APPENDIX B-9

STANDARD TERMS AND CONDITIONS
FOR

Cost Type Subcontracts

With

Educational Institutions

August 1, 2012

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

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SECTION I. CLAUSES APPLICABLE TO NREL SUBCONTRACTS

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

THE PRESCRIPTION FOLLOWING EACH CLAUSE TITLE BELOW ESTABLISHES APPLICABILITY OF THE CLAUSE IN ACCORDANCE WITH THE SCOPE OF WORK IN EACH SUBCONTRACT. WHEN A CLAUSE IS NOT APPLICABLE TO A SPECIFIC SCOPE OF WORK, SUCH CLAUSE IS SELF-DELETING AND WILL REMAIN SELF-DELETING UNLESS OR UNTIL THE SCOPE OF WORK IS SUBSEQUENTLY MODIFIED IN A WAY THAT THE PRESCRIPTION ESTABLISHES APPLICABILITY.

SECTION I.A CLAUSES INCORPORATED BY REFERENCE FOR AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

This Appendix incorporates one or more clauses by reference, with the same force and effect as if they were given in full text.

The following additional clauses apply to subcontracts or purchase orders funded in whole or in part under the American Recovery and Reinvestment Act of 2009:

FAR 52.203-15	Whistleblower Protection Under the American Recovery and Reinvestment Act of 2009 (JUN 2010)
FAR 52.204-11	American Recovery and Reinvestment Act-Reporting Requirements (JUL 2010)
FAR 52.215-2	Audit and Records – Negotiation (OCT 2010) and Alternate I (MAR 2009)
FAR 52. 244-6	Subcontracts for Commercial Items (OCT 2010)

CLAUSE 1. DEFINITIONS (SPECIAL) (APR 2012)

Derived from FAR 52.202-1 (JAN 2012) as modified by DEAR 902.201
(Applies to all subcontracts.)

(a) When a solicitation provision or subcontract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless—
  (1) The solicitation, or amended solicitation, provides a different definition;
  (2) The subcontracting parties agree to a different definition;
  (3) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
  (4) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.

(b) The FAR Index is a guide to words and terms the FAR defines and shows where each definition is located. The FAR Index is available via the Internet at http://www.acquisition.gov/far at the end of the FAR, after the FAR Appendix.

(c) When a solicitation provision or subcontract clause uses a word or term that is defined in the Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9), the word or term has the same meaning as the definition in 48 CFR 902.101 or the definition in the part, subpart, or section of 48 CFR chapter 9 where the provision or clause is prescribed in effect at the time the solicitation was issued, unless an exception in (a) applies.

(d) The following words and terms are in addition to paragraph (a) of this section—

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

(2) "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.

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

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

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

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

(7) "DOE Directive" means DOE Orders and Notices, modifications thereto, and other forms of directives, including for purposes of this subcontract those portions of DOE's accounting and procedures handbook applicable to Contractors, issued by DOE. The term does not include temporary written instructions by the DOE Contracting Officer or the NREL Subcontract Administrator for the purpose of addressing short-term or urgent DOE and NREL concerns relating to health, safety, or the environment.

CLAUSE 2. SUBCONTRACT ISSUES AND DISPUTES (SPECIAL-EDUCATIONAL INSTITUTIONS) (JUN 2011)

Derived from NREL 08.100-01

(Applies to all subcontracts.)

(a) It is NREL's practice to try to resolve all contractual issues by mutual agreement at the NREL Subcontract Administrator's level, without litigation. Both parties hereby agree to explore all reasonable avenues for negotiations in order to avoid a dispute. Either party may provide written notice to the other party to conduct negotiations for a period not to exceed sixty (60) calendar days. After sixty calendar days, if

possibilities for negotiations have failed, either party shall have thirty (30) calendar days to request that the potential dispute be moved to Alternative Dispute Resolution (ADR). Within fifteen (15) calendar days after receiving a request to move to ADR, if ADR procedures are not acceptable to the non-moving party, a written explanation citing specific reasons for rejecting ADR as inappropriate for resolution of the dispute shall be provided to the moving party. If the parties are unable to agree on the application of ADR procedures to resolve the potential dispute or are unable to satisfactorily resolve the dispute using ADR procedures for a period not to exceed ninety (90) calendar days (or such longer period as mutually agreed in writing), the parties shall resume the formal process authorized in this clause.

(b) The parties agree that the appropriate forum for litigation of any dispute pertaining to this subcontract shall be a court of competent jurisdiction as follows:
   (1) Subject to paragraph (b) (2) of this clause, any such litigation shall be brought and prosecuted exclusively in Federal District Court.
   (2) Provided, however, that in the event the requirements for jurisdiction in any Federal District Court are not present, such litigation shall be brought in a State court of competent jurisdiction.

(c) Any substantive issue of law in such litigation shall be determined in accordance with the body of applicable Federal law relating to the interpretation and application of clauses derived from Federal Acquisition 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 forum 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 those portions of the subcontract not under dispute 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.

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

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

Derived from NREL 08.100-04

(Applies to all subcontracts.)

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

CLAUSE 4. SUBCONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (SPECIAL-EDUCATIONAL INSTITUTIONS) (JUN 2011)

Derived from NREL 08.100-05

(Applies to all subcontracts.)

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

(b) The Subcontractor shall not authorize any resolution regarding NOV/NOAV associated with performance of work under the subcontract without prior written concurrence from the NREL Subcontract Administrator. The Subcontractor shall support and provide assistance to the Government concerning any matter arising under NOV/NOAV associated with performance of work under the subcontract.

CLAUSE 5. RESTRICTIONS ON LOWER-TIER SUBCONTRACTOR SALES TO NREL/GOVERNMENT (OCT 2011)

Derived from FAR 52.203-6 (FD)

(Applies to all subcontracts exceeding $150,000.)

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

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

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

CLAUSE 6. ANTI-KICKBACK PROCEDURES (OCT 2011)

Derived from FAR 52.203-7 (OCT 2010) (FD)

(Applies to all subcontracts exceeding $150,000.)

(a) Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The NREL Subcontract Administrator may—

(i) Offset the amount of the kickback against any monies owed by NREL under the subcontract; and/or

(ii) Direct that the Subcontractor withhold from sums owed the lower-tier Subcontractor under the subcontract the amount of the kickback. The NREL Subcontract Administrator may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to NREL or the Government unless NREL or Government 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 $150,000.

CLAUSE 7. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2011)

Derived from FAR 52.203-12 (OCT 2010) (FD)
(Applies to all subcontracts exceeding $150,000.)

(a) Definitions. As used in this clause—

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

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

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

(ii) The making of any Federal grant.

(iii) The making of any Federal loan.

(iv) The entering into any cooperative agreement.

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

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

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

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

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

(i) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

(ii) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

(iii) A special Government employee, as defined in section 202, Title 18, United States Code.

(iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

(d) Disclosure.

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

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

(e) Penalties.

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

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

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

(g) Lower-tier Subcontracts.

(1) The Subcontractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract, at any-tier, exceeding $150,000 under this subcontract. The Subcontractor that awards the subcontract, at any-tier, shall retain the declaration.

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

(3) The Subcontractor shall include the substance of this clause, including this paragraph (g), in any lower-tier subcontract exceeding $150,000.

CLAUSE 8. PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (SPECIAL) (MAY 2011)

Derived from FAR 52.204-4

(Applies to all subcontracts exceeding $150,000.)

