or
(3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from:

Office of Costs and Rates
Maritime Administration
400 Seventh Street, SW
Washington DC 20590
Phone: (202) 366-4610

Clause 42. TERMINATION FOR CONVENIENCE OF NREL/GOVERNMENT (FIXED PRICE) (SHORT FORM) (APR 1984)

Derived from FAR 52.249-1 (FD)

(Applies to fixed price subcontracts of $100,000 or less, except subcontracts for research and development work with educational or nonprofit institutions and subcontracts for architect-engineer services.)

The NREL Subcontract Administrator, by written notice, may terminate this subcontract, in whole or in part, when it is in NREL's/Government's interest. If this subcontract is terminated, the rights, duties, and obligations of the parties, including compensation to the Subcontractor, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this subcontract.

Clause 43. TERMINATION FOR CONVENIENCE OF NREL/GOVERNMENT (FIXED PRICE) AND ALTERNATE I (CONSTRUCTION) (SPECIAL) (OCT 2008)

Derived from FAR 52.249-2 (MAY 2004) and Alternate I (SEP 1996) (FD)

(Applies to fixed price subcontracts exceeding $100,000, except subcontracts for research and development work with educational or nonprofit institutions and subcontracts for architect-engineer services.) (Alternate I applies to fixed price construction subcontracts exceeding $100,000.)

(a) NREL may terminate performance of work under this subcontract in whole or, from time to time, in part if the NREL Subcontract Administrator determines that a termination is in NREL's/Government's interest. The NREL Subcontract Administrator shall terminate by delivering to the Subcontractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the NREL Subcontract Administrator, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice;

(2) Place no further subcontracts or orders (referred to as lower-tier subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the subcontract;

(3) Terminate all lower-tier subcontracts to the extent they relate to the work terminated;

(4) Assign to NREL, as directed by the NREL Subcontract Administrator, all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated, in which case NREL shall have the right to settle or to pay any termination settlement proposal arising out of those terminations;

(5) With approval or ratification to the extent required by the NREL Subcontract Administrator, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts; the approval or ratification will be final for purposes of this clause;

(6) As directed by the NREL Subcontract Administrator, transfer title to the Government and deliver to NREL—

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and

(ii) The completed or partially completed plans, drawings, information, and other property that, if the subcontract had been completed, would be required to be furnished to NREL.

(7) Complete performance of the work not terminated;

(8) Take any action that may be necessary, or that the NREL Subcontract Administrator may direct, for the protection and preservation of the property related to this subcontract that is in the possession of the Subcontractor and in which the Government has or may acquire an interest; and

(9) Use its best efforts to sell, as directed or authorized by the Government through the NREL Subcontract Administrator, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Subcontractor—

(i) Is not required to extend credit to any purchaser; and

(ii) May acquire the property under the conditions prescribed by, and at prices approved by, the Government acting through the NREL Subcontract Administrator. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by NREL under this subcontract, credited to the price or cost of the work, or paid in any other manner directed by the NREL Subcontract Administrator.

(c) The Subcontractor may submit complete termination inventory subcontract schedules no later than sixty (60) days from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator within this sixty (60)-day period.

(d) [Reserved.]

(e) After termination, the Subcontractor shall submit a final termination settlement proposal to the NREL Subcontract Administrator in the form and with the certification prescribed by the NREL Subcontract Administrator. The Subcontractor shall submit the proposal promptly, but no later than one (1) year from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator upon written request of the Subcontractor within this one (1) year period. However, if the NREL Subcontract Administrator determines that the facts justify it, a termination settlement proposal may be received and acted on after one (1) year or any extension. If the Subcontractor fails to submit the proposal within the time allowed, the NREL Subcontract Administrator may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.

(f) The Subcontractor and the NREL Subcontract Administrator may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g) (3) of this clause, may not exceed the total subcontract price as reduced by—

(1) The amount of payments previously made; and

(2) The subcontract price of work not terminated.

The subcontract shall be amended, and the Subcontractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Subcontractor and the NREL Subcontract Administrator fail to agree on the whole amount to be paid because of the termination of work, the NREL Subcontract Administrator shall pay the Subcontractor the amounts determined by the NREL

Subcontract Administrator as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The subcontract price for completed supplies or services accepted by NREL (or sold or acquired under subparagraph (b) (9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of—

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (g) (1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated lower-tier subcontracts that are properly chargeable to the terminated portion of the subcontract if not included in subdivision (g) (2) (i) of this clause; and

(iii) A sum, as profit on subdivision (g) (2) (i) of this clause, determined by the NREL Subcontract Administrator under 49.202 of the Federal Acquisition Regulation, in effect on the date of this subcontract, to be fair and reasonable. However, if it appears that the Subcontractor would have sustained a loss on the entire subcontract had it been completed, the NREL Subcontract Administrator shall allow no profit under this subdivision (g) (2) (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of lower-tier subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that NREL/Government expressly assumed the risk of loss, the NREL Subcontract Administrator shall exclude from the amounts payable to the Subcontractor under paragraph (g) of this clause, the fair value, as determined by the NREL Subcontract Administrator, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to NREL/Government or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this subcontract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Subcontractor shall have the right of appeal, under the Disputes clause, from any determination made by the NREL Subcontract Administrator under paragraph (e), (g), or (i) of this clause, except that if the Subcontractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (i), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Subcontractor under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Subcontractor under the terminated portion of the subcontract;

(2) Any claim which NREL/Government has against the Subcontractor under this clause; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Subcontractor or sold under the provisions of this clause and not recovered by or credited to NREL/Government.

