

**SAMPLE SUBCONTRACT NO. \*\*\*-\*-PROFORMA-\*\***

**UNDER**

**PRIME CONTRACT NO. DE-AC36-99GO10337**

**CONTRACTING PARTY:** MIDWEST RESEARCH INSTITUTE  
NATIONAL RENEWABLE ENERGY LABORATORY  
DIVISION

**SUBCONTRACTOR:** \*

**ADDRESS:** \*

**SUBCONTRACT TITLE:** "CONSTRUCTION PROJECT MANAGEMENT SERVICES AND  
SUPPORT"

**TYPE OF SUBCONTRACT:** LABOR HOUR WITH OPTIONS

**PERIOD OF PERFORMANCE:** BASE: EXECUTION DATE THROUGH TWELVE MONTHS  
OPTION I: MONTH 13 THROUGH MONTH 24 (IF EXERCISED)  
OPTION II: MONTH 25 THROUGH MONTH 36 (IF EXERCISED)

**SUBCONTRACT AMOUNT:** BASE: \$\*\*\*.00  
OPTION I: \$\*\*\*.00  
OPTION II: \$\*\*\*.00  
TOTAL \$\*\*\*.00

**PAYMENT TERMS:** NET 30

**SUBCONTRACTOR'S  
REMITTANCE NAME  
AND ADDRESS:** \*

**FUNDED AMOUNT AND  
TASK CHARGE NUMBER:** \$\*

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**TO**  
**SUBCONTRACT SCHEDULE**

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**SAMPLE SUBCONTRACT NO. \*\*\*-\* -PROFORMA-\*\***

**BETWEEN**

**MIDWEST RESEARCH INSTITUTE**

**NATIONAL RENEWABLE ENERGY LABORATORY DIVISION**

**AND**

\*

**SCHEDULE**

**INTRODUCTION**

THIS SUBCONTRACT is effective upon execution by the Midwest Research Institute, National Renewable Energy Laboratory Division and is between the Midwest Research Institute, acting through its National Renewable Energy Laboratory Division (hereinafter called "NREL") and \* (hereinafter called "Subcontractor"), whose principal offices are located in \*.

Midwest Research Institute has entered into Contract No. DE-AC36-99GO10337 (hereinafter called "Prime Contract") with the Department of Energy (hereinafter called "DOE"), an agency of the U.S. Government (hereinafter called "Government"), for the operation and management of the National Renewable Energy Laboratory.

This subcontract is entered into in furtherance of the performance of the work provided for in the Prime Contract.

**AGREEMENT**

NOW, THEREFORE, the parties hereto agree to the following terms and conditions:

**Notice of Assignment**

The Alliance for Sustainable Energy, LLC, a limited liability company consisting of Midwest Research Institute and Battelle Memorial Institute, will assume management and operation of the National Renewable Energy Laboratory on October 1, 2008, under a succeeding Prime Contract No. DE-AC36-08GO28308 with the Department of Energy. Effective October 1, 2008 and without further written notice to Subcontractor, Midwest Research Institute will assign this Agreement to the Alliance for Sustainable Energy, LLC.

**ARTICLE 1 – THE WORK TO BE PERFORMED**

- A. The Subcontractor shall perform the work generally described as "Construction Project Management Services and Support", and specifically provided for in Appendix A, Statement of Work, attached hereto and made a part hereof, pursuant to the provisions of this subcontract.
- B. Specific deliverables, quantities, due dates, reporting requirements, and addresses are set forth in Appendix A hereto.

**ARTICLE 2 – THE PERIOD OF PERFORMANCE**

The period of performance under this subcontract shall be as follows:

Base:	Execution through twelve (12) months
Option I:	Month 13 through month 24 (if exercised)
Option II:	Month 25 through month 36 (if exercised)

Each of these periods may be extended by mutual written agreement of the parties. NREL will make a decision, based on its sole judgment, whether or not to continue and exercise each Option of this subcontract, prior to the completion date of each period. If all Options are exercised by NREL, the total period of performance for the Base Period and all Options will be thirty-six (36) months. If NREL should decide not to exercise an Option, the subcontract shall be considered complete upon submittal of the final deliverables for the preceding Base Period or Option.

**ARTICLE 3 – PAYMENTS AND CEILING AMOUNT**

A. The Subcontractor shall perform the work called for under this subcontract on a labor hour basis. The Subcontractor shall receive compensation as specified hereunder, for all services and work performed, up to a ceiling amount for the Base Period and Option I and Option II as follows:

Base Period:	\$***.00
Option I:	\$***.00
Option II:	<u>\$***.00</u>
Total:	\$***.00

The Subcontractor is authorized by NREL’s execution of this subcontract to perform the base period of this subcontract.

B. Labor – Hour Rate

- The amounts shall be computed by multiplying the appropriate fully burdened hourly rates set forth below by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Invoices, in an original and one (1) copy, may be submitted once each month (or at more frequent intervals, if approved by the Subcontract Administrator), to the address in Article 4 – Invoices. The Subcontractor shall substantiate invoices by evidence of actual payment and by individual daily job timecards, or other substantiation approved by the Subcontract Administrator. Promptly after receipt of each substantiated invoice, NREL shall, except as otherwise provided in this subcontract, and subject to the terms of Article 4 – Invoices, pay the invoice as approved by the Subcontract Administrator. The fixed hourly rate ranges for this subcontract are as follows:

<u>Labor Category</u>	<u>Fixed Hourly Rate Range</u>
<b>Base Period</b>	
PROJECT MANAGERS	
Level 1	\$*_____ /hr. - \$*_____ /hr.
Level 2	\$*_____ /hr. - \$*_____ /hr.
Level 3	\$*_____ /hr. - \$*_____ /hr.

