APPENDIX B-3

STANDARD TERMS AND CONDITIONS FOR

SUPPLIES AND SERVICES
(WHERE SERVICE CONTRACT ACT APPLIES)

FIRM FIXED-PRICE OR FIXED UNIT-PRICE

March 1, 2020

Subcontractor is hereby 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 No. DE-AC36-08GO28308.

Appendix B-3
Standard Terms and Conditions for
Supplies and Services (Where Service Contract Act Applies)
Firm-Fixed or Fixed-Unit Price

Appendix B-3 Clause Number	FAR/DEAR Reference	Title	FD	OnSite Clause = Y	Threshold (Award Amount)	Date/Req'd Version
Section I - Clauses Applicable to NREL Subcontracts						
1	52.202-1	Definitions			All	
2	NREL 08.100-01	Subcontract Issues and Disputes			All	
3	NREL 08.100-04	Lobbying Restrictions (Energy & Water Act)			All	2007
4	NREL 08.100-05	Subcontractor Acceptance of Notices of Violation or Alleged Violations, Fines, and Penalties			All	
5	NREL 08.100-06	Subcontractor Quality Representations			All	May 2009
6	52.204-7	System for Award Management			All	Oct 2016
7	52.204-13	System for Award Management Maintenance			All	
8	52.204-14	Service Contract Reporting Requirements			All	Oct 2016
9	52.204-15	Service Contract Reporting Requirements for Indefinite-Delivery Contracts			All	Oct 2016
10	52.215-19	Notification of Ownership Changes	**X**		All	Oct 1997
11	52.219-8	Utilization of Small Business Concerns			All	
12	52.222-1	Notice to the Government of Labor Disputes			All	
13	52.222-3	Convict Labor			All	
14	52.222-4	Contract Work Hours and Safety Standards - Overtime Compensation	**X**		All	May 2014
15	52.222-17	Nondisplacement of Qualified Workers			All	May 2014
16	52.222-20	Contracts for Materials, Supplies, Articles and Equipment Exceeding $15,000			All	
17	52.222-21	Prohibition of Segregated Facilities	**X**		All	Apr 2015
18	52.222-26	Equal Opportunity	**X**		All	Sep 2016
19	52.222-50	Combating Trafficking in Persons	**X**		All	Mar 2015
20	52.222-55	Minimum Wages under Executive Order 13658	**X**		All	Dec 2015
21	52.223-3	Hazardous Material Identification and Material Safety Data - Alternate I			All	
22	52.225-1	Buy American - Supplies			All	May 2014
23	52.225-13	Restriction on Certain Foreign Purchases	**X**		All	Jun 2008
24	52.229-3	Federal, State, and Local Taxes			All	Feb 2013
25	52.229-6	Taxes - Foreign Fixed-Price Contracts			All	Feb 2013
26	52.232-24	Prohibition of Assignment of Claims			All	May 2014
27	52.232-33	Payment by Electronic Funds Transfer - System for Award Management			All	Jul 2013
28	52.232-39	Unenforceability of Unauthorized Obligations			All	

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29	52.232-40	Providing Accelerated Payments to Small Business Subcontractors	X		All	Dec 2013
30	52.242-13	Bankruptcy			All	Jul 1995
31	52.242-15	Stop Work Order - Cost-Reimbursement - Alternate			All	Aug 1989
32	52.242-15	Stop Work Order - Commercial Items			All	Aug 1989
33	52.243-1	Changes - Fixed-Price - Alternates I-V			All	Aug 1987
34	52.244-2	Subcontracts - Alternate I			All	Oct 2010
35	52.244-6	Subcontracts for Commercial Items	X		All	Nov 2017
36	52.246-2	Inspection of Supplies - Fixed-Price			All	Aug 1996
37	52.246-4	Inspection of Services - Fixed-Price			All	Aug 1996
38	52.247-1	Commercial Bill of Lading Notations			All	Feb 2006
39	52.247-63	Preference for U.S.-Flag Air Carriers	X		All	Jun 2003
40	52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels	X		All	Feb 2006
41	52.249-1	Termination for Convenience (Short Form) - Fixed Price			All	Apr 1984
42	52.249-2	Termination for Convenience - Fixed Price - Construction - Alternate I			All	Apr 2012
43	52.249-4	Termination for Convenience (Short Form) - Services			All	Apr 1984
44	52.249-8	Default - Fixed Price - Supply and Service			All	Apr 1984
45	952.204-71	Sensitive Foreign Nations Controls	X		All	Mar 2011
46	952.204-75	Public Affairs			All	Dec 2000
47	952.204-77	Computer Security	X		All	Aug 2006
48	952.247-70	Foreign Travel	X		All	Most Current
49	970.5208-1	Printing	X		All	Dec 2000
50	970.5225-1	Compliance with Export Control Laws and Regulations	X		All	Nov 2015
51	970.5232-3	Accounts, Records, and Inspection - Alternate I	X		All	Clause Dec 2010; Alt Dec 2000
52	970.5245-1	Property - Alternate I	X		All	Aug 2016
53	52.222-41	Service Contract Labor Standards	X		>$2.5K	Most Current
54	52.222-54	Employment Eligibility Verification	X		>$3.5K	Oct 2015
55	52.222-40	Notification of Employee Rights under the National Labor Relations Act	X		>$10K	Dec 2010
56	52.223-18	Encouraging Contractor Policies to Ban Text Messaging while Driving	X		>$10K (2018 mpt)	Aug 2011
57	52.222-36	Equal Opportunity for Workers with Disabilities	X		>$15K	Jul 2014

Appendix B-3 Standard Terms and Conditions for Supplies and Services (Where Service Contract Act Applies) Firm-Fixed or Fixed-Unit Price						
Appendix B-3 Clause Number	**FAR/DEAR Reference**	**Title**	**FD**	**OnSite Clause = Y**	**Threshold (Award Amount)**	**Date/Req'd Version**
58	52.225-8	Duty-Free Entry	**X**		>$15K*	Oct 2010
59	52.209-6	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	**X**		>$35K	Oct 2015
60	52.203-6	Restrictions on Subcontractor Sales to the Government	**X**		>SAT	Sep 2006
61	52.203-7	Anti-Kickback Procedures	**X**		>SAT	Apr 2014
62	52.203-12	Limitation on Payments to Influence Certain Federal Transactions	**X**		>SAT	Oct 2010
63	52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights	**X**		>SAT	Apr 2014
64	52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	**X**		>SAT	Jan 2017
65	52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper			>SAT	
66	52.222-35	Equal Opportunity for Veterans	**X**		$150K	Oct 2015
67	52.222-37	Employment Reports on Veterans	**X**		$150K	Feb 2016
68	52.222-43	Fair Labor Standards Act and Service Contract Labor Standards - Price Adjustment (Multiple Year and Option Contracts)	**X**		>SAT	Most Current
69	952.226-74	Displaced Employee Hiring Preference	**X**		>$500K	Jun 1997

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Appendix B-3 Clause Number	**FAR/DEAR Reference**	**Title**	**FD**	**OnSite Clause = Y**	**Threshold (Award Amount)**	**Date/Req'd Version**
Section II - Clauses Applicable to Subcontracts that Require Performance on NREL-Operated Facilities						
70	NREL 08.100-02	Security and Access Requirements		**Y**	All	
71	NREL 09.100-02	Worker Safety and Health Requirements		**Y**	All	Mar 2020
72	52.223-6	Drug-Free Workplace		**Y**	All	May 2001
73	52.228-5	Insurance - Work on a Government Installation and Alt I -Architect/Engineer Subcontracts		**Y**	All	Jan 1997
74	52.237-2	Protection of Government Buildings, Equipment, and Vegetation		**Y**	All	Apr 1984
75	952.203-70	Whistleblower Protection for Contractor Employees	**X**	**Y**	All	Dec 2000
76	970.5223-1	Integration of Environment, Safety, and Health into Work Planning and Execution	**X**	**Y**	All	Dec 2000
Section III - Sustainable Acquisition Clauses						
77	970.5223-7	Sustainable Acquisition Program	**X**	**Y**	>SAT	Oct 2010
78	52.223-2	Affirm Procurement of Biobased Products under Service and Construction Contracts		**Y**	All	Sep 2013
79	52.223-10	Waste Reduction Program		**Y**	All	May 2011
80	52.223-11	Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons			All	Jun 2016
81	52.223-12	Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners			All	Jun 2016
82	52.223-15	Energy Efficiency in Energy-Consuming Products	**X**	**Y**	All	Dec 2007
83	52.223-17	Affirm Procurement of EPA-designated Items in Service and Construction Contracts		**Y**	All	Aug 2018

DEFINITIONS (SPECIAL) (JUL 2014)
*Derived from **FAR 52.202-1** (NOV 2013) as modified by **DEAR 902.101***
(Applies to all subcontracts that exceed the Simplified Acquisition Threshold.)

(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.

SUBCONTRACT ISSUES AND DISPUTES (SPECIAL) (SEP 2007)
*Derived from **NREL 08.100-01***
(Applies to all subcontracts.)

(a) It is NREL's practice to try to resolve all contractual issues by mutual agreement at the NREL Subcontract Administrator's level, without litigation. Both parties hereby agree to explore all reasonable avenues for negotiations in order to avoid a dispute. Either party may provide written notice to the other party to conduct negotiations for a period not to exceed sixty (60) calendar days. After sixty calendar days, if possibilities for negotiations have failed, either party shall have thirty (30) calendar days to request that the potential dispute be moved to Alternative Dispute Resolution (ADR). Within fifteen (15) calendar days after receiving a request to move to ADR, if ADR procedures are not acceptable to the non-moving party, a written explanation citing specific reasons for rejecting ADR as inappropriate for resolution of the dispute shall be provided to the moving party. If the parties are unable to agree on the application of ADR procedures to resolve the potential dispute or are unable to satisfactorily resolve the dispute using ADR procedures for a period not to exceed ninety (90) calendar days (or such longer period as mutually agreed in writing), the parties shall resume the formal process authorized in this clause.

(b) The parties agree that the appropriate forum for litigation of any dispute pertaining to this subcontract shall be a court of competent jurisdiction as follows:

(1) Subject to paragraph (b) (2) of this clause, any such litigation shall be brought and prosecuted exclusively in Federal District Court; with venue in the United States District Court of Colorado in Denver, Colorado.

(2) Provided, however, that in the event the requirements for jurisdiction in any Federal District Court are not present, such litigation shall be brought in a court of competent jurisdiction in the county of Jefferson and State of Colorado.

(c) Any substantive issue of law in such litigation shall be determined in accordance with the body of applicable Federal law relating to the interpretation and application of clauses derived from Federal Acquisition Regulation (FAR) and the Department of Energy Acquisition Regulation that implement and supplement the FAR. If there is no applicable Federal law, the law of the State of Colorado shall apply in the determination of such issues. Conflict of law provisions shall not determine applicable governing law. Nothing in this clause shall grant the Subcontractor by implication any statutory rights or remedies not expressly set forth in this subcontract.

(d) There shall be no interruption in the prosecution of the work, and the Subcontractor shall proceed diligently with the performance of this subcontract pending final resolution of any contractual issues, disputes, or litigation arising under or related to this subcontract between the parties hereto or between the Subcontractor and lower-tier Subcontractors or suppliers.

(e) The Contract Disputes Act of 1978 (41 U.S.C. Sections 601-613) shall not apply to this subcontract; provided, however, that nothing in this clause shall prohibit NREL, in its sole discretion, from sponsoring a dispute of the Subcontractor for resolution under the provision of its prime contract with DOE. In the event that NREL so sponsors a dispute at the request of the Subcontractor, the Subcontractor shall be bound by the decision of the cognizant DOE Contracting Officer to the same extent and in the same manner as NREL.

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

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.

SUBCONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (SPECIAL) (MAY 2003)
*Derived from **NREL 08.100-05***
(Applies to all subcontracts.)

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

(b) When deemed appropriate by the NREL Subcontract Administrator, the Subcontractor shall conduct negotiations with regulators regarding NOV/NOAVs, fines and penalties, including, if the NREL Subcontract Administrator so requires, accepting NOV/NOAVs in its own name. The Subcontractor shall make no commitments or offers to regulators binding NREL/Government unless approved in advance and in writing by the NREL Subcontract Administrator. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Subcontractor being liable for any excess costs to NREL/Government associated with or resulting from such offers/commitments.

(c) The Subcontractor shall support and provide assistance to the NREL/Government concerning any matter arising under a NOV/NOAV.

SUBCONTRACTOR QUALITY REPRESENTATIONS (SPECIAL) (MAY 2009)
*Derived from **NREL 08.100-06***
(Applies to all subcontracts, including construction subcontracts, where items or parts are supplied or delivered.)

(a) New Materials. Unless otherwise specified in this subcontract, all items or parts supplied or delivered by the Subcontractor, or its lower-tier Subcontractors, shall consist of new materials. “New materials” means previously unused. The Subcontractor shall not deliver any item or part that is residual inventory resulting from terminated Government contracts/subcontracts or former Government surplus property.

(b) Recycled or Recovered Materials. The requirement for supply or delivery of items or parts consisting of new materials does not exclude the delivery of recycled or recovered materials as defined by the Environmental Protection Agency in 40 CFR 247.

(c) Used, Refurbished, or Rebuilt Items or Parts. In the event that items or parts consisting of new materials are not reasonably available to the Subcontractor, with prior NREL Subcontract Administrator written approval, the Subcontractor may supply or deliver either: used; or refurbished; or rebuilt items or parts that are not of such an age or so deteriorated as to impair their usefulness or safety and conform to government or industry-accepted specifications or national consensus standards.

(d) Suspect or Counterfeit Items or Parts. “Suspect or counterfeit items or parts” mean (1) items or parts that may be of new manufacture but labeled to represent a different class of items or parts or (2) used and/or refurbished items or parts complete with false labeling, that are represented as new items or parts.

(e) Indemnification of NREL/DOE. The Subcontractor shall indemnify NREL and the DOE, their officers, agents, and employees, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from items or parts that are not genuine, original, and unused, or not otherwise suitable for the intended purpose. This includes, but is not limited to, items or parts that are defective, suspect, or counterfeit; items or parts that have been provided under false pretenses; and items or parts that are materially altered, damaged, deteriorated, degraded, or result in product failure.

(f) Quality Representations. The Subcontractor represents that items and parts supplied or delivered under this Subcontract shall not include suspect or counterfeit items or parts nor shall counterfeit or suspect items or parts be used in performing any work under this Subcontract whether on or off the NREL operated facility. In the event that the Subcontractor or its lower-tier Subcontractors supplies or delivers suspect or counterfeit items or parts, such items or parts shall be impounded by NREL, or the Subcontractor shall remove the items or parts as directed by the NREL Subcontract Administrator. The Subcontractor shall promptly replace the counterfeit or suspect items or parts with supplies acceptable to NREL and the Subcontractor shall be liable for all costs relating to impoundment, removal, and replacement.

(g) NREL Rights. The rights of NREL under this clause are in addition to any other rights provided by law or under this Subcontract and such rights shall survive the termination or natural completion of the period of performance of this Subcontract.

SYSTEM FOR AWARD MANAGEMENT (NOV 2019)
Derived from FAR 52.204-7 (OCT 2018)
Applies to all subcontracts and solicitations.

(a) *Definitions*. As used in this provision—

"Electronic Funds Transfer (EFT) indicator means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

"Registered in the System for Award Management (SAM)" means that–

(1) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14) into SAM

(2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in SAM;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record "Active".

"Unique entity identifier" means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

(b)

(1) An Offeror is required to be registered in SAM when submitting an offer or quotation, and shall continue to be registered until time of award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "Unique Entity Identifier" followed by the unique entity identifier that identifies the Offeror's name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the NREL Subcontract Administrator to verify that the Offeror is registered in the SAM.

(c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at www.sam.gov for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:

(1) Company legal business name.
(2) Tradestyle, doing business, or other name by which your entity is commonly recognized.
(3) Company Physical Street Address, City, State, and Zip Code.
(4) Company Mailing Address, City, State and Zip Code (if separate from physical).
(5) Company telephone number.
(6) Date the company was started.
(7) Number of employees at your location.
(8) Chief executive officer/key manager.
(9) Line of business (industry).

(10) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the SAM database in the time prescribed by the NREL Subcontract Administrator, the NREL Subcontract Administrator reserves the right to proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered in SAM should consider applying for registration immediately upon receipt of this solicitation. See https://ww.sam.gov for information on registration.

SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (NOV 2019)
Derived from FAR 52.204-13 (OCT 2018)
(Applies to all subcontracts.)

(a) Definitions. As used in this clause—

"Electronic Funds Transfer (EFT) indicator" means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management (SAM) records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

"Registered in the System for Award Management (SAM)" means that–

(1) The subcontractor has entered all mandatory information, including the unique entity identifier and the EFT indicator (if applicable), the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart4.14), into SAM;
(2) The subcontractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in SAM;
(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The subcontractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and
(4) The Government has marked the record "Active".

"System for Award Management (SAM)" means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes–

(1) Data collected from prospective Federal awardees required for the conduct of business with the Government;
(2) Prospective subcontractor-submitted annual representations and certifications in accordance with FAR subpart 4.12; and
(3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

"Unique entity identifier" means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

(b) If the solicitation for this subcontract contained the provision 52.204-7, and the subcontractor was unable to register prior to award, the subcontractor shall be registered in SAM within 30 days after award or before three days prior to submission of the first invoice, whichever occurs first.

(c) The subcontractor shall maintain registration in SAM during subcontract performance and through final payment of any subcontract, basic agreement, basic ordering agreement, or blanket purchasing agreement. The subcontractor is responsible for the currency, accuracy and completeness of the data within SAM, and for any liability resulting from NREL and the Government's reliance on inaccurate or incomplete data. To remain registered in SAM after the initial registration, the subcontractor is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in SAM to ensure it is current, accurate and

complete. Updating information in SAM does not alter the terms and conditions of this subcontract and is not a substitute for a properly executed contractual document.

