

APPENDIX B-8

STANDARD TERMS AND CONDITIONS
FOR

COMMERCIAL ITEMS
(GOODS AND SERVICES)

SUBCONTRACTS AND PURCHASE ORDERS

FIRM FIXED-PRICE AND
FIXED UNIT-PRICE LEVEL OF EFFORT

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-8
Standard Terms and Conditions for Commercial Items (Goods and Services)

Appendix B-8 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	NREL 08.100-06	Subcontractor Quality Representations			All	May 2009
2	52.204-7	System for Award Management			All	Oct 2016
3	52.204-13	System for Award Management Maintenance			All	
4	52.212-4	Contract Terms and Conditions - Commercial Items			All	Oct 2018
5	52.215-19	Notification of Ownership Changes	X		All	Oct 1997
6	52.222-2	Payment for Overtime Premiums			All	July 1990
7	52.222-3	Convict Labor			All	
8	52.225-1	Buy American - Supplies			All	May 2014
9	52.225-13	Restriction on Certain Foreign Purchases	X		All	Jun 2008
10	52.232-33	Payment by Electronic Funds Transfer - System for Award Management			All	Jul 2013
11	52.232-39	Unenforceability of Unauthorized Obligations			All	
12	52.232-40	Providing Accelerated Payments to Small Business Subcontractors	X		All	Dec 2013
13	52.242-14	Suspension of Work			All	Apr 1984
14	52.242-15	Stop Work Order - Commercial Items			All	Aug 1989
15	52.244-6	Subcontracts for Commercial Items - Special	X		All	Nov 2017
16	52.247-1	Commercial Bill of Lading Notations			All	Feb 2006
17	970.5225-1	Compliance with Export Control Laws and Regulations	X		All	Nov 2015
18	970.5232-3	Accounts, Records, and Inspection - Alternate I	X		All	Clause Dec 2010; Alt Dec 2000
19	52.222-54	Employment Eligibility Verification	X		>\$3.5K	Oct 2015
20	52.223-18	Encouraging Contractor Policies to Ban Text Messaging while Driving	X		>\$10K (2018 mpt)	Aug 2011
21	52.225-8	Duty-Free Entry	X		>\$15K*	Oct 2010

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Appendix B-8 Clause Number	FAR/DEAR Reference	Title	FD	OnSite Clause = Y	Threshold (Award Amount)	Date/Req'd Version
22	52.203-6	Restrictions on Subcontractor Sales to the Government	X		>SAT	Sep 2006
23	52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights	X		>SAT	Apr 2014
Section II - Clauses						
24	NREL 08.100-02	Security and Access Requirements		Y	All	
25	NREL 09.100-02	Worker Safety and Health Requirements		Y	All	Mar 2020
26	52.228-5	Insurance - Work on a Government Installation and Alt I -Architect/Engineer Subcontracts		Y	All	Jan 1997
27	52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements		Y	All	Apr 1984
28	52.237-2	Protection of Government Buildings, Equipment, and Vegetation		Y	All	Apr 1984
29	952.203-70	Whistleblower Protection for Contractor Employees	X	Y	All	Dec 2000
30	970.5223-1	Integration of Environment, Safety, and Health into Work Planning and Execution	X	Y	All	Dec 2000
Section III - Sustainable Acquisition Clauses						
31	970.5223-7	Sustainable Acquisition Program	X	Y	>SAT	Oct 2010
32	52.223-2	Affirm Procurement of Biobased Products under Service and Construction Contracts		Y	All	Sep 2013
33	52.223-10	Waste Reduction Program		Y	All	May 2011
34	52.223-11	Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons			All	Jun 2016
35	52.223-12	Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners			All	Jun 2016
36	52.223-13	Acquisition of EPEAT®-Registered Imaging Equipment			All	Jun 2014
37	52.223-14	Acquisition of EPEAT®-Registered Televisions			All	Jun 2014
38	52.223-15	Energy Efficiency in Energy-Consuming Products	X	Y	All	Dec 2007
39	52.223-16	Acquisition of EPEAT®-Registered Personal Computer Products - Alternate I			All	Jun 2014
40	52.223-17	Affirm Procurement of EPA-designated Items in Service and Construction Contracts		Y	All	Aug 2018

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).

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- (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://www.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 subpart 4.14), 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

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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.

COMMERCIAL ITEMS—SUBCONTRACT TERMS AND CONDITIONS (JAN 2017)

Derived from FAR 52.212-4 (JAN 2017)

Applies to the acquisition of commercial items.

