APPENDIX B-6

STANDARD TERMS AND CONDITIONS FOR

(1) TIME AND MATERIALS, AND
(2) LABOR HOUR SUBCONTRACTS

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.

APPENDIX B-6 INDEX

Clause	Title	Page
SECTION I.	**CLAUSES APPLICABLE TO NREL SUBCONTRACTS**	**8**
CLAUSE 1.	**DEFINITIONS (SPECIAL) (OCT 2008)**	**8**
	Derived from FAR 52.202-1 (JUL 2004) as modified by DEAR 902.200 (MAR 2002)	*8*
	(Applies to all subcontracts.)	*8*
CLAUSE 2.	**SUBCONTRACT ISSUES AND DISPUTES (SPECIAL) (SEP 2007)**	**10**
	Derived from NREL 08.100-01	*10*
	(Applies to all subcontracts.)	*10*
CLAUSE 3.	**LOBBYING RESTRICTIONS (ENERGY & WATER ACT) (SPECIAL) (2007)**	**11**
	Derived from NREL 08.100-04	*11*
	(Applies to all subcontracts.)	*11*
CLAUSE 4.	**SUBCONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (SPECIAL) (MAY 2003)**	**11**
	Derived from NREL 08.100-05	*11*
	(Applies to all subcontracts.)	*11*
CLAUSE 5.	**SUBCONTRACTOR QUALITY REPRESENTATIONS (SPECIAL) (MAY 2009)**	**11**
	Derived from NREL 08.100-06	*11*
	(Applies to all subcontracts where items or parts are supplied or delivered.)	*11*
CLAUSE 6.	**RESTRICTIONS ON LOWER-TIER SUBCONTRACTOR SALES TO NREL/GOVERNMENT (SEP 2006)**	**12**
	Derived from FAR 52.203-6 (FD)	*12*
	(Applies to all subcontracts exceeding $100,000.)	*12*
CLAUSE 7.	**ANTI-KICKBACK PROCEDURES (JUL 1995)**	**13**
	Derived from FAR 52.203-7 (FD)	*13*
	(Applies to all subcontracts exceeding $100,000.)	*13*
CLAUSE 8.	**LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007)**	**14**
	Derived from FAR 52.203-12 (FD)	*14*
	(Applies to all subcontracts exceeding $100,000.)	*14*
CLAUSE 9.	**PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (SPECIAL) (MAY 2003)**	**18**
	Derived from FAR 52.204-4 (AUG 2000)	*18*
	(Applies to all subcontracts exceeding $100,000.)	*18*
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)**	**19**
	Derived from FAR 52.209-6 (FD)	*19*
	(Applies to all subcontracts with lower-tier subcontracts exceeding $30,000)	*19*

CLAUSE 11. AUDIT AND RECORDS—NEGOTIATION (MAR 2009)....19
Derived from FAR 52.215-2 (FD) 19
(Applies to all subcontracts exceeding $100,000.)....19
(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.)....19
(Alternate II applies to cost type subcontracts with State and Local Governments, educational institutions, and other nonprofit organizations.)....19

CLAUSE 12. NOTIFICATION OF CHANGE IN OWNERSHIP AND/OR NAME (SPECIAL) (OCT 2008)....21
Derived from FAR 52.215-19 (FD) (OCT 1997)....21
(Applies to all subcontracts.)....21

CLAUSE 13. ALLOWABLE COST AND PAYMENT (SPECIAL)(OCT 2008)....22
Derived from FAR 52.216-7 (DEC 2002)....22
(Applies to all cost type subcontracts.)....22
(For educational institutions, substitute subpart 31.3; For State and Local Governments, substitute subpart 31.6; for other non-profit organizations, substitute subpart 31.7. See FAR 16.307(a).)....22

CLAUSE 14. FIXED FEE (MAR 1997)....25
Derived from FAR 52.216-8....25
(Applies to cost plus fixed fee subcontracts, except construction and design-build subcontracts.)....25

CLAUSE 15. COST SUBCONTRACT—NO FEE (APR 1984)....26
Derived from FAR 52.216-11....26
(Applies to cost type subcontracts with no fee and are not cost sharing.)....26

CLAUSE 16. COST SHARING SUBCONTRACT—NO FEE (APR 1984)....26
Derived from FAR 52.216-12....26
(Applies to cost sharing subcontracts with no fee.)....26

CLAUSE 17. UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)....26
Derived from FAR 52.219-8 (FD)....26
(Applies to all subcontracts exceeding $100,000.)....26

CLAUSE 18. PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)....28
Derived from FAR 52.222-2....28
(Applies to cost type subcontracts exceeding $100,000.)....28

CLAUSE 19. CONVICT LABOR (JUN 2003)....29
Derived from FAR 52.222-3....29
(Applies to all subcontracts.)....29

CLAUSE 20. WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)....29
Derived from FAR 52.222-20 (FD)....29
(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.)....29

CLAUSE 21. PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)..... 30
Derived from FAR 52.222-21 (FD) 30
(Applies to subcontracts where the "Equal Opportunity Clause" is applicable.) .. 30

CLAUSE 22. EQUAL OPPORTUNITY (MAR 2007) 30
Derived from FAR 52.222-26 (FD) 30
(Applies to all subcontracts unless exempt from Executive Order 11246.) (See FAR 22.807(a).)..... 30

CLAUSE 23. EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006) 32
Derived from FAR 52.222-35 (FD) 32
(Applies to all subcontracts exceeding $100,000.) 32

CLAUSE 24. AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998) ... 35
Derived from FAR 52.222-36 (FD) 35
(Applies to all subcontracts exceeding $10,000.) 35

CLAUSE 25. EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006) 36
Derived from FAR 52.222-37 (FD) 36
(Applies to all subcontracts exceeding $100,000.) 36

CLAUSE 26. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)..... 37
Derived from FAR 52.225-13 (FD) 37
(Applies to all subcontracts.) 37

CLAUSE 27. LIMITATION OF COST (APR 1984) 38
Derived from FAR 52.232-20 38
(Applies to fully funded cost type subcontracts.) 38

CLAUSE 28. LIMITATION OF FUNDS (APR 1984)..... 39
Derived from FAR 52.232-22 39
(Applies to incrementally funded cost type subcontracts.) 39

CLAUSE 29. ASSIGNMENT OR TRANSFER (SPECIAL) (OCT 2008)..... 41
Derived from 52.232-24 (JAN 1986)..... 41
(Applies to all subcontracts.) 41