(d)

(1)

(i) If a subcontractor has legally changed its business name or “doing business as” name (whichever is shown on the subcontract), or has transferred the assets used in performing the subcontract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart 42.12, the subcontractor shall provide the responsible NREL Subcontract Administrator a minimum of one business day's written notification of its intention to—

(A) Change the name in SAM;

(B) Comply with the requirements of subpart 42.12 of the FAR; and

(C) Agree in writing to the timeline and procedures specified by the responsible NREL Subcontract Administrator. The subcontractor shall provide with the notification sufficient documentation to support the legally changed name.

(ii) If the subcontractor fails to comply with the requirements of paragraph (d)(1)(i) of this clause, or fails to perform the agreement at paragraph (d)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the subcontractor to be other than the subcontractor indicated in the subcontract will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the electronic funds transfer (EFT) clause of this subcontract.

SERVICE CONTRACT REPORTING REQUIREMENTS (OCT 2016)
*Derived from **FAR 52.204-14** (OCT 2016)*
Applies to all service subcontracts.

(a) Definition. "Lower-tier subcontract" means a subcontract awarded directly by the Subcontractor for the purpose of acquiring supplies or services (including construction) for performance of a subcontract with NREL. It does not include the Subcontractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Subcontractor's general and administrative expenses or indirect costs.

(b) The Subcontractor shall report, in accordance with paragraphs (c) and (d) of this clause, annually by October 31, for services performed under this subcontract during the preceding Government fiscal year (October 1-September 30).

(c) The Subcontractor shall report the following information:
- (1) Subcontract number and, as applicable, order number.
- (2) The total dollar amount invoiced for services performed during the previous Government fiscal year under the subcontract.
- (3) The number of Subcontractor direct labor hours expended on the services performed during the previous Government fiscal year.
- (4) Data reported by lower-tier subcontractors under paragraph (f) of this clause.

(d) The information required in paragraph (c) of this clause shall be submitted via the internet at www.sam.gov. (See SAM User Guide). If the Subcontractor fails to submit the report in a timely manner, the NREL Subcontract Administrator will exercise appropriate contractual remedies. In addition, the NREL Subcontract Administrator will make the Subcontractor's failure to comply with the reporting requirements a part of the Subcontractor's performance information under FAR subpart 42.15.

(e) Agencies will review Subcontractor reported information for reasonableness and consistency with available subcontract information. In the event the agency believes that revisions to the subcontractor reported information are warranted, the agency will notify the Subcontractor no later than November 15. By November 30, the Subcontractor shall revise the report, or document its rationale for the agency.

(f) (1) The Subcontractor shall require each Lower-tier subcontractor providing services under this subcontract, with lower-tier subcontract(s) each valued at or above the thresholds set forth in FAR Subpart 4.1703(a)(2), to provide the following detailed information to the Subcontractor in sufficient time to submit the report:
- (i) Subcontract number (including lower-tier subcontractor name and unique entity identifier); and
- (ii) The number of lower-tier subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.

(2) The Subcontractor shall advise the lower-tier subcontractor that the information will be made available to the public as required by section 743 of Division C of the Consolidated Appropriations Act, 2010.

SERVICE CONTRACT REPORTING REQUIREMENTS FOR INDEFINITE-DELIVERY CONTRACTS (OCT 2016)

*Derived from **FAR 52.204-15** (OCT 2016)*

(Applies to all indefinite delivery service subcontracts.)

(a) Definitions.
"Lower-tier subcontract" means a subcontract awarded directly by the Subcontractor for the purpose of acquiring supplies or services (including construction) for performance of a subcontract with NREL. It does not include the Subcontractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a subcontractor's general and administrative expenses or indirect costs.

(b) The Subcontractor shall report, in accordance with paragraphs (c) and (d) of this clause, annually by October 31, for services performed during the preceding Government fiscal year (October 1-September 30) under this subcontract for orders that exceed the thresholds established in FAR Subpart 4.1703(a)(2).

(c) The Subcontractor shall report the following information:
- (1) Subcontract number and order number.
- (2) The total dollar amount invoiced for services performed during the previous Government fiscal year under the subcontract or order.
- (3) The number of subcontractor direct labor hours expended on the services performed during the previous Government fiscal year.
- (4) Data reported by lower-tier subcontractors under paragraph (f) of this clause.

(d) The information required in paragraph (c) of this clause shall be submitted via the internet at www.sam.gov. (See SAM User Guide). If the Subcontractor fails to submit the report in a timely manner, the NREL Subcontract Administrator will exercise appropriate contractual remedies. In addition, the NREL Subcontract Administrator will make the Subcontractor's failure to comply with the reporting requirements a part of the Subcontractor's performance information under FAR subpart 42.15.

(e) Agencies will review Subcontractor reported information for reasonableness and consistency with available subcontract information. In the event the agency believes that revisions to the Subcontractor reported information are warranted, the agency will notify the Subcontractor no later than November 15. By November 30, the Subcontractor shall revise the report, or document its rationale for the agency.

(f) (1) The Subcontractor shall require each lower-tier subcontractor providing services under this subcontract, with lower-tier subcontract(s) each valued at or above the thresholds set forth in FAR subpart 4.1703(a)(2), to provide the following detailed information to the Subcontractor in sufficient time to submit the report:
- (i) Lower-tier subcontract number (including subcontractor name and unique entity identifier), and
- (ii) The number of lower-tier subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.
- (2) The Subcontractor shall advise the lower-tier subcontractor that the information will be made available to the public as required by section 743 of Division C of the Consolidated Appropriations Act, 2010.

NOTIFICATION OF CHANGE IN OWNERSHIP AND/OR NAME (OCT 2009)
*Derived from **FAR 52.215-19** (OCT 1997) (FD)*
(Applies to all subcontracts.)

(a) The Subcontractor shall make the following notifications in writing:
  (1) When the Subcontractor becomes aware that a change in its ownership or name has occurred, or is certain to occur, the Subcontractor shall provide such notification in accordance with NREL's novation and name change procedures.
  (2) When a change that could result in changes in the valuation of the Subcontractor's capitalized assets in the accounting records or any other asset valuations or cost changes, the Subcontractor shall provide such notification to the NREL Subcontract Administrator within thirty (30) days.

(b) In the event of change in ownership, the Subcontractor shall—
  (1) Maintain current, accurate, and complete inventory records of assets and their costs;
  (2) Provide the NREL Subcontract Administrator or designated representative ready access to the records upon request;
  (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives, are identified accurately before and after each of the Subcontractor's ownership changes; and
  (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Subcontractor ownership change.

(c) The Subcontractor shall include the substance of this clause in all lower-tier subcontracts where it is contemplated that cost or pricing data will be required or for which any pre-award or post-award cost determination is subject to FAR 31.2, cost principles and procedures applicable to commercial organizations. The Subcontractor shall notify the NREL Subcontract Administrator of the change in ownership or name of any lower-tier Subcontractor subject to the terms of this clause.

UTILIZATION OF SMALL BUSINESS CONCERNS (NOV 2016)
*Derived from **FAR 52.219-8** (FD) (NOV 2016)*
(Applies to all subcontracts exceeding $150,000.)

(a) *Definitions.* As used in this subcontract—

"HUBZone small business concern" means a small business concern, certified by the Small Business Administration, that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

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

(1) Means a small business concern—

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

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

(2) "Service-disabled veteran" means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

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

"Small disadvantaged business concern, consistent with 13 CFR 124.1002," means a small business concern under the size standard applicable to the acquisition, that—

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13

(i) CFR 124.105) by-- One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

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

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

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

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

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

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

(b) 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 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.

(c) 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.

(d)

(1) The Contractor may accept a subcontractor’s written representations of its size and socioeconomic status as a small business, small disadvantaged, business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(2) The Subcontractor may accept a lower-tier subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if—

(i) The lower-tier subcontractor is registered in SAM; and

(ii) The lower-tier subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(3) The Subcontractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a lower-tier subcontract.

(4) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a subcontractor acting in good faith is not liable for misrepresentations made by its lower-tier subcontractors regarding the lower-tier subcontractor's size or socioeconomic status.

(5) 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 System for Award Management 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.

NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)
*Derived from **FAR 52.222-1** (FEB 1997)*
(Applies to subcontracts for services and construction.)
If the Subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this subcontract, the Subcontractor shall immediately give notice, including all relevant information, to the NREL Subcontract Administrator.

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

(a) Except as provided in paragraph (b) of this clause, the Subcontractor shall not employ in the performance of this subcontract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Subcontractor is not prohibited from employing persons—

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (MAY 2014)

*Derived from **FAR 52.222-4** (MAY 2014) (FD)*

(Applies to subcontracts exceeding $150,000 involving the substantial employment of laborers or mechanics.)

(a) Overtime requirements. No Subcontractor or lower-tier Subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) Violation; liability for unpaid wages; liquidated damages. The responsible Subcontractor and lower-tier Subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Subcontractor and lower-tier Subcontractor are liable for liquidated damages payable to NREL/the Government. The NREL Subcontract Administrator will assess liquidated damages at the rate of $10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37).

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

(d) Payrolls and basic records.

(1) The Subcontractor and its lower-tier Subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the subcontract during the subcontract and shall make them available to the NREL/Government until 3 years after subcontract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.

(2) The Subcontractor and its lower-tier Subcontractors shall allow authorized representatives of the NREL Subcontract Administrator or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Subcontractor or lower-tier Subcontractor also shall allow authorized representatives of the NREL Subcontract Administrator or Department of Labor to interview employees in the workplace during working hours.

(e) Lower-tier subcontracts. The Subcontractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in lower-tier subcontracts may require or involve the employment of laborers and mechanics and require lower-tier Subcontractors to include these provisions in any such sub-tier subcontracts. The Subcontractor shall be responsible for compliance by any lower-tier Subcontractor or sub-tier Subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

NONDISPLACEMENT OF QUALIFIED WORKERS (MAY 2014) (SPECIAL NOV 2016)
*Derived from **FAR 52.222-17** (May 2014)*
Applies to service subcontracts exceeding the Simplified Acquisition Threshold.

(a) "Service employee", as used in this clause, means any person engaged in the performance of a service subcontract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor, subcontractor or lower-tier subcontractor and such persons.

(b) The Subcontractor and its lower-tier subcontractors shall, except as otherwise provided herein, in good faith offer those service employees employed under the predecessor subcontract whose employment will be terminated as a result of award of this subcontract or the expiration of the subcontract under which the service employees were hired, a right of first refusal of employment under this subcontract in positions for which the service employees are qualified.

(1) The Subcontractor and its lower-tier subcontractors shall determine the number of service employees necessary for efficient performance of this subcontract and may elect to employ fewer employees than the predecessor Subcontractor employed in connection with performance of the work.

(2) Except as provided in paragraph (c) of this clause, there shall be no employment opening under this subcontract, and the Subcontractor and any lower-tier subcontractors shall not offer employment under this subcontract, to any person prior to having complied fully with this obligation.

(i) The successor Subcontractor and its lower-tier subcontractors shall make a bona fide express offer of employment to each service employee as provided herein and shall state the time within which the service employee must accept such offer, but in no case shall the period within which the service employee must accept the offer of employment be less than 10 days.

(ii) The successor Subcontractor and its lower-tier subcontractors shall decide any question concerning a service employee's qualifications based upon the individual's education and employment history, with particular emphasis on the employee's experience on the predecessor subcontract, and the Subcontractor may utilize employment screening processes only when such processes are provided for by the Government through NREL, are conditions of the service contract, and are consistent with Executive Order 13495.

(iii) Where the successor Subcontractor does not initially offer employment to all the predecessor subcontract service employees, the obligation to offer employment shall continue for 90 days after the successor Subcontractor's first date of performance on the subcontract.

(iv) An offer of employment will be presumed to be bona fide even if it is not for a position similar to the one the employee previously held, but is one for which the employee is qualified, and even if it is subject to different employment terms and conditions, including changes to pay or benefits. (See 29 CFR 9.12 for a detailed description of a bona fide offer of employment).

(c) (1) Notwithstanding the obligation under paragraph (b) of this clause, the successor Subcontractor and any lower-tier subcontractors (i) may employ under this subcontract any service employee who has worked for the subcontractor or lower-tier subcontractor for at least three months immediately preceding the commencement of this subcontract and who would otherwise face lay-off or discharge, (ii) are not required to offer a right of first refusal to any service employee(s) of the predecessor subcontractor who are not service employees within the meaning of the Service Contract Labor Standards statute, 41 U.S.C. 6701(3), and (iii) are not required to offer a right of first refusal to any service employee(s) of the predecessor subcontractor whom the Subcontractor or any of its lower-tier subcontractors reasonably believes, based on the particular service employee's past performance, has failed to perform suitably on the job (see 29 CFR 9.12 (c)(4) for additional information). The successor Subcontractor bears the responsibility of demonstrating the appropriateness of claiming any of these exceptions.

(2) In addition, any Subcontractor or lower-tier subcontractor that has been certified by the U.S. Small Business Administration as a HUBZone small business concern must ensure that it complies with the statutory and regulatory requirements of the HUBZone Program (e.g., it must ensure that at least 35 percent of all of its employees reside within a HUBZone). The HUBZone small business Subcontractor or lower-tier subcontractor must consider whether it can meet the requirements of this clause and Executive Order 13495 while also ensuring it meets the HUBZone Program's requirements.

(3) Nothing in this clause shall be construed to permit a Subcontractor or lower-tier subcontractor to fail to comply with any provision of any other Executive order or law. For example, the requirements of the HUBZone Program (see FAR subpart 19.13), Executive Order 11246 (Equal Employment Opportunity), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 may conflict, in certain circumstances, with the requirements of Executive Order 13495. All applicable laws and Executive orders must be satisfied in tandem with, and if necessary prior to, the requirements of Executive Order 13495, 29 CFR part 9, and this clause.

(d) (1) The Subcontractor shall, not less than 30 days before completion of the Subcontractor's performance of services on the subcontract, furnish the NREL Subcontract Administrator with a certified list of the names of all service employees working under this subcontract and its lower-tier subcontracts at the time the list is submitted. The list shall also contain anniversary dates of employment of each service employee under this subcontract and its predecessor subcontracts with either the current or predecessor subcontractors or their lower-tier subcontractors. Where changes to the workforce are made after the submission of the certified list described in this paragraph, the Subcontractor shall, in accordance with paragraph (e) of this clause, not less than 10 days before completion of the services on this subcontract, furnish the NREL Subcontract Administrator with an updated certified list of the names of all service employees employed within the last month of subcontract performance. The updated list shall also contain anniversary dates of employment, and, where applicable, dates of separation of each service employee under the subcontract and its

predecessor subcontracts with either the current or predecessor Subcontractors or their lower-tier subcontractors.

(2) Immediately upon receipt of the certified service employee list but not before subcontract award, the NREL Subcontract Administrator shall provide the certified service employee list to the successor Subcontractor, and, if requested, to employees of the predecessor Subcontractor or lower-tier subcontractors or their authorized representatives.

(3) The NREL Subcontract Administrator will direct the predecessor Subcontractor to provide written notice (Appendix B to 29 CFR chapter 9) to service employees of their possible right to an offer of employment with the successor subcontractor. Where a significant portion of the predecessor Subcontractor's workforce is not fluent in English, the notice shall be provided in English and the language(s) with which service employees are more familiar. The written notice shall be—

(i) Posted in a conspicuous place at the worksite; or

(ii) Delivered to the service employees individually. If such delivery is via e-mail, the notification must result in an electronic delivery receipt or some other reliable confirmation that the intended recipient received the notice.

(e) (1) If required in accordance with 52.222-41(n), the predecessor Subcontractor shall, not less than 10 days before completion of this subcontract, furnish the NREL Subcontract Administrator a certified list of the names of all service employees working under this subcontract and its lower-tier subcontracts during the last month of subcontract performance. The list shall also contain anniversary dates of employment of each service employee under this subcontract and its predecessor subcontracts either with the current or predecessor Subcontractors or their lower-tier subcontractors. If there are no changes to the workforce before the predecessor subcontract is completed, then the predecessor Subcontractor is not required to submit a revised list 10 days prior to completion of performance and the requirements of 52.222-41(n) are met. When there are changes to the workforce after submission of the 30-day list, the predecessor Subcontractor shall submit a revised certified list not less than 10 days prior to performance completion.

(2) Immediately upon receipt of the certified service employee list but not before subcontract award, the NREL Subcontract Administrator shall provide the certified service employee list to the successor subcontractor, and, if requested, to employees of the predecessor subcontractor or lower-tier subcontractors or their authorized representatives.

(f) The Subcontractor and lower-tier subcontractor shall maintain the following records (regardless of format, e.g., paper or electronic) of its compliance with this clause for not less than a period of three years from the date the records were created.

(1) Copies of any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location, and attendance roster of any service employee meeting(s) at which the offers were extended, a summary of each meeting, a copy of any written notice that may have been distributed, and the names of the service employees from the predecessor contract to whom an offer was made.

(2) A copy of any record that forms the basis for any exemption claimed under this part.

(3) A copy of the service employee list provided to or received from NREL.

(4) An entry on the pay records of the amount of any retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division to each service employee, the period covered by such payment, and the date of payment, and a copy of any receipt form provided by or authorized by the Wage and Hour Division. The Subcontractor shall also deliver a copy of the receipt to the service employee and file the original, as evidence of payment by the Subcontractor and receipt by the service employee, with the Administrator or an authorized representative within 10 days after payment is made.

(g) Disputes concerning the requirements of this clause shall not be subject to the general disputes clause of this subcontract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 9. Disputes within the meaning of this clause include disputes between or among any of the following: The Subcontractor, NREL, the U.S. Department of Labor, and the service employees under the subcontract or its predecessor subcontract. The NREL Subcontract Administrator will refer any service employee who wishes to file a complaint, or ask questions concerning this subcontract clause, to the: Branch of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. Contact e-mail: displaced@dol.gov.

(h) The Subcontractor shall cooperate in any review or investigation by the Department of Labor into possible violations of the provisions of this clause and shall make such records requested by such official(s) available for inspection, copying, or transcription upon request.