(a) Definitions. As used in this clause—

(1) "Postconsumer fiber"

(i) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(ii) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(iii) Fiber derived from printers' over-runs, converter's scrap, and over-issue publications.

(b) When not using electronic commerce methods to submit information or data to NREL/Government, the Subcontractor is required to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper containing at least thirty (30) percent postconsumer fiber.

CLAUSE 9. PROTECTING NREL'S/GOVERNMENT'S INTEREST WHEN SUBCONTRACTING AT ANY TIER WITH CONTRACTORS AND SUBCONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEP 2006)

Derived from FAR 52.209-6 (FD)

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

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

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

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

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

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

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

(4) The systems and procedures the Subcontractor has established to ensure that it is fully protecting NREL/Government's interests when dealing with such

lower-tier Subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

CLAUSE 10. AUDIT AND RECORDS NEGOTIATION (MAR 2009) WITH 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 is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable subcontract, or any combination of these, the Subcontractor shall maintain and the DOE Contracting Officer, 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 this 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 three (3) years after final payment under this subcontract or for any shorter period specified in Subpart 4.7, Subcontractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this subcontract. In addition—
(1) If this subcontract is completely or partially terminated, the 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) 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.

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

CLAUSE 11. NOTIFICATION OF CHANGE IN OWNERSHIP AND/OR NAME (SPECIAL) (OCT 2009)

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 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 12. ALLOWABLE COST AND PAYMENT (SPECIAL-EDUCATIONAL INSTITUTIONS) (OCT 2011)

Derived from FAR 52.216-7 (JUN 2011)
(Applies to all cost type subcontracts.)
(For educational institutions, substitute subpart 31.3; For State and Local Governments, substitute subpart 31.6; for other non-profit organizations, substitute subpart 31.7. See FAR 16.307(a).)

(a) Invoicing

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

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

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

(b) Reimbursing costs.

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

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

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

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

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

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

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

(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.

(iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to lower-tier Subcontractors.

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

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

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

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

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

(c) Small business concerns.

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

(d) Final indirect cost rates.

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

(2) (i) The Subcontractor shall submit an adequate final indirect cost rate proposal to the NREL Subcontract Administrator and auditor within the six (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.

(iii) An adequate indirect cost rate proposal shall include the following data unless otherwise specified by the NREL Subcontract Administrator:

(A) Summary of all claimed indirect expense rates, including pool, base, and calculated indirect rate.

(B) General and Administrative expenses (final indirect cost pool). Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts).

(C) Overhead expenses (final indirect cost pool). Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) for each final indirect cost pool.

(D) Occupancy expenses (intermediate indirect cost pool). Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pools.

(E) Claimed allocation bases, by element of cost, used to distribute indirect costs.

(F) Facilities capital cost of money factors computation.

(G) Reconciliation of books of account (i.e., General Ledger) and claimed direct costs by major cost element.

(H) Schedule of direct costs by subcontract and lower-tier subcontract and indirect expense applied at claimed rates, as well as a subsidiary schedule of Government participation percentages in each of the allocation base amounts.

(I) Schedule of cumulative direct and indirect costs claimed and billed by subcontract and lower-tier subcontract.

(J) Lower-tier subcontract information. Listing of lower-tier subcontracts awarded to companies for which the Subcontractor is the prime or upper-tier Subcontractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor name, address, and point of contact information).

(K) Summary of each time-and-materials and labor-hour contract information, including labor categories, labor rates, hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates.

(L) Reconciliation of total payroll per IRS form 941 to total labor costs distribution.

(M) Listing of decisions/agreements/approvals and description of accounting/organizational changes.

(N) Certificate of final indirect costs (see 52.242-4, Certification of Final Indirect Costs).

(O) Subcontract closing information for subcontracts physically completed in this fiscal year (include subcontract number, period of performance, subcontract ceiling amounts, subcontract fee computations, level of effort, and indicate if the subcontract is ready to close).

(iv) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process:

(A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data.

(B) General Organizational information and Executive compensation for the five most highly compensated executives. See 31.205-6(p). Additional salary reference information is available at http://www.whitehouse.gov/omb/procurement_index_exec_comp/.

(C) Identification of prime contracts under which the Subcontractor performs as a Subcontractor.

(D) Description of accounting system (excludes Subcontractors required to submit a CAS Disclosure Statement or Subcontractors where the description of the accounting system has not changed from the previous year's submission).

(E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes Subcontractors where the procedures have not changed from the previous year's submission).

(F) Certified financial statements and other financial data (e.g., trial balance, compilation, review, etc.).

(G) Management letter from outside CPAs concerning any internal control weaknesses.

(H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph (G) of this section.

(I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government.

(J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when the final indirect cost rate submission is made.

(K) Federal and State income tax returns.

(L) Securities and Exchange Commission 10-K annual report.

(M) Minutes from board of directors meetings.

(N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year.

(O) Subcontract briefings, which generally include a synopsis of all pertinent subcontract provisions, such as: contract type, contract amount, product or service(s) to be provided, subcontract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations.

(v) The Subcontractor shall update the billings on all Subcontracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph

(d)(2)(iii)(I) of this section, within sixty (60) days after settlement of final indirect cost rates.

(3) The Subcontractor and the appropriate NREL representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify—
- (i) The agreed-upon final annual indirect cost rates;
- (ii) The bases to which the rates apply;
- (iii) The periods for which the rates apply;
- (iv) Any specific indirect cost items treated as direct costs in the settlement; and
- (v) The affected subcontract and/or lower-tier subcontract, identifying any with advance agreements or special terms and the applicable rates.

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

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

(5) Within one hundred-twenty (120) days (or longer period if approved in writing by the NREL Subcontract Administrator) after settlement of the final annual indirect cost rates for all years of a physically complete subcontract, the Subcontractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The Prime contractor is responsible for settling Subcontractor amounts and rates included in the completion invoice or voucher and providing status of Subcontractor audits to the NREL Subcontract Administrator upon request.

(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 Subcontract Issues and Disputes clause.

(e) Billing rates.

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

(1) Shall be the anticipated final rates; and

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

(f) Quick-closeout procedures.

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

(g) Audit.

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

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

(2) Adjusted for prior overpayments or underpayments.

(h) Final payment.

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

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

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

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

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

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

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

CLAUSE 13. COST SUBCONTRACT - NO FEE (SPECIAL EDUCATIONAL INSTITUTIONS) (JUN 2011)

Derived from FAR 52.216-11

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

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

(b) As agreed between the parties, NREL shall make full payment of the Subcontractor's claimed incurred costs prior to obtaining results from a comprehensive audit and execution of releases. Full payment of the Subcontractor's claimed incurred costs shall not be construed to be a "final payment" and shall not be construed as the starting date of the period under which the Subcontractor is required to retain and make available for examination, audit, or reproduction the records described in the Audit and Records clause of the Appendix B standard terms and conditions of this subcontract

(c) In accordance with the Appendix B standard terms and conditions, NREL may request or cause an audit to be conducted on 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 the performance of this subcontract. In the event that such audit results in the discovery of unallowable, unallocable, or unreasonable costs or other irregularities in the Subcontractor's claimed incurred costs, the Subcontractor shall have the right to promptly conduct its own audit of the disputed costs. If the Subcontractor concurs with the results of the NREL-directed audit, it will promptly refund the disputed costs to NREL. If the Subcontractor does not concur with the results of the NREL-directed audit, the parties shall negotiate in good faith to resolve the impasse. If the parties are unable to reach resolution regarding the disputed costs, either party may seek relief in accordance with the rights and remedies under the terms and conditions of the subcontract.

