APPENDIX B-7

STANDARD TERMS AND CONDITIONS FOR

CONSULTANT SUBCONTRACTS

Effective: October 1, 2003

APPENDIX B-7
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Derived from FAR 52.222-21 (FD)
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(Applies to all subcontracts).
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(Alternate II applies if this subcontract includes an order or lower-tier subcontract for communication services and facilities.)
ALTERNATE I (APR 1984)
Alternate I of this clause is applicable if this award is for the conduct of research, development, or demonstration.
ALTERNATE II (APR 1984)
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(Alternate III of this clause is applicable if this award includes a lower-tier subcontract for communication services and facilities.)
ALTERNATE I (APR 1984)
Alternate I of this clause applies when any items not covered are specifically listed and/or identified in the Subcontract Schedule.
ALTERNATE II (APR 1984)
Alternate II of this clause applies when any items covered are specifically listed and/or identified in the Subcontract Schedule.
ALTERNATE III (JUL 1995)
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(Applies to incrementally funded cost type subcontracts.)

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(Applies to service subcontracts not involving construction to be performed on Government-owned or -leased facility.)

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ALTERNATE I (APR 1984)

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Derived from FAR 52.243-1
(Applies to fixed price subcontracts.)
(Alternate I applies to subcontracts for services where no supplies are to be furnished--other than architect-engineer or other professional services subcontracts.)
(Alternate II applies to subcontracts for services where supplies are to be furnished--other than architect-engineer services, transportation, or research and development.)
(Alternate III applies to subcontracts for architect-engineer or other professional services.)
(Alternate IV applies to subcontracts for transportation services.)
(Alternate V applies to fixed price research and development subcontracts.)
ALTERNATE I (APR 1984)
ALTERNATE II (APR 1984)
ALTERNATE III (APR 1984)
If the requirement is for architect-engineer or other professional services, substitute the following paragraph (A) in the basic clause and add the following paragraph (F):
ALTERNATE IV (APR 1984)
If the requirement is for transportation services, substitute the following paragraph (A) in the basic clause.
ALTERNATE V (APR 1984)
If the requirement is for fixed price research and development, substitute the following subparagraphs (A) (1) and (A)(3) and paragraph (B) in the basic clause.

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Derived from FAR 52.243-3
(Applies to time and materials and labor hours and expenses subcontracts.)

Clause 41. LOWER-TIER SUBCONTRACTS (AUG 1998) 51
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.)

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Clause 44. INSPECTION--TIME-AND-MATERIAL AND LABOR-HOUR (MAY 2001) 54
Derived from FAR 52.246-6
(Applies to time and materials and labor hour and expenses subcontracts.)

Clause 45. COMMERCIAL BILL OF LADING NOTATIONS (SPECIAL) (MAY 2003) 56
Derived from FAR 52.247-1 (FD)
(Applies to all cost reimbursement subcontracts where transportation is a direct charge to the subcontract.) (Applies to all fixed price subcontracts where direct and actual transportation cost is a separate item in the invoice (e.g. F.O.B. origin) and not included in the delivered price (e.g. F.O.B. destination).)

Clause 46. PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN 1997) 56
Derived from FAR 52.247-63 (FD)
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(Applies to subcontracts that involve ocean transportation of supplies subject to the Cargo Preference Act of 1954.)

Clause 48. SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (SPECIAL) (MAY 2003) 59
Derived from FAR 52.247-67 (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.)

Clause 49. TERMINATION (COST-REIMBURSEMENT) (SEP 1996) MODIFIED BY DEAR 970.4905-1 (DEC 2000) AND ALTERNATE IV (TIME AND MATERIAL OR LABOR HOUR) (SEPT 1996) 59
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.)
Alternate IV
If the subcontract is a time-and-material or labor-hour and expenses subcontract, substitute the following paragraphs (H) and (i) for paragraphs (H) and(i) of the basic clause.

Clause 50. DEFAULT (FIXED PRICE SUPPLY AND SERVICE) (APR 1984) 64
Derived from FAR 52.249-8
(Applies to fixed price subcontracts for supplies and services.)

Clause 51. EXCUSABLE DELAYS (APR 1984) 65
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.)

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Derived from DEAR 952.203-70(FD)
(Applies to subcontracts for work directly related to activities at DOE-owned or -leased facilities.)

Clause 53. SENSITIVE FOREIGN NATIONS CONTROLS (SPECIAL) (MAY 2003) 66
Derived from (DEAR 952.204-71) (FD)
(Applies to all subcontracts.)

Clause 54. PUBLIC AFFAIRS (DEC 2000) 66
Derived from DEAR 952.204-75
(Applies to subcontracts where the subcontractor will release unclassified information related to NREL/DOE policies, programs, and activities.)

Clause 55. REFUND OF ROYALTIES (FEB 1995) 67
Derived from DEAR 952.227-9
(Applies to subcontracts where the Subcontractor will pay royalties for experimental, research, development, or demonstration work or other subcontracts where the Subcontractor will pay royalties.)

Clause 56. FOREIGN TRAVEL (SPECIAL) (MAY 2003) 68
Derived from DEAR 952.247-70 and DOE Order 551.1 (FD)
(Applies to all subcontracts where foreign travel may be required.)

Clause 57. ACCESS TO AND OWNERSHIP OF RECORDS (DEC 2000) 68
Derived from DEAR 970.5204-3 (FD)
(Applies to cost type subcontracts when the work is or involves a critical task under NREL's Prime Contract. Applies to all cost type subcontracts exceeding $2M and all cost type subcontracts where the clause Integration of Environment, Safety, and Health into Work Planning and Execution is applicable.)

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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.)

Clause 59. INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000) 70
Derived from DEAR 970.5223-1(FD)
(Applies to subcontracts involving complex or hazardous work that is to be performed on a Government-owned or -leased facility.)

Clause 60. ACCOUNTS, RECORDS, AND INSPECTION (DEC 2000) AND ALTERNATE I (DEC 2002) AND ALTERNATE II (DEC 2000) 72
Derived from DEAR 970.5232-3 (FD)
(Applies to all cost type subcontracts. Applies to all fixed price or unit price subcontracts where under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.)
ALTERNATE I

Use Alternate I for all subcontracts exceeding $550,000.00 and the clause "Subcontract Price Reduction for Defective Cost or Pricing Data" is applicable to the subcontract.
ALTERNATE II
Use Alternate II for cost-type subcontracts exceeding $5 million and expected to run for more than 2 years or cost-type subcontracts, as determined by the NREL Subcontract Administrator, where the Subcontractor has an established internal audit organization.

Clause 61. PROPERTY (DEC 2000) AND ALTERNATE I (DEC 2002)..... 74
Derived from DEAR 970.5245-1 (FD)
(Applies to cost type subcontracts.)
(Alternate I applies if the Subcontractor is a non-profit.)
Alternate I (DEC 2000)
If the Subcontractor is a non-profit subcontractor replace paragraph (J) of the basic clause with the following paragraph (J):

Clause 1. DEFINITIONS (MAR 2001)

Derived from FAR 52.202-1 as modified by DEAR 902.200 (DEC 2000)
(Applies to all subcontracts.)

A. "Head of the Agency" means the Secretary, Deputy Secretary, or Under Secretary of the Department of Energy.

B. "Commercial component" means any component that is a commercial item.

C. "Commercial item" 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 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 Federal Government requirements. "Minor" modifications means 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;

   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;

   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

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 clauses derived from 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 with respect to subcontracts issued pursuant to the DOE prime contract. 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 a person 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 Subcontract Administrator acting within the limits of their authority as delegated by the NREL Contracts and Business Services Director.

