

**APPENDIX B-8**

**STANDARD TERMS AND CONDITIONS  
FOR  
SUBCONTRACTS & PURCHASE ORDERS  
FOR  
COMMERCIAL ITEMS  
(Goods & Services)**

**April 2, 2009**

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**Section I. APPLICABLE COMMERCIAL ITEMS (GOODS AND SERVICES) CLAUSES; APPLICABLE FAR CLAUSES; SUBSTITUTIONS**

- (a) The full text clauses are applicable to all Subcontracts and Purchase Orders for commercial items (goods and services). For Purchase Orders the following substitutions shall be made as appropriate in the context of the full text clauses:
  - (1) "Purchase Order for "Subcontract"; and
  - (2) "Vendor/Supplier" for "Subcontractor".
- (b) One or more Federal Acquisition Regulation (FAR) clauses are incorporated by reference as they exist on the effective date of this Subcontract or Purchase Order with the same force and effect as if they were in full text. The following substitutions shall be made as appropriate in the context of the FAR clauses incorporated by reference:
  - (1) "NREL" for "Government or DOE";
  - (2) "Purchase Order" or "Subcontract" for "Contract";
  - (3) "Vendor/Supplier" or "Subcontractor" for "Contractor"; and
  - (4) "NREL Subcontract Administrator" for "Contracting Officer".

**Clause 1. ACCEPTANCE OF TERMS AND CONDITIONS (FEB 2009)**

*Derived from NREL 09.100-01*

Acceptance of this Subcontract must be in accordance with and strictly limited to these Terms and Conditions. An attempted acknowledgment or acceptance which contains provisions conflicting or additional to these Terms and Conditions or which varies any terms and conditions shall have no force or effect. Performance by the Subcontractor without an executed acknowledgment shall be deemed to be performance in accordance with these Terms and Conditions.

**Clause 2. COMMERCIAL ITEMS–SUBCONTRACT TERMS AND CONDITIONS (SPECIAL) (FEB 2009)**

*Derived from FAR 52.212-4 (FEB 2007)*

*(Applies to the acquisition of commercial items)*

- (a) Inspection/Acceptance. The Subcontractor shall only tender for acceptance those items that conform to the requirements of this subcontract. NREL reserves the right to inspect or test any supplies or services that have been tendered for acceptance. NREL may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in subcontract price. If repair/replacement or reperformance will not correct the defects or is not possible, NREL shall require a refund of the price. In the alternative, NREL/Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. NREL must exercise its post-acceptance rights—
  - (1) Within a reasonable time after the defect was discovered or should have been discovered; and
  - (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
- (b) Assignment. The Subcontractor or its assignee may assign its rights to receive payment due as a result of performance of this subcontract to a bank, trust company, or other financing institution, including any federal lending agency in accordance with

the Assignment of Claims Act (31 U.S.C.3727). However, when a third party makes payment (e.g., use of the Government-wide commercial purchase card), the Subcontractor may not assign its rights to receive payment under this subcontract. If directed by the Department of Energy, NREL may, without notice, assign or transfer all its rights and obligations under this Subcontract to a successor Contractor, DOE, or its designee.

- (c) Changes. Changes in the terms and conditions of this subcontract may be made only by written agreement of the parties.
- (d) Subcontract Issues and Disputes. (Special) (Sep 2007)
  - (1) It is NREL's practice to try to resolve all contractual issues by mutual agreement at the NREL Subcontract Administrator's level, without litigation. Both parties hereby agree to explore all reasonable avenues for negotiations in order to avoid a dispute. Either party may provide written notice to the other party to conduct negotiations for a period not to exceed sixty (60) calendar days. After sixty (60) calendar days, if possibilities for negotiations have failed, either party shall have thirty (30) calendar days to request that the potential dispute be moved to Alternative Dispute Resolution (ADR). Within fifteen (15) calendar days after receiving a request to move to ADR, if ADR procedures are not acceptable to the non-moving party, a written explanation citing specific reasons for rejecting ADR as inappropriate for resolution of the dispute shall be provided to the moving party. If the parties are unable to agree on the application of ADR procedures to resolve the potential dispute or are unable to satisfactorily resolve the dispute using ADR procedures for a period not to exceed ninety (90) calendar days (or such longer period as mutually agreed in writing), the parties shall resume the formal process authorized in this clause.
  - (2) The parties agree that the appropriate forum for litigation of any dispute pertaining to this subcontract shall be a court of competent jurisdiction as follows:
    - (i) 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.
    - (ii) 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.
  - (3) Any substantive issue of law in such litigation shall be determined in accordance with the body of applicable federal law relating to the interpretation and application of clauses derived from Federal Acquisition 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.
  - (4) 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 subcontractual issues, disputes, or litigation arising under or related to this subcontract between the parties

hereto or between the Subcontractor and lower-tier Subcontractors or suppliers.