CLAUSE 14. PREDETERMINED INDIRECT COST RATES (SPECIAL- EDUCATIONAL INSTITUTIONS) (JUN 2011)

Derived from FAR 52.216-15 (APR 1998)

(Applies to cost-type research and development subcontracts where predetermined indirect cost rates are used.)

(a) Notwithstanding the Allowable Cost and Payment clause of this subcontract, the allowable indirect costs under this subcontract shall be obtained by applying predetermined indirect cost rates to bases approved by the Subcontractor's cognizant audit agency as specified below.

(b) (1) The Subcontractor shall submit an adequate final indirect cost rate proposal to the Subcontractor's cognizant audit agency within the six (6)-month period following expiration of each of its fiscal years or other period as agreed to by the parties. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Subcontractor and granted in writing by the NREL Subcontract Administrator. The Subcontractor shall support its proposal with adequate supporting data.

(2) The proposed rates shall be based on the Subcontractor's actual cost experience for that period. The Subcontractor's cognizant audit agency shall establish the final indirect cost rates as promptly as practical after receipt of the Subcontractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with FAR Subpart 31.3 in effect on the date of this subcontract.

(d) Predetermined rate agreements in effect on the date of this subcontract shall be incorporated into the subcontract Schedule. The Subcontractor's cognizant audit agency and Subcontractor shall negotiate rates for subsequent periods and execute a written indirect cost rate agreement setting forth the results. The agreement shall specify—

(1) The agreed-upon predetermined indirect cost rates;
(2) The bases to which the rates apply;
(3) The period for which the rates apply; and
(4) The specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

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

(e) Pending establishment of indirect cost rates for any fiscal year (or other period agreed to by the parties), the Subcontractor shall be reimbursed at the rates for the previous fiscal year (or other period) subject to appropriate adjustment when applicable per OMB A-21 or government rate agreement.

(f) Any failure by the parties to agree on any predetermined indirect cost rates under this clause shall not be considered a dispute within the meaning of the Disputes clause. If for any fiscal year (or other period specified in the subcontract schedule) the parties fail to agree to predetermined indirect cost rates, the allowable indirect costs shall be obtained by applying final indirect cost rates established in accordance with the Allowable Cost and Payment clause.

(g) Allowable indirect costs for the period from the beginning of performance until the end of the Subcontractor's fiscal year (or other period specified in the subcontract schedule) shall be obtained using the predetermined indirect cost rates and the bases shown in the subcontract schedule.

CLAUSE 15. UTILIZATION OF SMALL BUSINESS CONCERNS (JAN 2011)

Derived from FAR 52.219-8 (FD)

(Applies to all subcontracts exceeding $150,000.)

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

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

(c) Definitions. As used in this subcontract—
(1) “HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
(2) “Service-disabled veteran-owned small business concern”—

(i) Means a small business concern—

(A) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

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

(ii) "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).

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

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

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

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

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

(D) It is identified, on the date of its representation, as a certified small disadvantaged business in the CCR Dynamic Small Business Search database maintained by the Small Business Administration, or

(ii) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

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

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

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

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

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

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

(d) (1) 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.

(2) The Subcontractor shall confirm that a lower-tier Subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting the SBA. Options for contacting the SBA include—

(i) HUBZone small business database search application web page at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm; or http://www.sba.gov/hubzone;

(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; or

(iii) The SBA HUBZone Help Desk at hubzone@sba.gov.

CLAUSE 16. PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)

Derived from FAR 52.222-2

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

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

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

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

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

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

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

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

(2) Demonstrate the effect that denial of the request will have on the subcontract delivery or performance subcontract 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 multi-shift operations or by employing additional personnel.

CLAUSE 17. CONVICT LABOR (JUN 2003)

Derived from FAR 52.222-3

(Applies to all subcontracts.)

(a) Except as provided in paragraph (b) of this clause, the Subcontractor shall not employ in the performance of this contract any person undergoing a sentence of

imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Subcontractor is not prohibited from employing persons—
  (1) On parole or probation to work at paid employment during the term of their sentence;
  (2) Who have been pardoned or who have served their terms; or
  (3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—
    (i) The worker is paid or is in an approved work training program on a voluntary basis;
    (ii) Representatives of local union central bodies or similar labor union organizations have been consulted;
    (iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;
    (iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
    (v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

CLAUSE 18. PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

Derived from FAR 52.222-21 (FD)

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

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

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

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

CLAUSE 19. EQUAL OPPORTUNITY (MAR 2007)

Derived from FAR 52.222-26 (FD)

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

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

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

If the Subcontractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Subcontractor's activities (41 CFR 60-1.5).

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

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.

(2) 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.

(3) 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.

(4) 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.

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

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

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

(8) 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.

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

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

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

CLAUSE 20. EQUAL OPPORTUNITY FOR VETERNS (SEP 2010)

Derived from FAR 52.222-35 (FD)

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

(a) Definitions. As used in this clause—

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

(2) "Armed Forces service medal veteran" means any veteran who, while serving on active duty in the U.S. military, ground, naval, or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).

(3) "Disabled veteran" means—

- (i) A veteran of the U.S. military, ground, naval, or air service, who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or
- (ii) A person who was discharged or released from active duty because of a service-connected disability.

(4) "Executive and senior management" means any employee—

- (i) Any employee—
  - (A) Compensated on a salary basis a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities;
  - (B) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
  - (C) Who customarily and regularly directs the work of two (2) or more other employees; and
  - (D) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; or
- (ii) Any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

(5) "Other protected veteran" means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.

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

(7) "Qualified disabled veteran" means a disabled veteran who has the ability to perform the essential functions of the employment positions with or without reasonable accommodation.

(8) "Recently separated veteran" means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval or air service.

(b) General.

(1) The Subcontractor shall not discriminate against any employee or applicant for employment because the individual is a disabled veteran, recently separated veteran, other protected veterans, or Armed Forces service medal veteran, regarding any position for which the employee or applicant for employment is qualified. The Subcontractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified individuals, including qualified disabled veterans, without discrimination based upon their disability status as a disabled veteran, recently separated veteran, Armed Forces service medal veteran, and other protected veteran in all employment practices including the following:

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

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(iii) Rate of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor;

(vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Subcontractor including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

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

(3) The Department of Labor's regulations require Subcontractors with 50 or more employees and subcontract of $100,000 or more to have an affirmative action program for veterans. See 41 CFR Part 60-300, Subpart C.

(c) Listing openings.

(1) The Subcontractor shall immediately list all employment openings that exist at the time of the execution of this subcontract and those which occur during the performance of this subcontract, including those not generated by this subcontract, and including those occurring at an establishment of the Subcontractor other than the one where the subcontract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate employment service delivery system where the opening occurs. Listing employment openings with the State workforce agency job bank or with the local employment service delivery system where the opening occurs shall satisfy the requirement to list jobs with the appropriate employment service delivery system.

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

(3) Whenever the Subcontractor becomes contractually bound to the listing terms of this clause, it shall advise the State workforce agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Subcontractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts/subcontracts. The Subcontractor may advise the State agency when it is no longer bound by this subcontract clause.

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

(e) Postings.