(i) If it is determined, pursuant to regulations issued by the Secretary of Labor (Secretary), that the Subcontractor or its lower-tier subcontractors are not in compliance with the requirements of this clause or any regulation or order of the Secretary, appropriate sanctions may be imposed and remedies invoked against the Subcontractor or its lower-tier subcontractors, as provided in Executive Order 13495, the regulations, and relevant orders of the Secretary, or as otherwise provided by law.

(j) The Subcontractor shall take such action with respect to any such lower-tier subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance. However, if the Subcontractor, as a result of such direction, becomes involved in litigation with a lower-tier subcontractor, or is threatened with such involvement, the Subcontractor may request that the United States, through the Secretary, enter into such litigation to protect the interests of the United States.

(k) The NREL Subcontract Administrator will withhold, or cause to be withheld, from the Subcontractor under this or any other Government-funded subcontract with the same Subcontractor, such sums as an authorized official of the Department of Labor requests, upon a determination by the Administrator, the Administrative Law Judge, or the Administrative Review Board, that there has been a failure to comply with the terms of this clause and that wages lost as a result of the violations are due to service employees or that other monetary relief is appropriate. If the NREL Subcontract Administrator or the Administrator, upon final order of the Secretary, finds that the Subcontractor has failed to provide a list of the names of service employees working under the subcontract, the NREL Subcontract Administrator may, in his or her discretion, or upon request by the Administrator, take such action

as may be necessary to cause the suspension of the payment of subcontract funds until such time as the list is provided to the NREL Subcontract Administrator.

(l) Lower-tier subcontracts. In every lower-tier subcontract over the simplified acquisition threshold entered into in order to perform services under this subcontract, the Subcontractor shall include a provision that ensures—

(1) That each lower-tier subcontractor will honor the requirements of paragraphs (b) through (c) of this clause with respect to the service employees of a predecessor lower-tier subcontractor or lower-tier subcontractors working under this subcontract, as well as of a predecessor Subcontractor and its lower-tier subcontractors;

(2) That the lower-tier subcontractor will provide the Subcontractor with the information about the service employees of the lower-tier subcontractor needed by the Subcontractor to comply with paragraphs (d) and (e) of this clause; and

(3) The recordkeeping requirements of paragraph (f) of this clause.

SUBCONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES AND EQUIPMENT (MAY 2014)
*Derived from **FAR 52.222-20** (MAY 2014)*
(Applies to all subcontracts exceeding $15,000 for manufacturing or furnishing of materials, supplies, articles, or equipment subject to the Walsh-Healey Public Contracts Act.)
If this subcontract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed $15,000, and is subject to 41 U.S.C. chapter 65, the following terms and conditions apply:

(a) All stipulations required by 41 U.S.C. chapter 65 and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this subcontract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and workers with disabilities may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 6508).

PROHIBITION OF SEGREGATED FACILITIES (APR 2015)
*Derived from **FAR 52.222-21** (APR 2015) (FD)*
(Applies to subcontracts where the "Equal Opportunity Clause" is applicable.)

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

"Gender identity" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html .

"Segregated facilities" 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, sexual orientation, gender identity, 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 sexes.

"Sexual orientation" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html .

(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 the 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.

EQUAL OPPORTUNITY (SEP 2016)
*Derived from **FAR 52.222-26** (SEP 2016) (FD)*
(Applies to all subcontracts unless exempt from Executive Order 11246.) (See FAR 22.807(a).)

(a) Definitions. As used in this clause—

"Compensation" means any payments made to, or on behalf of, an employee or offered to an applicant as remuneration for employment, including but not limited to salary, wages, overtime pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits, stock options and awards, profit sharing, and retirement.

"Compensation information" means the amount and type of compensation provided to employees or offered to applicants, including, but not limited to, the desire of the Subcontractor to attract and retain a particular employee for the value the employee is perceived to add to the Subcontractor's profit or productivity; the availability of employees with like skills in the marketplace; market research about the worth of similar jobs in the relevant marketplace; job analysis, descriptions, and evaluations; salary and pay structures; salary surveys; labor union agreements; and Subcontractor decisions, statements and policies related to setting or altering employee compensation.

"Essential job functions" means the fundamental job duties of the employment position an individual holds. A job function may be considered essential if—

(1) The access to compensation information is necessary in order to perform that function or another routinely assigned business task; or

(2) The function or duties of the position include protecting and maintaining the privacy of employee personnel records, including compensation information.

"Gender identity" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html .

"Sexual orientation" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html .

"United States" 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.

(2) 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, sexual orientation,

gender identity, or national origin. However, it shall not be a violation of this clause for the Subcontractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Subcontractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. This shall include, but not be limited to—

(i) Employment;
(ii) Upgrading;
(iii) Demotion;
(iv) Transfer;
(v) Recruitment or recruitment advertising;
(vi) Layoff or termination;
(vii) Rates of pay or other forms of compensation; and
(viii) Selection for training, including apprenticeship.

(3) The Subcontractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the NREL Subcontract Administrator that explain this clause.

(4) The Subcontractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(5)

(i) The Subcontractor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This prohibition against discrimination does not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Subcontractor's legal duty to furnish information.

(ii) The Subcontractor shall disseminate the prohibition on discrimination in paragraph (c)(5)(i) of this clause, using language prescribed by the Director of the Office of Federal Contract Compliance Programs (OFCCP), to employees and applicants by—

(A) Incorporation into existing employee manuals or handbooks; and
(B) Electronic posting or by posting a copy of the provision in conspicuous places available to employees and applicants for employment.

(6) 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.

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

(8) 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.

(9) The Subcontractor shall permit access to its premises, during normal business hours, by NREL/the Government or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Subcontractor shall permit the NREL/the 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.

(10) If the OFCCP determines that the Subcontractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this subcontract may be canceled, terminated, or suspended in whole or in part and the Subcontractor may be declared ineligible for further NREL/ Government contracts/subcontracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Subcontractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

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

(12) 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 Part 60-1.1.

COMBATING TRAFFICKING IN PERSONS (MAR 2015)
*Derived from **FAR 52.222-50** (MAR 2015) (FD)*
(Applies to all subcontracts.)

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

"Agent" means any individual, including a director, an officer, an employee, or an independent Subcontractor, authorized to act on behalf of the organization.

"Coercion" means—

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

"Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.

"Commercially available off-the-shelf (COTS) item" means--

(1) Any item of supply (including construction material) that is—

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

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

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

"Employee" means an employee of the Subcontractor directly engaged in the performance of work under the subcontract who has other than a minimal impact or involvement in subcontract performance.

"Forced labor" means knowingly providing or obtaining the labor or services of a person—

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

"Involuntary servitude" includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

"Severe forms of trafficking in persons" means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

"Sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

"Lower-Tier Subcontract" means any contract entered into by a lower-tier subcontractor to furnish supplies or services for performance of a subcontract.

"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.

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

(b) *Policy*. The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Subcontractors, Subcontractor employees, and their agents shall not—

(1) Engage in severe forms of trafficking in persons during the period of performance of the subcontract;

(2) Procure commercial sex acts during the period of performance of the subcontract;

(3) Use forced labor in the performance of the subcontract;

(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;

(5)

(i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language accessible to the worker, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant cost to be charged to the employee, and, if applicable, the hazardous nature of the work;

(ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;

(6) Charge employees recruitment fees;

(7)

(i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment--

(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that--

(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is--

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The Subcontractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the Subcontractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) *Subcontractor requirements*. The Subcontractor shall—

(1) Notify its employees and agents of—

(i) The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the subcontract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or lower-tier Subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification*.

(1) The Subcontractor shall inform the NREL Subcontract Administrator and the agency Inspector General immediately of—

(i) Any credible information it receives from any source (including host country law enforcement) that alleges a Subcontractor employee, lower-tier Subcontractor, or lower-tier Subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-

1. 13(b)(3)(i)(A), if that clause is included in the solicitation or subcontract, which requires disclosure to NREL General Counsel when the Subcontractor has credible evidence of fraud); and

(ii) Any actions taken against a Subcontractor employee, lower-tier Subcontractor, lower-tier Subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one subcontract, the Subcontractor shall inform the NREL subcontract administrator for the subcontract with the highest dollar value.

(e) *Remedies*. In addition to other remedies available to the Government, the Subcontractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in—

(1) Requiring the Subcontractor to remove a Subcontractor employee or employees from the performance of the subcontract;
(2) Requiring the Subcontractor to terminate a subcontract;
(3) Suspension of subcontract payments until the Subcontractor has taken appropriate remedial action;
(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Subcontractor non-compliance;
(5) Declining to exercise available options under the contract;
(6) Termination of the subcontract for default or cause, in accordance with the termination clause of this subcontract; or
(7) Suspension or debarment.

(f) *Mitigating and aggravating factors*. When determining remedies, the NREL Subcontract Administrator may consider the following:

(1) *Mitigating factors*. The Subcontractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.
(2) Aggravating factors. The Subcontractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the NREL Subcontract Administrator to do so.

(g) *Full cooperation*.

(1) The Subcontractor shall, at a minimum—
   (i) Disclose to NREL General Counsel information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;
   (ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;
   (iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and
   (iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.
(2) The requirement for full cooperation does not foreclose any Subcontractor rights arising in law, the FAR, or the terms of the contract. It does not—
   (i) Require the Subcontractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;
   (ii) Require any officer, director, owner, employee, or agent of the Subcontractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or

(iii) Restrict the Subcontractor from—
(A) Conducting an internal investigation; or
(B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

(h) *Compliance plan*.
(1) This paragraph (h) applies to any portion of the contract that—
(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and
(ii) Has an estimated value that exceeds $500,000.
(2) The Subcontractor shall maintain a compliance plan during the performance of the contract that is appropriate—
(i) To the size and complexity of the contract; and
(ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.
(3) *Minimum requirements*. The compliance plan must include, at a minimum, the following:
(i) An awareness program to inform Subcontractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the Web site for the Department of State's Office to Monitor and Combat Trafficking in Persons at http://www.state.gov/j/tip/.
(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at help@befree.org.
(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.
(iv) A housing plan, if the Subcontractor or subSubcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.
(v) Procedures to prevent agents and Lower-Tier Subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subSubcontractor employees that have engaged in such activities.
(4) *Posting*.
(i) The Subcontractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Subcontractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Subcontractor shall provide the relevant contents of the compliance plan to each worker in writing.

(ii) The Subcontractor shall provide the compliance plan to the NREL Subcontract Administrator upon request.

(5) *Certification*. Annually after receiving an award, the Subcontractor shall submit a certification to the NREL Subcontract Administrator that—

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, lower-tier subcontract or lower-tier subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either—

(A) To the best of the Subcontractor's knowledge and belief, neither it nor any of its agents, lower-tier subcontractors, or their agents is engaged in any such activities; or

(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Subcontractor or lower-tier subcontractor has taken the appropriate remedial and referral actions.

(i) *Subcontracts*.

(1) The Subcontractor shall include the substance of this clause, including this paragraph (i), in all lower-tier subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the lower-tier subcontract that—

(A) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(B) Has an estimated value that exceeds $500,000.

(2) If any lower-tier subcontractor is required by this clause to submit a certification, the Subcontractor shall require submission prior to the award of the lower-tier subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.

MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (DEC 2015) (SPECIAL NOV 2016)
*Derived from **FAR 52.222-55** (DEC 2015)*
(Applies to all service and construction subcontracts.)

(a) Definitions. As used in this clause–
"United States" means the 50 states and the District of Columbia.
"Worker" –
(1) Means any person engaged in performing work on, or in connection with, a subcontract covered by Executive Order 13658, and—
(i) Whose wages under such subcontract are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67) (formerly the Service Contract Act of 1965), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV) (formerly known as the Davis-Bacon Act);
(ii) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541; and
(iii) Regardless of the contractual relationship alleged to exist between the individual and the employer.
(2) Includes workers performing on, or in connection with, the subcontract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c).
(3) Also includes any person working on, or in connection with, the subcontract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(b) Executive Order Minimum wage rate.
(1) The Subcontractor shall pay to workers, while performing in the United States, and performing on, or in connection with, this Subcontract, a minimum hourly wage rate of $10.10 per hour beginning January 1, 2015.
(2) The Subcontractor shall adjust the minimum wage paid, if necessary, beginning January 1, 2016, and annually thereafter, to meet the applicable annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on www.wdol.gov (or any successor website), and a general notice on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, that will provide information on the E.O. minimum wage and how to obtain annual updates. The applicable published E.O. minimum wage is incorporated by reference into this subcontract.
(3) (i) The Subcontractor may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only for increased labor costs (including lower-tier subcontractor labor costs) as a result of an increase in the annual E.O. minimum wage, and for associated labor costs (including those for lower-tier subcontractors). Associated labor costs shall include

increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(ii) Lower-tier subcontractors may be entitled to adjustments due to the new minimum wage, pursuant to paragraph (b)(2). Subcontractors shall consider any lower-tier subcontractor requests for such price adjustment.

(iii) The Subcontract Administrator will not adjust the subcontract price under this clause for any costs other than those identified in paragraph (b)(3)(i) of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.

(4) The Subcontractor warrants that the prices in this subcontract do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(5) A pay period under this clause may not be longer than semi-monthly, but may be shorter to comply with any applicable law or other requirement under this subcontract establishing a shorter pay period. Workers shall be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued.

(6) The Subcontractor shall pay, unconditionally to each worker, all wages due free and clear without subsequent rebate or kickback. The Subcontractor may make deductions that reduce a worker's wages below the E.O. minimum wage rate only if done in accordance with 29 CFR 10.23, Deductions.

(7) The Subcontractor shall not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.

(8) Nothing in this clause shall excuse the Subcontractor from compliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the E.O. minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

(9) The Subcontractor shall pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

(10) The Subcontractor shall follow the policies and procedures in 29 CFR 10.24(b) and 10.28 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than $30 a month in tips.

(c) (1) This clause applies to workers as defined in paragraph (a). As provided in that definition–

(ii) Workers are covered regardless of the contractual relationship alleged to exist between the subcontractor or lower-tier subcontractor and the worker;

(iii) Workers with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) are covered; and

(iv) Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or

with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

(2) This clause does not apply to–

(i) Fair Labor Standards Act (FLSA)-covered individuals performing in connection with subcontracts covered by the E.O., i.e. those individuals who perform duties necessary to the performance of the subcontract, but who are not directly engaged in performing the specific work called for by the subcontract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such subcontracts;

(ii) Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to-

(A) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a).

(B) Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b).

(C) Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. 213(a)(1) and 29 CFR part 541).

(d) Notice. The Subcontractor shall notify all workers performing work on, or in connection with, this subcontract of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, the Subcontractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers whose wages are governed by the FLSA, the Subcontractor shall post notice, utilizing the poster provided by the Administrator, which can be obtained at www.dol.gov/whd/govcontracts, in a prominent and accessible place at the worksite. Subcontractors that customarily post notices to workers electronically may post the notice electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the subcontractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

(e) Payroll Records.

(1) The Subcontractor shall make and maintain records, for three years after completion of the work, containing the following information for each worker:

(i) Name, address, and social security number;

(ii) The worker's occupation(s) or classification(s);

(iii) The rate or rates of wages paid;

(iv) The number of daily and weekly hours worked by each worker;

(v) Any deductions made; and

(vi) Total wages paid.

(2) The Subcontractor shall make records pursuant to paragraph (e)(1) of this clause available for inspection and transcription by authorized representatives of the Administrator. The Subcontractor shall also make such records available upon request of the Subcontract Administrator.

(3) The Subcontractor shall make a copy of the subcontract available, as applicable, for inspection or transcription by authorized representatives of the Administrator.

(4) Failure to comply with this paragraph (e) shall be a violation of 29 CFR 10.26 and this subcontract. Upon direction of the Administrator or upon the Subcontract Administrator's own action, payment shall be withheld until such time as the noncompliance is corrected.

(5) Nothing in this clause limits or otherwise modifies the Subcontractor's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.

(f) Access. The Subcontractor shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.

(g) Withholding. The Subcontract administrator, upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the Subcontractor under this or any other NREL subcontract with the same Subcontractor, sufficient to pay workers the full amount of wages required by this clause.

(h) Disputes. Department of Labor has set forth in 29 CFR 10.51, Disputes concerning contractor/subcontractor compliance, the procedures for resolving disputes concerning a subcontractor's compliance with Department of Labor regulations at 29 CFR part 10. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this subcontract. These disputes include disputes between the Subcontractor (or any of its lower-tier subcontractors) and NREL, the Department of Labor, or the workers or their representatives.

(i) Antiretaliation. The Subcontractor shall not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.

(j) Lower-tier subcontractor compliance. The Subcontractor is responsible for lower-tier subcontractor compliance with the requirements of this clause and may be held liable for unpaid wages due lower-tier subcontractor workers.

(k) Lower-Tier subcontracts. The Subcontractor shall include the substance of this clause, including this paragraph (k) in all lower-tier subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards (formerly the Service Contract Act of 1965) statute or the Wage Rate Requirements (Construction) (formerly known as the Davis-Bacon Act) statute, and are to be performed in whole or in part in the United States.

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)
*Derived from **FAR 52.223-3** (JAN 1997)*
(Applies to subcontracts for supplies, services, and construction that requires the delivery of hazardous materials.)

(a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the subcontract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this subcontract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this subcontract.

Material (If none, insert "None")	Identification No.
_____	_____
_____	_____
_____	_____

(c) This list must be updated during performance of the subcontract whenever the Subcontractor determines that any other material to be delivered under this subcontract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Subcontractor shall promptly notify the NREL Subcontract Administrator and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by NREL shall relieve the Subcontractor of any responsibility or liability for the safety of Government, Subcontractor, or lower-tier Subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Subcontractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) NREL/Government's rights in data furnished under this subcontract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to--

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for NREL/ Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h) (1) of this clause, in precedence over any other clause of this subcontract providing for rights in data.

(3) NREL/Government is not precluded from using similar or identical data acquired from other sources.

(i) Except as provided in paragraph (i) (2), the Subcontractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.
For items shipped to consignees, the Subcontractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Subcontractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the NREL Subcontract Administrator.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Subcontractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

BUY AMERICAN ACT—SUPPLIES (MAY 2014)
*Derived from **FAR 52.225-1** (MAY 2014)*
(Applies to subcontracts for supplies exceeding $25,000)

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

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

(1) Means any item of supply (including construction material) that is—

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

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

(iii) Offered to NREL/the Government, under a subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into an end product.