- (5) The Contract Disputes Act of 1978 (41 U.S.C. Sections 60 1-613) shall not apply to this subcontract; provided, however, that nothing in this clause shall prohibit NREL, in its sole discretion, from sponsoring a dispute of the Subcontractor for resolution under the provision of its prime contract with DOE. In the event that NREL so sponsors a dispute at the request of the Subcontractor, the Subcontractor shall be bound by the decision of the cognizant DOE Contracting Officer to the same extent and in the same manner as NREL.
  - (6) Any disputes relative to intellectual property matters will be governed by other provisions of this subcontract.
- (e) Definitions. (Oct 2008)
- (1) "Head of the Agency" means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy.
  - (2) "Commercial component" means any component that is a commercial item.
  - (3) "Commercial item (goods or services)" means—
    - (i) Any item, other than real property, that is of a type customarily used for non-governmental purposes and that—
      - (A) Has been sold, leased, or licensed to the general public; or
      - (B) Has been offered for sale, lease, or license to the general public;
    - (ii) Any item that evolved from an item described in paragraph (3)(i) 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 an NREL/Government solicitation;
    - (iii) Any item that would satisfy a criterion expressed in paragraphs (3)(i) or (3)(ii) of this clause, but for
      - (A) Modifications of a type customarily available in the commercial marketplace; or
      - (B) Minor modifications of a type not customarily available in the commercial marketplace made to meet NREL or Federal Government requirements. "Minor" modifications mean modifications that do not significantly alter the non-governmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor.
    - (iv) Any combination of items meeting the requirements of paragraphs (3) (i), (ii), (iii), or (v) of this clause that are of a type customarily combined and sold in combination to the general public;
    - (v) 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 (3) (i), (ii), (iii), or (iv) of this clause, and if the source of such services—

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- (A) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
  - (B) 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;
  - (vi) 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;
  - (vii) Any item, combination of items, or service referred to in subparagraphs (3)(i) through (3)(vi), 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
  - (viii) 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.
- (4) "Component" means any item supplied to the Federal Government as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9 (a) and 52.225-11 (a).
- (5) "DOE Contracting Officer" means a person with the authority to enter into, administer, and/or terminate DOE prime contracts and make related determinations and findings. The term includes certain authorized representatives of the DOE Contracting Officer acting within the limits of their authority as delegated by the DOE Contracting Officer.
- (6) "NREL Subcontract Administrator" means an employee of the Management and Operating Contractor of NREL with the authority to enter into, administer, and/or terminate subcontracts under a DOE prime contract and make related determinations and findings. The term includes certain authorized representatives of NREL acting within the limits of their authority as delegated by NREL.
- (7) "Non-developmental item" means
- (i) 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;
  - (ii) Any item described in paragraph (7)(i) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of NREL/Government or a procuring department or agency; or
  - (iii) Any item of supply being produced that does not meet the requirements of paragraph (7)-(i) or (7)-(ii) solely because the item is not yet in use.
- (8) Except as otherwise provided in this subcontract, the terms "subcontracts" and "lower-tier subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders.

- (9) The term "DOE" means the U.S. Department of Energy.
  - (10) "Contractor" or "DOE Prime Contractor" means the entity managing and operating the National Renewable Energy Laboratory (NREL) under prime contract to the U.S. Department of Energy. NREL is a Department of Energy-owned national laboratory, managed and operated by the DOE Prime Contractor.
  - (11) 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 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 or NREL concerns relating to health, safety, or the environment.
- (f) Excusable Delays. The Subcontractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Subcontractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Subcontractor shall notify the NREL Subcontract Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the NREL Subcontract Administrator of the cessation of such occurrence.
- (g) Invoice.
- (1) The Subcontractor shall submit an original invoice (or electronic invoice, if authorized) to the address designated in the subcontract to receive invoices. An invoice must include—
    - (i) Name and address of the Subcontractor;
    - (ii) Invoice date and number;
    - (iii) Subcontract number, subcontract line item number and, if applicable, the order number;
    - (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
    - (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
    - (vi) Terms of any discount for prompt payment offered;
    - (vii) Name and address of official to whom payment is to be sent; and
    - (viii) Name, title, and phone number of person to notify in event of defective invoice.
    - (ix) [Reserved]
    - (x) [Reserved]
  - (2) Invoices will be handled in accordance with the Prime Contractor's DOE-approved procurement system.
- (h) Patent Indemnity. The Subcontractor shall indemnify NREL and the Government and their officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this subcontract, provided the Subcontractor is reasonably notified of such claims and proceedings.
- (i) Payment.