CLAUSE 30. BANKRUPTCY (JUL 1995) 41
Derived from FAR 52.242-13 41
(Applies to all subcontracts.) 41

CLAUSE 31. STOP WORK ORDER (AUG 1989) AND ALTERNATE 1 - COST REIMBURSEMENT (APR 1984)..... 41
Derived from FAR 52.242-15 41
(Applies to all subcontracts.) 41
(Alternate I applies to cost type subcontracts.)..... 41

CLAUSE 32. CHANGES - TIME-AND-MATERIALS OR LABOR-HOURS (SEP 2000)..... 42
Derived from FAR 52.243-3 42
(Applies to time and materials and labor hours and expenses subcontracts.) 42

CLAUSE 33. LOWER-TIER SUBCONTRACTS (JUN 2007) INCORPORATING ALTERNATE I (JUN 2007) 43
Derived from FAR 52.244-2 43
(Applies to all cost type subcontracts. Applies to letter, fixed price, time and material, and labor hour subcontracts exceeding $100,000.) 43

CLAUSE 34. LOWER-TIER SUBCONTRACTS FOR COMMERCIAL ITEMS (SPECIAL) (AUG 2009) 45
Derived from FAR 52.244-6 (FD) 45
(Applies to subcontracts for supplies or services other than commercial items.) 45

CLAUSE 35. INSPECTION OF TIME AND MATERIAL AND LABOR-HOUR (MAY 2001) 46
Derived from FAR 52.246-6 46
(Applies to time and materials and labor hour and expenses subcontracts.) 46

CLAUSE 36. PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003) 48
Derived from FAR 52.247-63 (FD) 48
(Applies to subcontracts that involve international air transportation.) 48

CLAUSE 37. PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006) 48
Derived from FAR 52.247-64 (FD) 48
(Applies to subcontracts that involve ocean transportation of supplies subject to the Cargo Preference Act of 1954.) 48

CLAUSE 38. SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (SPECIAL) (FEB 2006) 50
Derived from FAR 52.247-67 (FEB 2006) (FD) 50
(Applies to all cost type subcontracts and cost type lower-tier subcontracts where reimbursement of shipment costs is a direct charge to the subcontract.) 50

CLAUSE 39. TERMINATION (COST REIMBURSEMENT) (MAY 2004) MODIFIED BY DEAR 970.4905-1 (MAY 2007), ALTERNATE IV (TIME AND MATERIAL OR LABOR HOUR) (SEP 1996) 51
Derived from FAR 52.249-6 (FD) 51
(Applies to cost type subcontracts except research and development subcontracts with an educational or nonprofit institution on a no-fee basis.) 51
(Alternate IV applies to Time and Material and Labor Hour and Expenses subcontracts.) 51

CLAUSE 40. EXCUSABLE DELAYS (APR 1984) 55
Derived from FAR 52.249-14 (FD) 55
(Applies to cost reimbursement subcontracts for supplies, services, construction, and research and development on a fee basis. Also applies to time and materials, labor hour and expenses subcontracts.) 55

CLAUSE 41. SENSITIVE FOREIGN NATIONS CONTROLS (SPECIAL) (MAY 2003) 56
Derived from (DEAR 952.204-71) (FD) 56
(Applies to all subcontracts.) 56

CLAUSE 42. PUBLIC AFFAIRS (SPECIAL) (OCT 2008)..... 57
Derived from DEAR 952.204-75..... 57
(Applies to subcontracts where the Subcontractor will release unclassified information related to NREL/DOE policies, programs, and activities.) 57

CLAUSE 43. REFUND OF ROYALTIES (FEB 1995) 57
Derived from DEAR 952.227-9..... 57
(Applies to subcontracts where the Subcontractor will pay royalties for the use of intellectual property, either patent or data related.) 57

CLAUSE 44. RESEARCH MISCONDUCT (JUL 2005)4..... 58
Derived from DEAR 952.235-71 (FD)..... 58
(Applies to all subcontracts where the Subcontractor will propose, perform, or review research of any kind.)..... 58

CLAUSE 45. FOREIGN TRAVEL (SPECIAL) (OCT 2009)..... 61
Derived from DEAR 952.247-70 (AUG 2009) and DOE Order 551.1c (FD)..... 61
(Applies to all subcontracts where foreign travel is required.) 61

CLAUSE 46. ACCESS TO AND OWNERSHIP OF RECORDS (SPECIAL) (OCT 2008)..... 62
Derived from DEAR 970.5204-3 (JUL 2005) (FD)..... 62
(Applies to Fixed Price type subcontracts exceeding $2M and cost type subcontracts involving complex or hazardous work that is to be performed on a Government-owned or-leased facility and the clause Integration of Environment, Safety, and Health into Work Planning and Execution (48 CFR 970.5223-1), or similar clause, is applicable.)..... 62
(Applies to cost type subcontracts where the DOE Contracting Officer or the NREL Subcontract Administrator has specifically notified the Subcontractor that the subcontract is or involves a critical task related to the Prime Contract.) 62

CLAUSE 47. PRINTING (DEC 2000) 64
Derived from DEAR 970.5208-1 (FD)..... 64
(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.)..... 64

CLAUSE 48. PROPERTY (SPECIAL) (OCT 2008)..... 64
Derived from DEAR 970.5245-1 (DEC 2000) and Alternate 1 (Dec 2000) (FD) . 64
(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.) 64

SECTION II. CLAUSES APPLICABLE TO SUBCONTRACTS THAT REQUIRE PERFORMANCE ON NREL-OPERATED FACILITIES 69

CLAUSE 49. SECURITY AND ACCESS REQUIREMENTS (SPECIAL) (JAN 2009) 69
Derived from NREL 08.100-02 69
(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.)..... 69

CLAUSE 50. WORKER SAFETY AND HEALTH REQUIREMENTS (SPECIAL) (FEB 2009) 71
Derived from NREL 09.100-02 71
(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.) 71

CLAUSE 51. DRUG-FREE WORKPLACE (MAY 2001) 72
Derived from FAR 52.223-6 (FD) 72
(Applies to all subcontracts where work is to be performed on NREL operated facilities, including Government-owned or - leased property.) 72

CLAUSE 52. INSURANCE-WORK ON A GOVERNMENT INSTALLATION (SPECIAL) (JAN 2009) AND ALTERNATE I – ARCHITECT/ENGINEER SUBCONTRACTS (JAN 2009) 74
Derived from FAR 52.228-5 (JAN 1997) 74
(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.) 74
(Alternate I applies to Architect/Engineer subcontracts.) 74

CLAUSE 53. PROTECTION OF NREL/GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984) 76
Derived from FAR 52.237-2 76
(Applies to service subcontracts not involving construction to be performed on Government-owned or -leased facility.) 76

CLAUSE 54. WHISTLEBLOWER PROTECTION FOR SUBCONTRACTOR EMPLOYEES (DEC 2000) 76
Derived from DEAR 952.203-70(FD) 76
(Applies to subcontracts for work directly related to activities at DOE-owned or -leased facilities.) 76

CLAUSE 55. INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000) 76
Derived from DEAR 970.5223-1(FD) 76
(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.) 76

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 2008)

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 (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.