(l) If the termination is partial, the Subcontractor may file a proposal with the NREL Subcontract Administrator for an equitable adjustment of the price(s) of the continued portion of the subcontract. The NREL Subcontract Administrator shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this clause shall be requested within forty-five (45) days from the effective date of termination unless extended in writing by the NREL Subcontract Administrator.

(m) (1) NREL may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the subcontract, if the NREL Subcontract Administrator believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to NREL/Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by the NREL Subcontract Administrator because of the circumstances.

(n) Unless otherwise provided in this subcontract or by statute, the Subcontractor shall maintain all records and documents relating to the terminated portion of this subcontract for three (3) years after final settlement. This includes all books and other evidence on the Subcontractor's costs and expenses under this subcontract. The Subcontractor shall make these records and documents available to NREL/Government, at the Subcontractor's office, at all reasonable times, without any direct charge. If approved by the NREL Subcontract Administrator, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

ALTERNATE I

If the subcontract is for construction, substitute the following paragraph (g) for paragraph (g) of the basic clause:

(g) If the Subcontractor and NREL Subcontract Administrator fail to agree on the whole amount to be paid the Subcontractor because of the termination of work, the NREL Subcontract Administrator shall pay the Subcontractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For subcontract work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated lower-tier subcontracts that are properly chargeable to the terminated portion of the subcontract if not included in subdivision (g) (1) (i) of this clause; and

(iii) A sum, as profit on subdivision (g) (1) (i) of this clause, determined by the NREL Subcontract Administrator under 49.202 of the Federal Acquisition Regulation, in effect on the date of this subcontract, to be fair and reasonable; however, if it appears that the Subcontractor would have sustained a loss on the entire contract had it been completed, the NREL Subcontract Administrator shall allow no profit under this subdivision (g) (1) (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of lower-tier subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

Clause 44. TERMINATION FOR CONVENIENCE OF NREL/GOVERNMENT (SERVICES) (SHORT FORM) (APR 1984)

Derived from FAR 52.249-4 (FD)

(Applies to fixed-price subcontracts for services.)

The NREL Subcontract Administrator, by written notice, may terminate this subcontract, in whole or in part, when it is in NREL's/Government's best interest. If this subcontract is terminated, NREL shall be liable only for payment under the payment provisions of this subcontract for services rendered before the effective date of termination.

Clause 45. DEFAULT (FIXED PRICE SUPPLY AND SERVICE) (APR 1984)

Derived from FAR 52.249-8

(Applies to fixed price subcontracts for supplies and services.)

(a) (1) NREL may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Subcontractor, terminate this subcontract in whole or in part if the Subcontractor fails to—

(i) Deliver the supplies or to perform the services within the time specified in this subcontract or any extension;

(ii) Make progress, so as to endanger performance of this subcontract (but see subparagraph (a)(2) of this clause); or

(iii) Perform any of the other provisions of this subcontract (but see subparagraph (a) (2) of this clause).

(2) NREL's right to terminate this subcontract under subparagraphs (a) (1) (i), (ii), and (iii) of this clause, may be exercised if the Subcontractor does not cure such failure within ten (10) days (or more if authorized in writing by the NREL Subcontract Administrator) after receipt of the notice from the NREL Subcontract Administrator specifying the failure.

(b) If NREL terminates this subcontract in whole or in part, it may acquire, under the terms and in the manner the NREL Subcontract Administrator considers appropriate,

supplies or services similar to those terminated, and the Subcontractor will be liable to NREL/Government for any excess costs for those supplies or services. However, the Subcontractor shall continue the work not terminated.

(c) Except for defaults of Subcontractors at any tier, the Subcontractor shall not be liable for any excess costs if the failure to perform the subcontract arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes include—

(1) Acts of God or of the public enemy;
(2) Acts of the Government in either its sovereign or contractual capacity;
(3) Fires;
(4) Floods;
(5) Epidemics;
(6) Quarantine restrictions;
(7) Strikes;
(8) Freight embargoes; and
(9) Unusually severe weather.

In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor.

(d) If the failure to perform is caused by the default of a Subcontractor at any tier, and if the cause of the default is beyond the control of both the Subcontractor and lower-tier Subcontractor, and without the fault or negligence of either, the Subcontractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Subcontractor to meet the required delivery subcontract schedule.

(e) If this subcontract is terminated for default, NREL may require the Subcontractor to transfer title to the Government and deliver to NREL, as directed by the NREL Subcontract Administrator, any—

(1) Completed supplies; and
(2) Partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Subcontractor has specifically produced or acquired for the terminated portion of this subcontract. Upon direction of the NREL Subcontract Administrator, the Subcontractor shall also protect and preserve property in its possession in which NREL/Government has an interest.

(f) NREL shall pay subcontract price for completed supplies delivered and accepted. The Subcontractor and NREL Subcontract Administrator shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. NREL may withhold from these amounts any sum the NREL Subcontract Administrator determines to be necessary to protect NREL/Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Subcontract was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of NREL/Government.

(h) The rights and remedies of NREL/Government in this clause are in addition to any other rights and remedies provided by law or under this subcontract.

Clause 46. SENSITIVE FOREIGN NATIONS CONTROLS (SPECIAL) (OCT 2009)
Derived from (DEAR 952.204-71) (FD)
(Applies to all subcontracts.)