- (1) Items accepted. Payment shall be made for items accepted by NREL that have been delivered to the delivery destinations set forth in this subcontract.
  - (2) NREL will make payment in accordance with the payment terms stated in the subcontract.
  - (3) Discount. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.
  - (4) Overpayments. If the Subcontractor becomes aware of a duplicate subcontract financing or invoice payment or that NREL has otherwise overpaid on a subcontract financing or invoice payment, the Subcontractor shall immediately notify the NREL Subcontract Administrator and request instructions for disposition of the overpayment.
- (j) Risk of Loss. Unless the subcontract specifically provides otherwise, risk of loss or damage to the supplies provided under this subcontract shall remain with the Subcontractor until, and shall pass to NREL/Government upon:
- (1) Delivery of the supplies to a carrier, if transportation is Free on Board (FOB) Origin; or
  - (2) Delivery of the supplies to NREL at the destination specified in the subcontract, if transportation is f.o.b. destination.
- (k) Taxes. The Subcontractor shall exclude Colorado State Sales Tax from the Subcontract price. The Colorado Sales Tax Exemption Permit Number is provided in the Subcontract Schedule or Purchase Order. The Subcontractor warrants that the subcontract price includes all other applicable federal, state, and local taxes and duties.
- (l) Termination for NREL/Government's Convenience. NREL/Government reserves the right to terminate this subcontract, or any part hereof, for its sole convenience. In the event of such termination, the Subcontractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and lower-tier subcontractors to cease work. Subject to the terms of this subcontract, the Subcontractor shall be paid a percentage of the subcontract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Subcontractor can demonstrate to the satisfaction of NREL using its standard record keeping system, have resulted from the termination. The Subcontractor shall not be required to comply with the cost accounting standards or subcontract cost principles for this purpose. This paragraph does not give NREL or the Government any right to audit the Subcontractor's records. The Subcontractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.
- (m) Termination for Cause. NREL/Government may terminate this subcontract, or any part hereof, for cause in the event of any default by the Subcontractor, or if the Subcontractor fails to comply with any subcontract terms and conditions, or fails to provide NREL/Government, upon request, with adequate assurances of future performance. In the event of termination for cause, NREL/Government shall not be liable to the Subcontractor for any amount for supplies or services not accepted, and the Subcontractor shall be liable to NREL/Government for any and all rights and remedies provided by law. If it is determined that the NREL/Government improperly terminated this subcontract for default, such termination shall be deemed a termination for convenience.

- (n) Title. Unless specified elsewhere in this subcontract, title to items furnished under this subcontract shall pass to the Government upon acceptance, regardless of when or where NREL or the Government takes physical possession.
- (o) Warranty. Unless specified in an express warranty accepted, in writing by the NREL Subcontract Administrator, the Subcontractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this subcontract.
- (p) Limitation of Liability. Except as otherwise provided by an express warranty, the Subcontractor will not be liable to NREL/Government for consequential damages resulting from any defect or deficiencies in accepted items.
- (q) Other Compliances. The Subcontractor shall comply with all applicable federal, state and local laws, executive orders, rules and regulations applicable to its performance under this subcontract.
- (r) Compliance with Laws Unique to Government Subcontracts. The Subcontractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain federal subcontracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.
- (s) Order of Precedence. Any inconsistencies in this solicitation or subcontract shall be resolved by giving precedence in the following order:
  - (1) The schedule of supplies/services.
  - (2) The Assignments, Issues and Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Subcontracts paragraphs of this clause.
  - (3) The clause FAR 52.212-5. Subcontract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (SPECIAL) (FEB 2009).
  - (4) Addenda to this solicitation or subcontract, including any license agreements for computer software.
  - (5) [Reserved]
  - (6) Other paragraphs of this clause.
  - (7) [Reserved]
  - (8) Other documents, exhibits, and attachments.
  - (9) The specification.

**Clause 3. SUBCONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (SPECIAL) (FEB 2009)**

*Derived from FAR 52.212-5 (DEC 2007)*

- (a) The Subcontractor agrees to comply with the following FAR clauses, which are incorporated in this subcontract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:
  - (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sep 2006), with Alternate I (Oct 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).
  - (2) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)).
  - (3) 52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).
  - (4) 52.222-3, Convict Labor (Jun 2003) (E.O. 11755).

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- (5) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).
- (6) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
- (7) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sep 2006) (38 U.S.C. 4212).
- (8) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
- (9) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).
- (10) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sep 2006) (38 U.S.C. 4212).
- (11) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).
- (12) 52.225-1, Buy American Act—Supplies (Jun 2003) (41 U.S.C. 10a-10d).
- (13) 52.225-5, Trade Agreements (Nov 2007) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).
- (14) 52.225-13, Restrictions on Certain Foreign Purchases (Jun 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
- (15) 52.227-1, Authorization and Consent (Dec 2007).
- (16) 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2007).
- (17) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).
- (b) [RESERVED]
- (c) As specifically prescribed below for the work to be performed, the Subcontractor agrees to comply with the following FAR clauses, which are incorporated in this subcontract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:
  - (1) 52.222-41 Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, et seq.). (applicable to all Subcontracts or Purchase Orders exceeding \$2,500 for services as defined in the Service Contract Act).
  - (2) 52.225-8 Duty-Free Entry (Feb 2008) (19 U.S.C. 1202) (applicable when supplies valued at more than \$100,000 are eligible for duty-free entry and are imported by the Subcontractor for NREL/Government under this subcontract. May also apply to supplies valued at \$100,000 or less if the NREL Subcontract Administrator anticipates the savings from duty-free entry will be more than the administrative costs of obtaining duty-free entry).
- (d) [RESERVED]
- (e) (1) Notwithstanding the flow down (FD) requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Subcontractor is not required to include any FAR clause, other than those in paragraphs (i) through (vii) of this paragraph in lower-tier subcontracts for commercial items (goods or services) or commercial components. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—
  - (i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d) (2) and (3)), in all lower-tier subcontracts (except lower-tier subcontracts to small business concerns) that offer further subcontracting opportunities. 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
  - (ii) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

- (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).
  - (iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).
  - (v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).
  - (vi) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, et seq.).
  - (vii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.
- (2) While not required, the Subcontractor may include in its lower-tier subcontracts for commercial items (goods or services) a minimal number of additional clauses necessary to satisfy its contractual obligations.