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

(2) The employment notices shall—

(i) State the rights of applicants and employees as well as the Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are disabled veterans, recently separated veterans, Armed Forces service medal veterans and other protected veterans; and

(ii) Be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, and provided by the DOE Contracting Officer through the NREL Subcontract Administrator.

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

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

(f) Noncompliance. If the Subcontractor does not comply with the requirements of this clause, NREL/Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor. This includes implementing any sanctions imposed on a Subcontractor by the Department of Labor for violations of this clause (52.222-35, Equal Opportunity for Veterans). These sanctions (see 41 CFR 60-300.66) may include—

(1) Withholding progress payments;

(2) Termination or suspension of the subcontract; or
(3) Debarment of the Subcontractor

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

CLAUSE 21. AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (OCT 2011)
Derived from FAR 52.222-36 (OCT 2010) (FD)
(Applies to all subcontracts exceeding $15,000.)

(a) General.
(1) Regarding any position for which the employee or applicant for employment is qualified, the Subcontractor shall not discriminate against any employee or applicant because of physical or mental disability. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as—
(i) Recruitment, advertising, and job application procedures;
(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
(iii) Rates of pay or any other form of compensation and changes in compensation;
(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
(v) Leaves of absence, sick leave, or any other leave;
(vi) Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor;
(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
(viii) Activities sponsored by the Subcontractor, including social or recreational programs; and
(ix) Any other term, condition, or privilege of employment.
(2) The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C.793) (the Act), as amended.

(b) Postings.
(1) The Subcontractor agrees to post employment notices stating—
(i) The Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
(ii) The rights of applicants and employees.
(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Subcontractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Subcontractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the

Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary).

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

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

(d) Lower-tier Subcontracts.
The Subcontractor shall include the terms of this clause in every subcontract or purchase order in excess of $15,000 unless exempted by rules, regulations, or orders of the Secretary. The Subcontractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

CLAUSE 22. EMPLOYMENT REPORTS ON VETERANS (SEP 2010)

Derived from FAR 52.222-37 (FD)

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

(a) Definitions. As used in this clause, “Armed Forces service medal veteran,” “disabled veteran,” “other protected veteran,” and “recently separated veteran,” have the meanings given in the Equal Opportunity for Veterans clause.

(b) 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 total number of employees in the Subcontractor’s workforce, by job category and hiring location, who are disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans.

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans; and

(3) The maximum number and the minimum number of employees of the Subcontractor or lower-tier Subcontractor at each hiring location during the period covered by the report.

(c) The Subcontractor shall report the above items by completing the Form VETS-100A, entitled “Federal Contractor Veterans’ Employment Report (VETS-100A Report).”

(d) The Subcontractor shall submit VETS-100A Reports no later than September 30 of each year.

(e) The employment activity report required by paragraph (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent twelve (12) month period preceding as of the ending date selected for the Subcontractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Subcontractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f) The number of veterans reported must be based on data known to the Subcontractor when completing the VETS-100A. The Subcontractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the Subcontractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

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

CLAUSE 23. EMPLOYMENT ELIGIBILITY VERIFICATION (SPECIAL) (JUL 2011)

Derived from FAR 52.222-54 (JAN 2009) (FD)

(Applies to all subcontracts.)

(a) Definitions. Used in this clause—

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

(i) Means any item of supply that is—

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

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

(C) Offered to NREL/Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in Section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products. Per 46 CFR 525.1 (c)(2), "bulk cargo" means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

(2) "Employee assigned to the subcontract" means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a subcontract that is required to include the clause prescribed in FAR 22.1803. An employee is not considered to be directly performing work under a subcontract if the employee—

(i) Normally performs support work, such as indirect or overhead functions; and

(ii) Does not perform any substantial duties applicable to the subcontract.

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

(4) "Lower-tier Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a Subcontractor or another Lower-tier Subcontractor.

(5) "United States", as defined as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

(b) Enrollment and verification requirements.

(1) If the Subcontractor is not enrolled as a Federal [Sub]Contractor in E-Verify at time of subcontract award, the Subcontractor shall—

(i) Enroll. Enroll as a Federal [Sub]Contractor in the E-Verify program within 30 calendar days of subcontract award;

(ii) Verify all new employees. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the subcontract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) Verify employees assigned to the subcontract. For each employee assigned to the subcontract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the subcontract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Subcontractor is enrolled as a Federal [Sub]Contractor in E-Verify at time of subcontract award, the Subcontractor shall use E-Verify to initiate verification of employment eligibility of—

(i) All new employees.

(A) Enrolled 90 calendar days or more. The Subcontractor shall initiate verification of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the subcontract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) Enrolled less than 90 calendar days. Within 90 calendar days after enrollment as a Federal [Sub]Contractor in E-Verify, the Subcontractor shall initiate verification of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the subcontract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) Employees assigned to the subcontract. For each employee assigned to the subcontract, the Subcontractor shall initiate verification within 90 calendar days after date of subcontract award or within 30 days after assignment to the subcontract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Subcontractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency or NREL pursuant to a performance bond, the Subcontractor may choose to verify only employees assigned to the subcontract, whether existing employees or new hires. The Subcontractor shall follow the applicable verification requirements at (b)(1) or (b)(2) respectively, except that any requirement for verification of new employees applies only to new employees assigned to the subcontract.

(4) Option to verify employment eligibility of all employees. The Subcontractor may elect to verify all existing employees hired after November 6, 1986,

rather than just those employees assigned to the subcontract. The Subcontractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of—

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Subcontractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Subcontractor shall comply, for the period of performance of this subcontract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Subcontractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Subcontractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Subcontractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Subcontractor, then the Subcontractor must reenroll in E-Verify.

(c) Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: http://www.dhs.gov/E-Verify.

(d) Individuals previously verified. The Subcontractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Subcontractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and [Sub]Contractors.

(e) Lower-tier Subcontracts. The Subcontractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract at any tier that is for—

(1) (i) commercial (except as specified herein) or noncommercial services or

(ii) construction;

(2) that has a value of more than $3,000; and

(3) includes work performed in the United States.

The Subcontractor shall not include the requirements of this clause in subcontracts for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item but for minor modifications) that are performed by the COTS provider and are normally provided for that COTS item.

CLAUSE 24. DUTY-FREE ENTRY (OCT 2011)

Derived from FAR 52.225-8 (FEB 2000) (FD)

Appendix B-9

(Applies to subcontracts exceeding $150,000 where supplies are imported into the United States and duty-free entry may be obtained or subcontract value is less than $150,000 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 subcontract schedule to be accorded duty-free entry.

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

(1) The Subcontractor shall notify the NREL Subcontract Administrator in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of $15,000 that are to be imported into the customs territory of the United States for delivery to NREL under this subcontract, either as end products or for incorporation into end products. The Subcontractor shall furnish the notice to the NREL Subcontract Administrator at least twenty (20) calendar days before the importation. The notice shall identify the—

(i) Foreign supplies;

(ii) Estimated amount of duty; and

(iii) Country of origin.

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

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

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

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

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

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

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

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

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

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

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

(h) The Subcontractor shall instruct the foreign supplier to—
(1) Consign the shipment as specified in paragraph (g) of this clause;
(2) Mark all packages with the words "UNITED STATES GOVERNMENT" and “NREL/DOE”; and
(3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.