- (a) *Inspection/Acceptance.* The Subcontractor shall only tender for acceptance those items that conform to the requirements of this subcontract. NREL reserves the right to inspect or test any supplies or services that have been tendered for acceptance. NREL may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in subcontract price. If repair/replacement or reperformance will not correct the defects or is not possible, NREL/the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. NREL/the Government must exercise its post-acceptance rights—
- (1) Within a reasonable time after the defect was discovered or should have been discovered; and
 - (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
- (b) *Assignment.* The Subcontractor or its assignee may assign its rights to receive payment due as a result of performance of this subcontract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act ([31 U.S.C. 3727](#)). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Subcontractor may not assign its rights to receive payment under this subcontract.
- (c) *Changes.* Changes in the terms and conditions of this subcontract may be made only by written agreement of the parties.
- (d) Subcontract Issues and Disputes. (Special) (Sep 2007)
- (1) It is NREL's practice to try to resolve all contractual issues by mutual agreement at the NREL Subcontract Administrator's level, without litigation. Both parties hereby agree to explore all reasonable avenues for negotiations in order to avoid a dispute. Either party may provide written notice to the other party to conduct negotiations for a period not to exceed sixty (60) calendar days. After sixty (60) calendar days, if possibilities for negotiations have failed, either party shall have thirty (30) calendar days to request that the potential dispute be moved to Alternative Dispute Resolution (ADR). Within fifteen (15) calendar days after receiving a request to move to ADR, if ADR procedures are not acceptable to the non-moving party, a written explanation citing specific reasons for rejecting ADR as inappropriate for resolution of the dispute shall be provided to the moving party. If the parties are unable to agree on the application of ADR procedures to resolve the potential dispute or are unable to satisfactorily resolve the dispute using ADR procedures for a period not to exceed ninety (90) calendar days (or such longer period as mutually agreed in writing), the parties shall resume the formal process authorized in this clause.
 - (2) The parties agree that the appropriate forum for litigation of any dispute pertaining to this subcontract shall be a court of competent jurisdiction as follows:
 - (ii) Subject to paragraph (d) (2) (ii) 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.
 - (iii) Provided, however, that in the event that the requirements for jurisdiction in any Federal District Court are not present, such litigation

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shall be brought in a court of competent jurisdiction in the county of Jefferson and State of Colorado.

- (3) Any substantive issue of law in such litigation shall be determined in accordance with the body of applicable federal law relating to the interpretation and application of clauses derived from Federal Acquisition Regulation 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 to the Subcontractor by implication any statutory rights or remedies not expressly set forth in this subcontract.
 - (4) There shall be no interruption in the prosecution of the work, and the Subcontractor shall proceed diligently with the performance of this subcontract pending final resolution of any subcontractual issues, disputes, or litigation arising under or related to this subcontract between the parties hereto or between the Subcontractor and lower-tier Subcontractors or suppliers.
 - (2) The Contract Disputes Act of 1978 (41 U.S.C. Sections 60 1-613) shall not apply to this subcontract; provided, however, that nothing in this clause shall prohibit NREL, in its sole discretion, from sponsoring a dispute of the Subcontractor for resolution under the provision of its prime contract with DOE. In the event that NREL so sponsors a dispute at the request of the Subcontractor, the Subcontractor shall be bound by the decision of the cognizant DOE Contracting Officer to the same extent and in the same manner as NREL.
 - (3) Any disputes relative to intellectual property matters will be governed by other provisions of this subcontract.
- (e) Definitions. (Special) (JUL 2014)
- (1) 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—
 - (i) The solicitation, or amended solicitation, provides a different definition;
 - (ii) The subcontracting parties agree to a different definition;
 - (iii) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
 - (iv) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.
 - (2) 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.
 - (3) 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.
 - (4) The following words and terms are in addition to paragraph (a) of this section—