(a) In connection with any activities in the performance of this subcontract, the Subcontractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements of the Department of Energy, under DOE Order 142.3 or superseded directives, relating to those countries, which have been identified by DOE as sensitive foreign nations. The Subcontractor shall have the right to terminate its performance under this subcontract upon at least sixty (60) days prior written notice to the NREL Subcontract Administrator if the Subcontractor determines that it is unable, without substantially interfering with its polices or without adversely impacting its performance to continue performance of the work under this subcontract as a result of such notification. If the Subcontractor elects to terminate performance, the provisions of this subcontract regarding termination for the convenience of the Government shall apply.

(b) The provisions of this clause shall be included in any lower-tier subcontracts.

Clause 47. PUBLIC AFFAIRS (SPECIAL) (OCT 2008)
Derived from DEAR 952.204-75
(Applies to subcontracts where the Subcontractor will release unclassified information related to NREL/DOE policies, programs, and activities.)

(a) The Subcontractor must cooperate with NREL in releasing general, non-technical information concerning the existence of this subcontract, the identity of the parties, and the character and scope of the Subcontractor's effort to the public and news media, including but not limited to NREL/DOE policies, programs, and activities. The responsibilities under this clause must be accomplished through coordination with the NREL Subcontract Administrator and appropriate NREL public affairs personnel prior to the release of general, non-technical information.

(b) The Subcontractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of general, non-technical information regarding NREL/DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.

(c) The Subcontractor's internal procedures must ensure that all releases of general, non-technical information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Subcontractor's organization.

(d) The Subcontractor must comply with the NREL Subcontract Administrator's direction for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.

(e) Unless prohibited by law, the Subcontractor must notify the NREL Subcontract Administrator and appropriate NREL public affairs personnel of communications or contacts with Members of Congress relating to the effort performed under the subcontract.

(f) The Subcontractor must notify the NREL Subcontract Administrator and appropriate NREL public affairs personnel of activities or situations that may attract regional or

national news media attention and of non-routine inquiries from national news media relating to the effort performed under the subcontract.

(g) In releases of general, non-technical information to the public and news media, the Subcontractor must fully and accurately identify the Subcontractor's relationship to NREL/DOE and fully and accurately credit NREL/DOE for its role in funding programs and projects resulting in scientific, technical, and other achievements.

(h) The release or publication of information of a scientific or technical nature generated under this subcontract is governed by the provisions of Appendix C of this subcontract.

Clause 48. REFUND OF ROYALTIES (FEB 1995)

Derived from DEAR 952.227-9

(Applies to subcontracts where the Subcontractor will pay royalties for the use of intellectual property, either patent or data related.)

(a) The subcontract price includes certain amounts for royalties payable by the Subcontractor or lower-tier Subcontractors or both, which amounts have been reported to the Department of Energy through NREL.

(b) The term "royalties," as used in this clause, refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this subcontract or any lower-tier subcontract hereunder. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this subcontract or the copying of such data or data that is copyrighted.

(c) The Subcontractor shall furnish to the DOE through NREL, before final payment under this subcontract, a statement of royalties paid or required to be paid in connection with performing this subcontract and lower-tier subcontracts hereunder together with the reasons.

(d) The Subcontractor will be compensated for royalties reported under paragraph (c) of this clause, only to the extent that such royalties were included in the subcontract price and are determined by the DOE to be properly chargeable to the Government and allocable to the subcontract. To the extent that any royalties that are included in the subcontract price are not, in fact, paid by the Subcontractor or are determined by the DOE not to be properly chargeable to the Government and allocable to the subcontract, the subcontract price shall be reduced. Repayment or credit to the Government shall be made as the DOE directs. The approval by DOE of any individual payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.

(e) If, at any time within three (3) years after final payment under this subcontract, the Subcontractor for any reason is relieved in whole or in part from the payment of the royalties included in the final subcontract price as adjusted pursuant to paragraph (d) of this clause, the Subcontractor shall promptly notify the DOE through NREL of that fact and shall reimburse the Government in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds $250.

Clause 49. FOREIGN TRAVEL (SPECIAL) (OCT 2009)
Derived from DEAR 952.247-70 (AUG 2009) and DOE Order 551.1c (FD)
(Applies to all subcontracts where foreign travel is required.)

(a) All foreign travel (one trip or multiple trips), if required in performance of the subcontract, shall be subject to prior written approval from the Department of Energy and an approved Electronic Country Clearance (eCC) from the U.S. Department of State.

(b) Foreign travel is defined as travel from the United States (including Alaska, Hawaii, the Commonwealth of Puerto Rico and the Northern Mariana Islands, and the territories and possessions of the United States) to a foreign country and return, travel between foreign countries, by persons, including foreign nationals, whose salaries or travel expenses or both will ultimately be funded in whole or in part by NREL/DOE. Foreign travel also includes travel funded by non-NREL/DOE sources for which the traveler represents NREL/DOE or conducts business on behalf of NREL/DOE or the U.S. Government.

(c) Request for approval of foreign travel shall be submitted to NREL on an *NREL Request for Approval of Foreign Travel* form minimum of forty-five (45) days prior to the planned departure date.

Clause 50. PRINTING (DEC 2000)
Derived from DEAR 970.5208-1 (FD)
(Applies to all subcontracts where printing is required as this term is defined in Title I of the U.S. Government Printing and Binding Regulations.)

(a) To the extent that duplicating or printing services may be required in the performance of this subcontract, the Subcontractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.

(b) The term “Printing” includes the following processes: Composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this subcontract involving the duplication of less than five thousand (5,000) copies of a single page, or no more than twenty-five thousand (25,000) units in the aggregate of multiple pages, will not be deemed to be printing.

(c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.