(i) The Subcontractor shall provide written notice to the NREL Subcontract Administrator immediately after notification that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the subcontract schedule, upon award by the Subcontractor to the overseas supplier. The notice shall identify the—
(1) Foreign supplies;
(2) Country of origin;
(3) Subcontract number; and
(4) Subcontract schedule delivery date(s).

(j) The Subcontractor shall include the substance of this clause in any lower-tier subcontract if—
(1) Supplies identified in the subcontract schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or
(2) Other foreign supplies in excess of $15,000 may be imported into the customs territory of the United States.

CLAUSE 25. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)
Derived from FAR 52.225-13 (FD)
(Applies to all subcontracts exceeding $2,500.)

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

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

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

CLAUSE 26. LIMITATION OF COST (APR 1984)

Derived from FAR 52.232-20

(Applies to fully funded subcontracts.)

(a) The parties estimate that performance of this subcontract, exclusive of any fee, will not cost NREL more than—
  (1) The estimated cost specified in the subcontract schedule or,
  (2) If this is a cost-sharing subcontract, NREL's share of the estimated cost specified in the subcontract schedule.
  (3) The Subcontractor agrees to use its best efforts to perform the work specified in the subcontract schedule and all obligations under this subcontract within the estimated cost, which, if this is a cost-sharing subcontract, includes both NREL's and the Subcontractor's share of the cost.

(b) The Subcontractor shall notify the NREL Subcontract Administrator in writing whenever it has reason to believe that—
  (1) The costs the Subcontractor expects to incur under this subcontract in the next sixty (60) days, when added to all costs previously incurred, will exceed seventy-five (75) percent of the estimated cost specified in the subcontract schedule; or
  (2) The total cost for the performance of this subcontract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

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

(d) Except as required by other provisions of this subcontract, specifically citing and stated to be an exception to this clause—
  (1) NREL is not obligated to reimburse the Subcontractor for cost incurred in excess of—
    (i) The estimated cost specified in the subcontract schedule; or,
    (ii) If this is a cost-sharing subcontract, the estimated cost to NREL specified in the subcontract schedule; and
  (2) The Subcontractor is not obligated to continue performance under this subcontract (including actions under the Termination clause of this subcontract) or otherwise incur costs in excess of the estimated cost specified in the subcontract schedule, until the NREL Subcontract Administrator—
    (i) Notifies the Subcontractor in writing that the estimated cost has been increased and
    (ii) Provides a revised estimated total cost of performing this subcontract. If this is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the subcontract schedule.

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

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

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

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

CLAUSE 27. LIMITATION OF FUNDS (APR 1984)

Derived from FAR 52.232-22

(Applies to incrementally funded subcontracts.)

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

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

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

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

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

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

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

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

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

(d) Sixty (60) days before the end of the period specified in the subcontract schedule, the Subcontractor shall notify the NREL Subcontract Administrator in writing of the estimated amount of additional funds, if any, required to continue timely performance under the subcontract or for any further period specified in the subcontract 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 subcontract schedule or another agreed upon date, upon the Subcontractor's written request the NREL Subcontract Administrator will terminate this subcontract

on that date in accordance with the provisions of the Termination clause of this subcontract. If the Subcontractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the NREL Subcontract Administrator may terminate this subcontract on that later date.

(f) Except as required by other provisions of this subcontract, specifically citing and stated to be an exception to this clause—
  (1) NREL is not obligated to reimburse the Subcontractor for costs incurred in excess of the total amount allotted by NREL to this subcontract; and
  (2) The Subcontractor is not obligated to continue performance under this subcontract (including actions under the Termination clause of this subcontract) or otherwise incur costs in excess of—
    (i) The amount then allotted to the subcontract by NREL; or
    (ii) If this is a cost sharing subcontract, the amount then allotted by NREL to the subcontract plus the Subcontractor's corresponding share, until the NREL Subcontract Administrator notifies the Subcontractor in writing that the amount allotted by NREL has been increased and specifies an increased amount, which shall then constitute the total amount allotted by NREL to this subcontract.

(g) The estimated cost shall be increased to the extent that—
  (1) The amount allotted by NREL; or,
  (2) If this is a cost sharing subcontract, the amount then allotted by NREL to the subcontract plus the Subcontractor's corresponding share, exceeds the estimated cost specified in the subcontract schedule.
  If this is a cost sharing subcontract, the increase shall be allocated in accordance with the formula specified in the subcontract schedule.

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

(i) When and to the extent that the amount allotted by NREL to the subcontract is increased, any costs the Subcontractor incurs before the increase that are in excess of—
  (1) The amount previously allotted by NREL; or,
  (2) If this is a cost sharing subcontract, the amount previously allotted by NREL to the subcontract plus the Subcontractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the NREL Subcontract Administrator issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

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

(k) Nothing in this clause shall affect the right of NREL/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 subcontract

schedule equaling the percentage of completion of the work contemplated by this subcontract.

CLAUSE 28. ASSIGNMENT OR TRANSFER (SPECIAL) (OCT 2008)
Derived from 52.232-24 (JAN 1986)
(Applies to all subcontracts.)

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

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

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

CLAUSE 29. NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)
Derived from FAR 52.242-1
(Applies to cost-reimbursement type subcontracts.)

(a) Notwithstanding any other clause of this subcontract—

(1) The NREL Subcontract Administrator may at any time issue to the Subcontractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this subcontract that have been determined not to be allowable under the contract terms; and

(2) The Subcontractor may, after receiving a notice under subparagraph (1) above, submit a written response to the NREL Subcontract Administrator, with justification for allowance of the costs. If the Subcontractor does respond within sixty (60) days, the NREL Subcontract Administrator shall, within sixty (60) days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the NREL/Government's rights to take exception to incurred costs.

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

In the event the Subcontractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Subcontractor agrees to furnish, by certified mail or electronic commerce method authorized by the 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 31. STOP WORK ORDER (AUG 1989) INCORPORATING ALTERNATE 1 - COST REIMBURSEMENT (APR 1984)

Derived from FAR 52.242-15

(Applies to all 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 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 32. CHANGES - COST REIMBURSEMENT (AUG 1987) INCORPORATING ALTERNATE V - RESEARCH AND DEVELOPMENT (AUG 1984)

Derived from FAR 52.243-2

(Applies to all cost type research and development subcontracts.)

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

(1) Drawings, designs, or specifications.

(2) Method of shipment or packing.

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

(b) If any such change causes an increase or decrease in the estimated cost of, 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) Estimated cost or delivery or completion subcontract schedule, or both;

(2) Amount of any fixed fee; and

(3) 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.

(e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this subcontract and, if this subcontract is incrementally funded, the funds allotted for the performance of this subcontract, shall not be increased or considered to be increased except by specific written modification of the subcontract indicating the new subcontract estimated cost and, if this subcontract is incrementally funded, the new amount allotted to the subcontract. Until this modification is made, the Subcontractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost clause or Limitation of Funds clause of this subcontract.

CLAUSE 33. LOWER-TIER SUBCONTRACTS (JUN 2007) INCORPORATING ALTERNATE I (JUN 2007)

Derived from FAR 52.244-2

(Applies to all cost type subcontracts.)

(a) Definitions.

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

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

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

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

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

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

(2) Is fixed price and exceeds—

(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.

(d) If the Subcontractor has an approved purchasing system, the Subcontractor nevertheless shall obtain the NREL Subcontract Administrator's written consent before placing any lower-tier subcontracts not identified in the subcontract schedule.