**Clause 4. SUBCONTRACTOR QUALITY REPRESENTATIONS (SPECIAL) (APR 2009)**

*Derived from NREL 08.100-06*

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

- (a) New Materials. Unless otherwise specified in this subcontract, all items or parts supplied or delivered by the Subcontractor, or its lower-tier subcontractors, shall consist of new materials. "New materials" means previously unused. The Subcontractor shall not deliver any item or part that is residual inventory resulting from terminated Government contracts/subcontracts or former Government surplus property.
- (b) Recycled or Recovered Materials. The requirement for supply or delivery of items or parts consisting of new materials does not exclude the delivery of recycled or recovered materials as defined by the Environmental Protection Agency in 40 CFR 247.
- (c) Used, Refurbished, or Rebuilt Items or Parts. In the event that items or parts consisting of new materials are not reasonably available to the Subcontractor, with prior NREL Subcontract Administrator written approval, the Subcontractor may supply or deliver either—
  - (1) Used; or
  - (2) Refurbished; or
  - (3) Rebuilt items or parts that—
    - (i) are not of such an age or so deteriorated as to impair their usefulness or safety and
    - (ii) conform to government or industry-accepted specifications or national consensus standards.
- (d) Suspect or Counterfeit Items or Parts. "Suspect or counterfeit items or parts" means (1) items or parts that may be of new manufacture but labeled to represent a different class of items or parts or (2) used and/or refurbished items or parts complete with false labeling that are represented as new items or parts.
- (e) Indemnification of NREL/DOE. The Subcontractor shall indemnify NREL and the DOE, their officers, agents, and employees, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from items or parts that are not genuine, original, and unused, or not otherwise suitable for the intended purpose.

This includes, but is not limited to, items or parts that are defective, suspect, or counterfeit; items or parts that have been provided under false pretenses; and items or parts that are materially altered, damaged, deteriorated, degraded, or result in product failure.

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

**Clause 5. NOTIFICATION OF CHANGE IN OWNERSHIP AND/OR NAME (SPECIAL)  
(OCT 2008)**

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

*(Applies to all subcontracts.)*

- (a) The Subcontractor shall make the following notifications in writing:
  - (1) When the Subcontractor becomes aware that a change in its ownership or name has occurred, or is certain to occur, the Subcontractor shall provide such notification in accordance with NREL's novation and name change procedures.
  - (2) When a change that could result in changes in the valuation of the Subcontractor's capitalized assets in the accounting records or any other asset valuations or cost changes, the Subcontractor shall provide such notification to the NREL Subcontract Administrator within thirty (30) days.
- (b) In the event of change in ownership, the Subcontractor shall—
  - (1) Maintain current, accurate, and complete inventory records of assets and their costs;
  - (2) Provide the NREL Subcontract Administrator or designated representative ready access to the records upon request;
  - (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Subcontractor's ownership changes; and
  - (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Subcontractor ownership change.
- (c) The Subcontractor shall include the substance of this clause in all lower-tier subcontracts where it is contemplated that cost or pricing data will be required or for which any pre-award or post-award cost determination is subject to FAR 31.2, cost principles, and procedures applicable to commercial organizations. The Subcontractor shall notify the NREL Subcontract Administrator of the change in

ownership or name of any lower-tier Subcontractor subject to the terms of this clause.

**Clause 6. STOP WORK ORDER (SPECIAL-COMMERCIAL ITEMS) (FEB 2009)**

*Derived from FAR 52.242-15*

- (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.

**Clause 7. COMMERCIAL BILL OF LADING NOTATIONS (SPECIAL) (FEB 2009)**

*Derived from FAR 52.247-1ci (FEB 2006) (FD)*

*[Applies to all subcontracts where direct and actual transportation cost is a separate item in the invoice (e.g. free on board (F.O.B.) origin) and not included in the delivered price (e.g. F.O.B. destination)].*

When the NREL Subcontract Administrator authorizes supplies to be shipped on a commercial bill of lading and the Subcontractor will be reimbursed these transportation costs as direct

allowable costs, the Subcontractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

- (a) If NREL Subcontract Administrator is shown as the consignor or the consignee, the annotation shall be: "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, NREL Subcontract Administrator on behalf of the Government, pursuant to cost-reimbursement contract No. DE-AC36-08GO28308. This may be confirmed by contacting the Golden Field Office, 1617 Cole, Blvd, Golden, CO 80401."
- (b) If NREL Subcontract Administrator is not shown as the consignor or the consignee, the annotation shall be: "Transportation is for the U.S. Department of Energy, acting through its National Renewable Energy Laboratory (NREL) and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the NREL Subcontract Administrator, on behalf of the Government, pursuant to cost-reimbursement contract No. DE-AC36-08GO28308. This may be confirmed by contacting the Golden Field Office, 1617 Cole Blvd, Golden, CO 80401."