G. "Non-developmental item" means--

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 the 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 term "subcontracts" includes, but is not limited to, lower-tier subcontracts and changes and modifications to lower-tier subcontracts and purchase orders and changes and modifications to purchase orders under this subcontract.

I. The term "DOE" means the Department of Energy.

J. "Contractor" or "DOE Prime Contractor" means Midwest Research Institute. The term "NREL" means the National Renewable Energy Laboratory Division of the Midwest Research Institute, a not-for-profit Missouri Corporation, and includes the successors and assigns of the NREL Division of Midwest Research Institute. NREL facility is a Department of Energy-owned national laboratory, operated and managed under Contract No. DE-AC36-99-GO10337 by the NREL Division of the Midwest Research Institute.

K. The term "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 integrated 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. DISPUTES (SPECIAL) (May 2003)

(Applies to all subcontracts.)

A. It is NREL's policy 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 a negotiated settlement in order to avoid disputes. When all possibilities for negotiation have failed, the parties will endeavor to move the potential dispute to Alternative Dispute Resolution (ADR). Either party is required to provide a written explanation to the other party for rejecting a request for ADR proceedings, citing the specific reasons that ADR procedures are inappropriate for resolution of the dispute. If the parties are unable to satisfactorily resolve the dispute using ADR or cannot agree on its application, they resume the formal process authorized in this clause.

B. The parties agree that the appropriate forum for resolution of any dispute or claim 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 that 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 dispute, claim, or 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 Regulations and the Department of Energy Acquisition Regulations 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 to 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 dispute, claim, 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 claim of the Subcontractor for resolution under the provision of its prime contract with DOE. In the event that NREL so sponsors a claim 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. SECURITY, SAFETY, AND ACCESS REQUIREMENTS FOR SUBCONTRACT WORK PERFORMED AT NREL OPERATED FACILITIES (SPECIAL) (MAY 2003)

(Applies to all subcontracts where Subcontractor' employees (or lower-tier subcontractors' employees) and their officers, agents, or other persons representing the Subcontractor will enter onto NREL operated facilities, including Government-owned or –leased property.)

A. Security and safety requirements.

   1. NREL has established security and safety requirements to govern access onto NREL operated facilities by the Subcontractor's employees (and its lower-tier subcontractors' employees) and their officers, agents, and any other persons representing the Subcontractor.

   The introduction of certain "controlled" commodities and/or activities on the NREL operated facilities is prohibited. Prohibited articles include cameras, copying machines, reproduction

devices, recording devices, radio transmitters, 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 is 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 safety and security policies and procedures.

B. Access requirements for U.S. citizens.

1. Access to NREL operated facilities is controlled in accordance with the 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) and their 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 weeks. Foreign Nationals from DOE-designated "Terrorist Supporting Countries" will be processed for an extensive Federal background check and DOE Headquarters approval. This process requires a minimum of three months. The Subcontractor should contact the NREL Subcontract Administrator to obtain the most current listing of "Sensitive Countries" and "Terrorist Supporting Countries."

It is the responsibility of the NREL Technical Monitor and the NREL Subcontract Administrator to assure that the Subcontractor provides all documentation and meets all requirements within 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 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. Immigration and Naturalization Service. 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

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 subcontractor's employees) and their officers and agents to ensure the display and return of all issued badges.

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 are controlled on a 24-hour, 7-day per week basis.

E. The Subcontractor shall include this clause, including this Paragraph (E), in all lower-tier subcontracts involving subcontract that requires entry onto NREL operated facilities.

Clause 4. LOBBYING RESTRICTIONS (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT) (SPECIAL) (2001)

Derived from DOE Acquisition Letter 2000-11 (FD)
(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 5. LOBBYING RESTRICTIONS (DEPARTMENT OF INTERIOR & RELATED AGENCIES APPROPRIATIONS ACT) (SPECIAL) (2001)

Derived from DOE Acquisition Letter 2000-11
(Applies to all subcontracts.)

The Subcontractor or awardee agrees that none of the funds obligated on this award shall be made available for any activity, including publication or distribution of literature, that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

Clause 6. SUBCONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (SPECIAL) (MAY 2003)

(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 Government concerning any matter arising under a NOV/NOAV.

Clause 7. RESTRICTIONS ON LOWER-TIER SUBCONTRACTOR SALES TO NREL/GOVERNMENT (JUL 1995)

Derived from FAR 52.203-6 (FD)
(Applies to all subcontracts exceeding $100,000.)

A. Except as provided in paragraph (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 paragraph (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 $100,000.

Clause 8. ANTI-KICKBACK PROCEDURES (JUL 1995)

Derived from FAR 52.203-7 (FD)
(Applies to all subcontracts exceeding $100,000.)

A. Definitions.

"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 Prime Contractor, Prime Contractor employee, Subcontractor, or Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

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

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a Prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a Prime Contractor or Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the Prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the Prime Contractor or a higher-tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a 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 contract price charged by a Prime Contractor to the United States or in the subcontract price charged by a Subcontractor to a Prime Contractor or higher-tier subcontractor.

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, 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 DOE Contracting Officer may--

(i) Direct NREL to offset the amount of the kickback against any monies owed by NREL under this subcontract and/or

(ii) Direct that the Subcontractor withhold from sums owed the lower-tier subcontractor the amount of the kickback. The DOE Contracting Officer 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)(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) but excepting paragraph (C)(1), in all lower-tier subcontracts under this subcontract which exceed $100,000.

Clause 9. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)

Derived from FAR 52.203-12 (FD)
(Applies to all subcontracts exceeding $100,000.)

A. Definitions.

"Agency," as used in this clause, means executive agency as defined in FAR 2.101.

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

1. The awarding of any Federal contract or a subcontract under a Federal contract.
2. The making of any Federal grant.
3. The making of any Federal loan.
4. The entering into of any cooperative agreement.
5. The extension, continuation, renewal, amendment, or modification of any Federal contract or a subcontract under a Federal contract, grant, loan, or cooperative agreement.

"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. 450 B) and include Alaskan Natives.

"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.

"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.

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

1. An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
2. A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
3. A special Government employee, as defined in section 202, Title 18, United States Code.
4. 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.

"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 with respect to expenditures specifically permitted by other Federal law.

"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.

"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.

"Recipient," 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 with respect to expenditures specifically permitted by other Federal law.

"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 under a Federal contract, an officer or employee who is employed by such person for at least one hundred and 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. An officer or employee who is employed by such person for less than one hundred and 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 and thirty (130) working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

B. Prohibitions.

1. Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract or subcontract under a Federal contract, 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 of the following covered Federal actions: the awarding of any Federal contract or subcontract under a Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract or subcontract under a Federal contract, grant, loan, or cooperative agreement.

2. The Act also requires Subcontractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to 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 a Federal contract or subcontract under a Federal contract, grant, loan, or cooperative agreement.

3. The prohibitions of the Act do not apply under the following conditions:

   (i) Agency and legislative liaison by own employees.

      (a) The prohibition on the use of appropriated funds, in subparagraph (B)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

      (b) For purposes of subdivision (B)(3)(i)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

      (c) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

1. Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

2. Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action--

1. Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

2. Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

3. Capability presentations 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.

(e) Only those services expressly authorized by subdivision (B)(3)(i)(a) of this clause are permitted under this clause.

(ii) Professional and technical services.

(a) The prohibition on the use of appropriated funds, in subparagraph (B)(1) of this clause, does not apply in the case of –

1. 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.

2. 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.