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

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

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

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

(iv) The proposed lower-tier subcontract price.

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

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

(vii) A negotiation memorandum reflecting—

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

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

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

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

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

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

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

(2) If the Subcontractor has an approved purchasing system and consent is not required under paragraph (c), or (d) of this clause, the Subcontractor

nevertheless shall notify the NREL Subcontract Administrator reasonably in advance of entering into any:

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

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

(f) Unless the consent or approval specifically provides otherwise, neither consent by the NREL Subcontract Administrator to any 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.

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

(h) The Subcontractor shall give the NREL Subcontract Administrator immediate written notice of any action or suit filed and prompt notice of any claim made against the Subcontractor by any lower-tier Subcontractor or vendor that, in the opinion of the Subcontractor, may result in litigation related in any way to this subcontract, with respect to which the Subcontractor may be entitled to reimbursement from NREL/Government.

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

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

CLAUSE 34. INSPECTION OF RESEARCH AND DEVELOPMENT (SHORT FORM) (APR 1984)

Derived from FAR 52.246-9

(Applies to all subcontracts for research and development.)

NREL/Government has the right to inspect and evaluate the work performed or being performed under the subcontract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If NREL/Government performs inspections or evaluations 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.

CLAUSE 35. COMMERCIAL BILL OF LADING NOTATIONS (SPECIAL) (OCT 2008)

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

(Applies to all cost reimbursement subcontracts where transportation is a direct charge to the subcontract.)

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."

CLAUSE 36. PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003)

Derived from FAR 52.247-63 (FD)

(Applies to all subcontracts that involve international air transportation.)

(a) Definitions. As used in this clause—

(1) "International air transportation," means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

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

(3) "U.S.-flag air carrier," means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

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

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

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

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

_____

CLAUSE 37. PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006)

Derived from FAR 52.247-64 (FD)

(Applies to all subcontracts that involve ocean transportation of supplies subject to the Cargo Preference Act of 1954.)

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

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

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

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

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

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

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

(i) The NREL Subcontract Administrator, and

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

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

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

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

(A) Sponsoring U.S. Government agency

(B) Name of vessel

(C) Vessel flag of registry

(D) Date of loading

(E) Port of loading

(F) Port of final discharge

(G) Description of commodity

(H) Gross weight in pounds and cubic feet if available, and

(I) Total ocean freight revenue in U.S. dollars.

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

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

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

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

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

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

(i) This contract is—

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

(B) A construction contract; or

(ii) The supplies being transported are—

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

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

(1) Contingency operations;

(2) Exercises; or

(3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

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

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

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

Derived from FAR 52.247-67 (FEB 2006) (FD)

(Applies to all cost type subcontracts and cost-type lower-tier subcontracts where reimbursement of shipment costs is a direct charge to the subcontract.)

(a) The Subcontractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid—

(1) By the Subcontractor under a cost-reimbursement contract; and

(2) By a first-tier Subcontractor under a cost-reimbursement subcontract there under.

(b) Cost-reimbursement Subcontractors shall only submit for audit those bills of lading with freight shipment charges exceeding $100. Bills under $100 shall be retained on-site by the Subcontractor and made available for on-site audits. This exception only

applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

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

CLAUSE 39. TERMINATION FOR CONVENIENCE OF NREL/GOVERNMENT (EDUCATIONAL AND OTHER NON PROFIT INSTITUTIONS) (SPECIAL) (JUN 2012) MODIFIED BY DEAR 970.4905-1, ALTERNATE I (COST TYPE) (JUN 2012)

Derived from FAR 52.249-5 (SEP 1996) (FD)

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

(Alternate I applies to cost type subcontracts.)

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

(b) After receipt of a Notice of Termination, and except as directed by the NREL Subcontract Administrator, the Subcontractor shall immediately proceed with the following obligations:

(1) Stop work as specified in the notice;

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

(3) Terminate all applicable lower-tier subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination;

(4) Assign to NREL, as directed by the NREL Subcontract Administrator, all rights, titles, and interests of the Subcontractor under the lower-tier subcontracts terminated, in which case NREL shall have the right to settle or 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; 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 any information and items that, if the subcontract had been completed, would have been required to be furnished, including—

(i) Materials or equipment produced, in process, or acquired for the work terminated; and

(ii) Completed or partially completed plans, drawings, and information.

(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; and

(9) Use its best efforts to sell, as directed or authorized by the Government through the NREL Subcontract Administrator, termination inventory other

than that retained by NREL/Government under subparagraph (b)(6) of this clause; provided, however, that the Subcontractor—

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

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

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

(d) After termination, the Subcontractor shall submit a final termination settlement proposal to the NREL Subcontract Administrator in the form and with the certification prescribed by the NREL Subcontract Administrator. The Subcontractor shall submit the proposal promptly but no later than one (1) year from the effective date of termination unless extended in writing by the NREL Subcontract Administrator upon written request of the Subcontractor within this one (1)-year period. If the Subcontractor fails to submit the termination settlement 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.

(e) Subject to paragraph (d) of this clause, the Subcontractor and the NREL Subcontract Administrator may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Subcontractor and any reasonable loss on outstanding commitments for personal services that the Subcontractor is unable to cancel, provided that the Subcontractor exercised reasonable diligence in diverting such commitments to other operations. The subcontract shall be amended and the Subcontractor paid the agreed amount.

(f) The cost principles and procedures in Subpart 31.3 of the Federal Acquisition Regulation (FAR), as supplemented in subpart 970.31 of the Department of Energy (DOE) Acquisition Regulation, in effect on the date of the subcontract, shall govern all costs claimed, agreed to, or determined under this clause; however, if the Subcontractor is not an educational institution, and is a nonprofit organization under Office of Management and Budget (OMB) Circular A-122, “Cost Principles for Nonprofit Organizations,” July 8, 1980, those cost principles shall apply; provided, that if the Subcontractor is a nonprofit institution listed in Attachment C of OMB Circular A-122, the cost principles at FAR 31.2 for commercial organizations shall apply to such Subcontractor.

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

(h) The Subcontractor has the right of appeal as provided under the Disputes clause, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (d) of this clause and failed to request a time extension, there is no right of appeal.

CLAUSE 40. SENSITIVE FOREIGN NATIONS CONTROLS (SPECIAL- EDUCATIONAL INSTITUTIONS) (JUN 2011)

Derived from (DEAR 952.204-71) (APR 1994) (FD)

(Applies if the Subcontract is for unclassified work involving nuclear technology.)

(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 sixty (60) days prior written notice to the NREL Subcontract Administrator if the Subcontractor determines that it is unable, without substantially interfering with its polices or without adversely impacting its performance to continue performance of the work under this subcontract as a result of such notification. If the Subcontractor elects to terminate performance, the provisions of this subcontract regarding termination for the convenience of the Government shall apply.

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

CLAUSE 41. PUBLIC AFFAIRS (SPECIAL-EDUCATIONAL INSTITUTIONS) (JUN 2011)

Derived from DEAR 952.204-75

(Applies to subcontracts where the Subcontractor is required to release unclassified information related to NREL/DOE policies, programs, and activities.)

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

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

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

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

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

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

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

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

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

CLAUSE 42. DISPLACED EMPLOYEE HIRING PREFERENCE (JUNE 1997)

Derived from DEAR 952.226-74 (FD)

(Applies to all subcontracts exceeding $500,000, except subcontracts for commercial items.)