(d) The Subcontractor shall include the substance of this clause in all lower-tier subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations).

Clause 51. AFFIRMATIVE PROCUREMENT PROGRAM - SERVICES, SUPPLIES, AND CONSTRUCTION (SPECIAL) (OCT 2008)
Derived from DEAR 970.5223-2 (MAR 2003)
(Applies to subcontracts for services, supplies, and construction.)

(a) Definitions.

(1) “Comprehensive Procurement Guidelines” means the Comprehensive Procurement Guideline (CPG) program that is part of EPA's continuing effort to promote the use of materials recovered from solid waste. Buying recycled-

content products ensures that the materials collected in recycling programs will be used again in the manufacture of new products. Through CPG, EPA designates items that must contain recycled content when purchased by federal, state, and local agencies, or by government contractors and subcontractors using appropriated federal funds. An updated list of designated and proposed products with the accompanying recycled-content recommendations is located at: http://www.epa.gov/osw/conserve/tools/cpg/index.htm

(2) "Environmentally preferable products and services, recycled content products, and biobased products" means those products and services that are listed as a designated or proposed product or service on the EPA CPG and the USDA's comprehensive program for designating biobased products located at http://www.biopreferred.gov/?SMSESSION=NO. These products and services have a lesser or reduced effect on human health and the environment when compared to other products and services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

(b) In the performance of this subcontract, the Subcontractor shall make maximum use of environmentally preferable products and services, recycled content products, and biobased products in accordance with 40 CFR 247.

(c) The Subcontractor shall advise the NREL Subcontract Administrator if it is unable to procure such product because the product is not available--

(1) Competitively within a reasonable time;

(2) At a reasonable price; or

(3) Within subcontract performance requirements.

(d) Data Reports.

Upon request by the NREL Subcontract Administrator, the Subcontractor shall provide for each NREL fiscal year a data report that includes the following information, at a minimum:

(1) Quantities used and prices of CPG listed environmentally preferable products and services, recycled content products, and biobased products.

(2) Quantities used and prices of non-CPG listed environmentally preferable products and services, recycled content products, and biobased products.

Clause 52. PROPERTY (SPECIAL) (OCT 2008)

Derived from DEAR 970.5245-1 (DEC 2000) and Alternate 1 (Dec 2000) (FD)

(Applies to all subcontracts where Government Property is to be furnished to or acquired by the Subcontractors.) (Alternate I applies if the Subcontractor is a non-profit.)

(a) Furnishing of Government property.

NREL/Government reserves the right to furnish any property or services required for the performance of the work under this subcontract.

(b) Title to property.

Except as otherwise provided by the NREL Subcontract Administrator, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Subcontractor, for the cost of which the Subcontractor is entitled to be reimbursed as a direct item of cost under this subcontract, shall pass directly from the vendor to the Government. NREL/Government reserves the right to inspect, and to accept or reject, any item of such property. The Subcontractor shall

make such disposition of rejected items as the NREL Subcontract Administrator shall direct. Title to other property, the cost of which is reimbursable to the Subcontractor under this subcontract, shall pass to and vest in the Government upon:

(1) Issuance for use of such property in the performance of this subcontract;
(2) Commencement of processing or use of such property in the performance of this subcontract; or
(3) Reimbursement of the cost thereof by NREL/Government, whichever first occurs.

Property furnished by NREL/Government and property purchased or furnished by the Subcontractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(c) Identification.

To the extent directed by the NREL Subcontract Administrator, the Subcontractor shall identify Government property coming into the Subcontractor's possession or custody, by marking and segregating in such a way, satisfactory to the NREL Subcontract Administrator, as shall indicate its ownership by the Government.

(d) Disposition.

The Subcontractor shall make such disposition of Government property that has come into the possession or custody of the Subcontractor under this subcontract as the NREL Subcontract Administrator may direct during the progress of the work or upon completion or termination of this subcontract. Upon completion or termination of this subcontract, the Government through NREL shall:

(1) Determine if the equipment is excess:
(2) Make the equipment available to all other Government agencies: and
(3) Conduct an auction to dispose of the equipment if no other agency is interested in the property.

If the above does not result in disposition of the equipment, then the Subcontractor may, upon such terms and conditions as the NREL Subcontract Administrator may approve, sell or exchange such property, or acquire such property at a price agreed upon by the Government through the NREL Subcontract Administrator and the Subcontractor as the fair value thereof. The amount received by the Subcontractor as the result of any disposition, or the agreed fair value of any such property acquired by the Subcontractor, shall be applied in reduction of costs allowable under this subcontract or shall be otherwise credited to account to NREL/Government, as the NREL Subcontract Administrator may direct. Upon completion of the work or the termination of this subcontract, the Subcontractor shall render an accounting, as prescribed by the NREL Subcontract Administrator, of all Government property which had come into the possession or custody of the Subcontractor under this subcontract.

(e) Protection of Government property-management of high-risk property and classified materials.

(1) The Subcontractor shall take all reasonable precautions, and such other actions as may be directed by the NREL Subcontract Administrator, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect Government property in the Subcontractor's possession or custody.

(2) In addition, the Subcontractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management regulations (41 CFR chapter 101), the Department of Energy Property Management regulations (41 CFR chapter 109), and other applicable regulations.

(3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(f) Risk of loss of Government property.

(1) The Subcontractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:

(i) Willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel;

(ii) Failure of the Subcontractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the NREL Subcontract Administrator to safeguard such property under paragraph (e) of this clause; or

(iii) Failure of Subcontractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i) (1) of this clause.