(b) For purposes of subdivision (B)(3)(ii)(a) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract or subcontract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission

or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) 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.

(d) Only those services expressly authorized by subdivisions (B)(3)(ii)(a)(1) and (2) of this clause are permitted under this clause.

(e) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

C. Disclosure.

1. The Subcontractor who requests or receives from an agency a Federal contract or subcontract under a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (B)(1) of this clause, if paid for with appropriated funds.

2. The Subcontractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (C)(1) of this clause. An event that materially affects the accuracy of the information reported includes--

   (i) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

   (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

   (iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

3. The Subcontractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding $100,000 under the Federal contract.

4. All lower-tier subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the Subcontractor. The Subcontractor shall submit all disclosures to the NREL Subcontract Administrator at the end of the calendar quarter in which the disclosure form is submitted by the Subcontractor. Each lower-tier subcontractor certification shall be retained in the subcontract file of the awarding Subcontractor.

D. Agreement.

The Subcontractor agrees not to make any payment prohibited by this clause.

E. Penalties.

1. Any person who makes an expenditure prohibited under paragraph (A) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (B) 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 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 that 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.

Clause 10. 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-

"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).

"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 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 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 20 percent postconsumer material for use in submitting paper documents to NREL.

Clause 11. PROTECTING NREL'S/GOVERNMENT'S INTEREST WHEN SUBCONTRACTING AT ANY TIER WITH CONTRACTORS AND SUBCONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)

Derived from FAR 52.209-6 (FD)
(Applies to all subcontracts with lower-tier subcontracts exceeding $25,000.)

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 $25,000 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 $25,000, 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 List of Parties Excluded from Federal Procurement and Nonprocurement Programs). 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 on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
3. The compelling reason(s) for doing business with the lower-tier subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.
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 12. AUDIT AND RECORDS--NEGOTIATION (JUN 1999) AND ALTERNATE II (APR 1998)

Derived from FAR 52.215-2 (FD)
(Applies to all subcontracts exceeding $100,000.)
(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 written form, in the form of computer data, or in any other form.

B. Examination of Costs

If this 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, or an authorized representative of the DOE Contracting Officer, 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 part 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, or an authorized representative of the DOE Contracting Officer, 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 computation 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.

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 or any authorized representative of the DOE Contracting Officer, 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 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 records relating to the work terminated shall be made available for three (3) years after any resulting final termination settlement; and

2. Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this subcontract shall be made available 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 II (APR 1998)
For cost-type subcontracts with State and Local Governments, educational institutions, and other non-profit organizations, the following paragraph (H) shall be added.

H. The provisions of OMB Circular No. A-133, "Audits of States, Local Governments, and Non-profit Organizations," apply to this subcontract.

Clause 13. NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

Derived from FAR 52.215-19 (FD)
(Applies to subcontracts where cost or pricing data is required or subcontracts where pre-award or post-award cost determination will be subject to FAR subpart 31.2-subcontracts with commercial organizations.)

A. The Subcontractor shall make the following notifications in writing:

1. When the Subcontractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Subcontractor shall notify the NREL Subcontract Administrator within 30 days.
2. The Subcontractor shall also notify the NREL Subcontract Administrator within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

B. 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 under this Subcontract that meet the applicability requirement of FAR 15.408(k).

Clause 14. ALLOWABLE COST AND PAYMENT (DEC 2002)

Derived from FAR 52.216-7
(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.

NREL will make payments to the Subcontractor when requested as work progresses, but (except for small business concerns) not more often than once every 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.

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 lower-tier 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 30 days of the submission of the Subcontractor's payment request to NREL;

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

(c) Direct labor;

(d) Direct travel;

(e) Other direct in-house costs; and

(f) 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 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 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.

(ii) 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 Disputes clause.

5. Within 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.

6. (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 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 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 15. FIXED FEE (MAR 1997)

Derived from FAR 52.216-8
(Applies to cost plus fixed fee subcontracts, except construction subcontracts.)

A. NREL shall pay the Subcontractor for performing this subcontract the fixed fee specified in the Schedule.

B. Payment of the fixed fee shall be made as specified in the Schedule; **provided**, that after payment of 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 15 percent of the total fixed fee or $100,000, whichever is less. The NREL Subcontract Administrator shall release 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 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 16. COST SUBCONTRACT - NO FEE (APR 1984)

Derived from FAR 52.216-11
(Applies to cost type subcontracts with no fee and no cost share.)

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

B. After payment of 80 percent of the total estimated cost shown in the 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 percent of the total estimated cost shown in the Schedule or $100,000 whichever is less.

Clause 17. UTILIZATION OF SMALL BUSINESS CONCERNS. (OCT 2000)

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 Contractors and Subcontractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts 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--

"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.

"Service-disabled veteran-owned small business concern"--

1. Means a small business concern--

   (i) 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

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

2. 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).

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

"Small disadvantaged business concern" means a small business concern that represents, as part of its offer that--

1. It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;
2. No material change in disadvantaged ownership and control has occurred since its certification;
3. 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©(2); and
4. 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).

"Veteran-owned small business concern" means a small business concern--

1. 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
2. The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern--

1. 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
2. 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 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 contracts, together with identification of each affected subcontract; and
4. Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

Clause 19. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (SEPT 2000)

Derived from FAR 52.222-4 (FD)
(Applies to subcontracts exceeding $100,000 involving the substantial employment of laborers or mechanics.)

A. Overtime requirements.

No Subcontractor or lower-tier subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and ½ times the basic rate of pay for each hour worked over 40 hours.

B. Violation; liability for unpaid wages; liquidated damages.

The responsible Subcontractor and lower-tier subcontractor are liable for unpaid wages if they violate the terms in paragraph (A) of this clause. In addition, the Subcontractor and lower-tier subcontractor are liable for liquidated damages payable to NREL. The NREL Subcontract Administrator will assess liquidated damages at the rate of $10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the Contract Work Hours and Safety Standards Act.

C. Withholding for unpaid wages and liquidated damages.

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

D. Payrolls and basic records.

1. The Subcontractor and its lower-tier subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the subcontract during the subcontract and shall make them available to NREL/Government until 3 years after subcontract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5A (3) implementing the Davis-Bacon Act.
2. The Subcontractor and its lower-tier subcontractors shall allow authorized representatives of the NREL Subcontract Administrator or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (D) (1) of this clause. The Subcontractor or lower-tier subcontractor also shall allow authorized representatives of the NREL Subcontract Administrator or Department of Labor to interview employees in the workplace during working hours.

E. Lower-tier subcontracts.

The Subcontractor shall insert the provisions set forth in paragraphs (A) through (D) of this clause in lower-tier subcontracts exceeding $100,000 and require lower-tier Subcontractors to include these provisions in any sub-tier subcontracts. The Subcontractor shall be responsible for compliance by any lower-tier Subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (A) through (D) of this clause.

Clause 20. 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 21. EQUAL OPPORTUNITY (FEB 1999)

Derived from FAR 52.222-26 (FD)
(Applies to all subcontracts unless exempt from Executive Order 11246 (See FAR 22.807(a).)

A. If, during any 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 subparagraphs (B) (1) through (11) below. Upon request, the Subcontractor shall provide information necessary to determine the applicability of this clause.

B. During performance of this subcontract, the Subcontractor agrees as follows:

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 12 months preceding the date of contract award, the subcontractor shall, within 30 days after contract 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 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 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 subparagraphs (B)(1) through (11) 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.

C. Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1

Clause 22. AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)

Derived from FAR 52.222-35 (FD)
(Applies to all subcontracts exceeding $10,000.)