(a) Definition.
Eligible employee means a current or former employee of a Contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for Contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its Contractors or subcontractors with respect to work under its Contract with the Department at the time the particular position is available.

(b) Consistent with Department of Energy guidance for Contractor work force restructuring, as may be amended or supplemented from time to time, the Subcontractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this subcontract.

(c) The requirements of this clause shall be included in subcontracts at any tier (except for lower-tier subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed $500,000.

CLAUSE 43. RESEARCH MISCONDUCT (SPECIAL-EDUCATIONAL INSTITUTIONS) (JUN 2011)

Derived from DEAR 952.235-71 (FD)

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

(a) To the extent permitted by and concomitant with the Subcontractor's existing research misconduct policies and procedures, the Subcontractor is responsible for maintaining the integrity of research performed pursuant to this subcontract award including the prevention, detection, and remediation of research misconduct as defined by this clause, and the conduct of inquiries, investigations, and adjudications of allegations of research misconduct in accordance with the requirements of this clause.

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

(1) Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct and an identification of appropriate remedies or a determination that no further action is warranted;

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

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

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

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

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

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

(4) The allegation involves possible criminal misconduct.

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

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

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

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

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

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

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

(f) Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

CLAUSE 44. FOREIGN TRAVEL (SPECIAL) (JUN 2012)

Derived from DEAR 952.247-70 (JUN 2010) and DOE Order 551.1C (FD)
(Applies to all subcontracts where foreign travel is required.)

(a) Subcontractor foreign travel shall be conducted pursuant to the requirements contained in Department of Energy (DOE) Order 551.1C, Official Foreign Travel, or its successor in effect at the time of award.

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

(c) 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.

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

CLAUSE 45. PRINTING (DEC 2000)

Derived from DEAR 970.5208-1 (FD)

(Applies to all subcontracts where printing is required as this term is defined in Title I of the U.S. Government Printing and Binding Regulations.)

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

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

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

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

CLAUSE 46. PENALTIES FOR UNALLOWABLE COSTS (AUG 2009)

Derived from DEAR 970.5242-1 (DEC 2000)

(Applies to cost type subcontracts)

(a) Subcontractors which include unallowable cost in a submission for settlement for cost incurred, may be subject to penalties.

(b) If, during the review of a submission for settlement of cost incurred, the DOE Contracting Officer, through NREL, determines that the submission contains an expressly unallowable cost or a cost determined to be unallowable prior to the submission, the DOE Contracting Officer shall assess a penalty, through NREL.

(c) Unallowable costs are either expressly unallowable or determined unallowable.

(1) An expressly unallowable cost is a particular item or type of cost which, under the express provisions of an applicable law, regulation, or this subcontract, is specifically named and stated to be unallowable.

(2) A cost determined unallowable is one which, for that Subcontractor—

(i) Was subject to a DOE Contracting Officer's final decision and not appealed;

(ii) The Civilian Board of Contract Appeals or a court has previously ruled as unallowable; or

(iii) Was mutually agreed to be unallowable.

(d) If the DOE Contracting Officer determines that a cost submitted by the Subcontractor in its submission for settlement of cost incurred is—

(1) Expressly unallowable, then the DOE Contracting Officer shall assess, through NREL, a penalty in an amount equal to the disallowed cost allocated to this subcontract plus interest on the paid portion of the disallowed cost. Interest, through NREL, shall be computed from the date of overpayment to the date of repayment using the interest rate specified by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97); or

(2) Determined unallowable, then the DOE Contracting Officer shall assess, through NREL, a penalty in an amount equal to two times the amount of the disallowed cost allocated to this subcontract.

(e) The DOE Contracting Officer may waive the penalty provisions when—
  (1) The Subcontractor withdraws the submission before the formal initiation of an audit of the submission and submits a revised submission;
  (2) The amount of the unallowable costs allocated to covered subcontracts is $10,000 or less; or
  (3) The Subcontractor demonstrates to the DOE Contracting Officer's satisfaction that—
    (i) It has established appropriate policies, personnel training, and an internal control and review system that provides assurances that unallowable costs subject to penalties are precluded from the Subcontractor's submission for settlement of costs; and
    (ii) The unallowable costs subject to the penalty were inadvertently incorporated into the submission.

CLAUSE 47. PROPERTY (SPECIAL) (OCT 2008)

Derived from DEAR 970.5245-1 (DEC 2000) and Alternate 1 (Dec 2000)(FD)
(Applies to subcontracts where Government Property is to be furnished to or acquired by the University.) (Alternate I applies if the Subcontractor is a non-profit.)

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

(b) Title to property.
Except as otherwise provided by the NREL Subcontract Administrator, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Subcontractor, for the cost of which the Subcontractor is entitled to be reimbursed as a direct item of cost under this subcontract, shall pass directly from the vendor to the Government. NREL/Government reserves the right to inspect, and to accept or reject, any item of such property. The Subcontractor shall make such disposition of rejected items as the NREL Subcontract Administrator shall direct. Title to other property, the cost of which is reimbursable to the Subcontractor under this subcontract, shall pass to and vest in the Government upon:
  (1) Issuance for use of such property in the performance of this subcontract;
  (2) Commencement of processing or use of such property in the performance of this subcontract; or
  (3) Reimbursement of the cost thereof by NREL/Government, whichever first occurs.

Property furnished by NREL/Government and property purchased or furnished by the Subcontractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as 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) The Subcontractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:

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

(ii) Failure of the Subcontractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of

the NREL Subcontract Administrator to safeguard such property under paragraph (e) of this clause; or

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

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

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

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

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

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

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

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

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

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

(3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the NREL Subcontract Administrator. The Subcontractor shall take no action prejudicial to the right of NREL/Government to recover and, therefore, shall furnish to NREL/Government, on request, all reasonable assistance in obtaining recovery.

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

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

(i) Property Management.

(1) Property Management System.

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

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

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

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

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

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

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

(2) Property Inventory.

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

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

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

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

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

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

CLAUSE 48. SECURITY AND ACCESS REQUIREMENTS FOR SUBCONTRACT WORK PERFORMED AT NREL OPERATED FACILITIES (SPECIAL-EDUCATIONAL INSTITUTIONS) (JUN 2011)

Derived from NREL 08.100-02

(Applies to subcontracts where the Subcontractor and its 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 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 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 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, 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 and its, 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, 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 officers and agents who are not U.S. citizens for the duration of subcontract work at NREL operated facilities.

(4) After the Subcontractor 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 its 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 and the Subcontractor shall cooperate with and provide assistance to NREL to assure that its lower-tier subcontractors comply with the terms of this clause.

CLAUSE 49. WORKER SAFETY AND HEALTH REQUIREMENTS (SPECIAL-EDUCATIONAL INSTITUTIONS) (JUN 2011)

Derived from NREL 09.100-02

(Applies to subcontracts where the Subcontractor and its 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 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 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. 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.

(g) The Subcontractor shall include this clause, including this Paragraph (g), in all lower-tier subcontracts that require entry onto NREL operated facilities and the Subcontractor shall cooperate with and provide assistance to NREL to assure that its lower-tier subcontractors comply with the terms of this clause.

CLAUSE 50. DRUG-FREE WORKPLACE (MAY 2001)

Derived from FAR 52-223-6 (FD)

(Applies to 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) though (b)(6) of this clause.

(c) The Subcontractor, if an individual, agrees by award of the subcontract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this subcontract.