(2) If, after an initial review of the facts, the NREL Subcontract Administrator informs the Subcontractor that there is reason to believe that the loss, destruction of, or damage to the Government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Subcontractor to show that the Subcontractor should not be required to compensate NREL/Government for the loss, destruction, or damage.

(3) In the event that the Subcontractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the Subcontractor's compensation to NREL/Government shall be determined as follows:

(i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Government through the NREL Subcontract Administrator shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Government through the

NREL Subcontract Administrator shall determine the value of such property, consistent with all relevant facts and circumstances.

(iii) The portion of the cost of insurance obtained by the Subcontractor that is allocable to coverage of risks of loss referred to in paragraph (f) (1) of this clause is not allowable.

(g) Steps to be taken in event of loss.

In the event of any damage, destruction, or loss to Government property in the possession or custody of the Subcontractor with a value above the threshold set out in the Subcontractor's approved property management system, the Subcontractor:

(1) Shall immediately inform the NREL Subcontract Administrator of the occasion and extent thereof;

(2) Shall take all reasonable steps to protect the property remaining; and

(3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the NREL Subcontract Administrator.

The Subcontractor shall take no action prejudicial to the right of NREL/Government to recover, therefor, and shall furnish to NREL/Government, on request, all reasonable assistance in obtaining recovery.

(h) Government property for NREL/Government use only.

Government property shall be used only for the performance of this subcontract.

(i) Property Management.

(1) Property Management System.

(i) The Subcontractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the subcontract. The Subcontractor's property management system shall be submitted to the NREL Subcontract Administrator for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management regulations and Department of Energy Property Management regulations, and such directives or instructions which the NREL Subcontract Administrator may from time to time prescribe.

(ii) In order for a property management system to be approved, it must provide for:

(A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

(B) Employee personal responsibility and accountability for Government-owned property;

(C) Full integration with the Subcontractor's other administrative and financial systems; and

(D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.

(iii) Approval of the Subcontractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i) (2) of this clause.

(2) Property Inventory.

(i) Unless otherwise directed by the NREL Subcontract Administrator, the Subcontractor shall, within six (6) months after execution of the subcontract, provide a baseline inventory covering all items of Government property.

(ii) If the Subcontractor is succeeding another Subcontractor in the performance of this subcontract, the Subcontractor shall conduct a joint reconciliation of the property inventory with the predecessor Subcontractor. The Subcontractor agrees to participate in a joint reconciliation of the property inventory at the completion of this subcontract. This information will be used to provide a baseline for the succeeding subcontract as well as information for closeout of the predecessor subcontract.

(j) The term "Subcontractor's managerial personnel," as used in this clause, means the Subcontractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:

(1) All or substantially all of the Subcontractor's business; or

(2) All or substantially all of the Subcontractor's operations at any one facility or separate location to which this subcontract is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this subcontract; or

(4) A separate and complete major construction, alteration, or repair operation in connection with performance of this subcontract; or

(5) A separate and discrete major task or operation in connection with the performance of this subcontract.

(k) The Subcontractor shall include this clause in all cost reimbursable lower-tier subcontracts.

ALTERNATE I (DEC 2000)

If the Subcontractor is a non-profit Subcontractor replace paragraph (j) of the basic clause with the following paragraph (j):

(j) The term "Subcontractor's managerial personnel," as used in this clause, means the Subcontractor's directors, officers, and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of:

(1) The Subcontractor's business; or

(2) The Subcontractor's operations at any one facility or separate location at which this subcontract is being performed; or

(3) The Subcontractor's property system and/or a Major System Acquisition or Major Project as defined in DOE Order 4700.1 (Version in effect on effective date of subcontract).

SECTION II. CLAUSES APPLICABLE TO SUBCONTRACTS THAT REQUIRE PERFORMANCE ON NREL-OPERATED FACILITIES

The following clauses are applicable to subcontracts that require the Subcontractor or its lower-tier subcontractors, or other persons representing the Subcontractor, to perform work on NREL-operated facilities or Government –owned or –leased properties.

Clause 53. SECURITY AND ACCESS REQUIREMENTS (SPECIAL) (JAN 2009)

Derived from NREL 08.100-02

(Applies to all subcontracts where the Subcontractor or lower-tier subcontractors, and their employees, officers, agents, or other persons representing the Subcontractor, will perform work on NREL-operated facilities or government-owned or -leased properties.)

(a) Security requirements.

(1) NREL has established security requirements to govern access onto NREL operated facilities or government-owned or –leased properties (here after "NREL operated facilities") by the Subcontractor's employees (and its lower-tier subcontractors' employees), officers, agents, and any other persons representing the Subcontractor.

(i) The introduction of certain "controlled" commodities and/or activities on the NREL operated facilities is prohibited. Prohibited articles include firearms, explosive devices, incendiary devices, dangerous weapons or materials, controlled substances (illegal drugs), alcoholic beverages, and livestock. NREL operated facilities and DOE-owned or -leased property are closed to all hunting.

(2) As a condition of entry to NREL operated facilities, the Subcontractor agrees to permit NREL Security personnel to search the Subcontractor's employees (and its lower-tier subcontractors' employees) and their officers and agents' vehicles, packages, tool boxes, or other containers for the purpose of preventing prohibited articles to be brought onto NREL operated facilities or to detect or deter the unauthorized removal of Government property from NREL operated facilities.

(3) The Subcontractor is solely responsible for the security of the Subcontractor's employees (and its lower-tier subcontractors' employees) and their officers and agents' materials and equipment at the NREL operated facilities. Any security system the Subcontractor may elect to use (fences, keys, alarms, etc.) must be coordinated with the NREL Technical Monitor.