A. Definitions. As used in this clause--

"All employment openings" includes 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.

"Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

"Positions that will be filled from within the Subcontractor's organization" means employment openings for which no consideration will be given to persons outside the Subcontractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that 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.

"Veteran of the Vietnam era" means a person who--

1. Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released there from with other than a dishonorable discharge; or

2. Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964 and May 7, 1975.

B. General.

1. Regarding any position for which the employee or applicant for employment is qualified, the Subcontractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as--

   (i) Employment;

   (ii) Upgrading;

   (iii) Demotion or transfer;

   (iv) Recruitment;

   (v) Advertising;

   (vi) Layoff or termination;

   (vii) Rates of pay or other forms of compensation; and

   (viii) Selection for training, including apprenticeship.

2. The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

C. Listing openings.

1. The Subcontractor agrees to list all employment openings existing at subcontract award or occurring during subcontract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Subcontractor facility, including one not connected with performing this subcontract. An independent corporate affiliate is exempt from this requirement.

2. State and Local Government agencies holding Federal contracts or subcontracts of $10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.

3. The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing 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.

4. Whenever the Subcontractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, 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 system, it need not advise the State system of subsequent contracts/subcontracts. The Subcontractor may advise the State system when it is no longer bound by this subcontract clause.

D. Applicability.

1. This clause does not apply to the listing of employment openings which occur and are filled outside the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

E. 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 disabled veterans and veterans of the Vietnam era, 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. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the NREL Subcontract Administrator.

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 the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

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 issued pursuant to the Act.

G. Lower-tier subcontracts.

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

Clause 23. 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) and shall be provided by or through the DOE Contracting Officer.

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 24. EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)

Derived from FAR 52.222-37 (FD)
(Applies to all subcontracts exceeding $10,000.)

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 disabled veterans and the number of veterans of the Vietnam era 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 that total, the number of disabled veterans, and the number of veterans of the Vietnam era.

B. The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

C. Reports shall be submitted 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 during the period January through March 1st of the year the report is due, or
2. As of December 31, if the Subcontractor has previous 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 count of veterans reported according to paragraph (A) of this clause shall be based on voluntary disclosure. Each Subcontractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era 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 the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

F. Lower-tier Subcontracts.

The Subcontractor shall include the terms of this clause in every lower-tier subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

Clause 25. SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)

Derived from FAR 52.222-41 (FD)
(Applies to all subcontracts exceeding $2,500 for services as defined in Service Contract Act.)

A. Definitions.

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

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

B. Applicability.

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

C. Compensation.

1. Each service employee employed in the performance of this subcontract by the Subcontractor or any lower-tier subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the

Secretary of Labor, or authorized representative, as specified in any wage determination attached to this subcontract.

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

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

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

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

   (b) In the case of a subcontract modification, an exercise of an option, or extension of an existing subcontract, or in any other case where a Subcontractor succeeds a subcontract under which the classification in question was previously conformed pursuant to the paragraph (C) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and

fringe benefits specified for all classifications to be used on the subcontract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of subcontract work by the unlisted class of employees, the Subcontractor shall advise the NREL Subcontract Administrator of the action taken but the other procedures in subdivision (C)(2)(ii) of this clause need not be followed.

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

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

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

3. Adjustment of Compensation.

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

D. Obligation to Furnish Fringe Benefits.

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

E. Minimum Wage.

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

F. Successor Subcontracts.

If this subcontract succeeds a subcontract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this subcontract setting forth such collectively bargained wage rates and fringe benefits, neither the Subcontractor nor any lower-tier subcontractor under this subcontract shall pay any service employee performing any of the subcontract work (regardless of whether or not such employee was employed under the predecessor subcontract), less than the wages and fringe benefits

provided for in such collective bargaining agreement to which such employee would have been entitled if employed under the predecessor subcontract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. Neither the Subcontractor nor any lower-tier subcontractor may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor subcontract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Subcontractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor subcontract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the subcontract or lower-tier subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a subcontract or lower-tier subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

G. Notification to Employees.

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

H. Safe and Sanitary Working Conditions.

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

I. Records.

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

   (i) For each employee subject to the Act--

      (a) Name and address and social security number;

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

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

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

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

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

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

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

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

J. Pay Periods.

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

K. Withholding of Payments and Termination of Subcontract.

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

L. Lower-tier Subcontracts.

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

M. Collective Bargaining Agreements Applicable to Service Employees.

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

N. Seniority List.

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

O. Rulings and Interpretations.

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

P. Subcontractor's Certification.

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

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

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

Q. Variations, Tolerances, and Exemptions Involving Employment.

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

1. Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices,

student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

2. The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

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

R. Apprentices.

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

S. Tips.

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

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

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

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

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

T. Disputes Concerning Labor Standards.

The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this subcontract. Disputes within the meaning

of this clause include disputes between the Subcontractor (or any of its lower-tier subcontractors) and NREL, the DOE, the U.S. Department of Labor, or the employees of their representatives.

Clause 26. BUY AMERICAN ACT—BALANCE OF PAYMENTS PROGRAM--SUPPLIES (FEB 2000)

Derived from FAR 52.225-1
(Applies to subcontracts for supplies exceeding $2,500.)

A. Definitions.

As used in this clause--

"Component" means any item supplied to NREL/the Government as part of an end item or of another component.

"Cost of components" means--

1. For components purchased by the Subcontractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
2. For components manufactured by the Subcontractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic end product" means--

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

"End product" means supplies delivered under a line item of an NREL/Government subcontract.

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

"United States" means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States. The Balance of Payments Program provides a preference for domestic end products for supplies acquired for use outside the United States.

C. Offerors may obtain from the NREL Subcontract Administrator a list of foreign articles that the NREL Subcontract Administrator will treat as domestic for this subcontract.

D. The Subcontractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Act--Balance of Payments Program Certificate."

Clause 27. DUTY-FREE ENTRY (FEB 2000)

Derived from FAR 52.225-8 (FD)
(Applies to subcontracts exceeding $100,000 where supplies are imported into the United States and duty-free entry may be obtained or subcontract value is less than $100,000 and savings from waiving the duty is anticipated to be more than the administrative cost of waiving the duty.)

A. Definition. "Customs territory of the United States" means the States, the District of Columbia, and Puerto Rico.

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

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

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

   (i) Foreign supplies;

   (ii) Estimated amount of duty; and

   (iii) Country of origin.

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

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

D. The Subcontractor is not required to provide the notification under paragraph (C) of this clause for purchases of foreign supplies if--

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

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

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

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

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

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

2. NREL's DOE prime contract number and the NREL subcontract number;
3. Identification of carrier;
4. Notation "UNITED STATES GOVERNMENT, _____ [agency], _____ Duty-free entry to be claimed pursuant to Item No(s) _____ [from Tariff Schedules] _____, Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify [cognizant subcontract administration office] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.";
5. Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and
6. Estimated value in United States dollars.

H. The Subcontractor shall instruct the foreign supplier to--

1. Consign the shipment as specified in paragraph (G) of this clause;
2. Mark all packages with the words "UNITED STATES GOVERNMENT" and NREL/DOE; and
3. Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.

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

1. Foreign supplies;
2. Country of origin;
3. Subcontract number; and
4. Scheduled delivery date(s).

J. The Subcontractor shall include the substance of this clause in any lower-tier subcontract if--

1. Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or
2. Other foreign supplies in excess of $10,000 may be imported into the customs territory of the United States.

Clause 28. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JULY 2000)

Derived from FAR 52.225-13(FD)
(Applies to all subcontracts exceeding $2,500.)

