

## **APPENDIX C-3**

### **Intellectual Property Provisions For**

**Large and Small Business,  
Nonprofit Organizations,  
Educational Institutions, and  
Others  
(Non-Research and Development)**

**December 15, 2011**

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

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

**CLAUSE 1. AUTHORIZATION AND CONSENT (DEC 2007)**

*Derived from FAR 52.227-1 (FD)*

*(Applies as prescribed in FAR 27.201(a)(1).)*

- (a) The Government authorizes and consents to all use and manufacture, in performing this subcontract or any subcontract at any tier, of any invention described in and covered by a United States patent—
  - (1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government through NREL under this subcontract; or
  - (2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a lower-tier subcontractor with—
    - (i) specifications or written provisions forming a part of this subcontract or
    - (ii) specific written instructions given by the DOE through NREL directing the manner of performance. The entire liability to the Government for infringement of a United States patent shall be determined solely by the provisions of the indemnity clause, if any, included in this subcontract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.
- (b) The Subcontractor shall include the substance of this clause, including this paragraph (b), in all subcontracts at any tier that are expected to exceed the simplified acquisition threshold. However, omission of this clause from any lower-tier subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

**ALTERNATE I (APR 1984).**

***(Applicable to subcontracts for research, development, or demonstration, substitute the following paragraph (a) for paragraph (a) of the basic clause.)***

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

**ALTERNATE II (APR 1984).**

***(Applicable to subcontracts that include an order or lower-tier subcontract for communication services and facilities, substitute the following paragraph (a) for paragraph (a) of the basic clause.)***

- (a) The Government authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this subcontract for communication services and facilities for which rates, charges, and tariffs are not established by a government regulatory body, of any invention described in and covered by a United States patent—
  - (1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government through NREL under this subcontract; or
  - (2) Used in machinery, tools, or methods whose use necessarily results from compliance by the subcontractor or a lower-tier subcontractor with

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specifications or written provisions forming a part of this subcontract or with specific written instructions given by the DOE through NREL directing the manner of performance.

### **CLAUSE 2. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)**

*Derived from FAR 52.227-2 (FD)*

*(Applies subcontracts that exceed \$150,000 and the award is for construction, research, development, or demonstration.)*

- (a) The Subcontractor shall report to the DOE through NREL, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this subcontract of which the Subcontractor has knowledge.
- (b) In the event of any claim or suit against the Government or NREL on account of any alleged patent or copyright infringement arising out of the performance of this subcontract or out of the use of any supplies furnished or work or services performed under this subcontract, the Subcontractor shall furnish to the Government, when requested by the DOE through NREL, all evidence and information in the Subcontractor's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the Subcontractor has agreed to indemnify the Government.
- (c) The Subcontractor shall include the substance of this clause, including this paragraph (c), in all subcontracts at any tier that are expected to exceed the simplified acquisition threshold.

### **CLAUSE 3. PATENT INDEMNITY (APR 1984)**

*Derived from FAR 52.227-3*

*(Does not apply if this award is for the conduct of research, development, or demonstration.)*

- (a) The Subcontractor shall indemnify the Government and NREL and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this subcontract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.
- (b) This indemnity shall not apply unless the Subcontractor shall have been informed as soon as practicable by the Government or NREL of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to—
  - (1) An infringement resulting from compliance with specific written instructions of the DOE through NREL directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Subcontractor;

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- (2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or
- (3) A claimed infringement that is unreasonably settled without the consent of the Subcontractor, unless required by final decree of a court of competent jurisdiction.

**ALTERNATE I (APR 1984). AS PRESCRIBED IN 27.201-2 (C)(2), ADD THE FOLLOWING PARAGRAPH (C) TO THE BASIC CLAUSE.**

***(Applicable to the items specifically listed and/or identified.)***

- (c) This patent indemnification shall not apply to the following items:

None

List and/or identify the items to be excluded from this indemnity.

**ALTERNATE II (APR 1984). AS PRESCRIBED IN 27.201-2 (C)(2), ADD THE FOLLOWING PARAGRAPH (C) TO THE BASIC CLAUSE.**

***(Applicable to the items specifically listed and/or identified.)***

- (c) This patent indemnification shall cover the following items:

None

List and/or identify the items to be included under this indemnity.

**ALTERNATE III (JULY 1995). AS PRESCRIBED IN 27.201-2 (C)(3), ADD THE FOLLOWING PARAGRAPH (C) TO THE BASIC CLAUSE.**

***(Applicable if the subcontract award includes a lower-tier subcontract for communication services and facilities.)***

- ( ) As to subcontracts at any tier for communication service, this clause shall apply only to individual communication service authorizations over the simplified acquisition threshold issued under this contract and covering those communications services and facilities—
- (1) That are or have been sold or offered for sale by the Subcontractor to the public,
  - (2) That can be provided over commercially available equipment, or
  - (3) That involve relatively minor modifications.