"Cost of components" means--

(1) For components purchased by the Subcontractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Subcontractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic end product" means—

(1) An unmanufactured end product mined or produced in the United States;

(2) An end product manufactured in the United States, if—

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

(ii) The end product is a COTS item.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

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

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

(b) 41 U.S.C. chapter 83, Buy American, provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (See 12.505(a)(1)).

(c) Subcontractors may obtain from NREL Subcontract Administrator a list of foreign articles that the NREL Subcontract Administrator will treat as domestic for this subcontract.

(d) The Subcontractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Certificate."

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

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

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

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

FEDERAL, STATE, AND LOCAL TAXES (FEB 2013)
*Derived from **FAR 52.229-3** (FEB 2013)*
(Applies to fixed price subcontracts exceeding the Simplified Acquisition Threshold.)

(a) As used in this clause—
"After-imposed Federal tax" means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the subcontract date but whose exemption was later revoked or reduced during the subcontract period, on the transactions or property covered by this subcontract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the subcontract date. It does not include social security tax or other employment taxes.
"After-relieved Federal tax" means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this subcontract, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the subcontract date.
"All applicable Federal, State, and local taxes and duties" means all taxes and duties, in effect on the subcontract date, that the taxing authority is imposing and collecting on the transactions or property covered by this subcontract.
"Subcontract date" means the date set for bid opening or, if this is a negotiated subcontract or a modification, the effective date of this subcontract or modification.
"Local taxes" includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the subcontract is performed wholly or partly in any of those areas.

(b) (1) The subcontract price includes all applicable Federal, State, and local taxes and duties.
(2) [Reserved]

(c) The subcontract price shall be increased by the amount of any after-imposed Federal tax, provided the Subcontractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the subcontract price, as a contingency reserve or otherwise.

(d) The subcontract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The subcontract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Subcontractor is required to pay or bear, or does not obtain a refund of, through the Subcontractor's fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator.

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

(g) The Subcontractor shall promptly notify the NREL Subcontract Administrator of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate action as the NREL Subcontract Administrator directs.

(h) The Government through NREL shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Subcontractor requests such evidence and a reasonable basis exists to sustain the exemption.

TAXES—FOREIGN FIXED PRICE SUBCONTRACTS (FEB 2013)
*Derived from **FAR 52.229-6** (FEB 2013)*
(Applies to fixed price subcontracts exceeding the Simplified Acquisition Threshold and performed wholly or partly in a foreign country.)

(a) To the extent that this subcontract provides for furnishing supplies or performing services outside the United States and its outlying areas, this clause applies in lieu of any Federal, State, and local taxes clause of the subcontract.

(b) *Definitions*. As used in this clause—
"Subcontract date" means the date set for bid opening or, if this is a negotiated subcontract or a modification, the effective date of this subcontract or modification.
"Country concerned" means any country, other than the United States and its outlying areas, in which expenditures under this subcontract are made.
"Tax" and "taxes" include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.
"All applicable taxes and duties" means all taxes and duties, in effect on the subcontract date, that the taxing authority is imposing and collecting on the transactions or property covered by this subcontract, pursuant to written ruling or regulation in effect on the subcontract date.
"After-imposed tax" means any new or increased tax or duty, or tax that was exempted or excluded on the subcontract date but whose exemption was later revoked or reduced during the subcontract period, other than excepted tax, on the transactions or property covered by this subcontract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the subcontract date.
"After-relieved tax" means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this subcontract, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the subcontract date.
"Excepted tax" means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this subcontract, or any tax assessed on the Subcontractor's possession of, interest in, or use of property, title to which is in the U.S. Government.

(c) (1) Unless otherwise provided in this subcontract, the subcontract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.
(2) [Reserved]

(d) (1) Except as provided in subparagraph (d)(2) of this clause, the subcontract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the subcontract price by a provision of this subcontract that the Subcontractor is required to pay or bear, including any interest or penalty, if the Subcontractor states in writing that the subcontract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Subcontractor's fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator or to comply with the provisions of paragraph (i) of this clause.

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

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

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

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

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

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

ASSIGNMENT OR TRANSFER (MAY 2014) (SPECIAL OCT 2008)
*Derived from **FAR 52.232-24** (MAY 2014)*
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.

PAYMENT BY ELECTRONIC FUNDS TRANSFER – SYSTEM FOR AWARD MANAGEMENT (NOV 2016)

*Derived from **FAR 52.232-33** (JUL 2013)*

(Applies to all subcontracts where lower-tier Subcontractor is a small business concern.)

(a) Method of payment.

(1) All payments by NREL under this subcontract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event NREL is unable to release one or more payments by EFT, the subcontractor agrees to either—

(ii) Accept payment by check or some other mutually agreeable method of payment; or

(iii) Request NREL to extend the payment due date until such time as NREL can make payment by EFT (but see paragraph (d) of this clause).

(b) Subcontractor's EFT information. NREL shall make payment to the subcontractor using the EFT information contained in the Representations and Certifications and NREL ACH Banking Information form submitted with the offer. Information provided to NREL in these documents shall be consistent with that entered in the Government's System for Award Management (SAM) database. In the event that the EFT information changes, the subcontractor shall be responsible for providing the updated information in updated Representations and Certifications submitted to the subcontract administrator and to the SAM database.

(c) Mechanisms for EFT payment. NREL may make payment by EFT through either the Automated Clearing House (ACH) network. Suspension of payment. If the subcontractor's EFT information is incorrect, then NREL need not make payment to the subcontractor under this subcontract until correct EFT information is provided in Representations and Certifications, the NREL ACH Banking Information form and entered into the SAM database; and any invoice request shall be deemed not to be a proper invoice for the purpose of prompt payment under this subcontract. The prompt payment terms of the subcontract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(d) Liability for uncompleted or erroneous transfers.

(1) If an uncompleted or erroneous transfer occurs because NREL used the subcontractor's EFT information incorrectly, NREL remains responsible for—

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the subcontractor's EFT information was incorrect, and—

(ii) If the funds are no longer under the control of the NREL Accounts Payable office, NREL is deemed to have made payment and the subcontractor is responsible for recovery of any erroneously directed funds; or

(iii) If the funds remain under the control of the NREL Accounts Payable office, NREL shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(e) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this subcontract if, payment is on or before the payment due date, provided the specified payment date is a valid date under the payment terms of the subcontract.

(f) No EFT assignment of claims is allowable under this subcontract.

(g) Liability for change of EFT information by financial agent. NREL is not liable for errors resulting from changes to EFT information made by the subcontractor's financial agent.

(h) Payment information. The NREL Accounts Payable office shall forward to the subcontractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to NREL's payment processing contractor. NREL may request the subcontractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the NREL payment office is capable of executing. However, NREL does not guarantee that any particular format or method of delivery is available and retains the latitude to use the format and delivery method most convenient to NREL. If NREL makes payment by check in accordance with paragraph (a) of this clause, NREL shall mail the payment information to the remittance address contained in the subcontractor's Representations and Certifications and the subcontract.

UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS (JUN 2013)
*Derived from **FAR 52.232-39** (JUN 2013)*
(Applies to all subcontracts where any supply or service acquired is subject to any End User License Agreement.)

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this subcontract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring NREL/the Government to indemnify the Subcontractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:
   (1) Any such clause is unenforceable against NREL/the Government.
   (2) Neither NREL/the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind NREL/the Government or any Government authorized end user to such clause.
   (3) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(b) Paragraph (a) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS LOWER-TIER SUBCONTRACTORS (DEC 2013)

*Derived from **FAR 52.232-40** (FD)*

(Applies to all subcontracts where lower-tier Subcontractor is a small business concern.)

(a) Upon receipt of accelerated payments from the NREL/Government, the Contractor shall make accelerated payments to its small business Subcontractors under this subcontract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable subcontract or lower-tier subcontract, after receipt of a proper invoice and all other required documentation from the small business Subcontractor.

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(c) Include the substance of this clause, including this paragraph (c), in all lower-tier subcontracts with small business concerns, including lower-tier subcontracts with small business concerns for the acquisition of commercial items.

BANKRUPTCY (JUL 1995)
*Derived from **FAR 52.242-13***
(Applies to all subcontracts.)
In the event the Subcontractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Subcontractor agrees to furnish, by certified mail or electronic commerce method authorized by the subcontract, written notification of the bankruptcy to the NREL Subcontract Administrator responsible for administering the subcontract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of other NREL subcontract numbers and Government contract numbers and contracting offices for all NREL/Government subcontracts and contracts against which final payment has not been made. This obligation remains in effect until final payment under this subcontract.

STOP WORK ORDER (AUG 1989) AND ALTERNATE I (APR 1984) (COST REIMBURSEMENT)

*Derived from **FAR 52.242-15** (AUG 1989)*
Applies to all subcontracts.
Alternate I applies to cost type subcontracts.

(a) The NREL Subcontract Administrator may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all or any part of the work called for by this subcontract for a period of up to ninety (90) days, as determined appropriate by the NREL Subcontract Administrator, 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 up to ninety (90) days, as determined appropriate by the NREL Subcontract Administrator, after a stop-work is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, the NREL Subcontract Administrator shall either—

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default or the Termination clause of this subcontract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume work. The NREL Subcontract Administrator shall make an equitable adjustment and the subcontract shall be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this subcontract; and

(2) The Subcontractor asserts its right to the adjustment within thirty (30) days after the end of the period of work stoppage provided that, if the NREL Subcontract Administrator decides the facts justify the action, the NREL Subcontract Administrator may receive and act upon the claim submitted at any time before final payment under this subcontract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of NREL/Government, the NREL Subcontract Administrator shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the NREL Subcontract Administrator shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

ALTERNATE I (APR 1984)

If this clause is inserted in a cost reimbursement subcontract, substitute in paragraph (a) (2) the words, "the Termination clause of this subcontract" for the words "the Default, or the Termination for Convenience of NREL/Government clause of this subcontract." In paragraph (b) substitute the words "an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the subcontract that may be affected" for the words, "an equitable adjustment in the delivery subcontract schedule or subcontract price, or both."

STOP WORK ORDER (AUG 1989) (SPECIAL-COMMERCIAL ITEMS) (FEB 2009)
*Derived from **FAR 52.242-15** (AUG 1989)*
(Applies to all subcontracts or purchase orders.)

(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 up to ninety (90) days, as determined appropriate by the NREL Subcontract Administrator, 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 up to ninety (90) days, as determined appropriate by the NREL Subcontract Administrator, after a stop-work is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, the NREL Subcontract Administrator shall either—

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default or the Termination clause of this subcontract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume work. The NREL Subcontract Administrator shall make an equitable adjustment and the subcontract shall be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this subcontract; and

(2) The Subcontractor asserts its right to the adjustment within thirty (30) days after the end of the period of work stoppage provided that, if the NREL Subcontract Administrator decides the facts justify the action, the NREL Subcontract Administrator may receive and act upon the claim submitted at any time before final payment under this subcontract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of NREL/Government, the NREL Subcontract Administrator shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the NREL Subcontract Administrator shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

CHANGES - FIXED PRICE (AUG 1987) AND ALTERNATES I THROUGH V (APR 1984)
*Derived from **FAR 52.243-1***
(Applies to fixed price subcontracts.)
(Alternate I applies to subcontracts for services where no supplies are to be furnished--other than architect-engineer or other professional services subcontracts.)
(Alternate II applies to subcontracts for services where supplies are to be furnished--other than architect-engineer services, transportation, or research and development.)
(Alternate III applies to subcontracts for architect-engineer or other professional services.)
(Alternate IV applies to subcontracts for transportation services.)
(Alternate V applies to fixed price research and development subcontracts.)

(a) The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
  (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for NREL/Government, in accordance with the drawings, designs, or specifications.
  (2) Method of shipment or packing or supplies.
  (3) Place of delivery.

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

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

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

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

ALTERNATE I (APR 1984)
If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, substitute the following paragraph (a) in the basic clause:

(a) The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
  (1) Description of services to be performed.
  (2) Time of performance (i.e., hours of the day, days of the week, etc.).
  (3) Place of performance of the services.

ALTERNATE II (APR 1984)
If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, substitute the following paragraph (a) in the basic clause:

(a) The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
  (1) Description of services to be performed.
  (2) Time of performance (i.e., hours of the day, days of the week, etc.).
  (3) Place of performance of the services.
  (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for NREL/Government, in accordance with the drawings, designs, or specifications.
  (5) Method of shipment or packing of supplies.
  (6) Place of delivery.

ALTERNATE III (APR 1984)
If the requirement is for architect-engineer or other professional services, substitute the following paragraph (a) in the basic clause and add the following paragraph (f):

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

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

ALTERNATE IV (APR 1984)
If the requirement is for transportation services, substitute the following paragraph (a) in the basic clause.

(a) The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
  (1) Specifications.
  (2) Work or services.
  (3) Place of origin.
  (4) Place of delivery.
  (5) Tonnage to be shipped.
  (6) Amount of Government furnished property.

ALTERNATE V (APR 1984)
If the requirement is for fixed price research and development, substitute the following subparagraphs (a) (1) and (a) (3) and paragraph (b) in the basic clause.

(a) * * * *
  (1) Drawings, designs, or specifications.
  * * * * *
  (2) Place of inspection, delivery, or acceptance.

(b) If any such change causes an increase or decrease in the cost of, or time required for, performing this subcontract, whether or not changed by the order, the NREL Subcontract Administrator shall make an equitable adjustment in—
  (1) The subcontract price, the time of performance, or both; and
  (2) Other affected terms of the subcontract, and shall modify the subcontract accordingly.

LOWER-TIER SUBCONTRACTS (OCT 2010) INCORPORATING ALTERNATE I (JUN 2007)
*Derived from **FAR 52.244-2** (OCT 2010)*
Applies to all cost type subcontracts. Applies to letter, fixed price, time and material, and labor hour subcontracts exceeding $150,000.

(a) Definitions.
- (1) "Approved purchasing system," as used in this clause, means a Subcontractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).
- (2) "Consent to lower-tier subcontract," as used in this clause, means the NREL Subcontract Administrator's written consent for the Subcontractor to enter into a particular lower-tier subcontract.
- (3) "Lower-tier subcontract," as used in this clause, means any contract, as defined in FAR Subpart 2.1, entered into by a lower-tier Subcontractor to furnish supplies or services for performance of the subcontract or a lower-tier subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

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

(c) If the Subcontractor does not have an approved purchasing system, consent to lower-tier subcontract is required for any lower-tier subcontract that—
- (1) Is of the cost reimbursement, time and materials, or labor hour type; or
- (2) Is fixed price and exceeds the simplified acquisition threshold or five (5) percent of the total estimated cost of the subcontract.

(d) If the Subcontractor has an approved purchasing system, the Subcontractor nevertheless shall obtain the NREL Subcontract Administrator’s written consent before placing any of the lower-tier subcontracts identified in the subcontract schedule.

(e) (1) The Subcontractor shall notify the NREL Subcontract Administrator reasonably in advance of placing any lower-tier subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:
- (ii) A description of the supplies or services to be lower-tier subcontracted.
- (iii) Identification of the type of lower-tier subcontract to be used.
- (iv) Identification of the proposed lower-tier Subcontractor.
- (v) The proposed lower-tier subcontract price.
- (vi) 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.
- (vii) 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.
- (viii) A negotiation memorandum reflecting—
  - (A) The principal elements of the lower-tier subcontract price negotiations;
  - (B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;
(D) The extent, if any, to which the Subcontractor did not rely on the lower-tier Subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
(E) The extent to which it was recognized in the negotiation that the lower-tier Subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Subcontractor and the lower-tier Subcontractor; and the effect of any such defective data on the total price negotiated;
(F) The reasons for any significant difference between the Subcontractor's price objective and the price negotiated; and
(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) If the Subcontractor has an approved purchasing system and consent is not required under paragraph (c) or (d) of this clause, the Subcontractor nevertheless shall notify the NREL Subcontract Administrator reasonably in advance of entering into any:
(i) cost plus-fixed-fee subcontract, or
(ii) fixed price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (e)(1) (i) through (e)(1) (iv) of this clause.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the NREL Subcontract Administrator to any lower-tier subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination—
(1) Of the acceptability of any lower-tier subcontract terms or conditions;
(2) Of the allowability of any cost under this subcontract; or
(3) To relieve the Subcontractor of any responsibility for performing this subcontract.

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

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

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

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

LOWER-TIER SUBCONTRACTS FOR COMMERCIAL ITEMS (NOV 2016)
*Derived from **FAR 52.244-6** (NOV 2017) (FD)*
(Applies to subcontracts for supplies or services other than commercial items.)

(a) Definitions. As used in this clause—
"Commercial item and commercially available off-the-shelf item" have the meanings contained Federal Acquisition Regulation 2.101, Definitions.
"Lower-tier Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Subcontractor or lower-tier subcontractors.

(b) To the maximum extent practicable, the Subcontractor shall incorporate, and require its lower-tier subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this subcontract.

(c)

(1) The Subcontractor shall insert the following clauses in lower-tier subcontracts for commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509), if the subcontract exceeds $5.5 million and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the NREL Subcontract Administrator.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017).

(iv) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (Jun 2016), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204-21.

(v) 52.219-8, Utilization of Small Business Concerns (Nov 2016) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $700,000 ($1.5 million for construction of any public facility), the lower-tier subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(vi) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(vii) 52.222-26, Equal Opportunity (Sep 2016) (E.O. 11246).

(viii) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212(a));

(ix) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).

(x) 52.222-37, Employments Reports on Veterans (Feb 2016) (38 U.S.C. 4212).

(xi) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.

(xii)

(A) 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O. 13627).

(B) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

(xiii) 52.222-55, Minimum Wages under Executive Order 13658 (Dec 2015), if flowdown is required in accordance with paragraph (k) of FAR clause 52.222-55.

(xiv) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706), if flow down is required in accordance with paragraph (m) of FAR clause 52.222-62.

(xv)

(A) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a) if flow down is required in accordance with 52.224-3(f).