(d) In addition to other remedies available to the NREL and the Government, the Subcontractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Subcontractor subject to suspension of subcontract payments, termination of the subcontract or default, and suspension or debarment.

CLAUSE 51. ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (SPECIAL) (OCT 2008)

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

(Applies to subcontracts where energy consuming products will be delivered, acquired, or furnished for 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.

CLAUSE 52. INSURANCE-WORK ON A GOVERNMENT INSTALLATION (SPECIAL-EDUCATIONAL INSTITUTIONS (APR 2011)

Derived from FAR 52.228-5 (JAN 1997)

(Applies to 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) If the Subcontractor is a state University, the Subcontractor shall, at its own expense, maintain and keep in force during the entire performance period of this subcontract workers' compensation, employer's liability, general liability, and automobile liability insurance at a level required by the Subcontractor's cognizant State Legislature. If the Subcontractor is a private University, 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.

CLAUSE 53. 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 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 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 54. WHISTLEBLOWER PROTECTION FOR SUBCONTRACTOR EMPLOYEES (DEC 2000)

Derived from DEAR 952.203-70(FD)

(Applies to all 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 55. ACCESS TO AND OWNERSHIP OF RECORDS (SPECIAL-EDUCATIONAL INSTITUTIONS) (JUN 2011)

Derived from DEAR 970.5204-3 (DEC 2000) (FD)

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

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

(a) Delivery of copies of subcontract records to NREL/Government. Copies of all records (except as identified in paragraph (b) of this clause) acquired or generated by the Subcontractor in its performance of this subcontract shall be delivered to NREL or the Government or otherwise transferred by the Subcontractor either as the NREL Subcontract Administrator or the DOE Contracting Officer may from time to time direct during the progress of the work or, in any event, as the NREL Subcontract Administrator or the DOE Contracting Officer may direct upon completion or termination of this subcontract and final audit of accounts hereunder.

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

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

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

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

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

(5) The following categories of records:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial

information, or commercialization plans, and all related documents, notes and correspondence.

(ii) [Reserved.]

(iii) Patent, copyright, mask work, and trademark application files and related Subcontractor invention disclosures, documents and correspondence, where the Subcontractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

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

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

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

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

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

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

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

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

CLAUSE 56. INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)

Derived from DEAR 970.5223-1(FD)

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

(a) For the purposes of this clause—

(1) "Safety" encompasses environment, safety, and health, including pollution prevention and waste minimization; and

(2) "Employees" include lower-tier Subcontractor employees.

(b) In performing work under this subcontract, the Subcontractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Subcontractor shall exercise a degree of care commensurate with the work and the associated hazards. The Subcontractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the Subcontractor's work planning and execution processes. The Subcontractor shall, in the performance of work, ensure that—

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Subcontractor and lower-tier Subcontractor employees managing or supervising employees performing work.

(2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities 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.

CLAUSE 57. SUSTAINABLE ACQUISITION PROGRAM (SPECIAL) (MAR 2011)
Derived from DEAR 970.5223-7 (OCT 2010)(FD)
(Applies to subcontracts or purchase orders for supplies or services that support operation of NREL, exceed $150,000, and offer opportunities for the acquisition of energy efficient or environmentally sustainable supplies or services).

(a) Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, NREL is committed to managing its facilities in an environmentally preferable and sustainable manner that will promote the nature environment and protect the health and well being of its employees and Subcontractors. In the performance of providing products or services under this subcontract or purchase order, the Subcontractor shall provide products or services in a manner that promotes the natural environment, reduces greenhouse gas emissions and protects the health and well being of NREL employees, Subcontractor and visitors.

(b) Green purchasing or sustainable acquisition has several interacting initiatives. The Subcontractor must comply with initiatives that are current as of the subcontract or purchase order award date. NREL may require compliance with revised initiatives from time to time. The initiatives important to these Executive Orders are explained on the following Government or Industry Internet Sites:

(1) Recycled Content Products are described at http://epa.gov/cpg
(2) Biobased Products are described at http://www.biopreferred.gov/
(3) Energy efficient products are at http://energystar.gov/products for Energy Star products
(4) Energy efficient products are at http://www.femp.energy.gov/procurement for FEMP designated products
(5) Environmentally preferable and energy efficient electronics including desktop computers, laptops and monitors are at http://www.epeat.net the Electronic Products Environmental Assessment Tool (EPEAT) the Green Electronics Council site
(6) Green house gas emission inventories are required, including Scope 3 emissions which include contractor emissions. These are discussed at Section 13 of Executive Order 13514 which can be found at http://www.archives.gov/federal-register/executive-orders/disposition.html
(7) Non-Ozone Depleting Alternative Products are at http://www.epa.gov/ozone/strathome.html
(8) Water efficient plumbing products are at http://epa.gov/watersense

The Subcontractor may request an equitable adjustment to the terms of its subcontract or purchase order using the procedures in the applicable Changes clause in the relevant Appendix B.

(c) The clauses at FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming Products, and 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts, require the use of products that have biobased content, are energy efficient, or have recycled content. To the extent that the services provided by the Subcontractor require provision of any of the above

types of products, the Subcontractor must provide the energy efficient and environmentally sustainable type of product unless that type of product—

(1) Is not available;

(2) Is not life cycle cost effective (or does not exceed 110% of the price of alternative items if life cycle cost data is unavailable), EPEAT is an example of lifecycle costs that have been analyzed by DOE and found to be acceptable at the silver and gold level;

(3) Does not meet performance needs; or,

(4) Cannot be delivered in time to meet a critical need.

(d) In the performance of this subcontract, the Subcontractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, (http://www.epa.gov/greeningepa/practices/eo13423.htm) and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (http://www.archives.gov/federal-register/executive-orders/disposition.html).
The Subcontractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic Performance. This guide includes information concerning recycled content products, biobased products, energy efficient products, water efficient products, alternative fuels and vehicles, non ozone depleting substances and other environmentally preferable products and services. This guide is available on the Internet at:
http://management.energy.gov/documents/AcqGuide23pt0Rev1.pdf.

(e) Reserved.

(f) In complying with the requirements of paragraph (c) of this clause, the Subcontractor, working through the NREL Subcontract Administrator, shall coordinate its activities with and submit required reports to the NREL Sustainability Administrator.

(g) The Subcontractor shall prepare and submit performance reports, if required, using prescribed NREL formats made available to the Subcontractor from the NREL Sustainability Administrator, on September 30 of the year of performance, on matters related to the acquisition of environmentally preferable and sustainable products and services. This is a material delivery under the subcontract or purchase order. Failure to perform this requirement may be considered a failure that endangers performance of this subcontract and may result in termination for default.

(h) The Subcontractor will comply with the procedures in paragraphs (c) through (f) regarding the collection of all data necessary to generate the reports required under paragraphs (c) through (f), and submit the reports directly to the NREL Sustainability Administrator.
The Subcontractor will advise the NREL Subcontract Administrator if it is unable to procure energy efficient and environmentally sustainable items and cite which of the reasons in paragraph (c) apply.
The reports may be submitted at the conclusion of this subcontract or purchase order term provided that the delivery term is not multi-year in nature. If the delivery term is multi-year, the Subcontractor shall report its accomplishments for each fiscal year ending on September 30th in a manner and at a time or times acceptable to both parties. Failure to comply with these reporting requirements may be considered a breach of contract with attendant consequences.