(2) 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. ALLOWABLE COST AND PAYMENT (SPECIAL)(OCT 2008)

Derived from FAR 52.216-7 (DEC 2002)
(Applies to all cost type subcontracts.)
(For educational institutions, substitute subpart 31.3; For State and Local Governments, substitute subpart 31.6; for other non-profit organizations, substitute subpart 31.7. See FAR 16.307(a).)

(a) Invoicing

(1) NREL will make payments to the Subcontractor when requested as work progresses, but (except for small business concerns) not more often than once every two (2) weeks, in amounts determined to be allowable by the NREL Subcontract Administrator in accordance with Federal Acquisition Regulation (FAR) Subpart 31.2 (or appropriate FAR Subpart) in effect on the date of this subcontract and the terms of this subcontract. The Subcontractor may submit to an authorized representative of the NREL Subcontracting Administrator, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this subcontract.

(2) Subcontract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the subcontract are subcontract financing payments, except interim payments if this subcontract contains Alternate I to the clause FAR 52.232-25

(3) The designated payment office will make interim payments for subcontract financing on the _____ (*NREL Subcontract Administrator insert day as prescribed; if not prescribed, insert "30th")* day after the designated billing office receives a proper payment request. In the event that NREL/ Government requires an audit or other review of a specific payment request to ensure compliance with terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) Reimbursing costs.

(1) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only—

(i) Those recorded costs that, at the time of the request for reimbursement, the Subcontractor has paid by cash, check, or other

form of actual payment for items or services purchased directly for the subcontract;

(ii) When the Subcontractor is not delinquent in paying costs of subcontract performance in the ordinary course of business, costs incurred, but not necessarily paid for—

(A) Supplies and services purchased directly for the subcontract provided payments determined due will be made—

(1) In accordance with the terms and conditions of a lower-tier subcontract or invoice; and

(2) Ordinarily within thirty (30) days of the submission of the Subcontractor's payment request to NREL;

(iii) Materials issued from the Subcontractor's inventory and placed in the production process for use on the subcontract;

(iv) Direct labor;

(v) Direct travel;

(vi) Other direct in-house costs; and

(vii) Properly allocable and allowable indirect costs, as shown in the records maintained by the Subcontractor for purposes of obtaining reimbursement under NREL subcontracts.

(2) Accrued costs of Subcontractor contributions under employee pension plans shall be excluded until actually paid unless—

(i) The Subcontractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid thirty (30) days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Subcontractor's indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this subcontract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(4) Any statements in specifications or other documents incorporated in this subcontract by reference designating performance of services or furnishing of materials at the Subcontractor's expense or at no cost to NREL shall be disregarded for purposes of cost reimbursement under this clause.

(c) Small business concerns.

A small business concern may receive more frequent payments than every two (2) weeks.

(d) Final indirect cost rates.

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2) (i) The Subcontractor shall submit an adequate final indirect cost rate proposal to the NREL Subcontract Administrator and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Subcontractor and granted in writing by the NREL Subcontracting Administrator. The Subcontractor shall support its proposal with adequate supporting data.

The proposed rates shall be based on the Subcontractor's actual cost experience for that period. The appropriate NREL representative and the Subcontractor shall establish the final indirect cost rates as promptly as practical after receipt of the Subcontractor's proposal.

(3) The Subcontractor and the appropriate NREL representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify—

(i) The agreed-upon final annual indirect cost rates;

(ii) The bases to which the rates apply;

(iii) The periods for which the rates apply;

(iv) Any specific indirect cost items treated as direct costs in the settlement; and

(v) The affected subcontract and/or lower-tier subcontract, identifying any with advance agreements or special terms and the applicable rates.

The understanding shall not change any monetary ceiling, subcontract obligation, or specific cost allowance or disallowance provided for in this subcontract. The understanding is incorporated into this subcontract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Subcontract Issues and Disputes clause.

(5) Within one hundred-twenty (120) days (or longer period if approved in writing by the NREL Subcontract Administrator) after settlement of the final annual indirect cost rates for all years of a physically complete subcontract, the Subcontractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

(i) If the Subcontractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the NREL Subcontract Administrator may—

(A) Determine the amounts due to the Subcontractor under the subcontract; and

(B) Record this determination in a unilateral modification to the subcontract.

(ii) This determination constitutes the final decision of the NREL Subcontract Administrator in accordance with the Subcontract Issues and Disputes clause.

(e) Billing rates.

Until final annual indirect cost rates are established for any period, NREL shall reimburse the Subcontractor at billing rates established by the NREL Subcontract Administrator or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates—

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) Quick-closeout procedures.

Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) Audit.

At any time or times before final payment, the NREL Subcontract Administrator may have the Subcontractor's invoices or vouchers and statements of cost audited. Any payment may be—

(1) Reduced by amounts found by the NREL Subcontract Administrator not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

(h) Final payment.

(1) Upon approval of a completion invoice or voucher submitted by the Subcontractor in accordance with paragraph (d)(5) of this clause, and upon the Subcontractor's compliance with all terms of this subcontract, NREL shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Subcontractor shall pay to NREL any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Subcontractor or any assignee under this subcontract, to the extent that those amounts are properly allocable to costs for which the Subcontractor has been reimbursed by NREL. Reasonable expenses incurred by the Subcontractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the NREL Subcontract Administrator. Before final payment under this subcontract, the Subcontractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—

(i) An assignment to NREL/Government, in form and substance satisfactory to the NREL Subcontract Administrator, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Subcontractor has been reimbursed by NREL under this subcontract; and

(ii) A release discharging NREL, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this subcontract, except—

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Subcontractor to third parties arising out of the performance of this subcontract; provided, that the claims are not known to the Subcontractor on the date of the execution of the release, and that the Subcontractor gives notice of the claims in writing to the NREL Subcontract Administrator within six (6) years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Subcontractor under the patent clauses of this subcontract, excluding, however, any expenses arising from the Subcontractor's indemnification of NREL/Government against patent liability.