(B) Alternate I (Jan 2017) of 52.224-3, if flow down is required in accordance with 52.224-3(f) and the agency specifies that only its agency-provided training is acceptable.

(xvi) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xvii) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Dec 2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

(xviii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Subcontractor may flow down to lower-tier subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

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

INSPECTION OF SUPPLIES-FIXED PRICE (AUG 1996)
*Derived from **FAR 52.246-2***
(Applies to fixed price subcontracts for supplies and fixed price subcontracts for services where supplies are furnished.)

(a) Definition.
  (1) "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

(b) The Subcontractor shall provide and maintain an inspection system acceptable to NREL covering supplies under this subcontract and shall tender to NREL for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Subcontractor to be in conformity with subcontract requirements. As part of the system, the Subcontractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to NREL/Government during subcontract performance and for as long afterwards as the subcontract requires. NREL/Government may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the subcontract work. The right of review, whether exercised or not, does not relieve the Subcontractor of the obligations under the subcontract.

(c) NREL/Government has the right to inspect and test all supplies called for by the subcontract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. NREL/Government shall perform inspections and tests in a manner that will not unduly delay the work. NREL/Government assumes no contractual obligation to perform any inspection and test for the benefit of the Subcontractor unless specifically set forth elsewhere in this subcontract.

(d) If NREL/Government performs inspection(s) or test(s) on the premises of the Subcontractor or a lower-tier Subcontractor, the Subcontractor shall furnish, and shall require lower-tier Subcontractors to furnish, at no increase in subcontract price, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the subcontract, NREL/Government shall bear the expense of NREL/Government inspections or tests made at other than the Subcontractor's or lower-tier Subcontractor's premises; provided, that in case of rejection, the NREL/Government shall not be liable for any reduction in the value of inspection or test samples.

(e) (1) When supplies are not ready at the time specified by the Subcontractor for inspection(s) or test(s), the NREL Subcontract Administrator may charge to the Subcontractor the additional costs of inspection(s) or test(s).
  (2) The NREL Subcontract Administrator may also charge the Subcontractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

(f) NREL has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with subcontract requirements. NREL may reject nonconforming supplies with or without disposition instructions.

(g) The Subcontractor shall remove supplies rejected or required to be corrected. However, the NREL Subcontract Administrator may require or permit correction in place, promptly after notice, by and at the expense of the Subcontractor. The

Subcontractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

(h) If the Subcontractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, NREL may either—

(1) By subcontract or otherwise, remove, replace, or correct the supplies and charge the cost to the Subcontractor; or

(2) Terminate the subcontract for default. Unless the Subcontractor corrects or replaces the supplies within the delivery subcontract schedule, the NREL Subcontract Administrator may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

(i) (1) If this subcontract provides for the performance of quality assurance at source, and if requested by NREL/Government, the Subcontractor shall furnish advance notification of the time—

(ii) When Subcontractor inspection or tests will be performed in accordance with the terms and conditions of the subcontract; and

(iii) When the supplies will be ready for inspection.

(2) NREL/Government’s request shall specify the period and method of the advance notification and the NREL/Government representative to whom it shall be furnished. Requests shall not require more than two (2) workdays of advance notification if NREL/Government representative is in residence in the Subcontractor's plant, nor more than seven (7) workdays in other instances.

(j) NREL shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the subcontract. NREL's failure to inspect and accept or reject the supplies shall not relieve the Subcontractor from responsibility, nor impose liability on NREL/Government, for nonconforming supplies.

(k) Inspections and tests by NREL/Government do not relieve the Subcontractor of responsibility for defects or other failures to meet subcontract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the subcontract.

(l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, NREL/Government, in addition to any other rights and remedies provided by law, or under other provisions of this subcontract, shall have the right to require the Subcontractor—

(1) To correct or replace the defective or nonconforming supplies at the original point of delivery or at the Subcontractor's plant at the NREL Subcontract Administrator's election, at no increase in subcontract price, and in accordance with a reasonable delivery schedule as may be agreed upon between the Subcontractor and the NREL Subcontract Administrator; provided, that the NREL Subcontract Administrator may require a reduction in subcontract price if the Subcontractor fails to meet such delivery schedule; or

(2) Within a reasonable time after receipt by the Subcontractor of notice of defects or nonconformance, to repay such portion of the subcontract as is equitable under the circumstances if the NREL Subcontract Administrator elects not to require correction or replacement. When supplies are returned to the Subcontractor, the Subcontractor shall bear the transportation cost from the original point of delivery to the Subcontractor's plant and return to the original point when that point is not the Subcontractor's plant. If the Subcontractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of ten (10) days (or such longer period as

the NREL Subcontract Administrator may authorize in writing) after receipt of notice from the NREL Subcontract Administrator specifying such failure, NREL shall have the right by subcontract or otherwise to replace or correct such supplies and charge to the Subcontractor the cost occasioned NREL thereby.

INSPECTION OF SERVICES-FIXED PRICE (AUG 1996)
*Derived from **FAR 52.246-4***
(Applies to fixed price subcontracts for services and fixed price subcontracts for supplies where services are furnished.)

(a) Definition.
  (1) "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Subcontractor shall provide and maintain an inspection system acceptable to NREL covering the services under this subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to NREL/Government during subcontract performance and for as long afterwards as the subcontract requires.

(c) NREL/Government has the right to inspect and test all services called for by the subcontract, to the extent practicable at all times and places during the term of the subcontract. NREL/Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If NREL/Government performs inspections or tests on the premises of the Subcontractor or a lower-tier Subcontractor, the Subcontractor shall furnish, and shall require lower-tier Subcontractors to furnish, at no increase in subcontract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform to subcontract requirements, NREL may require the Subcontractor to perform the services again in conformity with subcontract requirements, at no increase in subcontract amount. When the defects in services cannot be corrected by reperformance, NREL may—
  (1) Require the Subcontractor to take necessary action to ensure that future performance conforms to subcontract requirements; and
  (2) Reduce the subcontract price to reflect the reduced value of the services performed.

(f) If the Subcontractor fails to promptly perform the service(s) again or to take the necessary action to ensure future performance in conformity with subcontract requirements, NREL may—
  (1) By subcontract or otherwise, perform the services and charge to the Subcontractor any cost incurred by NREL that is directly related to the performance of such service; or
  (2) Terminate the subcontract for default.

COMMERCIAL BILL OF LADING NOTATIONS (OCT 2009)
*Derived from **FAR 52.247-1** (FEB 2006) (FD)*
(Applies to all subcontracts where transportation is a direct charge to the subcontract.) (Direct and actual transportation cost is a separate item in the invoice (e.g. free on board (F.O.B.) origin) and not included in the delivered price (e.g. F.O.B. destination).
When the NREL Subcontract Administrator authorizes supplies to be shipped on a commercial bill of lading and the Subcontractor will be reimbursed these transportation costs as direct allowable costs, the Subcontractor shall ensure before shipment is made that the commercial shipping documents are annotated with the following notation:

> "Transportation is for the U.S. Department of Energy, acting through its National Renewable Energy Laboratory (NREL) and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by NREL on behalf of the Government pursuant to cost reimbursement contract No. DE-AC36-08GO28308. This may be confirmed by contacting the DOE, Golden Service Center, 15013 Denver West Parkway, Golden, CO 80401."

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

(a) Definitions. As used in this clause—
  (1) "International air transportation," means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
  (2) "United States" means the 50 States, the District of Columbia, and outlying areas.
  (3) "U.S.-flag air carrier," means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

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

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

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

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

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

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. App. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—
  (1) Acquired for a U.S. Government agency account;
  (2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
  (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
  (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

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

(c) (1) The Subcontractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both—
    (ii) The NREL Subcontract Administrator, and
    (iii) The Office of Cargo Preference
    Maritime Administration (MAR-590)
    400 Seventh Street, SW
    Washington, DC 20590
    Lower-tier Subcontractor bills of lading shall be submitted through the Subcontractor.
  (2) The Subcontractor shall furnish these bill of lading copies
    (i) Within twenty (20) working days of the date of loading for shipments originating in the United States, or
    (ii) Within thirty (30) working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
      (A) Sponsoring U.S. Government agency
      (B) Name of vessel
      (C) Vessel flag of registry
      (D) Date of loading
      (E) Port of loading
      (F) Port of final discharge
      (G) Description of commodity
      (H) Gross weight in pounds and cubic feet if available, and

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

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

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

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

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

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

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

(ii) This subcontract is—

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

(B) A construction subcontract; or

(iii) 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

TERMINATION FOR CONVENIENCE OF NREL/GOVERNMENT (FIXED PRICE) (SHORT FORM) (APR 1984)

*Derived from **FAR 52.249-1** (FD)*

(Applies to fixed price subcontracts of $100,000 or less, except subcontracts for research and development work with educational or nonprofit institutions and subcontracts for architect-engineer services.)

The NREL Subcontract Administrator, by written notice, may terminate this subcontract, in whole or in part, when it is in NREL's/Government's interest. If this subcontract is terminated, the rights, duties, and obligations of the parties, including compensation to the Subcontractor, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this subcontract.

TERMINATION FOR CONVENIENCE OF NREL/GOVERNMENT (FIXED PRICE) (APR 2012) AND ALTERNATE I (SEP 19916) (CONSTRUCTION) (SPECIAL)
*Derived from **FAR 52.249-2** (APR 2012) and **Alternate I** (SEP 1996) (FD)*
(Applies to fixed price subcontracts exceeding the Simplified Acquisition Threshold, except subcontracts for dismantling and demolition, research and development work with an educational or nonprofit institution on a no-profit basis, or architect-engineering services.)
(Alternate I applies to fixed price construction subcontracts exceeding the Simplified Acquisition Threshold.)

(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/the 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, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

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

(3) Terminate all lower-tier subcontracts to the extent they relate to the work terminated.

(4) Assign to NREL, as directed by the NREL Subcontract Administrator, all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated, in which case NREL shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the NREL Subcontract Administrator, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the NREL Subcontract Administrator, transfer title to the Government and deliver to NREL—

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

(ii) The completed or partially completed plans, drawings, information, and other property that, if the subcontract had been completed, would be required to be furnished to NREL/the Government.

(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/the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Government through the NREL Subcontract Administrator, any property of the types referred to in paragraph (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 Government acting through 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 120 days from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator upon written request of the Subcontractor within this 120-day period.

(d) [Reserved.]

(e) After termination, the Subcontractor shall submit a final termination settlement proposal to the NREL Subcontract Administrator in the form and with the certification prescribed by the NREL Subcontract Administrator. The Subcontractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator upon written request of the Subcontractor within this 1-year period. However, if the NREL Subcontract Administrator determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Subcontractor fails to submit the proposal within the time allowed, the NREL Subcontract Administrator may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Subcontractor and the NREL Subcontract Administrator may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, may not exceed the total subcontract price as reduced by (1) the amount of payments previously made and (2) the subcontract price of work not terminated. The subcontract shall be modified, and the Subcontractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Subcontractor and the NREL Subcontract Administrator fail to agree on the whole amount to be paid because of the termination of work, the NREL Subcontract Administrator shall pay the Subcontractor the amounts determined by the NREL Subcontract Administrator as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The subcontract price for completed supplies or services accepted by NREL (or sold or acquired under paragraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of—

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under paragraph (g)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated lower-tier subcontracts that are properly chargeable to the terminated portion of the subcontract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the NREL Subcontract Administrator under 49.202 of the Federal Acquisition Regulation, in effect on the date of this subcontract, to be

fair and reasonable; however, if it appears that the Subcontractor would have sustained a loss on the entire subcontract had it been completed, the NREL Subcontract Administrator shall allow no profit under this subdivision (g)(2)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

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

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

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

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

(h) Except for normal spoilage, and except to the extent that NREL/the Government expressly assumed the risk of loss, the NREL Subcontract Administrator shall exclude from the amounts payable to the Subcontractor under paragraph (g) of this clause, the fair value, as determined by the NREL Subcontract Administrator, for the loss of NREL/the Government property.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this subcontract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Subcontractor shall have the right of appeal, under the Disputes clause, from any determination made by the NREL Subcontract Administrator under paragraph (e), (g), or (l) of this clause, except that if the Subcontractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Subcontractor under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Subcontractor under the terminated portion of the subcontract;

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

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

(l) If the termination is partial, the Subcontractor may file a proposal with the NREL Subcontract Administrator for an equitable adjustment of the price(s) of the continued portion of the subcontract. The NREL Subcontract Administrator shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the NREL Subcontract Administrator.

(m) (1) NREL/the Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the subcontract, if the NREL Subcontract Administrator believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to NREL/the Government upon demand,

together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the NREL Subcontract Administrator because of the circumstances.

(n) Unless otherwise provided in this subcontract or by statute, the Subcontractor shall maintain all records and documents relating to the terminated portion of this subcontract for 3 years after final settlement. This includes all books and other evidence bearing on the Subcontractor's costs and expenses under this subcontract. The Subcontractor shall make these records and documents available to NREL/the Government, at the Subcontractor's office, at all reasonable times, without any direct charge. If approved by the NREL Subcontract Administrator, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

ALTERNATE I (SEP 1996)

If the contract is for construction, substitute the following paragraph (g) for paragraph (g) of the basic clause:

(g) If the Subcontractor and NREL Subcontract Administrator fail to agree on the whole amount to be paid the Subcontractor because of the termination of work, the NREL Subcontract Administrator shall pay the Subcontractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For subcontract work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated lower-tier subcontracts that are properly chargeable to the terminated portion of the subcontract if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the NREL Subcontract Administrator under 49.202 of the Federal Acquisition Regulation, in effect on the date of this subcontract, to be fair and reasonable; however, if it appears that the Subcontractor would have sustained a loss on the entire subcontract had it been completed, the NREL Subcontract Administrator shall allow no profit under this subdivision (g)(1)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

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

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

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

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

TERMINATION FOR CONVENIENCE OF NREL/GOVERNMENT (SERVICES) (SHORT FORM) (APR 1984)

*Derived from **FAR 52.249-4** (FD)*

(Applies to fixed-price subcontracts for services.)

The NREL Subcontract Administrator, by written notice, may terminate this subcontract, in whole or in part, when it is in NREL's/Government's best interest. If this subcontract is terminated, NREL shall be liable only for payment under the payment provisions of this subcontract for services rendered before the effective date of termination.

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

(a) (1) NREL may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Subcontractor, terminate this subcontract in whole or in part if the Subcontractor fails to—
- (ii) Deliver the supplies or to perform the services within the time specified in this subcontract or any extension;
- (iii) Make progress, so as to endanger performance of this subcontract (but see subparagraph (a)(2) of this clause); or
- (iv) Perform any of the other provisions of this subcontract (but see subparagraph (a) (2) of this clause).

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

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

(c) Except for defaults of Subcontractors at any tier, the Subcontractor shall not be liable for any excess costs if the failure to perform the subcontract arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes include—
- (1) Acts of God or of the public enemy;
- (2) Acts of the Government in either its sovereign or contractual capacity;
- (3) Fires;
- (4) Floods;
- (5) Epidemics;
- (6) Quarantine restrictions;
- (7) Strikes;
- (8) Freight embargoes; and
- (9) Unusually severe weather.

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

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

(e) If this subcontract is terminated for default, NREL may require the Subcontractor to transfer title to the Government and deliver to NREL, as directed by the NREL Subcontract Administrator, any—
- (1) Completed supplies; and
- (2) Partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as

"manufacturing materials" in this clause) that the Subcontractor has specifically produced or acquired for the terminated portion of this subcontract. Upon direction of the NREL Subcontract Administrator, the Subcontractor shall also protect and preserve property in its possession in which NREL/Government has an interest.

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

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

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

SENSITIVE FOREIGN NATIONS CONTROLS (SPECIAL) (MAR 2011)
*Derived from **DEAR 952.204-71** (MAR 2011) (FD)*
(Applies if the subcontract involves making unclassified information about nuclear technology available to sensitive foreign nations.)

(a) In connection with any activities in the performance of this subcontract, the Subcontractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements attached to this subcontract, relating to those countries, which may from time to time, be identified to the Subcontractor by written notice as sensitive foreign nations. The Subcontractor shall have the right to terminate its performance under this subcontract upon at least 60 days' prior written notice to the NREL Subcontract Administrator if the Subcontractor determines that it is unable, without substantially interfering with its polices or without adversely impacting its performance to continue performance of the work under this subcontract as a result of such notification. If the Subcontractor elects to terminate performance, the provisions of this subcontract regarding termination for the convenience of NREL/the Government shall apply.

(b) The provisions of this clause shall be included in any lower-tier subcontracts which may involve making unclassified information about nuclear technology available to sensitive foreign nations.

PUBLIC AFFAIRS (DEC 2000) (SPECIAL OCT 2011)
*Derived from **DEAR 952.204-75** (DEC 2000)*
(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.

COMPUTER SECURITY (AUG 2006) (SPECIAL JAN 2019)

Derived from DEAR 952.204-77 (AUG 2006)

(Applies to all subcontracts where Subcontractor employees have access to computers owned, leased, or operated on behalf of DOE.)

(a) Definitions.

(1) Computer means desktop computers, portable computers, computer networks (including the DOE Network and local area networks at or controlled by DOE organizations), network devices, automated information systems, and or other related computer equipment owned by, leased, or operated on behalf of the DOE.

(2) Individual means an NREL/DOE [Sub]Contractor or lower-tier subcontractor employee, or any other person who has been granted access to a DOE computer or to information on a DOE computer and does not include a member of the public who sends an email message to a DOE computer or who obtains information available to the public on DOE Web sites.

(b) Access to DOE computers. A Subcontractor shall not allow an individual to have access to information on a DOE computer unless—

(1) The individual has acknowledged in writing that the individual has no expectation of privacy in the use of a DOE computer; and

(2) The individual has consented in writing to permit access by an authorized investigative agency to any DOE computer used during the period of that individual's access to information on a DOE computer, and for a period of three years thereafter.

(c) No expectation of privacy. Notwithstanding any other provision of law (including any provision of law enacted by the Electronic Communications Privacy Act of 1986), no individual using a DOE computer shall have any expectation of privacy in the use of that computer.