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- (ii) "Head of the Agency" means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy.
 - (iii) "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.
 - (iv) "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 under a DOE Prime Contract and make related determinations and findings. The term includes certain authorized representatives of NREL acting within the limits of their authority as delegated by NREL.
 - (v) 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.
 - (vi) The term "DOE" means the U.S. Department of Energy.
 - (vii) "Contractor" or "DOE Prime Contractor" means the entity managing and operating the National Renewable Energy Laboratory (NREL) under Prime Contract to the U.S. Department of Energy (DOE). NREL is a Department of Energy-owned national laboratory, managed and operated by the DOE Prime Contractor.
 - (viii) The term "DOE Directive" means DOE Orders and Notices, modifications thereto and other forms of directives, including for purposes of this subcontract those portions of DOE's Accounting and Procedures Handbook applicable to Contractors, issued by DOE. The term does not include temporary written instructions by the DOE Contracting Officer or the NREL Subcontract Administrator for the purpose of addressing short-term or urgent DOE or NREL concerns relating to health, safety, or the environment.
- (f) *Excusable delays.* The Subcontractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Subcontractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Subcontractor shall notify the NREL Subcontract Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the NREL Subcontract Administrator of the cessation of such occurrence.
- (g) Invoice.
- (1) The Subcontractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the subcontract to receive invoices. An invoice must include—
 - (i) Name and address of the Subcontractor;
 - (ii) Invoice date and number;
 - (iii) Subcontract number, line item number and, if applicable, the order number;

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- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ii) [Reserved]
- (iii) [Reserved]
- (2) Invoices will be handled in accordance with the Prime Contractor's DOE-approved procurement system.
- (h) *Patent indemnity.* The Subcontractor shall indemnify NREL and /the Government and their officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this subcontract, provided the Subcontractor is reasonably notified of such claims and proceedings.
- (i) *Payment.*—
 - (1) *Items accepted.* Payment shall be made for items accepted by NREL that have been delivered to the delivery destinations set forth in this subcontract.
 - (2) NREL will make payment in accordance with the payment terms stated in the subcontract.
 - (3) [Reserved]
 - (4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.
 - (5) *Overpayments.* If the Subcontractor becomes aware of a duplicate subcontract financing or invoice payment or that NREL has otherwise overpaid on a subcontract financing or invoice payment, the Subcontractor shall—
 - (i) Remit the overpayment amount to the payment office cited in the subcontract along with a description of the overpayment including the—
 - (A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
 - (B) Affected subcontract number and delivery order number, if applicable;
 - (C) Affected subcontract line item or subline item, if applicable; and
 - (D) Subcontractor point of contact.
 - (ii) Provide a copy of the remittance and supporting documentation to the NREL Subcontract Administrator.
 - (6) *Interest.*
 - (i) NREL retains all rights to impose simple interest on all amounts that become payable by the Subcontractor to NREL under this subcontract from the date due until paid unless paid within thirty (30) days of becoming due. The interest rate shall be the Current Value of Funds Rate (CVFR) published in the Federal Register as of the due date.
 - (ii) NREL may issue a demand for payment to the Subcontractor upon finding a debt is due under the subcontract.
 - (iii) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

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- (A) The date on which NREL receives payment from the Subcontractor;
 - (B) The date of issuance of an NREL payment to the Subcontractor from which an amount otherwise payable has been withheld as a credit against the subcontract debt; or
 - (C) The date on which an amount withheld and applied to the subcontract debt would otherwise have become payable to the Subcontractor.
- (iv) The interest charge made under this clause may be reduced under the procedures prescribed in [32.608-2](#) of the Federal Acquisition Regulation in effect on the date of this contract.
- (j) *Risk of loss.* Unless the subcontract specifically provides otherwise, risk of loss or damage to the supplies provided under this subcontract shall remain with the Subcontractor until, and shall pass to NREL/the Government upon:
- (1) Delivery of the supplies to a carrier, if transportation is Free on Board (FOB) origin; or
 - (2) Delivery of the supplies to NREL at the destination specified in the contract, if transportation is f.o.b. destination.
- (k) *Taxes.* The Subcontractor shall exclude Colorado State Sales Tax from the Subcontract price. The Colorado Sales Tax Exemption Permit Number is provided in the Subcontract Schedule or Purchase Order. The Subcontractor warrants that the subcontract price includes all applicable Federal, State, and local taxes and duties.
- (l) *Termination for NREL/the Government's convenience.* NREL/the Government reserves the right to terminate this subcontract, or any part hereof, for its sole convenience. In the event of such termination, the Subcontractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and lower-tier subcontractors to cease work. Subject to the terms of this subcontract, the Subcontractor shall be paid a percentage of the subcontract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Subcontractor can demonstrate to the satisfaction of NREL using its standard record keeping system, have resulted from the termination. The Subcontractor shall not be required to comply with the cost accounting standards or subcontract cost principles for this purpose. This paragraph does not give NREL/the Government any right to audit the Subcontractor's records. The Subcontractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.
- (m) *Termination for cause.* NREL/the Government may terminate this subcontract, or any part hereof, for cause in the event of any default by the Subcontractor, or if the Subcontractor fails to comply with any subcontract terms and conditions, or fails to provide NREL/the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, NREL/the Government shall not be liable to the Subcontractor for any amount for supplies or services not accepted, and the Subcontractor shall be liable to NREL/the Government for any and all rights and remedies provided by law. If it is determined that NREL/the Government improperly terminated this subcontract for default, such termination shall be deemed a termination for convenience.
- (n) *Title.* Unless specified elsewhere in this subcontract, title to items furnished under this subcontract shall pass to the Government upon acceptance, regardless of when or where NREL/the Government takes physical possession.
- (o) *Warranty.* The Subcontractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this subcontract.