Clause 14. FIXED FEE (MAR 1997)

Derived from FAR 52.216-8

(Applies to cost plus fixed fee subcontracts, except construction and design-build subcontracts.)

(a) NREL shall pay the Subcontractor for performing this subcontract the fixed fee specified in the subcontract schedule.

(b) Payment of the fixed fee shall be made as specified in the subcontract schedule; provided, that after payment of eighty-five (85) percent of the fixed fee, the NREL Subcontract Administrator may withhold further payment of fee until a reserve is set aside in an amount that the NREL Subcontract Administrator considers necessary to protect NREL's/Government's interest. This reserve shall not exceed fifteen (15) percent of the total fixed fee or $100,000, whichever is less. The NREL Subcontract Administrator shall release seventy-five (75) percent of all fee withholds under this subcontract after receipt of the certified final indirect cost rates proposal covering the year of physical completion of this subcontract, provided the Subcontractor has satisfied all other subcontract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The NREL Subcontract Administrator may release up to ninety (90) percent of the fee withholds under this subcontract based on the Subcontractor's past performance related to the submission and settlement of final indirect cost rate proposals.

Clause 15. COST SUBCONTRACT—NO FEE (APR 1984)

Derived from FAR 52.216-11

(Applies to cost type subcontracts with no fee and are not cost sharing.)

(a) NREL shall not pay the Subcontractor a fee for performing this subcontract.

(b) After payment of eighty (80) percent of the total estimated cost shown in the subcontract schedule, the NREL Subcontract Administrator may withhold further payment of allowable cost until a reserve is set aside in an amount that the NREL Subcontract Administrator considers necessary to protect NREL's/Government's interest. This reserve shall not exceed one (1) percent of the total estimated cost shown in the subcontract schedule or $100,000, whichever is less.

Clause 16. COST SHARING SUBCONTRACT—NO FEE (APR 1984)

Derived from FAR 52.216-12

(Applies to cost sharing subcontracts with no fee.)

(a) NREL shall not pay to the Subcontractor a fee for performing this subcontract.

(b) After paying eighty (80) percent of NREL's share of the total estimated cost of performance shown in the subcontract schedule, the NREL Subcontract Administrator may withhold further payment of allowable cost until a reserve is set aside in an amount that the NREL Subcontract Administrator considers necessary to protect NREL's/Government's interest. This reserve shall not exceed one (1) percent of NREL's share of the total estimated cost shown in the subcontract schedule or $100,000, whichever is less.

Clause 17. 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 18. PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)

Derived from FAR 52.222-2

(Applies to cost type subcontracts exceeding $100,000.)

(a) The use of overtime is authorized under this subcontract if the overtime premium does not exceed zero (0) or the overtime premium is paid for work—

(1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(2) By indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or

(4) That will result in lower overall costs to NREL/Government.

(b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall—

(1) Identify the work unit e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the NREL Subcontract Administrator to evaluate the necessity for the overtime;

(2) Demonstrate the effect that denial of the request will have on the subcontract delivery or performance schedule;

(3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government subcontracts/contracts, together with identification of each affected subcontract/contract; and

(4) Provide reasons why the required work cannot be performed by using multi-shift operations or by employing additional personnel.

Clause 19. 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 20. 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 21. 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 22. 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 to be provided by the NREL Subcontract Administrator 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 to be provided by the NREL Subcontract Administrator 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 23. 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 24. 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 25. 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 26. 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 27. LIMITATION OF COST (APR 1984)

Derived from FAR 52.232-20

(Applies to fully funded cost type subcontracts.)

(a) The parties estimate that performance of this subcontract, exclusive of any fee, will not cost NREL more than—

(1) The estimated cost specified in the subcontract schedule or,

(2) If this is a cost sharing subcontract, NREL's share of the estimated cost specified in the subcontract schedule.

The Subcontractor agrees to use its best efforts to perform the work specified in the subcontract schedule and all obligations under this subcontract within the estimated cost, which, if this is a cost sharing subcontract, includes both NREL's and the Subcontractor's share of the cost.

(b) The Subcontractor shall notify the NREL Subcontract Administrator in writing whenever it has reason to believe that—

(1) The costs the Subcontractor expects to incur under this subcontract in the next sixty (60) days, when added to all costs previously incurred, will exceed seventy-five (75) percent of the estimated cost specified in the subcontract schedule; or

(2) The total cost for the performance of this subcontract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Subcontractor shall provide the NREL Subcontract Administrator a revised estimate of the total cost of performing this subcontract.

(d) Except as required by other provisions of this subcontract, specifically citing and stated to be an exception to this clause—

(1) NREL is not obligated to reimburse the Subcontractor for cost incurred in excess of—

(i) The estimated cost specified in the subcontract schedule or,

(ii) If this is a cost sharing subcontract, the estimated cost to NREL specified in the subcontract schedule; and

(2) The Subcontractor is not obligated to continue performance under this subcontract (including actions under the Termination clause of this subcontract) or otherwise incur costs in excess of the estimated cost specified in the subcontract schedule, until the NREL Subcontract Administrator—

(i) Notifies the Subcontractor in writing that the estimated cost has been increased and

(ii) Provides a revised estimated total cost of performing this subcontract. If this is a cost sharing subcontract, the increase shall be allocated in accordance with the formula specified in the subcontract schedule.

(e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than the NREL Subcontract Administrator, shall affect this subcontract's estimated cost to NREL. In the absence of the specified notice, NREL is not obligated to reimburse the Subcontractor for any costs in excess of the estimated cost or, if this is a cost sharing subcontract, for any

costs in excess of the estimated cost to NREL specified in the subcontract schedule, whether those excess costs were incurred during the course of the subcontract or as a result of termination.

(f) If the estimated cost specified in the subcontract schedule is increased, any costs the Subcontractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the NREL Subcontract Administrator issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the estimated cost to NREL specified in the subcontract schedule, unless they contain a statement increasing the estimated cost.

(h) If this subcontract is terminated or the estimated cost is not increased, NREL and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the subcontract, based upon the costs incurred by each.