(4) The Subcontractor is responsible to advise the NREL Technical Monitor promptly of any non-routine events, occurrences, incidents, accidents, etc., particularly in situations involving lost–time accidents and ambulance runs, occurring under this subcontract.

(5) NREL Security reserves the right to revoke site access authorization for any person violating NREL or DOE security policies and procedures.

(b) Access requirements for U.S. citizens.

(1) Access to NREL operated facilities is controlled in accordance with DOE's security requirements. The Subcontractor shall ensure that any of the Subcontractor's employees (and its lower-tier subcontractors' employees) and their officers and agents who will enter onto the NREL operated facilities

are specifically authorized site access under the NREL requirements set forth in the NREL Access Control Policy and Program, including identification, badging, and registration by NREL Security. A two-week advance notice to NREL Security processed through the NREL Subcontract Administrator is required prior to access by U.S. citizens.

(c) Access requirements for persons who are not U.S. citizens.

(1) The Subcontractor shall ensure that any of the Subcontractor's employees (or its lower-tier subcontractors' employees), officers, and agents who will enter onto NREL operated facilities and who are not U.S. citizens meet the requirements set forth in NREL's Foreign National Management Policy and Program, including: (a) appropriate work authorization documentation (i.e. Visa); (b) completion of an NREL Foreign National Data Card; and (c) NREL Manager-level approval.

(2) Foreign Nationals from DOE-designated "Sensitive Countries" will be processed for a federal background check. This process requires a minimum of two (2) weeks. Foreign Nationals from DOE-designated "Terrorist Supporting Countries" will not be allowed. The Subcontractor should contact the NREL Subcontract Administrator to obtain the most current listing of "Sensitive Countries" and "Terrorist Supporting Countries."

(i) It is the Subcontractor's responsibility to obtain and provide all necessary information and documentation to meet NREL, DOE, and federal requirements regarding Subcontractors' employees (or its lower-tier subcontractors' employees), officers', and agents' work authorization and identification to the NREL Technical Monitor and the NREL Subcontract Administrator to meet the appropriate time frames for NREL Security to process and approve the request for access. Any person(s) denied access by NREL Security or DOE shall not be assigned by the Subcontractor to enter onto or perform subcontract work at NREL operated facilities.

(3) Prior to the initiation of a subcontract that requires entry onto NREL operated facilities, the Subcontractor shall provide to the NREL Subcontract Administrator advance notice and necessary evidence (including Visa types and expiration dates) that legally sufficient work permits have been obtained from the U.S. Citizenship and Immigration Services. Further, the Subcontractor is responsible to ensure that such permits are properly maintained for any of the Subcontractor's employees (and its lower-tier subcontractors' employees) and their officers and agents who are not U.S. citizens for the duration of subcontract work at NREL operated facilities.

(4) After the Subcontractor (and its lower-tier subcontractors) has commenced work under the subcontract, the Subcontractor shall provide to the NREL Subcontract Administrator the same advance notice and necessary evidence (including Visa types and expiration dates) for all subsequently assigned individuals who are not U.S. citizens who will enter onto NREL operated facilities.

(d) Access Requirements for all persons.

(1) All persons entering NREL operated facilities must display a valid NREL– or DOE– issued identification badge. The Subcontractor is responsible to coordinate badge requirements for entrance onto NREL operated facilities for all the Subcontractor's employees (and lower-tier subcontractors' employees) and their officers and agents to ensure the display and return of all issued badges.

(2) The Subcontractor is responsible to coordinate with the NREL Technical Monitor all vehicle parking requirements needed to perform the subcontract work on the NREL operated facilities. Vehicle access by Subcontractors and other visitors to the NREL operated facilities is controlled on a 24-hour, 7-day per week basis.

(3) The Subcontractor is cautioned that effective January 1, 2007, the Colorado Revised Statutes (CRS 8-2-122) require employers that transact business in Colorado to comply with employment verification requirements to affirm that the employer has examined the legal work status of newly-hired employees and has retained file copies of the documents required by the Federal Immigration Reform and Control Act (8 USC 1324a).

Clause 54. WORKER SAFETY AND HEALTH REQUIREMENTS (SPECIAL) (FEB 2009)

Derived from NREL 09.100-02

(Applies to all subcontracts where the Subcontractor or lower-tier Subcontractors, and their employees, officers, agents, or other persons representing the Subcontractor, will perform work on NREL-operated facilities or government-owned or -leased properties.)

(a) **THE SUBCONTRACTOR SHALL BE RESPONSIBLE TO ENSURE THAT ALL WORK PERFORMED UNDER THIS SUBCONTRACT (INCLUSIVE OF LOWER-TIER SUBCONTRACTORS) IS PERFORMED IN ACCORDANCE WITH THE DEPARTMENT OF ENERGY'S "WORKER SAFETY AND HEALTH" RULE CODIFIED AT 10 CFR 851. THE SUBCONTRACTOR 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 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, THE SUBCONTRACTOR SHALL ALSO COMPLY WITH THE CLAUSE "INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION" (DEAR 970.5223-1).**

(b) The Subcontractor shall have a structured approach to its worker safety and health program that at a minimum meets the mandatory requirements specified in Appendix A of 10 CFR 851 for implementing any of the following functional areas applicable to the work to be performed: (1) construction safety; (2) fire protection; (3) firearms safety; (4) explosives safety; (5) pressure safety; (6) electrical safety; (7) industrial hygiene; (8) occupational medicine; (9) biological safety; and (10) 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: (1) management responsibilities; (2) worker rights and responsibilities; (3) hazard identification and assessment; (4) hazard prevention and abatement; (5) training and information; and (6) 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. 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 EHSS&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 termination in accordance with the termination or default clauses of the subcontract 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.