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- (p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Subcontractor will not be liable to NREL/the Government for consequential damages resulting from any defect or deficiencies in accepted items.
- (q) *Other compliances.* The Subcontractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this subcontract.
- (r) *Compliance with laws unique to Government Subcontracts.* The Subcontractor agrees to comply with [31 U.S.C. 1352](#) relating to limitations on the use of appropriated funds to influence certain Federal subcontracts; [18 U.S.C. 431](#) relating to officials not to benefit; [40 U.S.C. chapter 37](#), Contract Work Hours and Safety Standards; [41 U.S.C. chapter 87](#), Kickbacks; [41 U.S.C. 4712](#) and [10 U.S.C. 2409](#) relating to whistleblower protections; [49 U.S.C. 40118](#), Fly American; and [41 U.S.C. chapter 21](#) relating to procurement integrity.
- (s) *Order of precedence.* Any inconsistencies in this solicitation or subcontract shall be resolved by giving precedence in the following order:
- (1) The schedule of supplies/services.
 - (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Subcontracts, and Unauthorized Obligations paragraphs of this clause;
 - (3) The clause at [52.212-5](#).
 - (4) Addenda to this solicitation or subcontract, including any license agreements for computer software.
 - (3) [Reserved]
 1. Other paragraphs of this clause.
 - (4) [Reserved]
 - (5) The [Standard Form 1449](#).
 - (6) Other documents, exhibits, and attachments.
 - (7) The specification.
- (t) [RESERVED]
- (u) Unauthorized Obligations.
- (1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor 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:
 - (i) Any such clause is unenforceable against the Government.
 - (ii) Neither 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 the Government or any Government authorized end user to such clause.
 - (iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.
 - (2) Paragraph (u)(1) 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.

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- (v) Incorporation by reference. The Subcontractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the subcontract.

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.

PAYMENT FOR OVERTIME PREMIUMS (OCT 2011)

Derived from FAR 52.222-2 (JUL 1990)

(Applies to cost-type subcontracts exceeding \$150,000.)

- (a) The use of overtime is authorized under this subcontract if the overtime premium does not exceed zero (0) or the overtime premium is paid for work—
 - (1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
 - (2) By indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
 - (3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
 - (4) That will result in lower overall costs to NREL/Government.
- (b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall—
 - (1) Identify the work unit e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the NREL Subcontract Administrator to evaluate the necessity for the overtime;
 - (2) Demonstrate the effect that denial of the request will have on the subcontract delivery or performance schedule;
 - (3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government subcontracts/contracts, together with identification of each affected subcontract/contract; and
 - (4) Provide reasons why the required work cannot be performed by using multi-shift operations or by employing additional personnel.

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.

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.

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- (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.

**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.

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- (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.

SUSPENSION OF WORK (APR 1984)

Derived from FAR 52.242-14

(Applies to construction and architect-engineer subcontracts.)

- (a) The NREL Subcontract Administrator may order the Subcontractor, in writing, to suspend, delay, or interrupt all or any part of the work of this subcontract for the period of time that the NREL Subcontract Administrator determines appropriate for the convenience of NREL/Government.
- (b) If the performance of all or any part of the work is, for any unreasonable period of time, suspended, delayed, or interrupted—
 - (1) By an act of the NREL Subcontract Administrator in the administration of this subcontract; or
 - (2) By the NREL Subcontract Administrator's failure to act within the time specified in this subcontract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this subcontract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the subcontract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Subcontractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this subcontract.
- (c) A claim under this clause shall not be allowed—
 - (1) For any costs incurred more than twenty (20) days before the Subcontractor shall have notified the NREL Subcontract Administrator in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and
 - (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the subcontract.

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.

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).

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- (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.

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.”

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 ALTERNATE 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.

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- (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

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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.