(d) Written records. The Subcontractor is responsible for maintaining written records for itself and lower-tier subcontractors demonstrating compliance with the provisions of paragraph (b) of this section. The Subcontractor agrees to provide access to these records to the DOE, its authorized agents, or the NREL Subcontract Administrator upon request.

(e) Lower-tier Subcontracts. The Subcontractor shall insert this clause, including this paragraph (e), in lower-tier subcontracts under this subcontract that may provide access to computers owned, leased, or operated on behalf of the DOE.

FOREIGN TRAVEL (JUN 2010) (SPECIAL JUN 2012)
*Derived from **DEAR 952.247-70** (JUN 2010) and **DOE Order 551.1C***
(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.

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).

COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS (NOV 2015)
*Derived from **DEAR 970.5225-1** (NOV 2015)*
(Applies to all subcontracts.)

(a) The Subcontractor shall comply with all applicable U.S. export control laws and regulations.

(b) The Subcontractor's responsibility to comply with all applicable laws and regulations exists independent of, and is not established or limited by, the information provided by this clause.

(c) Nothing in the terms of this contract adds to, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive Orders, and regulations, including but not limited to—

(1) The Atomic Energy Act of 1954, as amended;
(2) The Arms Export Control Act (22 U.S.C. 2751 *et seq.*);
(3) The Export Administration Act of 1979 (50 U.S.C. app. 2401 *et seq.*), as continued under the International Emergency Economic Powers Act (Title II of Pub. L. 95-223, 91 Stat. 1626, October 28, 1977; 50 U.S.C. 1701 *et seq.*);
(4) Trading with the Enemy Act (50 U.S.C. App. 5(b), as amended by the Foreign Assistance Act of 1961);
(5) Assistance to Foreign Atomic Energy Activities (10 CFR part 810);
(6) Export and Import of Nuclear Equipment and Material (10 CFR part 110);
(7) International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130);
(8) Export Administration Regulations (EAR) (15 CFR parts 730 through 774); and
(9) Regulations administered by the Office of Foreign Assets Control (31 CFR parts 500 through 598).

(d) In addition to the Federal laws and regulations cited above, National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical, and Engineering Information establishes a national policy that, to the maximum extent possible, the products of fundamental research shall remain unrestricted. NSDD 189 provides that no restrictions may be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided in applicable U.S. statutes. As a result, contracts confined to the performance of unclassified fundamental research generally do not involve any export-controlled activities.

NSDD 189 does not take precedence over statutes. NSDD 189 does not exempt any research from statutes that apply to export controls such as the Atomic Energy Act, as amended; the Arms Export Control Act; the Export Administration Act of 1979, as amended; or the U.S. International Emergency Economic Powers Act; or the regulations that implement those statutes (*e.g.,* the ITAR, the EAR, 10 CFR part 110 and 10 CFR part 810). Thus, if items (*e.g.,* commodities, software or technologies) that are controlled by U.S. export control laws or regulations are used to conduct research or are generated as part of the research efforts, the export control laws and regulations apply to the controlled items.

(e) The Subcontractor shall include the substance of this clause, including this paragraph (e), in all solicitations and lower-tier subcontracts.

ACCOUNTS, RECORDS, AND INSPECTION (DEC 2010) WITH ALERNATE I (DEC 2000)
Derived from DEAR 970.5232-3
(Applies to subcontracts that include FAR 52.215-11, Price Reduction for Defective Cost or Pricing Data-Modifications.)

(a) Accounts. The Subcontractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the Subcontractor in connection with the work under this subcontract, other applicable credits, negotiated fixed amounts, and fee accruals under this subcontract; and the receipt, use, and disposition of all Government property coming into the possession of the Subcontractor under this subcontract. The system of accounts employed by the Subcontractor shall be satisfactory to NREL and in accordance with generally accepted accounting principles consistently applied.

(b) Inspection and audit of accounts and records. All books of account and records relating to this subcontract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause 970.5204-3, Access to and Ownership of Records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the Subcontractor shall afford DOE proper facilities for such inspection and audit.

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

(d) Disposition of records. Except as agreed upon by NREL/Government and the Subcontractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Subcontractor in connection with the work under this subcontract, other applicable credits, and fee accruals under this subcontract, shall be the property of the Government, and shall be delivered to NREL/Government or otherwise disposed of by the Subcontractor either as the NREL Subcontract Administrator/Contracting Officer may from time to time direct during the progress of the work or, in any event, as the NREL Subcontract Administrator/Contracting Officer shall direct upon completion or termination of this subcontract and final audit of accounts hereunder. Except as otherwise provided in this subcontract, including provisions of Clause 970.5204-3, Access to and Ownership of Records, all other records in the possession of the Subcontractor relating to this subcontract shall be preserved by the Subcontractor for a period of three years after final payment under this subcontract or otherwise disposed of in such manner as may be agreed upon by NREL/Government and the Subcontractor.

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

(f) Inspections. The DOE/NREL shall have the right to inspect the work and activities of the Subcontractor under this subcontract at such time and in such manner as it shall deem appropriate.

(g) Lower-tier Subcontracts. The Subcontractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all lower-tier subcontracts (including fixed-price or unit-price subcontracts or purchase orders) entered into hereunder where, under the terms of the lower-tier subcontract, costs incurred are a factor in determining the amount payable to the lower-tier Subcontractor.

(h) Comptroller general.

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's or lower-tier Subcontractor's directly pertinent records involving transactions related to this subcontract or a lower-tier subcontract hereunder and to interview any current employee regarding such transactions.

(2) This paragraph may not be construed to require the Subcontractor or lower-tier Subcontractor to create or maintain any record that the Subcontractor or lower-tier Subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(3) Nothing in this subcontract shall be deemed to preclude an audit by the Government Accountability Office of any transaction under this subcontract.

(i) Internal audit. The Subcontractor agrees to design and maintain an internal audit plan and an internal audit organization.

(1) Upon subcontract award, the exercise of any subcontract option, or the extension of the subcontract, the Subcontractor must submit to the NREL Subcontract Administrator for approval an Internal Audit Implementation Design to include the overall strategy for internal audits. The Audit Implementation Design must describe—

(i) The internal audit organization's placement within the Subcontractor's organization and its reporting requirements;

(ii) The audit organization's size and the experience and educational standards of its staff;

(iii) The audit organization's relationship to the corporate entities of the Subcontractor;

(iv) The standards to be used in conducting the internal audits;

(v) The overall internal audit strategy of this subcontract, considering particularly the method of auditing costs incurred in the performance of the subcontract;

(vi) The intended use of external audit resources;

(vii) The plan for audit of lower-tier subcontracts, both pre-award and post-award; and

(viii) The schedule for peer review of internal audits by other Subcontractor internal audit organizations, or other independent third party audit entities approved by the NREL Subcontract Administrator.

(2) By each January 31 of the subcontract performance period, the Subcontractor must submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year. That report shall reflect the results of the internal audits during the previous fiscal year and the actions to be taken to resolve weaknesses identified in the Subcontractor's system of business, financial, or management controls.

(3) By each June 30 of the subcontract performance period, the Subcontractor must submit to the NREL Subcontract Administrator an annual audit plan for the activities to be undertaken by the internal audit organization during the

next fiscal year that is designed to test the costs incurred and Subcontractor management systems described in the internal audit design.

(4) The NREL Subcontract Administrator may require revisions to documents submitted under paragraphs (i)(1), (i)(2), and (i)(3) of this clause, including the design plan for the internal audits, the annual report, and the annual internal audits.

(j) Remedies. If at any time during subcontract performance, the NREL Subcontract Administrator determines that unallowable costs were claimed by the Subcontractor to the extent of making the Subcontractor's management controls suspect, or the Subcontractor's management systems that validate costs incurred and claimed suspect, the NREL Subcontract Administrator may, in his or her sole discretion, require the Subcontractor to cease using the special financial institution account in whole or with regard to specified accounts, requiring reimbursable costs to be claimed by periodic vouchering. In addition, the NREL Subcontract Administrator, where he or she deems it appropriate, may: Impose a penalty under 48 CFR 970.5242-1, Penalties for Unallowable Costs; require a refund; reduce the Subcontractor's otherwise earned fee; and take such other action as authorized in law, regulation, or this subcontract.

Alternate I (DEC 2000). As prescribed in 970.3270(a)(2), if the subcontract includes the clause at 48 CFR 52.215-11, Price Reduction for Defective Cost or Pricing Data—Modifications, the basic clause shall be modified as follows:

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

(g) Paragraph (g) of the basic clause shall be modified by adding the following: The Subcontractor further agrees to include an “Audit” clause, the substance of which is the “Audit” clause set forth at 48 CFR 52.215-2, in each lower-tier subcontract which does not include provisions similar to those in paragraph (a) through paragraph (g) and paragraph (h) of this clause, but which contains a “defective cost or pricing data” clause.

PROPERTY (SPECIAL) (AUG 2016)
*Derived from **DEAR 970.5245-1** (AUG 2016) and **Alternate I** (AUG 2016) (FD)*
(Applies to all subcontracts where Government Property is to be furnished to or acquired by the Subcontractor.)
(*Alternate I applies if the Subcontractor is a non-profit Subcontractor*.)

(a) *Furnishing of Government property*. NREL/The 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/The Government reserves the right to inspect, and to accept or reject, any item of such property. The Subcontractor shall make such disposition of rejected items as the NREL Subcontract Administrator shall direct. Title to other property, the cost of which is reimbursable to the Subcontractor under this subcontract, shall pass to and vest in the Government upon

(1) Issuance for use of such property in the performance of this subcontract, or
(2) Commencement of processing or use of such property in the performance of this subcontract, or
(3) Property furnished by NREL/the 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 which 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. 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/the 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 (DOE) Property Management Regulations (41 CFR chapter 109), and other applicable Regulations.

(3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(f) *Risk of loss of Government property.*

(1)

(i) The Subcontractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following—

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

(B) 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

(C) 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.

(ii) 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/the Government for the loss, destruction, or damage.

(2) 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/the 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.

(3) 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/the Government to recover therefore, and shall furnish to NREL/the 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.*

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.

(i) 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) [Reserved]

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

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

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

(2) *Property Inventory.*

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

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

provide a baseline for the succeeding subcontract as well as information for closeout of the predecessor subcontract.

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

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

(2) All or substantially all of the Subcontractor's operations at any one facility or separate location to which this subcontract is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this subcontract; or

(4) A separate and complete major construction, alteration, or repair operation in connection with performance of this subcontract; or

(5) A separate and discrete major task or operation in connection with the performance of this subcontract.

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

ALTERNATE I (AUG 2016)

If the Subcontractor is a non-profit Subcontractor replace paragraph (j) of the basic clause with the following paragraph (j):

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

(1) The Subcontractor's business; or

(2) The Subcontractor's operations at any one facility or separate location at which this subcontract is being performed; or

(3) The Subcontractor's property system and/or a Major System Project as defined in DOE Order 413.3B, or successor version (Version in effect on effective date of subcontract).

SERVICE CONTRACT LABOR STANDARDS (FORMERLY SERVICE CONTRACT ACT OF 1965) (AUG 2018)

*Derived from **FAR 52.222-41** (FD)*

(Applies to subcontracts exceeding $2,500 for services as defined in the Service Contract Labor Standards statute.)

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

"Subcontractor," when this clause is used in any lower-tier subcontract, shall be deemed to refer to the lower-tier subcontractor, except in the term "Government Prime Subcontractor."

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

(b) *Applicability*. This subcontract is subject to the following provisions and to all other applicable provisions of 41 U.S.C. chapter 67, Service Contract Labor Standards, and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to subcontracts or lower-tier subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 6702, as interpreted in Subpart C of 29 CFR Part 4.

(c) Compensation.

(1) Each service employee employed in the performance of this subcontract by the Subcontractor or any lower-tier subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this subcontract.

(2)

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

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

days of receipt or will notify the NREL Subcontract Administrator within 30 days of receipt that additional time is necessary.

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

(iv)

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

(B) In the case of a subcontract modification, an exercise of an option, or extension of an existing subcontract, or in any other case where a Subcontractor succeeds a subcontract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.,* adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the subcontract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of subcontract work by the unlisted class of employees, the Subcontractor shall advise the NREL Subcontract Administrator of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

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

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

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

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

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

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

(f) *Successor subcontracts.* If this subcontract succeeds a subcontract subject to the Service Contract Labor Standards statute under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this subcontract setting forth such collectively bargained wage rates and fringe benefits, neither the Subcontractor nor any lower-tier subcontractor under this subcontract shall pay any service employee performing any of the subcontract work (regardless of whether or not such employee was employed under the predecessor subcontract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor subcontract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Subcontractor or lower-tier subcontractor under this subcontract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor subcontract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Subcontractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor subcontract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the subcontract or lower-tier subcontract, in

accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a subcontract or lower-tier subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to employees*. The Subcontractor and any lower-tier subcontractor under this subcontract shall notify each service employee commencing work on this subcontract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this subcontract, or shall post the wage determination attached to this subcontract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of 41 U.S.C. 6703 and of this subcontract.

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

(i) Records.

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

(i) For each employee subject to the Service Contract Labor Standards statute—

(A) Name and address and social security number;

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

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

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

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

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

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

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this subcontract, and in the case of failure to produce these records, the NREL Subcontract Administrator, upon direction of the Department of Labor and notification to the

Subcontractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

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

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

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

(l) *Lower-tier subcontracts*. The Subcontractor agrees to insert this clause in all lower-tier subcontracts subject to the Service Contract Labor Standards statute.

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

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

predecessor Subcontractors of each such service employee. The NREL Subcontract Administrator shall turn over such list to the successor Subcontractor at the commencement of the succeeding subcontract.

(o) *Rulings and interpretations*. Rulings and interpretations of the Service Contract Labor Standards statute are contained in Regulations, 29 CFR Part 4.

(p) Subcontractor's certification.

(1) By entering into this subcontract, the Subcontractor (and officials thereof) certifies that neither it nor any person or firm who has a substantial interest in the Subcontractor's firm is a person or firm ineligible to be awarded Government subcontracts by virtue of the sanctions imposed under 41 U.S.C. 6706.

(2) No part of this subcontract shall be lower-tier subcontracted to any person or firm ineligible for award of a Government subcontract under 41 U.S.C. 6706.

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

(q) *Variations, tolerances, and exemptions involving employment*. Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to 41 U.S.C. 6707 prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by 41 U.S.C. 6703(1) without diminishing any fringe benefits or cash payments in lieu thereof required under 41 U.S.C. 6703(2), in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, persons with disabilities, and disabled clients of work centers under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).

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

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

(r) *Apprentices*. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Office of Apprenticeship Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

The allowable ratio of apprentices to journeymen employed on the subcontract work in any craft classification shall not be greater than the ratio permitted to the Subcontractor as to his entire work force under the registered program.

(s) *Tips*. An employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by 41 U.S.C. 6703(1), in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed $1.34 per hour beginning January 1, 1981. To use this provision—

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

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

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

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of 41 U.S.C. 6707(c).

(t) *Disputes concerning labor standards*. The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this subcontract. Disputes within the meaning of this clause include disputes between the Subcontractor (or any of its lower-tier subcontractors) and NREL, the U.S. Department of Labor, or the employees or their representatives.

Employment Eligibility Verification (OCT 2015) (SPECIAL JAN 2019)
Derived from FAR 52.222-54 (OCT 2015) (FD)
Applies to all subcontracts that exceed $3,500 and includes work performed in the United States.

(a) Definitions. As used in this clause—
"Commercially available off-the-shelf (COTS) item"—
(1) Means any item of supply that is—
(i) A commercial item (as defined in paragraph (1) of the definition at 2.101);
(ii) Sold in substantial quantities in the commercial marketplace; and
(iii) Offered to NREL/the Government, without modification, in the same form in which it is sold in the commercial marketplace; and
(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4) 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.
"Employee assigned to the subcontract" means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a subcontract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a subcontract if the employee—
(1) Normally performs support work, such as indirect or overhead functions; and
(2) Does not perform any substantial duties applicable to the subcontract.
"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.
"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.
"Subcontract" means any subcontract, as defined in 2.101, entered into by a lower-tier subcontractor to furnish supplies or services for performance of a prime subcontract or a lower-tier subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.
(1) "United States," as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, 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).

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.

(3) Option to verify employment eligibility of all employees. The Subcontractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), 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 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), 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).

(4) 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 lower-tier subcontract that—

(1) Is for—

(i) Commercial or noncommercial services (except 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), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than $3,500; and

(3) Includes work performed in the United States.

NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010) (SPECIAL NOV 2016)

*Derived from **FAR 52.222-40** (DEC 2010)*

Applies to all subcontracts exceeding $10,000 that will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor pursuant to section 3 of Executive Order 13496 of January 30,2009.

(a) During the term of this subcontract, the Subcontractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the subcontract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2 (d) and (f).

(1) Physical posting of the employee notice shall be in conspicuous places in and about the Subcontractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the subcontract.

(2) If the Subcontractor customarily posts notices to employees electronically, then the Subcontractor shall also post the required notice electronically by displaying prominently, on any website that is maintained by the Subcontractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's website that contains the full text of the poster. The link to the Department's website, as referenced in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

(b) This required employee notice, printed by the Department of Labor, may be—

(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor–Management Standards or Office of Federal Contract Compliance Programs;

(2) Downloaded from the Office of Labor–Management Standards Web site at http://www.dol.gov/olms/regs/compliance/EO13496.htm; or

(3) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

(c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The Subcontractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Subcontractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause or otherwise acts in violation of the National Labor Relations Act, NREL shall have the right to terminate this subcontract in whole or in part in accordance with the termination clause of this subcontract, and the Subcontractor may be suspended or debarred by the Department of Energy in accordance with 29 CFR 471.14 and subpart 9.4. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(f) Lower-tier subcontracts.

(1) The Subcontractor shall include the substance of this clause, including this paragraph (f), in every lower-tier subcontract that exceeds $10,000 and will

be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each lower-tier subcontractor.

(2) The Subcontractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.