The Subcontractor shall not acquire, for use in the performance of this subcontract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

B. The Subcontractor shall not acquire for use in the performance of this subcontract any supplies or services from entities controlled by the government of Iraq.

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

Clause 29. AUTHORIZATION AND CONSENT (JUL 1995) AND ALTERNATES I AND II (APR 1984)

Derived from FAR 52.227-1 (FD)
(Applies to all subcontracts).

(Alternate I applies to subcontracts for the conduct of research, development, or demonstration.)
(Alternate II applies if this subcontract includes an order or lower-tier subcontract for communication services and facilities.)

A. The Government authorizes and consents to all use and manufacture, in performing this subcontract or any subcontract at any tier, of any invention described in and covered by a United States patent

1. Embodied in the structure or composition of any article the delivery of which is accepted by NREL/Government under this subcontract or;
2. Used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a lower-tier subcontractor with--
   - (i) Specifications or written provisions forming a part of this subcontract or
   - (ii) Specific written instructions given by the Government working through NREL directing the manner of performance. The entire liability to NREL/Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this subcontract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

B. The Subcontractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any lower-tier subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

ALTERNATE I (APR 1984)
Alternate I of this clause is applicable if this award is for the conduct of research, development, or demonstration.

The following is substituted for paragraph (A) of the clause:

A. The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this subcontract or any subcontract at any tier.

ALTERNATE II (APR 1984)
Alternate II of this clause is applicable if this award includes an order or lower-tier subcontract for communication services and facilities.

The following is substituted for paragraph (A) of the clause:

A. The Government authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this subcontract for communication services and facilities for which rates, charges, and tariffs are not established by a Government regulatory body, of any invention described in and covered by a United States patent

1. Embodied in the structure or composition of any article the delivery of which is accepted by the Government through NREL under this subcontract or
2. Used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a lower-tier subcontractor with specifications or written provisions forming a part of this subcontract or with specific written instructions given by the DOE through NREL directing the manner of performance.

Clause 30. PATENT INDEMNITY (APR 1984) AND ALTERNATES I, II, AND III (APR 1984)

Derived from FAR 52.227-3
(Applies to all subcontracts except for the conduct of research, development, or demonstration.)
(Alternate I of this clause applies when any items not covered are specifically listed and/or identified in the Subcontract Schedule.)

(Alternate II of this clause applies when any items covered are specifically listed and/or identified in the Subcontract Schedule.)

(Alternate III of this clause is applicable if this award includes a lower-tier subcontract for communication services and facilities.)

A. The Subcontractor shall indemnify NREL/Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this subcontract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

B. This indemnity shall not apply unless the Subcontractor shall have been informed as soon as practicable by NREL/Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to

   1. An infringement resulting from compliance with specific written instructions of the DOE through NREL directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the subcontract not normally used by the Subcontractor,
   2. An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or
   3. A claimed infringement that is unreasonably settled without the consent of the Subcontractor, unless required by final decree of a court of competent jurisdiction.

ALTERNATE I (APR 1984)

Alternate I of this clause applies when any items not covered are specifically listed and/or identified in the Subcontract Schedule.

The following paragraph (C) is added to the clause:

C. This patent indemnification shall not apply to items listed in the Subcontract Schedule:

ALTERNATE II (APR 1984)

Alternate II of this clause applies when any items covered are specifically listed and/or identified in the Subcontract Schedule.

The following paragraph (C) is added to the clause:

C. This patent indemnification shall cover items listed in the Subcontract Schedule:

ALTERNATE III (JUL 1995)

Alternate III of this clause applies if this award includes a lower-tier subcontract for communication services and facilities.

The following paragraph is added to the clause:

( ) As to subcontracts at any tier for communication service, this clause shall apply only to individual communication service authorizations over the simplified acquisition threshold issued under this subcontract and covering those communications services and facilities

1. That are or have been sold or offered for sale by the Subcontractor to the public,
2. That can be provided over commercially available equipment, or
3. That involve relatively minor modifications.

Clause 31. INSURANCE--LIABILITY TO THIRD PERSONS (SPECIAL) (MAY 2003)

Derived from FAR 52.228-7
(Applies to all cost type, time and material, and labor hour and expenses subcontracts.)

A. 1. Except as provided in subparagraph (A)(2) of this clause, the Subcontractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the NREL Subcontract Administrator may require under this subcontract.

2. The Subcontractor may, with the approval of the NREL Subcontract Administrator, maintain a self-insurance program; **provided** that, with respect to workers' compensation, the Subcontractor is qualified pursuant to statutory authority.

3. The Subcontractor shall provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in this clause, with insurers approved by the NREL Subcontract Administrator.

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	**$100,000**	**$100,000**	**N/A**
Comprehensive General Liability	**$500,000**	**$500,000**	**$100,000**
Automobile Liability	**$200,000**	**$500,000**	**$20,000**

B. The Subcontractor agrees to submit for the NREL Subcontract Administrator's approval, to the extent and in the manner required by the NREL Subcontract Administrator, any other insurance that is maintained by the Subcontractor in connection with the performance of this subcontract and for which the Subcontractor seeks reimbursement.

C. The Subcontractor shall be reimbursed--

1. For that portion

   (i) Of the reasonable cost of insurance allocable to this subcontract, and

   (ii) Required or approved under this clause; and

2. For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this subcontract. These liabilities must arise out of the performance of this subcontract, whether or not caused by the negligence of the Subcontractor or of the Subcontractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by NREL/Government. These liabilities are for--

   (i) Loss of or damage to property (other than property owned, occupied, or used by the Subcontractor, rented to the Subcontractor, or in the care, custody, or control of the Subcontractor); or

   (ii) Death or bodily injury.

D. NREL's/Government's liability under paragraph (C) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this subcontract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

E. The Subcontractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)-

1. For which the Subcontractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the subcontract;

2. For which the Subcontractor has failed to insure or to maintain insurance as required by the NREL Subcontract Administrator; or

3. That result from willful misconduct or lack of good faith on the part of any of the Subcontractor's directors, officers, managers, superintendents, or other 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 operations at any one plant or separate location in which this subcontract is being performed; or

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

F. The provisions of paragraph (E) of this clause shall not restrict the right of the Subcontractor to be reimbursed for the cost of insurance maintained by the Subcontractor in connection with the performance of this subcontract, other than insurance required in accordance with this clause; **provided**, that such cost is allowable under the Allowable Cost and Payment clause of this subcontract.

G. If any suit or action is filed or any claim is made against the Subcontractor, the cost and expense of which may be reimbursable to the Subcontractor under this subcontract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Subcontractor shall--

1. Immediately notify the NREL Subcontract Administrator and promptly furnish copies of all pertinent papers received:
2. Authorize NREL/Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and
3. Authorize NREL/Government representatives to settle or defend the claim and to represent the Subcontractor in or to take charge of any litigation, if required by NREL/Government, when the liability is not insured or covered by bond. The Subcontractor may, at its own expense, be associated with NREL/Government representatives in any such claim or litigation.

Clause 32. TAXES--FOREIGN FIXED PRICE SUBCONTRACTS (JAN 1991)

Derived from FAR 52.229-6
(Applies to fixed price subcontracts exceeding $100,000 performed wholly or partly in a foreign country.)

A. To the extent that this subcontract provides for furnishing supplies or performing services outside the United States, its possessions, and Puerto Rico, this clause applies in lieu of any Federal, State, and Local taxes clause of the subcontract.

B. "Subcontract date," as used in this clause means the date set for bid opening or, if this is a negotiated subcontract or a modification, the effective date of this subcontract or modification.