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

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- (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.

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- (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.

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.

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

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- 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.

**RESTRICTIONS ON LOWER-TIER SUBCONTRACTOR SALES TO NREL/GOVERNMENT
(OCT 2011)**

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

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

- (a) Except as provided in (b) of this clause, the Subcontractor shall not enter into any agreement with an actual or prospective lower-tier Subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such lower-tier Subcontractors directly to NREL/Government of any item or process (including computer software) made or furnished by the lower-tier Subcontractor under this subcontract or under any follow-on production subcontract.
- (b) The prohibition in (a) of this clause does not preclude the Subcontractor from asserting rights that are otherwise authorized by law or regulation.
- (c) The Subcontractor agrees to incorporate the substance of this clause, including this paragraph (c), in all lower-tier subcontracts under this subcontract which exceed the simplified acquisition threshold.

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.

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

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- 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

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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-CONSTRUCTION.HTML](https://www.nrel.gov/about/ehs-construction.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.

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

Derived from FAR 52.228-5 (JAN 1997)

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

Alternate I applies to Architect/Engineer subcontracts.

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

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

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

ALTERNATE I

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

- (b) Before commencing work under this subcontract, the Subcontractor shall provide the NREL Subcontract Administrator with written proof that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Alliance for Sustainable Energy, LLC and the Government's interest shall not be effective—

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- (1) For such period as the laws of the state in which this subcontract is to be performed prescribe; or
- (2) Until thirty (30) days after the insurer or the Subcontractor gives written notice to the NREL Subcontract Administrator, whichever period is longer.

The Subcontractor shall immediately notify the NREL Subcontract Administrator in the event of any termination, cancellation, reduction or other material change adversely affecting the Alliance for Sustainable Energy, LLC and the Government's interest in the required insurance.

- (d) The Subcontractor shall, at its own expense, provide and maintain at least the kinds and minimum amounts of Architect/Engineer Professional Liability and Errors and Omissions insurance required in this clause. Architect/Engineer Professional Liability and Errors and Omissions insurance shall be provided and maintained during the entire performance of the subcontract and for five (5) years after the completion of the work. The Subcontractor shall flow down this insurance requirement to its lower-tier Subcontractors providing Architect/Engineer professional services. Such flow down to lower-tiers shall not be construed to relieve the Subcontractor from its obligations under this clause.

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

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

Derived from FAR 52.236-9 (APR 1984)

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

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

**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

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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.

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- (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—

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- (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

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- (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) 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.

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- (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/>.

ACQUISITION OF EPEAT®-REGISTERED IMAGING EQUIPMENT (NOV 2019)

Derived from FAR 52.223-13 (JUN 2014)

(Applies to all subcontracts for the acquisition of imaging equipment.)

(a) Definitions. As used in this clause—

“Imaging equipment” means the following products:

- (1) Copier-A commercially available imaging product with a sole function of the production of hard copy duplicates from graphic hard-copy originals. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as copiers or upgradeable digital copiers (UDCs).
- (2) Digital duplicator-A commercially available imaging product that is sold in the market as a fully automated duplicator system through the method of stencil duplicating with digital reproduction functionality. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as digital duplicators.
- (3) Facsimile machine (fax machine)-A commercially available imaging product whose primary functions are scanning hard-copy originals for electronic transmission to remote units and receiving similar electronic transmissions to produce hard-copy output. Electronic transmission is primarily over a public telephone system but also may be via computer network or the Internet. The product also may be capable of producing hard copy duplicates. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as fax machines.
- (4) Mailing machine-A commercially available imaging product that serves to print postage onto mail pieces. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as mailing machines.
- (5) Multifunction device (MFD)-A commercially available imaging product, which is a physically integrated device or a combination of functionally integrated components, that performs two or more of the core functions of copying, printing, scanning, or faxing. The copy functionality as addressed in this definition is considered to be distinct from single-sheet convenience copying offered by fax machines. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as MFDs or multifunction products.
- (6) Printer-A commercially available imaging product that serves as a hard-copy output device and is capable of receiving information from single-user or networked computers, or other input devices (e.g., digital cameras). The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as printers, including printers that can be upgraded into MFDs in the field.
- (7) Scanner-A commercially available imaging product that functions as an electro-optical device for converting information into electronic images that can be stored, edited, converted, or transmitted, primarily in a personal computing environment. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as scanners.