Clause 55. DRUG-FREE WORKPLACE (MAY 2001)

Derived from FAR 52.223-6 (FD)
(Applies to all subcontracts where work is to be performed on NREL operated facilities, including Government-owned or - leased property.)

(a) Definitions, as used in this clause,

(1) "Controlled substance," means a controlled substance in subcontract schedules I through V of section 202 of the Controlled Substances Act (21

U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

(2) "Conviction," means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

(3) "Criminal drug statute," means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

(4) "Drug-free workplace," means the NREL-operated site(s) for the performance of work done by the Subcontractor in connection with a specific subcontract where employees of the Subcontractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

(5) "Employee," means an employee of a Subcontractor directly engaged in the performance of work under a NREL subcontract. "Directly engaged" is defined to include all direct cost employees and any other Subcontractor employee who has other than a minimal impact or involvement in subcontract performance.

(6) "Individual," means a Subcontractor that has no more than one employee including the Subcontractor.

(b) The Subcontractor, if other than an individual, shall—within thirty (30) days after award (unless a longer period is agreed to in writing for subcontracts of thirty (30) days or more performance duration), or as soon as possible for subcontracts of less than thirty (30) days performance duration—

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Subcontractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The Subcontractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the Subcontract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this Subcontract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction;

(5) Notify the NREL Subcontract Administrator in writing within ten (10) days after receiving notice under subdivision (b) (4) (ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within thirty (30) days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
  (i) Taking appropriate personnel action against such employee, up to and including termination; or
  (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) though (b)(6) of this clause.

(c) The Subcontractor, if an individual, agrees by award of the subcontract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this subcontract.

(d) In addition to other remedies available to the NREL and the Government, the Subcontractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Subcontractor subject to suspension of subcontract payments, termination of the subcontract or default, and suspension or debarment."

Clause 56. ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (SPECIAL) (OCT 2008)

Derived from FAR 52.223-15 (DEC 2007) (FD)

(Applies to subcontracts where energy consuming products will be delivered, acquired, or furnished for (i) use by the Subcontractor or NREL on DOE-owned or -leased facilities or (ii) construction, renovation, or maintenance of DOE-owned or -leased facilities.)

(a) Definition. As used in this clause—
  (1) "Energy-efficient product"—
    (i) Means a product that—
      Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or
    (ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.
  (2) [Reserved.]

(b) The Subcontractor shall ensure that energy-consuming products are energy efficient products (i.e., ENERGY STAR® products or FEMP-designated products) at the time of subcontract award, for products that are—
  (1) Delivered;
  (2) Acquired by the Subcontractor for use in performing services at a DOE-owned or -leased facility;
  (3) Furnished by the Subcontractor for use by NREL/Government; or
  (4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(c) The requirements of paragraph (b) apply to the Subcontractor (including any lower-tier Subcontractor) unless—

(1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or
(2) Otherwise approved in writing by the NREL Subcontract Administrator.

(d) Information about these products is available for—
(1) ENERGY STAR® at http://www.energystar.gov/products; and
(2) FEMP at http://www1.eere.energy.gov/femp/procurement/eep_requirements.html.

Clause 57. INSURANCE-WORK ON A GOVERNMENT INSTALLATION (SPECIAL) (JAN 2009) AND ALTERNATE I – ARCHITECT/ENGINEER SUBCONTRACTS (JAN 2009)
Derived from FAR 52.228-5 (JAN 1997)
(Applies to all subcontracts, except construction and design-build subcontracts, where the Subcontractor or lower-tier Subcontractors, and their employees, officers, agents, or other persons representing the Subcontractor, will perform work on NREL-operated facilities or Government-owned or -leased properties.)
(Alternate I applies to Architect/Engineer subcontracts.)

(a) The Subcontractor shall, at its own expense, maintain and keep in force during the entire performance period of this subcontract at least the kinds and minimum amounts of insurance required in this clause.

Insurance Type	Bodily Injury		Property Damage
	Each Person	Each Occurrence	
Workers' Compensation	As Required by Law	As Required by Law	N/A
Employer's Liability	$1,000,000.00	$1,000,000.00	N/A
General Liability	$1,000,000.00	$1,000,000.00	$1,000,000.00
Automobile Liability	$1,000,000.00	$1,000,000.00	$1,000,000.00

(b) Before commencing work under this subcontract, the Subcontractor shall obtain the required insurance and shall maintain such required insurance for the entire period of performance of this subcontract. The Subcontractor shall immediately notify the NREL Subcontract Administrator in the event of any termination, cancellation, reduction, or other material change adversely affecting NREL's/Government's interest in the required insurance.

(c) The Subcontractor shall insert the substance of this clause, including this Paragraph (c), in lower-tier subcontracts under this subcontract that require work on a NREL-operated facility, or Government-owned or -leased properties and shall require the lower-tier Subcontractors to provide and maintain the same kinds and minimum amounts of insurance required under this subcontract (exceptions to this requirement will require prior approval from the NREL Subcontract Administrator). The Subcontractor shall maintain a copy of all the lower-tier Subcontractors' proof of required insurance, and shall make copies available to the NREL Subcontract Administrator upon request.

ALTERNATE I
(When the subcontract includes architect/engineer services, replace paragraph (b) with the following paragraph (b) and add the following paragraph (d) to the clause.)