"Country concerned," as used in this clause, means any country, other than the United States, its possessions, and Puerto Rico, in which expenditures under this subcontract are made.

"Tax," and "taxes," as used in this clause, include fees and charges for doing business that are levied by the Government of the country concerned or by its political subdivisions.

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

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

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

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

C. Unless otherwise provided in this subcontract, the subcontract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the Government of

the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

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

E. The subcontract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States/NREL shall be entitled to interest received by the Subcontractor incident to a refund of taxes to the extent that such interest was earned after the Subcontractor was paid by NREL for such taxes. The Government of the United States/NREL shall be entitled to repayment of any penalty refunded to the Subcontractor to the extent that the penalty was paid by NREL.

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

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

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

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

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

Clause 33. 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 Schedule or,

2. If this is a cost-sharing subcontract, NREL's share of the estimated cost specified in the Schedule.

The Subcontractor agrees to use its best efforts to perform the work specified in the 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 75 percent of the estimated cost specified in the 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 Schedule or,

(ii) If this is a cost-sharing subcontract, the estimated cost to NREL specified in the 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 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 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 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 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 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 share of costs incurred by each.

Clause 34. 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 Schedule or,
2. If this is a cost-sharing subcontract, NREL's share of the estimated cost specified in the Schedule.

The Subcontractor agrees to use its best efforts to perform the work specified in the 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 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 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 Schedule.

D. Sixty (60) days before the end of the period specified in the 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 under the subcontract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.

E. If, after notification, additional funds are not allotted by the end of the period specified in the 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 Schedule.

If this is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the 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 Schedule, unless they contain a statement increasing the amount allotted.

K. Nothing in this clause shall affect the right of NREL/Government 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 share of 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 Schedule equaling the percentage of completion of the work contemplated by this subcontract.

Clause 35. PROHIBITION OF ASSIGNMENT OR TRANSFER (SPECIAL) (MAY 2002)

Derived from 52.232-24
(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 NREL Division of Midwest Research Institute may assign or transfer all its rights and obligations under this subcontract to DOE or its designee.

Clause 36. 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 37. 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 contract, 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 Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this subcontract.

Clause 38. 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 schedule or subcontract price, or both."

Clause 39. CHANGES - FIXED PRICE (AUG 1987) AND ALTERNATES I THROUGH V (APR 1984)

Derived from FAR 52.243-1
(Applies to fixed price subcontracts.)

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

A. The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:

1. Description of services to be performed.
2. Time of performance (i.e., hours of the day, days of the week, etc.).
3. Place of performance of the services.
4. Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for NREL/Government, in accordance with the drawings, designs, or specifications.
5. Method of shipment or packing or supplies.

6. Place of delivery.

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

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

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

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

ALTERNATE I (APR 1984)

If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, substitute the following paragraph (A) in the basic clause.

A. The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:

1. Description of services to be performed.
2. Time of performance (i.e., hours of the day, days of the week, etc.).
3. Place of performance of the services.

ALTERNATE II (APR 1984)

If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, substitute the following paragraph (A) in the basic clause.

A. The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:

1. Description of services to be performed.
2. Time of performance (i.e., hours of the day, days of the week, etc.).
3. Place of performance of the services.
4. Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for NREL/Government, in accordance with the drawings, designs, or specifications.
5. Method of shipment or packing of supplies.
6. Place of delivery.

ALTERNATE III (APR 1984)

If the requirement is for architect-engineer or other professional services, substitute the following paragraph (A) in the basic clause and add the following paragraph (F):

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

* * * * * *

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

ALTERNATE IV (APR 1984)

If the requirement is for transportation services, substitute the following paragraph (A) in the basic clause.

A. The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:

1. Specifications.
2. Work or services.
3. Place of origin.
4. Place of delivery.
5. Tonnage to be shipped.
6. Amount of Government-furnished property.

ALTERNATE V (APR 1984)

If the requirement is for fixed price research and development, substitute the following subparagraphs (A) (1) and (A)(3) and paragraph (B) in the basic clause.

A. * * * * *

1. Drawings, designs, or specifications.

* * * * * *

3. Place of inspection, delivery, or acceptance.

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

1. The subcontract price, the time of performance, or both; and
2. Other affected terms of the subcontract, and shall modify the subcontract accordingly.

Clause 40. CHANGES - TIME-AND-MATERIALS OR LABOR-HOURS (AUG 1987)

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. Drawings, designs, or specifications.
2. Method of shipment or packing.
3. Place of delivery.
4. Amount of 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 the--

1. Ceiling price,
2. Hourly rates,
3. Delivery schedule, and
4. Other affected terms, and shall modify the subcontract accordingly.

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 shall excuse the Subcontractor from proceeding with the subcontract as changed.

Clause 41. LOWER-TIER SUBCONTRACTS (AUG 1998)

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.

As used in this clause-

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

"Consent to lower-tier subcontract" means the NREL Subcontract Administrator's written consent for the Subcontractor to enter into a particular lower-tier subcontract.

"Lower-tier subcontract" 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. This clause does not apply to lower-tier subcontracts for special test equipment when the subcontract contains the clause at FAR 52.245-18, Special Test Equipment.

C. 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 (D) or (E) or this clause.

D. 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-

   (i) For a subcontract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold ($100,000) or five (5) percent of the total estimated cost of the subcontract; or

   (ii) For subcontracts awarded by a civilian agency other that the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold ($100,000) or five (5) percent of the total estimated cost of the subcontract.

E. 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.

F. 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 (C), (D), or (E) 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. The Subcontractor is not required to notify the NREL Subcontract Administrator in advance of entering into any lower-tier subcontract for which consent is not required under paragraph (C), (D), or (E) or this clause.

G. Unless the consent or approval specifically provides otherwise, neither consent by the NREL Subcontract Administrator to any subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination--

1. Of the acceptability of any 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.

H. 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).

I. 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.

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

K. 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 42. LOWER-TIER SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (MAR 2001)

Derived from FAR 52.244-6 (FD)
(Applies to subcontracts for supplies or services other than commercial items.)

A. Definitions.

"Commercial item," as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.

"Lower-tier Subcontract," as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Lower-tier Subcontractor or Subcontractor at any tier.

B. To the maximum extent practicable, the Subcontractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this subcontract.

C. Notwithstanding any other clause of this subcontract, the Subcontractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

1. 52.222-26, Equal Opportunity (E.O. 11246);
2. 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));
3. 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793); and

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

Clause 43. GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) (APR 1984)

Derived from FAR 52.245-4
(Applies to fixed price; time and material; labor hour and expenses subcontracts where NREL/Government property is provided and the value of such property is less than $100,000. Does not apply to subcontracts with educational or nonprofit organizations.)

A. NREL/Government shall deliver to the Subcontractor, at the time and locations stated in this subcontract, the Government-furnished property described in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Subcontractor, the NREL Subcontract Administrator shall equitably adjust affected provisions of this subcontract in accordance with the Changes clause when--

1. The Subcontractor submits a timely written request for an equitable adjustment; and
2. The facts warrant an equitable adjustment.

B. Title to Government-furnished property shall remain in the Government. The Subcontractor shall use the Government-furnished property only in connection with this subcontract. The Subcontractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for Government inspection at all reasonable times, unless the clause at Federal Acquisition Regulation 52.245-1, Property Records, is included in this subcontract.

C. Upon delivery of Government-furnished property to the Subcontractor, the Subcontractor assumes the risk and responsibility for its loss or damage, except--

1. For reasonable wear and tear;
2. To the extent property is consumed in performing this subcontract; or
3. As otherwise provided for by the provisions of this subcontract.