(b) Under this subcontract, the Subcontractor shall deliver, furnish for NREL/the Government use, or furnish for Subcontractor use at a Federally controlled facility,

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- only imaging equipment that, at the time of submission of proposals and at the time of award, was EPEAT® bronze-registered or higher.
- (c) For information about EPEAT®, see www.epa.gov/epeat/.

ACQUISITION OF EPEAT®-REGISTERED TELEVISIONS (NOV 2019)

Derived from FAR 52.223-14 (JUN 2014)

(Applies to all subcontracts for the acquisition of televisions.)

(a) Definitions. As used in this clause—

“Television” or “TV” means a commercially available electronic product designed primarily for the reception and display of audiovisual signals received from terrestrial, cable, satellite, Internet Protocol TV (IPTV), or other digital or analog sources. A TV consists of a tuner/receiver and a display encased in a single enclosure. The product usually relies upon a cathode-ray tube (CRT), liquid crystal display (LCD), plasma display, or other display technology. Televisions with computer capability (e.g., computer input port) may be considered to be a TV as long as they are marketed and sold to consumers primarily as televisions.

(b) Under this subcontract, the Subcontractor shall deliver, furnish for NREL/Government use, or furnish for Subcontractor use at a Federally controlled facility, only televisions that, at the time of submission of proposals and at the time of award, were EPEAT® bronze-registered or higher.

(c) For information about EPEAT®, see www.epa.gov/epeat/.

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.

ACQUISITION OF EPEAT® -REGISTERED PERSONAL COMPUTER PRODUCTS AND ALTERNATE I (NOV 2019).

Derived from FAR 52.223-16 (OCT 2015) and Alternate I (JUN 2014)

(Applies to all subcontracts for the acquisition of personal computer products.)

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

“Computer” means a device that performs logical operations and processes data. Computers are composed of, at a minimum.

- (1) A central processing unit (CPU) to perform operations;
- (2) User input devices such as a keyboard, mouse, digitizer, or game controller; and
- (3) A computer display screen to output information. Computers include both stationary and portable units, including desktop computers, integrated desktop computers, notebook computers, thin clients, and workstations. Although computers must be capable of using input devices and computer displays, as noted in (2) and (3) above, computer systems do not need to include these devices on shipment to meet this definition. This definition does not include server computers, gaming consoles, mobile telephones, portable hand-held calculators, portable digital assistants (PDAs), MP3 players, or any other mobile computing device with displays less than 4 inches, measured diagonally.

“Computer display” means a display screen and its associated electronics encased in a single housing or within the computer housing (e.g., notebook or integrated desktop computer) that is capable of displaying output information from a computer via one or more inputs such as a VGA, DVI, USB, DisplayPort, and/or IEEE 1394-2008™, Standard for High Performance Serial Bus. Examples of computer display technologies are the cathode-ray tube (CRT) and liquid crystal display (LCD).

“Desktop computer” means a computer where the main unit is intended to be located in a permanent location, often on a desk or on the floor. Desktops are not designed for portability and utilize an external computer display, keyboard, and mouse. Desktops are designed for a broad range of home and office applications.

“Integrated desktop computer” means a desktop system in which the computer and computer display function as a single unit that receives its AC power through a single cable. Integrated desktop computers come in one of two possible forms:

- (4) A system where the computer display and computer are physically combined into a single unit; or
- (5) A system packaged as a single system where the computer display is separate but is connected to the main chassis by a DC power cord and both the computer and computer display are powered from a single power supply. As a subset of desktop computers, integrated desktop computers are typically designed to provide similar functionality as desktop systems

“Notebook computer” means a computer designed specifically for portability and to be operated for extended periods of time either with or without a direct connection to an AC power source. Notebooks must utilize an integrated computer display and be capable of operation off of an integrated battery or other portable power source. In addition, most notebooks use an external power supply and have an integrated

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keyboard and pointing device. Notebook computers are typically designed to provide similar functionality to desktops, including operation of software similar in functionality to that used in desktops. Docking stations are considered accessories for notebook computers, not notebook computers. Tablet PCs, which may use touch-sensitive screens along with, or instead of, other input devices, are considered notebook computers.

“Personal computer product” means a computer, computer display, desktop computer, integrated desktop computer, or notebook computer.

- (b) Under this subcontract, the Subcontractor shall deliver, furnish for NREL/Government use, or furnish for Subcontractor use at a Federally controlled facility, only personal computer products that, at the time of submission of proposals and at the time of award, were EPEAT® silver-registered or gold-registered.
- (c) For information about EPEAT®, see www.epa.gov/epeat.

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>.