#### **CLAUSE 4. RIGHTS IN DATA-GENERAL (DEC 2007)**

*Derived from FAR 52.227-14*

*(Applies to subcontracts that require the use or delivery of limited rights data and/or restricted computer software. Alternates are incorporated, unless modified upon recommendation of NREL Patent Counsel.)*

- (a) Definitions. As used in this clause—

- (1) “Computer database” or “database means” a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
- (2) “Computer software”—
  - (i) Means
    - (A) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which

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- recorded, that allow or cause a computer to perform a specific operation or series of operations; and
- (B) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.
  - (ii) Does not include computer databases or computer software documentation.
- (3) “Computer software documentation” means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.
  - (4) “Data” means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to subcontract administration, such as financial, administrative, cost or pricing, or management information.
  - (5) “Form, fit, and function data” means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.
  - (6) “Limited rights” means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.
  - (7) “Limited rights data” means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.
  - (8) “Restricted computer software” means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.
  - (9) “Restricted rights,” as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.
  - (10) “Technical data” means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. 403(8)).
  - (11) “Unlimited rights” means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and

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perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

- (b) Allocation of rights.
  - (1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in—
    - (i) Data first produced in the performance of this subcontract;
    - (ii) Form, fit, and function data delivered under this subcontract;
    - (iii) Data delivered under this subcontract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this subcontract; and
    - (iv) All other data delivered under this subcontract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.
  - (2) The Subcontractor shall have the right to—
    - (i) Assert copyright in data first produced in the performance of this subcontract to the extent provided in paragraph (c)(1) of this clause;
    - (ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of this subcontract, unless provided otherwise in paragraph (d) of this clause;
    - (iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
    - (iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.
- (c) Copyright—
  - (1) Data first produced in the performance of this subcontract.
    - (i) Unless provided otherwise in paragraph (d) of this clause, the Subcontractor may, without prior approval of the DOE Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this subcontract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the DOE Contracting Officer is required to assert copyright in all other data first produced in the performance of this subcontract.
    - (ii) When authorized to assert copyright to the data, the Subcontractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number).
    - (iii) For data other than computer software, the Subcontractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Subcontractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software

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- to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.
- (2) *Data not first produced in the performance of this subcontract.* The Subcontractor shall not, without the prior written permission of the DOE Contracting Officer, incorporate in data delivered under this subcontract any data not first produced in the performance of this subcontract unless the Subcontractor—
    - (i) Identifies the data; and
    - (ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this subcontract) or as otherwise provided in a collateral agreement incorporated in or made part of this subcontract.
  - (3) *Removal of copyright notices.* The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.
  - (d) *Release, publication, and use of data.* The Subcontractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of this subcontract, except—
    - (1) As prohibited by Federal law or regulation (e.g., export control or national security laws or regulations);
    - (2) As expressly set forth in this subcontract; or
    - (3) If the Subcontractor receives or is given access to data necessary for the performance of this subcontract that contain restrictive markings, the Subcontractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the DOE Contracting Officer.
  - (e) *Unauthorized marking of data.*
    - (1) Notwithstanding any other provisions of this subcontract concerning inspection or acceptance, if any data delivered under this subcontract are marked with the notices specified in paragraph (g)(3) or (g)(4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this subcontract, the DOE Contracting Officer may at any time either return the data to the Subcontractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 253d, the following procedures shall apply prior to canceling or ignoring the markings.
      - (i) The DOE Contracting Officer shall make written inquiry to the Subcontractor affording the Subcontractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
      - (ii) If the Subcontractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the sixty (60) day period (or a longer time approved in writing by the DOE Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

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- (iii) If the Subcontractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the DOE Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the DOE Contracting Officer determines that the markings are authorized, the Subcontractor shall be so notified in writing. If the DOE Contracting Officer determines, with concurrence of the Head of the Contracting Activity, that the markings are not authorized, the DOE Contracting Officer shall furnish the Subcontractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Subcontractor files suit in a court of competent jurisdiction within 90 days of receipt of the DOE Contracting Officer's decision. The Government shall continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the DOE Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.
  - (2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.
  - (3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Subcontractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this subcontract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this subcontract.
- (f) Omitted or incorrect markings.
- (1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.
  - (2) If the unmarked data has not been disclosed without restriction outside the Government, the Subcontractor may request, within six (6) months (or a longer time approved by the DOE in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Subcontractor's expense. The DOE may agree to do so if the Subcontractor—
    - (i) Identifies the data to which the omitted notice is to be applied;
    - (ii) Demonstrates that the omission of the notice was inadvertent;
    - (iii) Establishes that the proposed notice is authorized; and
    - (iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.
  - (3) If data has been marked with an incorrect notice, DOE may—
    - (i) Permit correction of the notice at the Subcontractor's expense if the Subcontractor identifies the data and demonstrates that the correct notice is authorized; or