**Section II. CLAUSES APPLICABLE TO SUBCONTRACTS OR PURCHASE ORDERS FOR COMMERCIAL ITEMS (GOODS AND SERVICES) THAT REQUIRE PERFORMANCE ON NREL-OPERATED FACILITIES**

The following clauses are applicable to subcontracts and purchase orders for commercial items (goods and services) that require the Subcontractor or its lower-tier subcontractors, or other persons representing the subcontractor, to perform work on NREL-operated facilities or government-owned or -leased properties.

**Clause 8. SECURITY AND ACCESS REQUIREMENTS FOR SUBCONTRACT WORK PERFORMED AT NREL OPERATED FACILITIES (SPECIAL) (JAN 2009)**

*Derived from NREL 08.100-02*

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

- (a) Security requirements.
  - (1) NREL has established security requirements to govern access onto NREL operated facilities or government-owned or -leased properties (here after "NREL operated facilities") by the Subcontractor's employees (and its lower-tier Subcontractors' employees), officers, agents, and any other persons representing the Subcontractor.
    - (i) The introduction of certain "controlled" commodities and/or activities on the NREL operated facilities is prohibited. Prohibited articles include firearms, explosive devices, incendiary devices, dangerous weapons or materials, controlled substances (illegal drugs), alcoholic beverages, and livestock. NREL operated facilities and DOE-owned or -leased property are closed to all hunting.
  - (2) As a condition of entry to NREL operated facilities, the Subcontractor agrees to permit NREL Security personnel to search the Subcontractor's employees

- (and its lower-tier Subcontractors' employees) and their officers and agents' vehicles, packages, tool boxes, or other containers for the purpose of preventing prohibited articles to be brought onto NREL operated facilities or to detect or deter the unauthorized removal of Government property from NREL operated facilities.
- (3) The Subcontractor is solely responsible for the security of the Subcontractor's employees (and its lower-tier Subcontractors' employees) and their officers and agents' materials and equipment at the NREL operated facilities. Any security system the Subcontractor may elect to use (fences, keys, alarms, etc.) must be coordinated with the NREL Technical Monitor.
  - (4) The Subcontractor is responsible to advise the NREL Technical Monitor promptly of any non-routine events, occurrences, incidents, accidents, etc., particularly in situations involving lost-time accidents and ambulance runs, occurring under this subcontract.
  - (5) NREL Security reserves the right to revoke site access authorization for any person violating NREL or DOE security policies and procedures.
- (b) Access requirements for U.S. citizens.
- (1) Access to NREL operated facilities is controlled in accordance with DOE's security requirements. The Subcontractor shall ensure that any of the Subcontractor's employees (and its lower-tier Subcontractors' employees) and their officers and agents who will enter onto the NREL operated facilities are specifically authorized site access under the NREL requirements set forth in the NREL Access Control Policy and Program, including identification, badging, and registration by NREL Security. A two-week advance notice to NREL Security processed through the NREL Subcontract Administrator is required prior to access by U.S. citizens.
- (c) Access requirements for persons who are not U.S. citizens.
- (1) The Subcontractor shall ensure that any of the Subcontractor's employees (or its lower-tier Subcontractors' employees), officers, and agents who will enter onto NREL operated facilities and who are not U.S. citizens meet the requirements set forth in NREL's Foreign National Management Policy and Program, including: (a) appropriate work authorization documentation (i.e. Visa); (b) completion of an NREL Foreign National Data Card; and (c) NREL Manager-level approval.
  - (2) Foreign Nationals from DOE-designated "Sensitive Countries" will be processed for a federal background check. This process requires a minimum of two (2) weeks. Foreign Nationals from DOE-designated "Terrorist Supporting Countries" will not be allowed. The Subcontractor should contact the NREL Subcontract Administrator to obtain the most current listing of "Sensitive Countries" and "Terrorist Supporting Countries."
    - (i) It is the Subcontractor's responsibility to obtain and provide all necessary information and documentation to meet NREL, DOE, and federal requirements regarding Subcontractors' employees (or its lower-tier Subcontractors' employees), officers', and agents' work authorization and identification to the NREL Technical Monitor and the NREL Subcontract Administrator to meet the appropriate time frames for NREL Security to process and approve the request for access. Any person(s) denied access by NREL Security or DOE shall not be assigned by the Subcontractor to enter onto or perform subcontract work at NREL operated facilities.