(3) The Subcontractor shall take such action with respect to any such lower-tier subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

(4) However, if the Subcontractor becomes involved in litigation with a lower-tier subcontractor, or is threatened with such involvement, as a result of such direction, the Subcontractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

ENCOURAGING SUBCONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)

*Derived from **FAR 52.223-18** (AUG 2011)*

(Applies to subcontracts exceeding the micro-purchase threshold.)

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

"Driving"—

(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

"Text messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, dated October 1, 2009.

(c) The Subcontractor is encouraged to—

(1) Adopt and enforce policies that ban text messaging while driving—

(i) Company-owned or -rented vehicles or Government-owned vehicles; or

(ii) Privately-owned vehicles when on official NREL/Government business or when performing any work for or on behalf of NREL/the Government.

(2) Conduct initiatives in a manner commensurate with the size of the business, such as—

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) Lower-tier subcontracts. The Subcontractor shall insert the substance of this clause, including this paragraph (d), in all lower-tier subcontracts that exceed the micro-purchase threshold.

EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUL 2014)
*Derived from **FAR 52.222-36** (JUL 2014) (FD)*
(Applies to all subcontracts exceeding $15,000.)

(a) *Equal opportunity clause.* The Subcontractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60.741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Subcontractor to employ and advance in employment qualified individuals with disabilities.

(b) *Lower-Tier Subcontracts.* The Subcontractor shall include the terms of this clause in every lower-tier subcontract or purchase order in excess of $15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each lower-tier subcontractor or vendor. The Subcontractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

DUTY-FREE ENTRY (OCT 2010)
*Derived from **FAR 52.225-8** (OCT 2010) (FD)*
(Applies to subcontracts where supplies to be accorded duty-free entry will be imported into the customs territory of the United States, or other foreign supplies in excess of $15,000 may be imported into the customs territory of the United States.)

(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/the Government under this subcontract, either as end products or for incorporation into end products. The Subcontractor shall furnish the notice to the NREL Subcontract Administrator at least 20 calendar days before the importation. The notice shall identify the--

(i) Foreign supplies;

(ii) Estimated amount of duty; and (iii) Country of origin.

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

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

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

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

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

(e) The Subcontractor shall claim duty-free entry only for supplies to be delivered to NREL/the Government 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/the Government 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 by the NREL Subcontract Administrator 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

Other foreign supplies in excess of $15,000 may be imported into the customs territory of the United States.

PROTECTING NREL'S/GOVERNMENT'S INTEREST WHEN SUBCONTRACTING AT ANY TIER WITH SUBCONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (OCT 2015)

*Derived from **FAR 52.209-6** (OCT 2015) (FD)*

(Applies to all subcontracts with lower-tier subcontracts exceeding $35,000)

(a) Definition. "Commercially available off-the-shelf (COTS) item," as used in this clause--

(1) Means any item of supply (including construction material) that is—

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

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

(iii) Offered to the NREL/Government, under a subcontract or a lower-tier subcontract, at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

(b) The Government suspends or debars Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Subcontractor shall not enter into any lower-tier subcontract in excess of $35,000 with a lower-tier Subcontractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Subcontractor shall require each proposed lower-tier Subcontractor, whose lower-tier subcontract will exceed $35,000, other than a lower-tier Subcontractor providing a commercially available off-the-shelf item, to disclose to the lower-tier 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.

(d) 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 (other than a lower-tier Subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the System for Award Management (SAM) Exclusions). 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 listed with an exclusion in SAM.

(3) The compelling reason(s) for doing business with the lower-tier Subcontractor notwithstanding its being listed with an exclusion in SAM.

(4) The systems and procedures the Subcontractor has established to ensure that it is fully protecting NREL/the 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.

(e) Lower-tier Subcontracts. Unless this is a subcontract for the acquisition of commercial items, the Subcontractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each lower-tier subcontract that—

(1) Exceeds $35,000 in value; and

(2) Is not a lower-tier subcontract for commercially available off-the-shelf items.

RESTRICTIONS ON LOWER-TIER SUBCONTRACTOR SALES TO NREL/GOVERNMENT (NOV 2019)

*Derived from **FAR 52.203-6** (SEP 2006) (FD)*

(Applies to all subcontracts exceeding the Simplified Acquisition Threshold.)

(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.

ANTI-KICKBACK PROCEDURES (NOV 2019)
*Derived from **FAR 52.203-7** (MAY 2014) (FD)*
(Applies to all subcontracts exceeding the Simplified Acquisition Threshold.)

(a) *Definitions*.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided 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.

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

"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.

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

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

"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.

"Lower-tier Subcontractor," as used in this clause,

(1) means 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

(2) includes any person who offers to furnish or furnishes general supplies to the Subcontractor or a Prime Contractor.

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

(b) The 41 U.S.C. Chapter 87, Kickbacks, 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 Attorney General.

(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 the 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 subparagraph (c)(1), in all lower-tier subcontracts under this subcontract which exceed $150,000.

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (NOV 2019)

*Derived from **FAR 52.203-12** (OCT 2010) (FD)*

(Applies to all subcontracts exceeding the Simplified Acquisition Threshold.)

(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:

(2) 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.

(3) 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.

(4) 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.

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

SUBCONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (APR 2014)

*Derived from **FAR 52.203-17** (APR 2014)*

Applies to all subcontracts over the Simplified Acquisition Threshold.

(a) This subcontract and employees working on this subcontract will be subject to the whistleblower rights and remedies in the pilot program on Subcontractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L.112-239) and FAR 3.908.

(b) The Subcontractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

(c) The Subcontractor shall insert the substance of this clause, including this paragraph (c), in all lower-tier subcontracts over the simplified acquisition threshold.

PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (NOV 2019)

*Derived from **FAR 52.203-19** (JAN 2017) (FD)*

(Applies to all subcontracts over the Simplified Acquisition Threshold and requiring a confidentiality agreement.)

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

"Internal confidentiality agreement or statement" means a confidentiality agreement or any other written statement that the Subcontractor requires any of its employees or subcontractors to sign regarding nondisclosure of Subcontractor information, except that it does not include confidentiality agreements arising out of civil litigation or confidentiality agreements that Subcontractor employees or lower-tier subcontractors sign at the behest of a Federal agency.

"Lower-Tier Subcontract" means any contract as defined in subpart 2.1 entered into by a lower-tier subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

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

(b) The Subcontractor shall not require its employees or lower-tier subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or lower-tier subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of an NREL contract to a designated investigative or law enforcement representative of NREL authorized to receive such information (e.g., the NREL Subcontract Administrator).

(c) The Subcontractor shall notify current employees and lower-tier subcontractors that prohibitions and restrictions of any preexisting internal confidentiality agreements or statements covered by this clause, to the extent that such prohibitions and restrictions are inconsistent with the prohibitions of this clause, are no longer in effect.

(d) The prohibition in paragraph (b) of this clause does not contravene requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(e) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015, (Pub. L. 113-235), and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions) use of funds appropriated (or otherwise made available) is prohibited, if the NREL Subcontract Administrator determines that the Subcontractor is not in compliance with the provisions of this clause.

(f) The Subcontractor shall include the substance of this clause, including this paragraph (f), in lower-tier subcontracts under such contracts.

PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (SPECIAL) (NOV 2019)
*Derived from **FAR 52.204-4** (MAY 2011)*
(Applies to all subcontracts exceeding the Simplified Acquisition Threshold.)

(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.

EQUAL OPPORTUNITY FOR VETERANS (OCT 2015)
*Derived from **FAR 52.222-35** (OCT 2015) (FD)*
(Applies to all subcontracts exceeding $150,000.)

(a) Definitions. As used in this clause—
"Active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," "qualified disabled veteran,' and "recently separated veteran" have the meanings given at FAR 22.1301.

(b) *Equal opportunity clause*. The Subcontractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Subcontractor to employ and advance in employment qualified protected veterans.

(c) Lower-tier Subcontracts. The Subcontractor shall insert the terms of this clause in subcontracts of $150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Subcontractor shall act as specified by the NREL Subcontract Administrator, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate of identify properly the parties and their undertakings.

EMPLOYMENT REPORTS ON VETERANS (FEB 2016)
*Derived from **FAR 52.222-37** (FEB 2016) (FD)*
(Applies to all subcontracts exceeding $150,000.)

(a) *Definitions*. As used in this clause, "active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," and "recently separated veteran," have the meanings given in FAR 22.1301.

(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 protected veterans (*i.e.*, active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled 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 protected veterans (*i.e.*, active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans); and

(3) The maximum number and 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 filing the VETS-4212 "Federal Contractor Veterans' Employment Report" (see "VETS-4212 Federal Contractor Reporting" and "Filing Your VETS-4212 Report" at http://www.dol.gov/vets/vets4212.htm).

(d) The Subcontractor shall file VETS-4212 Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Subontractors 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-4212. 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 CFR 60-300.42), 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 $150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS—PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (SPECIAL AUG 2018)
*Derived from **FAR 52.222-43** (AUG 2018) (FD)*
(Applies to all subcontracts subject to the Service Contract Act)

(a) This clause applies to both subcontracts subject to area prevailing wage determinations and subcontracts subject to collective bargaining agreements.

(b) The Subcontractor warrants that the prices in this subcontract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The wage determination, issued under the Service Contract Labor Standards statute, (41 U.S.C. chapter 67), by the Administrator, Wage and Hour Division, U.S. Department of Labor, current on the anniversary date of a multiple year subcontract or the beginning of each renewal option period, shall apply to this subcontract. If no such determination has been made applicable to this subcontract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year subcontract or the beginning of each renewal option period, shall apply to this subcontract.

(d) The subcontract price, subcontract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect the Subcontractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Subcontractor as a result of:

(1) The Department of Labor wage determination applicable on the anniversary date of the multiple year subcontract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of $4.00 per hour. The Subcontractor chose to pay $4.10. The new wage determination increases the minimum rate to $4.50 per hour. Even if the Subcontractor voluntarily increases the rate to $4.75 per hour, the allowable price adjustment is $.40 per hour;

(2) An increased or decreased wage determination otherwise applied to the subcontract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this subcontract, affects the minimum wage, and becomes applicable to this subcontract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (d) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(f) The Subcontractor shall notify the NREL Subcontract Administrator of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the NREL Subcontract Administrator. The Subcontractor shall promptly notify the NREL Subcontract Administrator of any decrease under this clause, but nothing in the clause shall preclude NREL/the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract), and any relevant supporting data, including payroll records, that the NREL Subcontract Administrator may reasonably require. Upon agreement of the parties, the subcontract price, subcontract unit price labor rates, or fixed hourly rates shall be

modified in writing. The Subcontractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The NREL Subcontract Administrator or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Subcontractor until the expiration of 3 years after final payment under the subcontract.

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.

SECURITY AND ACCESS REQUIREMENTS (SPECIAL) (DEC 2018)
*Derived from **NREL 08.100-02***
(Applies to all subcontracts where the Subcontractor or lower-tier Subcontractors, and their employees, officers, agents, or other persons representing the Subcontractor, will perform work on NREL-operated facilities or government-owned or -leased properties.)

(a) Security requirements.
  (1) NREL has established security requirements to govern access onto NREL operated facilities or government-owned or –leased properties (here after "NREL operated facilities") by the Subcontractor's employees (and its lower-tier Subcontractors' employees), officers, agents, and any other persons representing the Subcontractor.
    (i) The introduction of certain "controlled" commodities and/or activities on the NREL operated facilities is prohibited. Prohibited articles include firearms, explosive devices, incendiary devices, dangerous weapons or materials, controlled substances (illegal drugs), alcoholic beverages, and livestock. NREL operated facilities and DOE-owned or -leased property are closed to all hunting.
  (2) As a condition of entry to NREL operated facilities, the Subcontractor agrees to permit NREL Security personnel to search the Subcontractor's employees (and its lower-tier Subcontractors' employees) and their officers and agents' vehicles, packages, tool boxes, or other containers for the purpose of preventing prohibited articles to be brought onto NREL operated facilities or to detect or deter the unauthorized removal of Government property from NREL operated facilities.
  (3) The Subcontractor is solely responsible for the security of the Subcontractor's employees (and its lower-tier Subcontractors' employees) and their officers and agents' materials and equipment at the NREL operated facilities. Any security system the Subcontractor may elect to use (fences, keys, alarms, etc.) must be coordinated with the NREL Technical Monitor.
  (4) The Subcontractor is responsible to advise the NREL Technical Monitor promptly of any non-routine events, occurrences, incidents, accidents, etc., particularly in situations involving lost–time accidents and ambulance runs, occurring under this subcontract.
  (5) NREL Security reserves the right to revoke site access authorization for any person violating NREL or DOE security policies and procedures.

(b) Access requirements for U.S. citizens.
  (1) Access to NREL operated facilities is controlled in accordance with DOE's security requirements. The Subcontractor shall ensure that any of the Subcontractor's employees (and its lower-tier Subcontractors' employees) and their officers and agents who will enter onto the NREL operated facilities are specifically authorized site access under the NREL requirements set forth in the NREL Access Control Policy and Program, including identification, badging, and registration by NREL Security. A two-week advance notice to NREL Security processed through the NREL Subcontract Administrator is required prior to access by U.S. citizens.

(c) Access requirements for persons who are not U.S. citizens.
  (1) The Subcontractor shall ensure that any of the Subcontractor's employees (or its lower-tier Subcontractors' employees), officers, and agents who will enter onto NREL operated facilities and who are not U.S. citizens meet the

requirements set forth in NREL's Foreign National Management Policy and Program, including: (a) appropriate work authorization documentation (i.e. Visa); (b) completion of an NREL Foreign National Data Card; and (c) NREL Manager-level approval.

(2) Foreign Nationals from DOE-designated "Sensitive Countries" will be processed for a federal background check. This process requires a minimum of 30 calendar days notification prior to visit or assignment. 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."

(ii) It is the Subcontractor's responsibility to obtain and provide all necessary information and documentation to meet NREL, DOE, and federal requirements regarding Subcontractors' employees (or its lower-tier Subcontractors' employees), officers', and agents' work authorization and identification to the NREL Technical Monitor and the NREL Subcontract Administrator to meet the appropriate time frames for NREL Security to process and approve the request for access. Any person(s) denied access by NREL Security or DOE shall not be assigned by the Subcontractor to enter onto or perform subcontract work at NREL operated facilities.

(3) Prior to the initiation of a subcontract that requires entry onto NREL operated facilities, the Subcontractor shall provide to the NREL Subcontract Administrator advance notice and necessary evidence (including Visa types and expiration dates) that legally sufficient work permits have been obtained from the U.S. Citizenship and Immigration Services. Further, the Subcontractor is responsible to ensure that such permits are properly maintained for any of the Subcontractor's employees (and its lower-tier Subcontractors' employees) and their officers and agents who are not U.S. citizens for the duration of subcontract work at NREL operated facilities.

(4) After the Subcontractor (and its lower-tier Subcontractors) has commenced work under the subcontract, the Subcontractor shall provide to the NREL Subcontract Administrator the same advance notice and necessary evidence (including Visa types and expiration dates) for all subsequently assigned individuals who are not U.S. citizens who will enter onto NREL operated facilities.

(d) Access Requirements for all persons.

(1) All persons entering NREL operated facilities must display a valid NREL– or DOE– issued identification badge. The Subcontractor is responsible to coordinate badge requirements for entrance onto NREL operated facilities for all the Subcontractor's employees (and lower-tier Subcontractors' employees) and their officers and agents to ensure the display and return of all issued badges.

(2) The Subcontractor is responsible to coordinate with the NREL Technical Monitor all vehicle parking requirements needed to perform the subcontract work on the NREL operated facilities. Vehicle access by Subcontractors and other visitors to the NREL operated facilities is controlled on a 24-hour, 7-day per week basis.

(3) The Subcontractor is cautioned that effective January 1, 2007, the Colorado Revised Statutes (CRS 8-2-122) require employers that transact business in Colorado to comply with employment verification requirements to affirm that

the employer has examined the legal work status of newly-hired employees and has retained file copies of the documents required by the Federal Immigration Reform and Control Act (8 USC 1324a).

WORKER SAFETY AND HEALTH REQUIREMENTS (SPECIAL) (MAR 2020)
*Derived from **NREL 09.100-02***
(Applies to all subcontracts where the Subcontractor or lower-tier Subcontractors, and their employees, officers, agents, or other persons representing the Subcontractor, will perform work on NREL-operated facilities or government-owned or -leased properties.)

(a) **THE SUBCONTRACTOR SHALL BE RESPONSIBLE TO ENSURE THAT ALL WORK PERFORMED UNDER THIS SUBCONTRACT (INCLUSIVE OF LOWER-TIER SUBCONTRACTORS) IS PERFORMED IN ACCORDANCE WITH THE DEPARTMENT OF ENERGY'S "WORKER SAFETY AND HEALTH" RULE CODIFIED AT 10 CFR 851. THE SUBCONTRACTOR SHALL ENSURE THAT ALL WORK IS PERFORMED IN ACCORDANCE WITH NREL'S DOE-APPROVED SAFETY MANAGEMENT SYSTEM, INCLUDING, BUT NOT LIMITED TO, THE MOST CURRENT REQUIREMENTS SET FORTH IN THE APPLICABLE NREL "SERVICE AND MAINTENANCE SUBCONTRACTOR ENVIRONMENT, SAFETY & HEALTH MANUAL" OR "CONSTRUCTION ENVIRONMENT HEALTH & SAFETY MANUAL," BOTH AVAILABLE AT HTTPS://WWW.NREL.GOV/ABOUT/EHS.HTML. THE SUBCONTRACTOR IS RESPONSIBLE FOR ENSURING ONGOING COMPLIANCE WITH ANY UPDATES AND/OR REVISIONS TO THE APPLICABLE NREL ENVIRONMENT, HEALTH & SAFETY MANUAL.**

THE SUBCONTRACTOR IS SUBJECT TO ALL APPLICABLE PROCEDURES FOR INVESTIGATING VIOLATIONS, ENFORCING COMPLIANCE WITH REQUIREMENTS, AND ASSESSING CIVIL PENALTIES OR FEE REDUCTIONS FOR VIOLATIONS UNDER DOE'S "WORKER SAFETY AND HEALTH" RULE. WHEN THESE "WORKER SAFETY AND HEALTH REQUIREMENTS" ARE MADE APPLICABLE TO THE WORK TO BE PERFORMED UNDER AN NREL SUBCONTRACT, THE SUBCONTRACTOR SHALL ALSO COMPLY WITH THE CLAUSE "INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION" (DEAR 970.5223-1).