Clause 28. LIMITATION OF FUNDS (APR 1984)

Derived from FAR 52.232-22

(Applies to incrementally funded cost type subcontracts.)

(a) The parties estimate that performance of this subcontract will not cost NREL more than—

(1) The estimated cost specified in the subcontract schedule; or,

(2) If this is a cost sharing subcontract, NREL's share of the estimated cost specified in the subcontract schedule.

The Subcontractor agrees to use its best efforts to perform the work specified in the subcontract schedule and all obligations under this subcontract within the estimated cost, which, if this is a cost sharing subcontract, includes both NREL's and the Subcontractor's share of the cost.

(b) The subcontract schedule specifies the amount presently available for payment by NREL and allotted to this subcontract, the items covered, NREL's share of the cost if this is a cost sharing subcontract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that NREL will allot additional funds incrementally to the subcontract up to the full estimated cost to NREL specified in the subcontract schedule, exclusive of any fee. The Subcontractor agrees to perform, or have performed, work on the subcontract up to the point at which the total amount paid and payable by NREL under the subcontract approximates but does not exceed the total amount actually allotted by NREL to the subcontract.

(c) The Subcontractor shall notify the NREL Subcontract Administrator in writing whenever it has reason to believe that the costs it expects to incur under this subcontract in the next sixty (60) days, when added to all costs previously incurred, will exceed seventy-five (75) percent of—

(1) The total amount so far allotted to the subcontract by NREL; or,

(2) If this is a cost sharing subcontract, the amount then allotted to the subcontract by NREL plus the Subcontractor's corresponding share.

The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the subcontract schedule.

(d) Sixty (60) days before the end of the period specified in the subcontract schedule, the Subcontractor shall notify the NREL Subcontract Administrator in writing of the estimated amount of additional funds, if any, required to continue timely performance

(e) If, after notification, additional funds are not allotted by the end of the period specified in the subcontract schedule or another agreed upon date, upon the Subcontractor's written request the NREL Subcontract Administrator will terminate this subcontract on that date in accordance with the provisions of the Termination clause of this subcontract. If the Subcontractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the NREL Subcontract Administrator may terminate this subcontract on that later date.

(f) Except as required by other provisions of this subcontract, specifically citing and stated to be an exception to this clause—

(1) NREL is not obligated to reimburse the Subcontractor for costs incurred in excess of the total amount allotted by NREL to this subcontract; and

(2) The Subcontractor is not obligated to continue performance under this subcontract (including actions under the Termination clause of this subcontract) or otherwise incur costs in excess of—

(i) The amount then allotted to the subcontract by NREL; or

(ii) If this is a cost sharing subcontract, the amount then allotted by NREL to the subcontract plus the Subcontractor's corresponding share.

Until the NREL Subcontract Administrator notifies the Subcontractor in writing that the amount allotted by NREL has been increased and specifies an increased amount, which shall then constitute the total amount allotted by NREL to this subcontract.

(g) The estimated cost shall be increased to the extent that—

(1) The amount allotted by NREL; or,

(2) If this is a cost sharing subcontract, the amount then allotted by NREL to the subcontract plus the Subcontractor's corresponding share, exceeds the estimated cost specified in the subcontract schedule.

If this is a cost sharing subcontract, the increase shall be allocated in accordance with the formula specified in the subcontract schedule.

(h) No notice, communication, or representation in any form other than that specified in paragraph (f)(2) above, or from any person other than the NREL Subcontract Administrator, shall affect the amount allotted by NREL to this subcontract. In the absence of the specified notice, NREL is not obligated to reimburse the Subcontractor for any costs in excess of the total amount allotted by NREL to this subcontract, whether incurred during the course of the subcontract or as a result of termination.

(i) When and to the extent that the amount allotted by NREL to the subcontract is increased, any costs the Subcontractor incurs before the increase that are in excess of—

(1) The amount previously allotted by NREL; or,

(2) If this is a cost sharing subcontract, the amount previously allotted by NREL to the subcontract plus the Subcontractor's corresponding share.

Shall be allowable to the same extent as if incurred afterward, unless the NREL Subcontract Administrator issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by NREL specified in the subcontract schedule, unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause shall affect the right of NREL to terminate this subcontract. If this subcontract is terminated, NREL and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the subcontract, based upon the costs incurred by each.

(l) If NREL does not allot sufficient funds to allow completion of the work, the Subcontractor is entitled to a percentage of the fee specified in the subcontract schedule equaling the percentage of completion of the work contemplated by this subcontract.

Clause 29. 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 30. 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 subcontrtacts/contracts against which final payment has not been made. This obligation remains in effect until final payment under this subcontract.

Clause 31. 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 32. CHANGES - TIME-AND-MATERIALS OR LABOR-HOURS (SEP 2000)

Derived from FAR 52.243-3

(Applies to time and materials and labor hours and expenses 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) 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 or 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.
(7) Amount of NREL/Government-furnished property.

(b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this subcontract, whether or not changed by the order, or otherwise affects any other terms and conditions of this subcontract, the NREL Subcontract Administrator shall make an equitable adjustment in any one or more of the following and will modify the subcontract accordingly:
(1) Ceiling price.
(2) Hourly rates.
(3) Delivery subcontract schedule.
(4) Other affected terms.

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

Clause 33. 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 34. 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 35. INSPECTION OF TIME AND MATERIAL AND LABOR-HOUR (MAY 2001)

Derived from FAR 52.246-6

(Applies to time and materials and labor hour and expenses subcontracts.)

(a) Definitions.

(1) "Subcontractor's managerial personnel," as used in this clause, means any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

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

(ii) All or substantially all of the Subcontractor's operation at any one plant or separate location where the subcontract is being performed; or

(iii) A separate and complete major industrial operation connected with the performance of this subcontract.

(2) "Materials," as used in this clause, includes data when the subcontract does not include the Warranty of Data clause.

(b) The Subcontractor shall provide and maintain an inspection system acceptable to NREL/Government covering the material, fabricating methods, work, and services under this subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to the 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 materials furnished and services performed under this subcontract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance.

NREL/Government may also inspect the plant or plants of the Subcontractor or any lower-tier Subcontractor engaged in subcontract performance. NREL/Government shall perform inspections and tests in a manner that will not unduly delay the work.

(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, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise specified in the subcontract, NREL shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted sixty (60) days after the date of delivery, unless accepted earlier.