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- (ii) Correct any incorrect notices.
- (g) Protection of limited rights data and restricted computer software.
  - (1) The Subcontractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Subcontractor shall—
    - (i) Identify the data being withheld; and
    - (ii) Furnish form, fit, and function data instead.
  - (2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.
  - (3) [Reserved]
- (h) *Lower-tier Subcontracting.* The Subcontractor shall obtain from its lower-tier subcontractors all data and rights therein necessary to fulfill the Subcontractor's obligations to the Government under this subcontract. If a lower-tier subcontractor refuses to accept terms affording the Government those rights, the Subcontractor shall promptly notify DOE of the refusal and shall not proceed with the lower-tier subcontract award without authorization in writing from DOE.
- (i) *Relationship to patents or other rights.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

### **ALTERNATE I (DEC 2007)**

***(Substitute the following definition for "limited rights data" in paragraph (a) of the basic clause.)***

- (a) "Limited rights data" means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

### **ALTERNATE II (DEC 2007)**

***(Insert the following paragraph (g)(3) in the basic clause.)***

- (g) (3) Notwithstanding paragraph (g)(1) of this clause, the subcontract may identify and specify the delivery of limited rights data, or DOE may require by written request the delivery of limited rights data that has been withheld or would otherwise be entitled to be withheld. If delivery of that data is required, the Subcontractor shall affix the following "Limited Rights Notice" to the data and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

#### **Limited Rights Notice (Dec 2007)**

- (a) These data are submitted with limited rights under Government Subcontract No. \_\_\_\_\_ (and lower-tier subcontract \_\_\_\_\_, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Subcontractor, be used for purposes of manufacture nor disclosed outside the Government or NREL; except that the Government may disclose these data outside the Government through NREL for the following purposes, if any; provided that the Government makes such disclosure subject to prohibition against further use and disclosure: *[Agencies may list additional purposes as set forth in 27.404-2(c)(1) or if none, so state.]*
- (b) This notice shall be marked on any reproduction of these data, in whole or in part.

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### **ALTERNATE III (DEC 2007).**

**(Insert the following paragraph (g)(4) in the basic clause.)**

- (g) (4)(i) Notwithstanding paragraph (g)(1) of this clause, the subcontract may identify and specify the delivery of restricted computer software, or the Government may require by written request the delivery of restricted computer software that has been withheld or would otherwise be entitled to be withheld. If delivery of that computer software is required, the Subcontractor shall affix the following "Restricted Rights Notice" to the computer software and the Government will treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the notice:

#### **RESTRICTED RIGHTS NOTICE (DEC 2007)**

- (a) This computer software is submitted with restricted rights under Government Subcontract No. \_\_\_\_\_ (and lower-tier subcontract \_\_\_\_\_, if appropriate). It may not be used, reproduced, or disclosed by the Government or NREL except as provided in paragraph (b) of this notice or as otherwise expressly stated in the subcontract.
- (b) This computer software may be—
- (1) Used or copied for use with the computer(s) for which it was acquired, including use at any Government installation to which the computer(s) may be transferred;
  - (2) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;
  - (3) Reproduced for safekeeping (archives) or backup purposes;
  - (4) Modified, adapted, or combined with other computer software, *provided* that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restricted rights;
  - (5) Disclosed to and reproduced for use by support service Subcontractors or their subcontractors in accordance with paragraphs (b)(1) through (4) of this notice; and
  - (6) Used or copied for use with a replacement computer.
- (c) Notwithstanding the foregoing, if this computer software is copyrighted computer software, it is licensed to the Government with the minimum rights set forth in paragraph (b) of this notice.
- (d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the subcontract.
- (e) This notice shall be marked on any reproduction of this computer software, in whole or in part.

(g)(3)(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form notice may be used instead:

#### **RESTRICTED RIGHTS NOTICE SHORT FORM (JUN 1987)**

Use, reproduction, or disclosure is subject to restrictions set forth in Subcontract No. \_\_\_\_\_ (and lower-tier subcontract, if appropriate) with \_\_\_\_\_ (name of subcontractor and lower-tier subcontractor).