(b) Before commencing work under this subcontract, the Subcontractor shall provide the NREL Subcontract Administrator with written proof that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Alliance for Sustainable Energy, LLC and the Government's interest shall not be effective—

(1) For such period as the laws of the state in which this subcontract is to be performed prescribe; or

(2) Until thirty (30) days after the insurer or the Subcontractor gives written notice to the NREL Subcontract Administrator, whichever period is longer.

The Subcontractor shall immediately notify the NREL Subcontract Administrator in the event of any termination, cancellation, reduction, or other material change adversely affecting the Alliance for Sustainable Energy, LLC and the Government's interest in the required insurance.

(d) The Subcontractor shall, at its own expense, provide and maintain at least the kinds and minimum amounts of Architect/Engineer Professional Liability and Errors and Omissions insurance required in this clause. Architect/Engineer Professional Liability and Errors and Omissions insurance shall be provided and maintained during the entire performance of the subcontract and for five (5) years after the completion of the work. The Subcontractor shall flow down this insurance requirement to its lower-tier subcontractors providing Architect/Engineer professional services. Such flow down to lower-tiers shall not be construed to relieve the Subcontractor from its obligations under this clause.

Insurance Type		
	Per Claim	Aggregate Claims
Architect/Engineer Professional Liability and Errors and Omissions	$1,000,000.00	$1,000,000.00

Clause 58. PROTECTION OF NREL/GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)

Derived from FAR 52.237-2

(Applies to service subcontracts not involving construction to be performed on Government-owned or -leased facility.)

The Subcontractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on NREL/Government installation. If the Subcontractor's failure to use reasonable care causes damage to any of this property, the Subcontractor shall replace or repair the damage at no expense to NREL/Government as the NREL Subcontract Administrator directs. If the Subcontractor fails or refuses to make such repair or replacement, the Subcontractor shall be liable for the cost, which may be deducted from the subcontract price.

Clause 59. WHISTLEBLOWER PROTECTION FOR SUBCONTRACTOR EMPLOYEES (DEC 2000)

Derived from DEAR 952.203-70(FD)

(Applies to subcontracts for work directly related to activities at DOE-owned or -leased facilities.)

(a) The Subcontractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR Part 708 for work performed on behalf of NREL directly related to activities at DOE-owned or -leased sites.

(b) The Subcontractor shall insert or have inserted the substance of this clause, including this paragraph (b) in subcontracts at all tiers, for subcontracts involving work performed on behalf of NREL directly related to activities at DOE-owned or -leased sites.

Clause 60. INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)

Derived from DEAR 970.5223-1(FD)

(Applies to all subcontracts where the Subcontractor or lower-tier subcontractors and their employees, officers, agents, or other persons representing the Subcontractor will perform complex or hazardous work on NREL-operated facilities or Government-owned or –leased properties.)

(a) For the purposes of this clause:

(1) “Safety’ encompasses environment, safety, and health, including pollution prevention and waste minimization; and

(2) ‘Employees” include lower-tier subcontractor employees.

(b) In performing work under this subcontract, the Subcontractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Subcontractor shall exercise a degree of care commensurate with the work and the associated hazards. The Subcontractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the Subcontractor’s work planning and execution processes. The Subcontractor shall, in the performance of work, ensure that:

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Subcontractor and lower-tier subcontractor employees managing or supervising employees performing work.

(2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

(6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis

should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.

(7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by NREL/Government and the Subcontractor. These agreed-upon conditions and requirements are requirements of the subcontract and binding upon the Subcontractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.

(c) The Subcontractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the Subcontractor will:

(1) Define the scope of work;
(2) Identify and analyze hazards associated with the work;
(3) Develop and implement hazard controls;
(4) Perform work within controls; and
(5) Provide feedback on adequacy of controls and continue to improve safety management.

(d) The System shall describe how the Subcontractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to NREL/DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the Subcontractor will measure system effectiveness.

(e) The Subcontractor shall submit to the NREL Subcontract Administrator documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the NREL Subcontract Administrator. Guidance on the preparation, content, review, and approval of the System will be provided by the NREL Subcontract Administrator. On an annual basis, the Subcontractor shall review and update, for NREL's approval, its safety performance objectives, performance measures, and commitments consistent with and in response to NREL/DOE program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the Subcontractor's business processes for work planning, budgeting, authorization, execution, and change control.

(f) The Subcontractor shall comply with, and assist NREL/DOE in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of NREL's Prime Contract entitled "Laws, Regulations, and DOE Directives." The Subcontractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this subcontract.

(g) The Subcontractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Subcontractor fails to provide resolution or, if at any time, the Subcontractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the NREL Subcontract Administrator may issue an order stopping work in whole or in part. Any stop work order issued by the NREL Subcontract Administrator under this clause (or issued by the Subcontractor to a lower–tier Subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of NREL/Government. In the

event that the NREL Subcontract Administrator issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the NREL Subcontract Administrator. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(h) Regardless of the performer of the work, the Subcontractor is responsible for compliance with the ES&H requirements applicable to this subcontract. The Subcontractor is responsible for flowing down the ES&H requirements applicable to this subcontract to subcontracts at any tier to the extent necessary to ensure the Subcontractor's compliance with the requirements.

(i) The Subcontractor shall include a clause substantially the same as this clause in lower-tier subcontracts involving complex or hazardous work on site at an NREL operated facility or Government-owned or-leased properties. Such lower-tier subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the Subcontractor may choose not to require the lower-tier subcontractor to submit a Safety Management System for the Subcontractor's review and approval.