(f) At any time during subcontract performance, but not later than six (6) months (or such other time as may be specified in the subcontract) after acceptance of the services or materials last delivered under this subcontract, NREL may require the Subcontractor to replace or correct services or materials that at time of delivery failed to meet subcontract requirements. Except as otherwise specified in paragraph (h) of this clause, the cost of replacement or correction shall be determined under the Payments Under Time-and-Materials and Labor-Hour and Expenses Subcontracts clause, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Subcontractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g) (1) If the Subcontractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by NREL), NREL may—

(i) By subcontract or otherwise, perform the replacement or correction, charge to the Subcontractor any increased cost, or deduct such increased cost from any amounts paid or due under this subcontract; or

(ii) Terminate this subcontract for default.

(2) Failure to agree to the amount of increased cost to be charged to the Subcontractor shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) above, NREL may at any time require the Subcontractor to remedy by correction or replacement, without cost to NREL, any failure by the Subcontractor to comply with the requirements of this subcontract, if the failure is due to—

(1) Fraud, lack of good faith, or willful misconduct on the part of the Subcontractor's managerial personnel; or

(2) The conduct of one or more of the Subcontractor's employees selected or retained by the Subcontractor after any of the Subcontractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this subcontract.

(j) The Subcontractor has no obligation or liability under this subcontract to correct or replace materials and services that at time of delivery do not meet subcontract requirements, except as provided in this clause or as may be otherwise specified in the subcontract.

(k) Unless otherwise specified in the subcontract, the Subcontractor's obligation to correct or replace NREL/Government-furnished property shall be governed by the clause pertaining to NREL/Government property.

Clause 36. 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 37. 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 38. SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (SPECIAL) (FEB 2006)

Derived from FAR 52.247-67 (FEB 2006) (FD)
(Applies to all cost type subcontracts and cost type lower-tier subcontracts where reimbursement of shipment costs is a direct charge to the subcontract.)

(a) The Subcontractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid—
  (1) By the Subcontractor under a cost reimbursement subcontract; and
  (2) By a first-tier Subcontractor under a cost reimbursement lower-tier subcontract thereunder.

(b) Cost reimbursement Subcontractors shall only submit for audit those bills of lading with freight shipment charges exceeding $100. Bills under $100 shall be retained on-site by the Subcontractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

(c) Subcontractors shall submit the above referenced transportation documents to the NREL Subcontract Administrator.

Clause 39. TERMINATION (COST REIMBURSEMENT) (MAY 2004) MODIFIED BY DEAR 970.4905-1 (MAY 2007), ALTERNATE IV (TIME AND MATERIAL OR LABOR HOUR) (SEP 1996)

Derived from FAR 52.249-6 (FD)

(Applies to cost type subcontracts except research and development subcontracts with an educational or nonprofit institution on a no-fee basis.)

(Alternate IV applies to Time and Material and Labor Hour and Expenses subcontracts.)

(a) NREL may terminate performance of work under this subcontract in whole or, from time to time, in part, if—

(1) The NREL Subcontract Administrator determines that a termination is in the NREL/Government's interest; or

(2) The Subcontractor defaults in performing this subcontract and fails to cure the default within ten (10) days (unless extended by the NREL Subcontract Administrator) after receiving a notice specifying the default.

(i) "Default," as used in this clause, includes failure to make progress in the work so as to endanger performance.

(b) The NREL Subcontract Administrator shall terminate by delivering to the Subcontractor a Notice of Termination specifying whether termination is for default of the Subcontractor or for convenience of NREL/Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Subcontractor was not in default or that the Subcontractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Subcontractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the NREL/Government.

(c) 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 lower-tier subcontracts or orders (referred to as lower-tier subcontracts in this clause), 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 cost of which would be reimbursable in whole or in part, under this subcontract; approval or ratification will be final for purposes of this clause.

(6) Transfer title to the Government (if not already transferred) and, as directed by the NREL Subcontract Administrator, deliver to the NREL—

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

(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 the NREL; and

(iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this subcontract, the cost of which the Subcontractor has been or will be reimbursed under this subcontract.

(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 NREL/Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the NREL Subcontract Administrator, any property of the types referred to in paragraph (c)(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 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.

(d) The Subcontractor shall submit complete termination inventory subcontract schedules no later than one hundred twenty (120) days from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator upon written request of the Subcontractor within this one hundred twenty (120) day period.

(e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Subcontractor may submit to the NREL Subcontract Administrator a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the NREL Subcontract Administrator. The Subcontractor may request the NREL/Government to remove those items or enter into an agreement for their storage. Within fifteen (15) days, NREL/Government will accept the items and remove them or enter into a storage agreement. The NREL Subcontract Administrator may verify the list upon removal of the items, or if stored, within forty five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.

(f) 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 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.

(g) Subject to paragraph (f) of this clause, the Subcontractor and the NREL Subcontract Administrator may agree on the whole or any part of the amount to be paid (including

an allowance for fee) because of the termination. The subcontract shall be amended, and the Subcontractor paid the agreed amount.

(h) If the Subcontractor and the NREL Subcontract Administrator fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the NREL Subcontract Administrator shall determine, on the basis of information available, the amount, if any, due the Subcontractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this subcontract, not previously paid, for the performance of this subcontract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the NREL Subcontract Administrator; however, the Subcontractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated lower-tier subcontracts that are properly chargeable to the terminated portion of the contract if not included in paragraph (h)(1) of this clause.

(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. If the termination is for default, no amounts for the preparation of the Subcontractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the subcontract, determined as follows:

(i) If the subcontract is terminated for the convenience of the NREL/Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding lower-tier subcontract effort included in lower-tier Subcontractors' termination proposals, less previous payments for fee.

(ii) If the subcontract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by NREL is to the total number of articles (or amount of services) of a like kind required by the subcontract.

(5) If the settlement includes only fee, it will be determined under paragraph (h)(4) of this clause.

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, as supplemented in subpart 970.31 of the Department of Energy 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 (f), (h), or (l) of this clause, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the NREL Subcontract

Administrator has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, NREL shall pay the Subcontractor—

(1) The amount determined by the NREL Subcontract Administrator if there is no right of appeal or if no timely appeal has been taken; or

(2) The amount finally determined on an 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 this subcontract;

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

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

(l) The Subcontractor and NREL Subcontract Administrator must agree to any equitable adjustment in fee for the continued portion of the subcontract when there is a partial termination. The NREL Subcontract Administrator shall amend the subcontract to reflect the agreement.