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(g)(3)(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

#### **ALTERNATE IV (DEC 2007)**

***(Use Alternate IV in subcontracts for basic or applied research to be performed solely by universities and colleges.)***

- (f) *Copyright—(1) Data first produced in the performance of the subcontract.* Except as otherwise specifically provided in this subcontract, the Subcontractor may assert copyright in any data first produced in the performance of this subcontract. When asserting copyright, the Subcontractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including subcontract number), to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Subcontractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Subcontractor grants to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public), by or on behalf of the Government.

#### **ALTERNATE V (DEC2007)**

***(Use Alternate V in subcontracts where the Government needs the right to inspect certain data at the subcontractor's facility.)***

- (j) The Subcontractor agrees, except as may be otherwise specified in this subcontract for specific data deliverables listed as not subject to this paragraph, that the DOE Contracting Officer may, up to three (3) years after acceptance of all deliverables under this subcontract, inspect at the Subcontractor's facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Subcontractor's assertion of limited rights or restricted rights status of the data or for evaluating work performance. When the Subcontractor whose data are to be inspected demonstrates to the DOE Contracting Officer that there would be a possible conflict of interest if a particular representative made the inspection, the DOE Contracting Officer shall designate an alternate inspector.

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### **CLAUSE 5. ADDITIONAL DATA REQUIREMENTS (JUN 1987)**

*Derived from FAR 52.227-16*

*(Does not apply if subcontract award is for the conduct of basic or applied research, as set out elsewhere in this award, to be performed solely by a college or university, and the estimated cost is not in excess of \$500,000.)*

- (a) In addition to the data (as defined in the clause at 52.227-14, Rights in Data-General clause or other equivalent included in this subcontract) specified elsewhere in this subcontract to be delivered, the DOE may, at any time during subcontract performance or within a period of (three) 3 years after acceptance of all items to be delivered under this subcontract, order any data first produced or specifically used in the performance of this subcontract.
- (b) The Rights in Data-General clause or other equivalent included in this subcontract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Subcontractor to deliver any data the withholding of which is authorized by the Rights in Data-General or other equivalent clause of this subcontract, or data which are specifically identified in this subcontract as not subject to this clause.
- (c) When data are to be delivered under this clause, the Subcontractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.
- (d) The DOE may release the Subcontractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (A) of this clause.

### **CLAUSE 6. RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)**

*Derived from FAR 52.227-23*

*(As prescribed in 27.409(l), the following clause has been completed and inserted in the Schedule of the subcontract.)*

Except for data contained on pages \_\_\_\_\_, it is agreed that as a condition of award of this subcontract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data--General" clause contained in this subcontract) in and to the technical data contained in the proposal dated \_\_\_\_\_, upon which this subcontract is based.

### **CLAUSE 7. REFUND OF ROYALTIES (FEB 1995)**

*Derived from DEAR 952.227-9*

*(Applies to subcontracts where the Subcontractor will pay royalties for experimental, research, development, or demonstration work or other subcontracts where the Subcontractor will pay royalties.)*

- (a) The subcontract price includes certain amounts for royalties payable by the Subcontractor or lower-tier subcontractors or both, which amounts have been reported to the DOE through NREL.
- (b) The term "royalties," as used in this clause, refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this subcontract or any lower-tier subcontract here-under. The term also includes any costs or charges associated with the access to, use of, or other right

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pertaining to data that is represented to be proprietary and is related to the performance of this subcontract or the copying of such data or data that is copyrighted.

- (c) The Subcontractor shall furnish to the DOE through NREL, before final payment under this subcontract, a statement of royalties paid or required to be paid in connection with performing this subcontract and lower-tier subcontracts hereunder together with the reasons.
- (d) The Subcontractor will be compensated for royalties reported under paragraph (C) of this clause, only to the extent that such royalties were included in the subcontract price and are determined by the DOE to be properly chargeable to the Government and allocable to the subcontract. To the extent that any royalties that are included in the subcontract price are not, in fact, paid by the Subcontractor or are determined by the DOE not to be properly chargeable to the Government and allocable to the subcontract, the subcontract price shall be reduced. Repayment or credit to the Government shall be made as the DOE directs. The approval by DOE of any individual payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.
- (e) If, at any time within 3 years after final payment under this subcontract, the Subcontractor for any reason is relieved in whole or in part from the payment of the royalties included in the final subcontract price as adjusted pursuant to paragraph (D) of this clause, the Subcontractor shall promptly notify the DOE of that fact and shall reimburse the Government in a corresponding amount.
- (f) The substance of this clause, including this paragraph (F), shall be included in any lower-tier subcontract in which the amount of royalties reported during negotiation of the lower-tier subcontract exceeds \$250.