- (3) Prior to the initiation of a subcontract that requires entry onto NREL operated facilities, the Subcontractor shall provide to the NREL Subcontract Administrator advance notice and necessary evidence (including Visa types and expiration dates) that legally sufficient work permits have been obtained from the U.S. Citizenship and Immigration Services. Further, the Subcontractor is responsible to ensure that such permits are properly maintained for any of the Subcontractor's employees (and its lower-tier Subcontractors' employees) and their officers and agents who are not U.S. citizens for the duration of subcontract work at NREL operated facilities.
  - (4) After the Subcontractor (and its lower-tier Subcontractors) has commenced work under the subcontract, the Subcontractor shall provide to the NREL Subcontract Administrator the same advance notice and necessary evidence (including Visa types and expiration dates) for all subsequently assigned individuals who are not U.S. citizens who will enter onto NREL operated facilities.
- (d) Access Requirements for all persons.
- (1) All persons entering NREL operated facilities must display a valid NREL- or DOE- issued identification badge. The Subcontractor is responsible to coordinate badge requirements for entrance onto NREL operated facilities for all the Subcontractor's employees (and lower-tier Subcontractors' employees) and their officers and agents to ensure the display and return of all issued badges.
  - (2) The Subcontractor is responsible to coordinate with the NREL Technical Monitor all vehicle parking requirements needed to perform the subcontract work on the NREL operated facilities. Vehicle access by Subcontractors and other visitors to the NREL operated facilities is controlled on a 24-hour, 7-day per week basis.
  - (3) The Subcontractor is cautioned that effective January 1, 2007, the Colorado Revised Statutes (CRS 8-2-122) require employers that transact business in Colorado to comply with employment verification requirements to affirm that the employer has examined the legal work status of newly-hired employees and has retained file copies of the documents required by the Federal Immigration Reform and Control Act (8 USC 1324a).
- (e) The Subcontractor shall include this clause, including this Paragraph (e), in all lower-tier subcontracts that require entry onto NREL operated facilities."

**Clause 9. WORKER SAFETY AND HEALTH REQUIREMENTS (SPECIAL) (FEB 2009)**

*Derived from NREL 09.100-02*

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

- (a) **THE SUBCONTRACTOR SHALL BE RESPONSIBLE TO ENSURE THAT ALL WORK PERFORMED UNDER THIS SUBCONTRACT (INCLUSIVE OF LOWER-TIER SUBCONTRACTORS) IS PERFORMED IN ACCORDANCE WITH THE DEPARTMENT OF ENERGY'S "WORKER SAFETY AND HEALTH" RULE CODIFIED AT 10 CFR 851. THE SUBCONTRACTOR SHALL ENSURE THAT ALL WORK IS PERFORMED IN ACCORDANCE WITH NREL'S DOE-APPROVED SAFETY MANAGEMENT SYSTEM. THE SUBCONTRACTOR IS SUBJECT TO ALL APPLICABLE PROCEDURES FOR INVESTIGATING VIOLATIONS, ENFORCING COMPLIANCE WITH REQUIREMENTS, AND ASSESSING CIVIL PENALTIES OR FEE REDUCTIONS FOR VIOLATIONS**

**UNDER DOE'S "WORKER SAFETY AND HEALTH" RULE. WHEN THESE "WORKER SAFETY AND HEALTH REQUIREMENTS" ARE MADE APPLICABLE TO THE WORK TO BE PERFORMED UNDER AN NREL SUBCONTRACT, THE SUBCONTRACTOR SHALL ALSO COMPLY WITH THE CLAUSE "INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION" (DEAR 970.5223-1).**

- (b) The Subcontractor shall have a structured approach to its worker safety and health program that at a minimum meets the mandatory requirements specified in Appendix A of 10 CFR 851 for implementing any of the following functional areas applicable to the work to be performed: (1) construction safety; (2) fire protection; (3) firearms safety; (4) explosives safety; (5) pressure safety; (6) electrical safety; (7) industrial hygiene; (8) occupational medicine; (9) biological safety; and (10) motor vehicle safety.
- (c) The Subcontractor shall be responsible for full compliance (inclusive of its lower-tier subcontractors) with all applicable worker safety and health standards of DOE and NREL to provide subcontract work that is free from recognized hazards that are causing or have the potential to cause death or serious physical harm to workers. The Subcontractor shall comply with all Safety and Health Standards applicable to the hazards of the work to be performed, including but not limited to: (a) 29 CFR 1904 Recording and Reporting Occupational Injuries and Illnesses; (b) 29 CFR 1910 Occupational Safety and Health Standards and ACGIH Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices; (c) 29 CFR 1926 Safety and Health Regulations for Construction; (d) ANSI Z88.2 Respiratory Protection; (e) ANSI Z136.1 Safe Use of Lasers; (f) ANSI Z49.1 Welding, Cutting, and Allied Processes; (g) NFPA 70 National Electrical Code; and (h) NFPA 70E Standard for Electrical Safety in the Workplace. Nothing in this Paragraph (c) shall be construed as relieving the Subcontractor from complying with any additional specific safety and health requirements necessary to protect the safety and health of workers.
- (d) In conforming to the worker safety and health requirements identified the Subcontractor shall provide at least worker safety and health supervision in the following areas: (1) management responsibilities; (2) worker rights and responsibilities; (3) hazard identification and assessment; (4) hazard prevention and abatement; (5) training and information; and (6) recordkeeping and reporting.
- (e) NREL may inspect the Subcontractor's operation as work proceeds, from time to time, for compliance with worker safety and health requirements contained in this subcontract. The NREL Subcontract Administrator shall direct the Subcontractor to make the necessary corrections commensurate with deficiencies found. The Subcontractor shall make these corrections at no additional expense to NREL. The Subcontractor shall participate in NREL's fact-finding investigations of accidents, injuries, occurrences, and near-misses. The Subcontractor shall participate in fact-finding investigations at no additional expense to NREL. The Subcontractor shall remove from the work site any employee that NREL identifies in writing as unsafe, incompetent, careless, or otherwise objectionable. The Subcontractor shall replace the removed employee at no additional expense to NREL. Any NREL representatives, NREL subcontractors, or DOE representatives, including but not limited to the NREL Technical Monitor or Project Manager, the DOE Federal Project Director, the NREL Subcontract Administrator and NREL and DOE EHSS&Q representatives have authority to stop work if unsafe conditions exist. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of or in connection with any unsafe conditions work stoppage. The Subcontractor's violation, refusal, or failure to abate violations, or applicable