(m) (1) NREL/Government 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 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) The provisions of this clause relating to fee are inapplicable if this subcontract does not include a fee.

ALTERNATE IV (SEP 1996). IF THE SUBCONTRACT IS A TIME-AND-MATERIAL OR LABOR-HOUR SUBCONTRACT, SUBSTITUTE THE FOLLOWING PARAGRAPHS (h) AND (l) FOR PARAGRAPHS (h) AND (l) OF THE BASIC CLAUSE:

(h) If the Subcontractor and the NREL Subcontract Administrator fail to agree in whole or in part on the amount to be paid because of the termination of work, the NREL Subcontract Administrator shall determine, on the basis of information available, the amount, if any, due the Subcontractor and shall pay the amount determined as follows:

(1) If the termination is for the convenience of NREL/Government, include—

(i) An amount for direct labor hours (as defined in the subcontract schedule) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the subcontract schedule, less any hourly rate payments already made to the Subcontractor;

(ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Subcontractor;

(iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination, if they are reasonably incurred after the effective date, with the approval of or as directed by the NREL Subcontract Administrator; however, the Subcontractor shall discontinue these expenses as rapidly as practicable;

(iv) If not included in subdivision (h)(1)(i), (ii), or (iii) of this clause, 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; and

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

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

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

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

(2) If the termination is for default of the Subcontractor, include the amounts computed under paragraph (h)(1) of this clause but omit—

(i) Any amount for preparation of the Subcontractor's termination settlement proposal; and

(ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by NREL.

* * * * *

(l) If the termination is partial, the Subcontractor may file with the NREL Subcontract Administrator a proposal for an equitable adjustment of price(s) for 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 ninety (90) days from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator.

Clause 40. EXCUSABLE DELAYS (APR 1984)

Derived from FAR 52.249-14 (FD)

(Applies to cost reimbursement subcontracts for supplies, services, construction, and research and development on a fee basis. Also applies to time and materials, labor hour and expenses subcontracts.)

(a) Except for defaults of Subcontractors at any tier, the Subcontractor shall not be in default because of any failure to perform this subcontract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of these causes are—

(1) Acts of God or of the public enemy;

(2) Acts of 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. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a Subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Subcontractor and lower-tier Subcontractor, and without the fault or negligence of either, the Subcontractor shall not be deemed to be in default, unless—
   (1) The lower-tier subcontracted supplies or services were obtainable from other sources;
   (2) The NREL Subcontract Administrator ordered the Subcontractor in writing to purchase these supplies or services from the other source; and
   (3) The Subcontractor failed to comply reasonably with this order.

(c) Upon request of the Subcontractor, the NREL Subcontract Administrator shall ascertain the facts and extent of the failure. If the NREL Subcontract Administrator determines that any failure to perform results from one or more of the causes above, the delivery subcontract schedule shall be revised, subject to the rights of NREL/Government under the termination clause of this subcontract.

Clause 41. SENSITIVE FOREIGN NATIONS CONTROLS (SPECIAL) (MAY 2003)

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 superseding 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 42. 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 43. 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 44. RESEARCH MISCONDUCT (JUL 2005)4

Derived from DEAR 952.235-71 (FD)

(Applies to all subcontracts where the Subcontractor will propose, perform, or review research of any kind.)

(a) The Subcontractor is responsible for maintaining the integrity of research performed pursuant to this subcontract award including the prevention, detection, and remediation of research misconduct as defined by this clause, and the conduct of inquiries, investigations, and adjudication of allegations of research misconduct in accordance with the requirements of this clause.

(b) Unless otherwise instructed by the NREL Subcontract Administrator, the Subcontractor must conduct an initial inquiry into any allegation of research misconduct. If the Subcontractor determines that there is sufficient evidence to proceed to an investigation, it must notify the NREL Subcontract Administrator and, unless otherwise instructed, the Subcontractor must:

(1) Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct

and an identification of appropriate remedies or a determination that no further action is warranted;

(2) Conduct adjudication, if the investigation leads to a finding of research misconduct, by a responsible official who was not involved in the inquiry or investigation and is separated organizationally from the element which conducted the investigation. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.

(3) Inform the NREL Subcontract Administrator if an initial inquiry supports a formal investigation and, if requested by the NREL Subcontract Administrator thereafter, keep the NREL Subcontract Administrator informed of the results of the investigation and any subsequent adjudication. When an investigation is complete, the Subcontractor will forward to the NREL Subcontract Administrator a copy of the evidentiary record, the investigative report, any recommendations made to the Subcontractor's adjudicating official, and the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response (if any).

(c) NREL/DOE may elect to act in lieu of the Subcontractor in conducting an inquiry or investigation into an allegation of research misconduct if the NREL Subcontract Administrator finds that:

(1) The research organization is not prepared to handle the allegation in a manner consistent with this clause;

(2) The allegation involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;

(3) NREL/DOE involvement is necessary to ensure the public health, safety, and security, or to prevent harm to the public interest; or

(4) The allegation involves possible criminal misconduct.

(d) In conducting the activities under paragraphs (b) and (c) of this clause, the Subcontractor and NREL, if it elects to conduct the inquiry or investigation, shall adhere to the following guidelines:

(1) Safeguards for information and subjects of allegations.
The Subcontractor shall provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith to the attention of the Subcontractor without suffering retribution. Safeguards include: protection against retaliation; fair and objective procedures for examining and resolving allegations; and diligence in protecting positions and reputations. The Subcontractor shall also provide the subjects of allegations confidence that their rights are protected and that the mere filing of an allegation of research misconduct will not result in an adverse action. Safeguards include timely written notice regarding substantive allegations against them, a description of the allegation and reasonable access to any evidence submitted to support the allegation or developed in response to an allegation, and notice of any findings of research misconduct.

(2) Objectivity and Expertise.
The Subcontractor shall select individual(s) to inquire, investigate, and adjudicate allegations of research misconduct that have appropriate expertise and have no unresolved conflict of interest. The individual(s) who conduct(s) adjudication must not be the same individual(s) who conducted the inquiry or investigation, and must be separate organizationally from the element that conducted the inquiry or investigation.

(3) Timeliness.

The Subcontractor shall coordinate, inquire, investigate, and adjudicate allegations of research misconduct promptly, but thoroughly. Generally, an investigation should be completed within one hundred twenty (120) days of initiation, and adjudication should be complete within sixty (60) days of receipt of the record of investigation.