D. Upon completing this subcontract, the Subcontractor shall follow the instructions of the NREL Subcontract Administrator regarding the disposition of all Government-furnished property not consumed in performing this subcontract or previously delivered to the Government. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the NREL Subcontract Administrator. The net proceeds of any such disposal shall be credited to the subcontract price or shall be paid to the Government as directed by the NREL Subcontract Administrator.

E. If this subcontract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

Clause 44. INSPECTION--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.

As used in this clause--"Subcontractor's managerial personnel" means any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--

1. All or substantially all of the Subcontractor's business;
2. All or substantially all of the Subcontractor's operation at any one plant or separate location where the subcontract is being performed; or
3. A separate and complete major industrial operation connected with the performance of this subcontract.

"Materials" 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 or test 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 60 days after the date of delivery, unless accepted earlier.

F. At any time during subcontract performance, but not later than 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 45. COMMERCIAL BILL OF LADING NOTATIONS (SPECIAL) (MAY 2003)

Derived from FAR 52.247-1 (FD)
(Applies to all cost reimbursement subcontracts where transportation is a direct charge to the subcontract.) (Applies to all fixed price subcontracts where direct and actual transportation cost is a separate item in the invoice (e.g. F.O.B. origin) and not included in the delivered price (e.g. F.O.B. destination).)

If the NREL Subcontract Administrator authorizes supplies to be shipped on a commercial bill of lading and the Subcontractor will be reimbursed these transportation costs as direct allowable costs, the Subcontractor shall ensure before shipment is made that the commercial shipping documents are annotated the following notation:

> "Transportation is for the U.S. Department of Energy, acting through its National Renewable Energy Laboratory (NREL) and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the by NREL on behalf of the Government, pursuant to cost-reimbursement contract No. DE AC36-99GO10337. This may be confirmed by contacting The Golden Field Office, 1617 Cole Blvd. Golden, CO 80401."

Clause 46. PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN 1997)

Derived from FAR 52.247-63 (FD)
(Applies to subcontracts that involve international air transportation.)

A. "International air transportation," as used in this clause, 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.

"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier," as used in this clause, 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. The Subcontractor agrees, in performing work under this subcontract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

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):

_____

E. The Subcontractor shall include the substance of this clause, including this paragraph (E), in each lower-tier subcontracts or purchase orders under this subcontract that may involve international air transportation.

Clause 47. PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (JUN 2000)

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. The Cargo Preference Act of 1954 (46 U.S.C. 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--

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 Subcontractor.

2. The Subcontractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

(i) Sponsoring U.S. Government agency.

(ii) Name of vessel.

(iii) Vessel flag of registry.

(iv) Date of loading.

(v) Port of loading.

(vi) Port of final discharge.

(vii) Description of commodity.

(viii) Gross weight in pounds and cubic feet if available.

(ix) 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 contract that involve ocean transportation of supplies subject to the Cargo Preference Act of 1954.

E. The requirement in paragraph (A) does not apply to--

1. Cargoes carried in vessels of the Panama Canal Commission or 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); and

3. Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

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

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

Clause 48. SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (SPECIAL) (MAY 2003)

Derived from FAR 52.247-67 (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. 1. In accordance with paragraph (A)(2) of this clause, the Subcontractor shall submit to NREL for audit by the General Services Administration (GSA), legible copies of all paid freight bills/invoices, commercial bills of lading (CBL's), passenger coupons, and other supporting documents for transportation services on which the NREL/Government will assume freight charges that were paid--

   (i) By the Subcontractor under a cost-reimbursement Subcontract; and

   (ii) By a first-tier lower-tier subcontractor under a cost-reimbursement lower-tier subcontract thereunder.

   2. Cost-reimbursement Subcontractors shall only submit for audit those CBL's with freight shipment charges exceeding $50.00. Bills under $50.00 shall be retained on-site by the Subcontractor and made available for NREL/Government 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.

B. The Subcontractor shall forward copies of paid freight bills/invoices, CBL's, passenger coupons, and supporting documents as an attachment to the subcontractor's invoice on which the transportation charges are identified for payment by NREL, including those for any first tier subcontractors under a cost-type lower-tier subcontract.

C. Any original transportation bills or other documents requested by NREL/Government shall be forwarded promptly by the Subcontractor to NREL Subcontract Administrator. The Subcontractor shall ensure that the name of NREL/DOE is stamped or written on the face of the bill before sending it to NREL.

Clause 49. TERMINATION (COST-REIMBURSEMENT) (SEP 1996) MODIFIED BY DEAR 970.4905-1 (DEC 2000) AND ALTERNATE IV (TIME AND MATERIAL OR LABOR HOUR) (SEPT 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 NREL/Government's interest; or

   2. The Subcontractor defaults in performing this subcontract and fails to cure the default within 10 days (unless extended by the NREL Subcontract Administrator) after receiving a notice specifying the default. "Default" 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 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 contract.
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 (if not already transferred) to the Government and, as directed by the NREL Subcontract Administrator, deliver to NREL--
   (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
   (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to 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 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 subparagraph (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 schedules no later than 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 120-day period.

E. After expiration of the plant clearance period as defined in Subpart 45.6 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 NREL/Government to remove those items or enter into an agreement for their storage. Within 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 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 1 year from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator upon written request of the Subcontractor within this 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 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 subcontract if not included in subparagraph (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 NREL/Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the subcontract, 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 subparagraph (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 Regulations, 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 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. The 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 contract, if the NREL Subcontract Administrator believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.

2. If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to 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 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

If the subcontract is a time-and-material or labor-hour and expenses subcontract, substitute the following paragraphs (H) and (i) for paragraphs (H) and(i) 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 Schedule of the subcontract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the 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 subparagraph (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.

* * * * *

I. 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 90 days from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator.

Clause 50. DEFAULT (FIXED PRICE SUPPLY AND SERVICE) (APR 1984)

Derived from FAR 52.249-8
(Applies to fixed price subcontracts for supplies and services.)

A. 1. NREL may, subject to paragraphs (C) and (D) of this clause, by written notice of default to the Subcontractor, terminate this subcontract in whole or in part if the Subcontractor fails to--

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

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

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

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

B. If NREL terminates this subcontract in whole or in part, it may acquire, under the terms and in the manner the NREL Subcontract Administrator considers appropriate, supplies or services similar to those terminated, and the Subcontractor will be liable to NREL/Government for any excess costs for those supplies or services. However, the Subcontractor shall continue the work not terminated.

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

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

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

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

E. If this subcontract is terminated for default, NREL may require the Subcontractor to transfer title to the Government and deliver to NREL, as directed by the NREL Subcontract Administrator, any--

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

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

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

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

Clause 51. 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 schedule shall be revised, subject to the rights of NREL/Government under the termination clause of this subcontract.

Clause 52. 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 DOE 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 DOE directly related to activities at DOE-owned or leased sites.

Clause 53. 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, relating to those countries, which may from time to time, be identified to the Subcontractor as sensitive foreign nations. The Subcontractor shall have the right to terminate its performance under this subcontract upon at least 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 54. PUBLIC AFFAIRS (DEC 2000)

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 unclassified information to the public and news media regarding NREL/DOE policies, programs, and activities relating to its effort under the subcontract. The responsibilities under this clause must be accomplished through coordination with the NREL Subcontract Administrator and appropriate NREL public affairs personnel in accordance with procedures defined by the NREL Subcontract Administrator.

B. The Subcontractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of unclassified 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 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 NREL/DOE procedures for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.