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

**Clause 10. DRUG-FREE WORKPLACE (MAY 2001)**

*Derived from FAR 52-223-6 (FD)*

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

- (a) Definitions.
- (1) "Controlled substance," as used in this clause, means a controlled substance in subcontract schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.
  - (2) "Conviction," as used in this clause, means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.
  - (3) "Criminal drug statute," as used in this clause, means a federal or non-federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.
  - (4) "Drug-free workplace," as used in this clause, means the NREL-operated site(s) for the performance of work done by the Subcontractor in connection with a specific subcontract where employees of the Subcontractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.
  - (5) "Employee," as used in this clause, means an employee of a Subcontractor directly engaged in the performance of work under a NREL subcontract. "Directly engaged" is defined to include all direct cost employees and any other Subcontractor employee who has other than a minimal impact or involvement in subcontract performance.
  - (6) "Individual," as used in this clause, means a Subcontractor that has no more than one employee including the Subcontractor.
- (b) The Subcontractor, if other than an individual, shall—within thirty (30) days after award (unless a longer period is agreed to in writing for subcontracts of thirty (30) days or more performance duration), or as soon as possible for subcontracts of less than thirty (30) days performance duration—
- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is

- prohibited in the Subcontractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- (2) Establish an ongoing drug-free awareness program to inform such employees about—
    - (i) The dangers of drug abuse in the workplace;
    - (ii) The Subcontractor's policy of maintaining a drug-free workplace;
    - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
    - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - (3) Provide all employees engaged in performance of the Subcontract with a copy of the statement required by subparagraph (b)(1) of this clause;
  - (4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this Subcontract, the employee will—
    - (i) Abide by the terms of the statement; and
    - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction;
  - (5) Notify the NREL Subcontract Administrator in writing within ten (10) days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
  - (6) Within thirty (30) days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
    - (i) Take appropriate personnel action against such employee, up to and including termination; or
    - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency; and
    - (iii) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.
- (c) The Subcontractor, if an individual, agrees by award of the subcontract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this subcontract.
- (d) In addition to other remedies available to the NREL and the Government, the Subcontractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Subcontractor subject to suspension of subcontract payments, termination of the subcontract or default, and suspension or debarment.

**Clause 11. ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (SPECIAL) (OCT 2008)**

*Derived from FAR 52.223-15 (DEC 2007) (FD)*

*(Applies to all subcontracts where energy consuming products will be delivered, acquired, or furnished for use by the Subcontractor or for use on NREL-operated facilities or government-owned or -leased properties.)*

- (a) Definition. As used in this clause—
  - (1) “Energy-efficient product”—
    - (i) Means a product that—  
Meets DOE and Environmental Protection Agency criteria for use of the Energy Star® trademark label; or
    - (ii) Is in the upper twenty-five percent (25%) of efficiency for all similar products as designated by the Department of Energy’s Federal Energy Management Program (FEMP).
  - (2) [Reserved.]
- (b) The Subcontractor shall ensure that energy-consuming products are energy efficient products (i.e., ENERGY STAR® products or FEMP-designated products) at the time of subcontract award, for products that are—
  - (1) Delivered;
  - (2) Acquired by the Subcontractor for use in performing services at a DOE-owned or -leased facility;
  - (3) Furnished by the Subcontractor for use by NREL/Government; or
  - (4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.
- (c) The requirements of paragraph (b) apply to the Subcontractor (including any lower-tier Subcontractor) unless—
  - (1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or
  - (2) Otherwise approved in writing by the NREL Subcontract Administrator.
- (d) Information about these products is available for—
  - (1) ENERGY STAR® at <http://www.energystar.gov/products>; and
  - (2) FEMP at [http://www1.eere.energy.gov/femp/procurement/eep\\_requirements.html](http://www1.eere.energy.gov/femp/procurement/eep_requirements.html).

**Clause 12. INSURANCE-WORK ON A GOVERNMENT INSTALLATION (SPECIAL) (JAN 2009) AND ALTERNATE I – ARCHITECT/ENGINEER SUBCONTRACTS (JAN 2009)**

*Derived from FAR 52.228-5 (JAN 1997)*

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

*(Alternate I applies to Architect/Engineer subcontracts.)*

- (a) The Subcontractor shall, at its own expense, maintain and keep in force during the entire performance period of this subcontract at least the kinds and minimum amounts of insurance required in this clause.