(b) The Subcontractor shall have a structured approach to its worker safety and health program that at a minimum meets the mandatory requirements specified in Appendix A of 10 CFR 851 for implementing any of the following functional areas applicable to the work to be performed: (1) construction safety; (2) fire protection; (3) firearms safety; (4) explosives safety; (5) pressure safety; (6) electrical safety; (7) industrial hygiene; (8) occupational medicine; (9) biological safety; and (10) motor vehicle safety.

(c) The Subcontractor shall be responsible for full compliance (inclusive of its lower-tier Subcontractors) with all applicable worker safety and health standards of DOE and NREL to provide subcontract work that is free from recognized hazards that are causing or have the potential to cause death or serious physical harm to workers. The Subcontractor shall comply with all Safety and Health Standards applicable to the hazards of the work to be performed, including but not limited to: (a) 29 CFR 1904 Recording and Reporting Occupational Injuries and Illnesses; (b) 29 CFR 1910 Occupational Safety and Health Standards and ACGIH Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices; (c) 29 CFR 1926 Safety and Health Regulations for Construction; (d) ANSI Z88.2 Respiratory Protection; (e) ANSI Z136.1 Safe Use of Lasers; (f) ANSI Z49.1 Welding, Cutting, and Allied Processes; (g) NFPA 70 National Electrical Code; and (h) NFPA 70E Standard for Electrical Safety in the Workplace. Nothing in this Paragraph (c) shall be construed as relieving the Subcontractor from complying with any additional specific safety and health requirements necessary to protect the safety and health of workers.

(d) In conforming to the worker safety and health requirements identified the Subcontractor shall provide at least worker safety and health supervision in the following areas: (1) management responsibilities; (2) worker rights and responsibilities; (3) hazard identification and assessment; (4) hazard prevention and abatement; (5) training and information; and (6) recordkeeping and reporting.

(e) NREL may inspect the Subcontractor's operation as work proceeds, from time to time, for compliance with worker safety and health requirements contained in this subcontract. The NREL Subcontract Administrator shall direct the Subcontractor to make the necessary corrections commensurate with deficiencies found. The Subcontractor shall make these corrections at no additional expense to NREL. The Subcontractor shall participate in NREL's fact-finding investigations of accidents, injuries, occurrences, and near-misses. The Subcontractor shall participate in fact-finding investigations at no additional expense to NREL. The Subcontractor shall remove from the work site any employee that NREL identifies in writing as unsafe, incompetent, careless, or otherwise objectionable. The Subcontractor shall replace the removed employee at no additional expense to NREL. Any NREL representatives, NREL Subcontractors, or DOE representatives, including but not limited to the NREL Technical Monitor or Project Manager, the DOE Federal Project Director, the NREL Subcontract Administrator and NREL and DOE EHSS&Q representatives have authority to stop work if unsafe conditions exist. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of or in connection with any unsafe conditions work stoppage. The Subcontractor's violation, refusal, or failure to abate violations, or applicable deficiencies may be justification for subcontract termination in accordance with the termination or default clauses of the subcontract terms and conditions.

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

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

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

(b) The Subcontractor, if other than an individual, shall—within thirty (30) days after award (unless a longer period is agreed to in writing for subcontracts of thirty (30) days or more performance duration), or as soon as possible for subcontracts of less than thirty (30) days performance duration—
- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Subcontractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- (2) Establish an ongoing drug-free awareness program to inform such employees about—
  - (ii) The dangers of drug abuse in the workplace;
  - (iii) The Subcontractor's policy of maintaining a drug-free workplace;
  - (iv) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (v) 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—
  - (ii) Abide by the terms of the statement; and

(iii) 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:

(ii) Taking appropriate personnel action against such employee, up to and including termination; or

(iii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) though (b)(6) of this clause.

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

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

INSURANCE-WORK ON A GOVERNMENT INSTALLATION (SPECIAL) (JAN 2009) AND ALTERNATE I – ARCHITECT/ENGINEER SUBCONTRACTS (JAN 2009)
*Derived from **FAR 52.228-5** (JAN 1997)*
(Applies to all subcontracts, except construction and design-build subcontracts, where the Subcontractor or lower-tier Subcontractors, and their employees, officers, agents, or other persons representing the Subcontractor, will perform work on NREL-operated facilities or Government-owned or -leased properties.
(Alternate I applies to Architect/Engineer subcontracts.)

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

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

(b) Before commencing work under this subcontract, the Subcontractor shall obtain the required insurance and shall maintain such required insurance for the entire period of performance of this subcontract. The Subcontractor shall immediately notify the NREL Subcontract Administrator in the event of any termination, cancellation, reduction, or other material change adversely affecting NREL's/Government's interest in the required insurance.

(c) The Subcontractor shall insert the substance of this clause, including this Paragraph (c), in lower-tier subcontracts under this subcontract that require work on a NREL-operated facility, or Government-owned or -leased properties and shall require the lower-tier Subcontractors to provide and maintain the same kinds and minimum amounts of insurance required under this subcontract (exceptions to this requirement will require prior approval from the NREL Subcontract Administrator). The Subcontractor shall maintain a copy of all the lower-tier Subcontractors' proof of required insurance, and shall make copies available to the NREL Subcontract Administrator upon request.

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

(a) Before commencing work under this subcontract, the Subcontractor shall provide the NREL Subcontract Administrator with written proof that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Alliance for Sustainable Energy, LLC and the Government's interest shall not be effective—

(1) For such period as the laws of the state in which this subcontract is to be performed prescribe; or
(2) Until thirty (30) days after the insurer or the Subcontractor gives written notice to the NREL Subcontract Administrator, whichever period is longer.

The Subcontractor shall immediately notify the NREL Subcontract Administrator in the event of any termination, cancellation, reduction or other material change adversely affecting the Alliance for Sustainable Energy, LLC and the Government's interest in the required insurance.

(b) The Subcontractor shall, at its own expense, provide and maintain at least the kinds and minimum amounts of Architect/Engineer Professional Liability and Errors and Omissions insurance required in this clause. Architect/Engineer Professional Liability and Errors and Omissions insurance shall be provided and maintained during the entire performance of the subcontract and for five (5) years after the completion of the work. The Subcontractor shall flow down this insurance requirement to its lower-tier Subcontractors providing Architect/Engineer professional services. Such flow down to lower-tiers shall not be construed to relieve the Subcontractor from its obligations under this clause.

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

PROTECTION OF NREL/GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)

*Derived from **FAR 52.237-2** (APR 1984)*

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

The Subcontractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the NREL/Government installation. If the Subcontractor's failure to use reasonable care causes damage to any of this property, the Subcontractor shall replace or repair the damage at no expense to NREL/the Government as the NREL Subcontract Administrator directs. If the Subcontractor fails or refuses to make such repair or replacement, the Subcontractor shall be liable for the cost, which may be deducted from the subcontract price.

WHISTLEBLOWER PROTECTION FOR SUBCONTRACTOR EMPLOYEES (DEC 2000)
*Derived from **DEAR 952.203-70** (FD)*
(Applies to subcontracts for work directly related to activities at NREL-operated facilities or Government-owned or -leased properties.)

(a) The Subcontractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR Part 708 for work performed on behalf of NREL directly related to activities at DOE-owned or -leased sites.

(b) The Subcontractor shall insert or have inserted the substance of this clause, including this paragraph (b) in subcontracts at all tiers, for subcontracts involving work performed on behalf of NREL directly related to activities at DOE-owned or -leased sites.

INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (NOV 2016)

*Derived from **DEAR 970.5223-1** (FD) (DEC 2000)*

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

(a) For the purposes of this clause:
  (1) "Safety' encompasses environment, safety, and health, including pollution prevention and waste minimization; and
  (2) 'Employees" include lower-tier Subcontractor employees.

(b) In performing work under this subcontract, the Subcontractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Subcontractor shall exercise a degree of care commensurate with the work and the associated hazards. The Subcontractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the Subcontractor's work planning and execution processes. The Subcontractor shall, in the performance of work, ensure that:
  (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Subcontractor and lower-tier Subcontractor employees managing or supervising employees performing work.
  (2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
  (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
  (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
  (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
  (6) Upon discovery of potential cultural resources, the Subcontractor shall stop work immediately and report to the NREL Project Manager. The Subcontractor shall not handle, move, or otherwise disturb items that are potential cultural resources, either on the ground surface or buried/unearthed below the ground surface. Items discovered remain the property of DOE and may not be removed from the site. The Subcontractor shall not alter, damage, or deconstruct existing structures on the National Register of Historic Places as identified by the NREL Project Manager.
  (7) 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.
  (8) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by NREL/Government and the Subcontractor. These agreed-upon conditions and requirements are

requirements of the subcontract and binding upon the Subcontractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.

(c) The Subcontractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the Subcontractor will:
(1) Define the scope of work;
(2) Identify and analyze hazards associated with the work;
(3) Develop and implement hazard controls;
(4) Perform work within controls; and
(5) Provide feedback on adequacy of controls and continue to improve safety management.

(d) The System shall describe how the Subcontractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to NREL/DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the Subcontractor will measure system effectiveness.

(e) The Subcontractor shall submit to the NREL Subcontract Administrator documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the NREL Subcontract Administrator. Guidance on the preparation, content, review, and approval of the System will be provided by the NREL Subcontract Administrator. On an annual basis, the Subcontractor shall review and update, for NREL's approval, its safety performance objectives, performance measures, and commitments consistent with and in response to NREL/DOE program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the Subcontractor's business processes for work planning, budgeting, authorization, execution, and change control.

(f) The Subcontractor shall comply with, and assist NREL/DOE in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of NREL's Prime Contract entitled "Laws, Regulations, and DOE Directives." The Subcontractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this subcontract.

(g) The Subcontractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Subcontractor fails to provide resolution or, if at any time, the Subcontractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the NREL Subcontract Administrator may issue an order stopping work in whole or in part. Any stop work order issued by the NREL Subcontract Administrator under this clause (or issued by the Subcontractor to a lower–tier Subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of NREL/Government. In the event that the NREL Subcontract Administrator issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the NREL Subcontract Administrator. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(h) Regardless of the performer of the work, the Subcontractor is responsible for compliance with the ES&H requirements applicable to this subcontract. The Subcontractor is responsible for flowing down the ES&H requirements applicable to this subcontract to subcontracts at any tier to the extent necessary to ensure the Subcontractor's compliance with the requirements.

(i) The Subcontractor shall include a clause substantially the same as this clause in lower-tier subcontracts involving complex or hazardous work on site at an NREL operated facility or Government-owned or-leased properties. Such lower-tier subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the Subcontractor may choose not to require the lower-tier Subcontractor to submit a Safety Management System for the Subcontractor's review and approval.

SUSTAINABLE ACQUISITION PROGRAM (NOV 2019)
*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 the Simplified Acquisition Threshold, and offer opportunities for the acquisition of energy efficient or environmentally sustainable supplies or services).

(a) In the spirit of 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 Executive Orders associated with sustainable acquisition practices 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) Greenhouse 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 Bio based 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 bio based 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 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, bio based 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.

AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION SUBCONTRACTS (NOV 2019)

Derived from FAR 52.223-2 (SEP 2013)

(Applies to subcontracts for service and construction that involve the use of USDA-designated items at http://www.biopreferred.gov or 7 CFR part 3201.)

(a) In the performance of this subcontract, the subcontractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless-

(1) The product cannot be acquired-

(i) Competitively within a time frame providing for compliance with the subcontract performance schedule;

(ii) Meeting subcontract performance requirements; or

(iii) At a reasonable price.

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3(e)). For example, all USDA-designated items are exempt from the preferred procurement requirement for the following:

(i) Spacecraft system and launch support equipment.

(ii) Military equipment, i.e., a product or system designed or procured for combat or combat-related missions.

(b) Information about this requirement and these products is available at http://www.biopreferred.gov.

(c) In the performance of this subcontract, the Subcontractor shall-

(1) Report to the NREL Subcontract Administrator, on the product types and dollar value of any USDA-designated biobased products purchased by the Subcontractor during the previous Government fiscal year, between October 1 and September 30; and

(2) Submit this report no later than-

(i) October 31 of each year during subcontract performance; and

(ii) At the end of subcontract performance.

52.223-10 WASTE REDUCTION PROGRAM (NOV 2019)

Derived from FAR 52.223-10 (MAY 2011)

(Applies to all solicitations and subcontracts for support services at NREL-operated facilities.)

(a) Definitions. As used in this clause-

(1) "Recycling" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

(2) "Waste prevention" means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

(3) "Waste reduction" means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of Section 3(e) of Executive Order 13423, the subcontractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this subcontract. The Subcontractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C.6962, *etseq*.) and implementing regulations (40 CFR Part 247).

OZONE-DEPLETING SUBSTANCES AND HIGH GLOBAL WARMING POTENTIAL HYDROFLUOROCARBONS (NOV 2019)
Derived from FAR 52.223-11 (JUN 2016)
(Applies to all subcontracts or purchase orders performed or delivered within the United States.)

(a) Definitions. As used in this clause–

"Global warming potential" means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

"High global warming potential hydrofluorocarbons" means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR Part 82 subpart G with supplemental tables of alternatives available at (http://www.epa.gov/snap/).

"Hydrofluorocarbons" means compounds that only contain hydrogen, fluorine, and carbon.

"Ozone-depleting substance," means any substance the Environmental Protection Agency designates in 40 CFR part 82 as-

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

(b) The Subcontractor shall label products that contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C.7671j(b), (c), (d), and (e) and 40 CFR part 82, subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) *_____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

*The Subcontractor shall insert the name of the substance(s).

(c) Reporting. For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, the Subcontractor shall–

(1) Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons contained in the equipment and appliances delivered to NREL and the Government under this subcontract by–
    (i) Type of hydrofluorocarbon (e.g., HFC-134 a, HFC-125, R-410 A, R-404 A, etc.);
    (ii) Subcontract number; and
    (iii) Equipment/appliance;
(2) Report that information to the NREL Subcontract Administrator –
    (i) Annually by November 30 of each year during subcontract performance; and

(ii) At the end of subcontract performance.

(d) The Subcontractor shall refer to EPA's SNAP program (available at http://www.epa.gov/snap) to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82 subpart G with supplemental tables available at http://www.epa.gov/snap.

MAINTENANCE, SERVICE, REPAIR, OR DISPOSAL OF REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (NOV 2019)

Derived from FAR 52.223-12 (JUN 2016)

(Applies to all indefinite delivery service subcontracts)

(a) Definitions. As used in this clause–

"Global warming potential" means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

"High global warming potential hydrofluorocarbons" means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR Part 82 subpart G with supplemental tables of alternatives available at (http://www.epa.gov/snap/).

"Hydrofluorocarbons" means compounds that only contain hydrogen, fluorine, and carbon.

(b) The Subcontractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C.7671g and 7 671h) as each or both apply to this subcontract.

(c) Unless otherwise specified in the subcontract, the Subcontractor shall reduce the use, release, or emissions of high global warming potential hydrofluorocarbons under this subcontract by–

(1) Transitioning over time to the use of another acceptable alternative in lieu of high global warming potential hydrofluorocarbons in a particular end use for which EPA's SNAP program has identified other acceptable alternatives that have lower global warming potential;

(2) Preventing and repairing refrigerant leaks through service and maintenance during contract performance;

(3) Implementing recovery, recycling, and responsible disposal programs that avoid release or emissions during equipment service and as the equipment reaches the end of its useful life; and

(4) Using reclaimed hydrofluorocarbons, where feasible.

(d) (d) For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, that will be maintained, serviced, repaired, or disposed under this contract, the Subcontractor shall–

(1) Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons added or taken out of equipment or appliances under this subcontract by–

(i) Type of hydrofluorocarbon (e.g., HFC-134 a, HFC-125, R-410 A, R-404 A, etc.);

(ii) Subcontract number;

(iii) Equipment/appliance; and

(2) Report that information to the NREL Subcontract Administrator –

(i) No later than November 30 of each year during subcontract performance; and

(ii) At the end of subcontract performance.

(e) The subcontractor shall refer to EPA's SNAP program to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82 subpart G with supplemental tables available at http://www.epa.gov/snap/.

ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (DEC 2007) (SPECIAL OCT 2008)

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

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

(a) Definition. As used in this clause—
- (1) "Energy-efficient product"—
  - (i) Means a product that—
    meets DOE and Environmental Protection Agency criteria for use of the Energy Star® trademark label; or
  - (ii) Is in the upper twenty-five percent (25%) of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program (FEMP).
- (2) [Reserved.]

(b) The Subcontractor shall ensure that energy-consuming products are energy efficient products (i.e., ENERGY STAR® products or FEMP-designated products) at the time of subcontract award, for products that are—
- (1) Delivered;
- (2) Acquired by the Subcontractor for use in performing services at a DOE-owned or -leased facility;
- (3) Furnished by the Subcontractor for use by NREL/Government; or
- (4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(c) The requirements of paragraph (b) apply to the Subcontractor (including any lower-tier Subcontractor) unless—
- (1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or
- (2) Otherwise approved in writing by the NREL Subcontract Administrator.

(d) Information about these products is available for—
- (1) ENERGY STAR® at http://www.energystar.gov/products; and
- (2) FEMP at http://www1.eere.energy.gov/femp/procurement/eep_requirements.html.

AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (NOV 2019)

Derived from FAR 52.223-17 (AUG 2018)

(Applies to all service and construction subcontracts unless the subcontract will not involve the use of a product that is or can be made with recovered material.)

(a) In the performance of this subcontract, the subcontractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired-

(1) Competitively within a timeframe providing for compliance with the subcontract performance schedule;

(2) Meeting contract performance requirements; or

(3) At a reasonable price.

(b) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, http://https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program. The list of EPA-designated items is available at http://https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.