E. Unless prohibited by law, and in accordance with procedures defined by the NREL Subcontract Administrator, 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. In accordance with procedures defined by the NREL Subcontract Administrator, 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 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.

Clause 55. REFUND OF ROYALTIES (FEB 1995)

Derived from DEAR 952.227-9
(Applies to subcontracts where the Subcontractor will pay royalties for experimental, research, development, or demonstration work or other subcontracts where the Subcontractor will pay royalties.)

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 DOE 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 56. FOREIGN TRAVEL (SPECIAL) (MAY 2003)

Derived from DEAR 952.247-70 and DOE Order 551.1 (FD)
(Applies to all subcontracts where foreign travel may be required.)

A. All foreign travel (one trip or multiple trips), if required in performance of the subcontract, shall be subject to the prior approval of the Department of Energy. 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.

B. Request for approval of foreign travel shall be submitted to NREL a minimum of forty-five (45) days prior to the planned departure date, and be submitted on a NREL Request for Approval of Foreign Travel Form.

Clause 57. ACCESS TO AND OWNERSHIP OF RECORDS (DEC 2000)

Derived from DEAR 970.5204-3 (FD)
(Applies to cost type subcontracts when the work is or involves a critical task under NREL's Prime Contract. Applies to all cost type subcontracts exceeding $2M and all cost type subcontracts where the clause Integration of Environment, Safety, and Health into Work Planning and Execution is applicable.)

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 the Government or otherwise disposed of by the Subcontractor either as the NREL Subcontract Administrator may from time to time direct during the progress of the work or, in any event, as the NREL Subcontract Administrator 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 workers' compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns, and 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.

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

3. Records relating to any procurement action by the Subcontractor, except for records that under 48 CFR 970.5232-3, Accounts, Records, and Inspection, are described as the property of Government; and

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 maintained pursuant to the other terms and conditions of this Subcontract:

   (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) The Subcontractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

   (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 NREL/DOE or its designees, including successor Contractors to NREL. Upon delivery, title to such records shall vest in NREL/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 NREL/Government or its designees at all reasonable times, and the Subcontractor shall afford NREL/Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the NREL Subcontract Administrator, the Subcontractor shall deliver such records to a location specified by the NREL Subcontract Administrator for inspection, copying, and audit. The NREL/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 NREL/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 lower-tier subcontract is greater than $2 million (unless specifically waived by the NREL Subcontract Administrator);
2. The NREL Subcontract Administrator determines that the lower-tier subcontract is, or involves, a critical task related to NREL's Prime Contract; or
3. The lower-tier subcontract includes 48 CFR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

Clause 58. 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 5,000 copies of a single page, or no more than 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 59. INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)

Derived from DEAR 970.5223-1(FD)
(Applies to subcontracts involving complex or hazardous work that is to be performed on a Government-owned or -leased facility.)

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 a Government-owned or-leased facility. 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.

Clause 60. ACCOUNTS, RECORDS, AND INSPECTION (DEC 2000) AND ALTERNATE I (DEC 2002) AND ALTERNATE II (DEC 2000)

Derived from DEAR 970.5232-3 (FD)
(Applies to all cost type subcontracts. Applies to all fixed price or unit price subcontracts where under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.)

A. Accounts.

The Subcontractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred or anticipated to be 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. The system of accounts employed by the Subcontractor shall be satisfactory to NREL/Government and in accordance with generally accepted accounting principles consistently applied.

B. Inspection and audit of accounts and records.

All books of account and records relating to this subcontract shall be subject to inspection and audit by NREL/Government or its designees in accordance with the provisions of the Clause, “Access to and Ownership of Records”, at all reasonable times, before and during the period of retention provided for in paragraph (D) of this clause, and the Subcontractor shall afford NREL/Government proper facilities for such inspection and audit.

C. Audit of lower-tier subcontractors' records.

The Subcontractor also agrees, with respect to any lower-tier subcontracts (including fixed-price or unit-price lower-tier subcontracts or purchase orders) where, under the terms of the lower-tier subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the lower-tier subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the NREL Subcontract Administrator.

D. Disposition of records.

Except as agreed upon by the NREL/Government and the Subcontractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Subcontractor in connection with the work under this subcontract, other applicable credits, and fee accruals under this subcontract, shall be the property of the Government, and shall be delivered to NREL/Government or otherwise disposed of by the Subcontractor either as the NREL Subcontract Administrator may from time to time direct during the progress of the work or, in any event, as the NREL Subcontract Administrator shall direct upon completion or termination of this subcontract and final audit of accounts hereunder. Except as otherwise provided in this subcontract, including provisions of the Clause, “Access to and Ownership of Records”, all other records in the possession of the Subcontractor relating to this subcontract shall be preserved by the Subcontractor for a period of three years after final payment under this subcontract or otherwise disposed of in such manner as may be agreed upon by the NREL/Government and the Subcontractor.

E. Reports.

The Subcontractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this subcontract as the NREL Subcontract Administrator may from time to time require.

F. Inspections.

NREL/Government shall have the right to inspect the work and activities of the Subcontractor under this subcontract at such time and in such manner as it shall deem appropriate.

G. Lower-tier subcontracts.

The Subcontractor further agrees to require the inclusion of provisions similar to those in paragraphs (A) through (G) and paragraph (H) of this clause in all lower-tier subcontracts (including fixed price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the lower-tier subcontract, costs incurred are a factor in determining the amount payable to the lower-tier subcontractor. The Subcontractor further agrees to include an “Audit” clause, the substance of which is the “Audit” clause set forth at 48 CFR 52.215-2 in each lower-tier subcontract which does not include provisions similar to those in paragraph (A) through paragraph (G) and paragraph (H) of this clause, but which contains a “lower-tier subcontract defective cost or pricing data” clause.

H. 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.
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.
3. Nothing in this subcontract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this subcontract.

ALTERNATE I
Use Alternate I for all subcontracts exceeding $550,000.00 and the clause "Subcontract Price Reduction for Defective Cost or Pricing Data" is applicable to the subcontract.

A. Paragraph (A) of the basic clause shall be modified by adding the words "or anticipated to be incurred" after the words "allowable costs incurred."

B. Paragraph (G) of the basic clause shall be modified by adding the following:

The Subcontractor further agrees to include an "Audit" clause, the substance of which is the "Audit" clause set forth at 48 CFR 52.215-2, in each lower-tier subcontract which does not include provisions similar to those in paragraph (A) through paragraph (G) and paragraph (H) of this clause, but which contains a "Lower-tier subcontract defective cost or pricing data" clause.

ALTERNATE II
Use Alternate II for cost-type subcontracts exceeding $5 million and expected to run for more than 2 years or cost-type subcontracts, as determined by the NREL Subcontract Administrator, where the Subcontractor has an established internal audit organization.

I. Internal audit.

The Subcontractor agrees to conduct an internal audit and examination satisfactory to NREL/Government of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this subcontract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to NREL/Government. The Subcontractor shall include this paragraph (I) in all cost-reimbursement lower-tier subcontracts with an estimated cost exceeding $5 million and expected to run for more than 2 years or any other cost-reimbursement lower-tier subcontract as determined by the NREL Subcontract Administrator where the lower-tier subcontractor has an established internal audit organization.

Clause 61. PROPERTY (DEC 2000) AND ALTERNATE I (DEC 2002)

Derived from DEAR 970.5245-1 (FD)
(Applies to cost type subcontracts.)

(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, or (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 personality 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. (i) 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:

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

   (iii) 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

   (iv) 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 he 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 therefore, 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 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).