Insurance Type	Bodily Injury		Property Damage
	Each Person	Each Occurrence	
Workers' Compensation	As Required by Law	As Required by Law	N/A
Employer's Liability	\$1,000,000.00	\$1,000,000.00	N/A
General Liability	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00
Automobile Liability	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00

- (b) Before commencing work under this subcontract, the Subcontractor shall obtain the required insurance and shall maintain such required insurance for the entire period of performance of this subcontract. The Subcontractor shall immediately notify the NREL Subcontract Administrator in the event of any termination, cancellation, reduction, or other material change adversely affecting NREL's/Government's interest in the required insurance.
- (c) The Subcontractor shall insert the substance of this clause, including this Paragraph (c), in lower-tier subcontracts under this subcontract that require work on a NREL-operated facility, or Government-owned or -leased properties and shall require the lower-tier Subcontractors to provide and maintain the same kinds and minimum amounts of insurance required under this subcontract (exceptions to this requirement will require prior approval from the NREL Subcontract Administrator). The Subcontractor shall maintain a copy of all the lower-tier Subcontractors' proof of required insurance, and shall make copies available to the NREL Subcontract Administrator upon request.

**ALTERNATE I**

*(When the subcontract includes architect/engineer services, replace paragraph (b) with the following paragraph (b) and add the following paragraph (d) to the clause.)*

- (b) Before commencing work under this subcontract, the Subcontractor shall provide the NREL Subcontract Administrator with written proof that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Alliance for Sustainable Energy, LLC and the Government's interest shall not be effective—
  - (1) For such period as the laws of the state in which this subcontract is to be performed prescribe; or
  - (2) Until thirty (30) days after the insurer or the Subcontractor gives written notice to the NREL Subcontract Administrator, whichever period is longer.

The Subcontractor shall immediately notify the NREL Subcontract Administrator in the event of any termination, cancellation, reduction or other material change adversely affecting the Alliance for Sustainable Energy, LLC and the Government's interest in the required insurance.
- (d) The Subcontractor shall, at its own expense, provide and maintain at least the kinds and minimum amounts of Architect/Engineer Professional Liability and Errors and Omissions insurance required in this clause. Architect/Engineer Professional Liability and Errors and Omissions insurance shall be provided and maintained during the entire performance of the subcontract and for five (5) years after the completion of the work. The Subcontractor shall flow down this insurance requirement to its lower-

tier subcontractors providing Architect/Engineer professional services. Such flow down to lower-tiers shall not be construed to relieve the Subcontractor from its obligations under this clause.

Insurance Type		
	Per Claim	Aggregate Claims
Architect/Engineer Professional Liability and Errors and Omissions	\$1,000,000.00	\$1,000,000.00

**Clause 13. PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS AND SET OFF FOR HAZARDOUS MATERIALS RESPONSE, CLEANUP, AND DISPOSAL (SPECIAL) (NOV 2008)**

*Derived from FAR 52.236-9 (APR 1984)*

*(Applies to all subcontracts where the Subcontractor or lower-tier Subcontractors, and their employees, officers, agents, or other persons representing the Subcontractor, will enter onto NREL-operated facilities or government-owned or -leased properties.)*

- (a) The Subcontractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which is not to be removed and which does not unreasonably interfere with the work required under this subcontract. The Subcontractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during subcontract performance, or by the careless operation of equipment, or by workmen, the Subcontractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the NREL Subcontract Administrator.
- (b) The Subcontractor shall protect from damage all existing improvements and utilities—
  - (1) At or near the work site, and
  - (2) On adjacent property of a third party, the locations of which are made known to or should be known by the Subcontractor.
- (c) The Subcontractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this subcontract or failure to exercise reasonable care in performing the work. If the Subcontractor fails or refuses to repair the damage promptly, the NREL Subcontract Administrator may have the necessary work performed and charge the cost to the Subcontractor.
- (d) The Subcontractor shall be responsible for reasonable costs associated with NREL-directed emergency response, cleanup, and disposal of hazardous material, chemical, or petroleum spills caused by the Subcontractor or any of its lower-tier Subcontractors during performance of work required under this subcontract. Upon determination of reasonable costs to be back charged to the Subcontractor resulting from such hazardous material spills, the NREL Subcontract Administrator shall provide the Subcontractor with written notice of the work performed and the costs to be charged to the Subcontractor. The back charge shall be set off against the subcontract price and the subcontract shall be modified in writing. NREL has the right to set off such costs against any amount payable to the Subcontractor whether or not in connection with this subcontract.

- (e) 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 14. INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)**

*Derived from DEAR 970.5223-1(FD)*

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

- (a) For the purposes of this clause—
  - (1) “Safety” encompasses environment, safety, and health, including pollution prevention and waste minimization; and
  - (2) “Employees” include lower-tier Subcontractor employees.
- (b) In performing work under this subcontract, the Subcontractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Subcontractor shall exercise a degree of care commensurate with the work and the associated hazards. The Subcontractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the Subcontractor’s work planning and execution processes. The Subcontractor shall, in the performance of work, ensure that—
  - (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Subcontractor and lower-tier Subcontractor employees managing or supervising employees performing work.
  - (2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
  - (3) Personnel possess the experience, knowledge, skills, and abilities 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 (System).

- (c) The Subcontractor shall manage and perform work in accordance with a documented 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 work on site at NREL operated facilities or 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.