(4) Confidentiality.
To the extent possible, consistent with fair and thorough processing of allegations of research misconduct and applicable law and regulation, knowledge about the identity of the subjects of allegations, and informants should be limited to those with a need to know.

(5) Remediation and Sanction.
If the Subcontractor finds that research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process. The Subcontractor must take all necessary corrective actions. Such actions may include, but are not limited to, correcting the research record and as appropriate imposing restrictions, controls, or other parameters on research in process or to be conducted in the future. The Subcontractor must coordinate remedial actions with the NREL Subcontract Administrator. The Subcontractor must also consider whether personnel sanctions are appropriate. Any such sanction must be considered and effected consistent with any applicable personnel laws, policies, and procedures, and shall take into account the seriousness of the misconduct and its impact, whether it was done knowingly or intentionally, and whether it was an isolated event or pattern of conduct.

(e) NREL/DOE reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with the terms and conditions of the award instrument and applicable laws and regulations. However, the Subcontractor's good faith administration of this clause and the effectiveness of its remedial actions and sanctions shall be positive considerations and shall be taken into account as mitigating factors in assessing the need for such actions. If NREL/DOE pursues any such action, it will inform the subject of the action of the outcome and any applicable appeal procedures.

(f) Definitions.

(1) “Adjudication,” as used in this clause, means a formal review of a record of investigation of alleged research misconduct to determine whether and what corrective actions and sanctions should be taken.

(2) “Fabrication,” as used in this clause, means making up data or results and recording or reporting them.

(3) “Falsification,” as used in this clause, means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

(4) “Finding of Research Misconduct,” as used in this clause, means a determination, based on a preponderance of the evidence that research misconduct has occurred. Such a finding requires a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it be knowingly, intentionally, or recklessly committed.

(5) “Inquiry,” as used in this clause, means information gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

(6) “Investigation,” as used in this clause, means the formal examination and evaluation of the relevant facts.

(7) "Plagiarism," as used in this clause, means the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

(8) "Research," as used in this clause, means all basic, applied, and demonstration research in all fields of science, medicine, engineering, and mathematics, including, but not limited to, research in economics, education, linguistics, medicine, psychology, social sciences statistics, and research involving human subjects or animals.

(9) "Research Misconduct," as used in this clause, means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, but does not include honest error or differences of opinion.

(10) "Research Record," as used in this clause, means the record of all data or results that embody the facts resulting from scientists' inquiries, including, but not limited to, research proposals; laboratory records, both physical and electronic; progress reports; abstracts; theses; oral presentations; internal reports; and journal articles.

(g) By executing this subcontract, the Subcontractor provides its assurance that it has established an administrative process for performing an inquiry, mediating if possible, or investigating, and reporting allegations of research misconduct; and that it will comply with its own administrative process and the requirements of 10 CFR part 733 for performing an inquiry, possible mediation, investigation and reporting of research misconduct.

(h) The Subcontractor must insert or have inserted the substance of this clause, including paragraph (g), in subcontracts at all tiers that involve research.

Clause 45. 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 46. ACCESS TO AND OWNERSHIP OF RECORDS (SPECIAL) (OCT 2008)

Derived from DEAR 970.5204-3 (JUL 2005) (FD)

(Applies to Fixed Price type subcontracts exceeding $2M and cost type subcontracts involving complex or hazardous work that is to be performed on a Government-owned or-leased facility and the clause Integration of Environment, Safety, and Health into Work Planning and Execution (48 CFR 970.5223-1), or similar clause, is applicable.)

(Applies to cost type subcontracts where the DOE Contracting Officer or the NREL Subcontract Administrator has specifically notified the Subcontractor that the subcontract is or involves a critical task related to the Prime Contract.)

(a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the Subcontractor in its performance of this subcontract shall be the property of the Government and shall be delivered to NREL or the Government or otherwise disposed of by the Subcontractor either as the NREL Subcontract Administrator or the DOE Contracting Officer may from time to time direct during the progress of the work or, in any event, as the NREL Subcontract Administrator or the DOE Contracting Officer shall direct upon completion or termination of the subcontract.

(b) Subcontractor-owned records. The following records are considered the property of the Subcontractor and are not within the scope of paragraph (a) of this clause.

(1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except for those records described by the Subcontract as being maintained in Privacy Act systems of records.[70 FR 37010 Jun. 28, 2005];

(2) Confidential Subcontractor financial information, and correspondence between the Subcontractor and other segments of the Subcontractor (i.e., the Subcontractor's corporate headquarters);

(3) Records relating to any procurement action by the Subcontractor, except for accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the Subcontractor in connection with the work under this subcontract; other applicable credits, negotiated fixed amounts, and fee accruals under this subcontract; and the receipt, use, and disposition of all Government property coming into the possession of the Subcontractor under this subcontract.;

(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

(5) The following categories of records:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

(ii) [Reserved.]

(iii) Patent, copyright, mask work, and trademark application files and related Subcontractor invention disclosures, documents and correspondence, where the Subcontractor has elected rights or has

permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

(c) Subcontract completion or termination. In the event of completion or termination of this subcontract, copies of any of the Subcontractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor Prime Contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(d) Inspection, copying, and audit of records. All records acquired or generated by the Subcontractor under this subcontract in the possession of the Subcontractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Subcontractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the DOE Contracting Officer or NREL Subcontract Administrator, the Subcontractor shall deliver such records to a location specified by the DOE Contracting Officer or the NREL Subcontract Administrator for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.

(f) Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of Subcontract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the Subcontractor. In addition, the Subcontractor shall retain individual radiation exposure records generated in the performance of work under this Subcontract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the subcontract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.

(g) Lower-Tier Subcontracts. The Subcontractor shall include the requirements of this clause in all lower-tier subcontracts that are of a cost reimbursement type if any of the following factors is present:

(1) The value of the subcontract is greater than $2 million (unless specifically waived by the DOE Contracting Officer or NREL Subcontract Administrator);

(2) The DOE Contracting Officer or NREL Subcontract Administrator notifies the Subcontractor that the lower-tier subcontract is, or involves, a critical task related to the Prime Contract; or

(3) The lower tier subcontract involves complex or hazardous work that is to be performed on a Government-owned or-leased facility and the clause Integration of Environment, Safety, and Health into Work Planning and Execution (48 CFR 970.5223-1), or similar clause, is applicable.

Clause 47. 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 48. 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 and 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 49. 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 50. 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 51. 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 52. 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 53. 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 54. 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 55. 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.