<u>Labor Category</u>	<u>Fixed Hourly Rate Range</u>
PROJECT CONTROL ENGINEERS	
Level 1	\$* _____ /hr. - \$* _____ /hr.
Level 2	\$* _____ /hr. - \$* _____ /hr.
Level 3	\$* _____ /hr. - \$* _____ /hr.

**Option I**

PROJECT MANAGERS	
Level 1	\$* _____ /hr. - \$* _____ /hr.
Level 2	\$* _____ /hr. - \$* _____ /hr.
Level 3	\$* _____ /hr. - \$* _____ /hr.

PROJECT CONTROL ENGINEERS	
Level 1	\$* _____ /hr. - \$* _____ /hr.
Level 2	\$* _____ /hr. - \$* _____ /hr.
Level 3	\$* _____ /hr. - \$* _____ /hr.

**Option II**

PROJECT MANAGERS	
Level 1	\$* _____ /hr. - \$* _____ /hr.
Level 2	\$* _____ /hr. - \$* _____ /hr.
Level 3	\$* _____ /hr. - \$* _____ /hr.

PROJECT CONTROL ENGINEERS	
Level 1	\$* _____ /hr. - \$* _____ /hr.
Level 2	\$* _____ /hr. - \$* _____ /hr.
Level 3	\$* _____ /hr. - \$* _____ /hr.

2. After payment of 80 percent of the total ceiling amount, the Subcontract Administrator may withhold further payment of allowable time and expenses until a reserve is set aside in an amount that the Subcontract Administrator considers necessary to protect NREL's interest. This reserve shall not exceed one percent of the ceiling amount or \$10,000, whichever is less.
  
3. The fixed hourly rate ranges set forth in this Article shall not be varied by virtue of the Subcontractor having performed work on an overtime basis, unless such overtime was specifically authorized in advance in writing by the Subcontract Administrator. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Subcontract Administrator, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this subcontract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Subcontract Administrator.

C. Expenses

Expenses shall be unallowable and unallocable to this labor hour subcontract.

D. Cost

It is estimated that the total cost to NREL for the performance of this subcontract shall not exceed the ceiling amount set forth in this article and the Subcontractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this subcontract within such ceiling amount. If at any time the Subcontractor has reason to believe that the hourly rate payments that will accrue in performing this subcontract in the succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling amount in the schedule, the Subcontractor shall notify the Subcontract Administrator giving a revised estimate of the total ceiling amount to NREL for performing this subcontract with supporting reasons and documentation. If at any time during this subcontract, the Subcontractor has reason to believe that the total ceiling amount to NREL for performing this subcontract will be substantially greater or less than then the stated ceiling amount, the Subcontractor shall so notify the Subcontract Administrator, giving a revised estimate of the total ceiling amount for performing this subcontract, with supporting reasons and documentation. If at any time during performing this subcontract, NREL has reason to believe that the work to be required in performing this subcontract will be substantially greater or less than the stated ceiling amount, the Subcontract Administrator will so advise the Subcontractor, giving the then revised estimate of the total amount of effort to be required under the subcontract.

E. Ceiling Amount

NREL shall not be obligated to pay the Subcontractor any amount in excess of the ceiling amount set forth in this article, and the Subcontractor shall not be obligated to continue performance if to do so would exceed the ceiling amount set forth in this article, unless and until the Subcontract Administrator shall have notified the Subcontractor in writing that the ceiling amount has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling amount for performance under this subcontract. When and to the extent that the ceiling amount set forth in this article has been increased, any hours expended by the Subcontractor in excess of the ceiling amount before the increase shall be allowable to the same extent as if the hours expended had been incurred after the increase in the ceiling amount.

F. Audit

At any time before final payment under this subcontract the Subcontract Administrator may request audit of the invoices. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Subcontract Administrator not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the invoice designated by the Subcontractor as the "completion invoice" and substantiating documentation, and upon compliance by the Subcontractor with all terms of this subcontract (including, without limitation, terms relating to release of claims, terms relating to patent clearance, and the terms of Article 4 - Invoices), NREL shall promptly pay any balance due the Subcontractor. The completion invoice and substantiating documentation, shall be submitted by the Subcontractor as promptly as practicable following completion of the work under this subcontract, but in no event later than one (1) year (or such longer period as the Subcontract Administrator may approve in writing) from the date of completion.

## **ARTICLE 4 – INVOICES**

A. Invoices

1. Invoices for work accomplished under this subcontract shall be submitted in an original and one copy to:

National Renewable Energy Laboratory  
Attn: \*\*, M/S 1533  
1617 Cole Boulevard  
Golden, CO 80401-3393

- 2. To facilitate processing and payment each invoice must contain the following information 1) date of invoice; 2) subcontract number that appears on the cover sheet of this subcontract; 3) level of effort (number of hours) expended; 4) total amount of invoice; and 5) any other information or documentation required by other provisions of this subcontract. Payments under this subcontract shall be made in accordance with this article and the payment terms. Payments will be made to the Subcontractor’s remittance name and address shown on the cover sheet of this subcontract. The NREL Subcontract Administrator may determine that a condition precedent to final payment under this subcontract requires the receipt of a final executed Release of Claims from the subcontractor and the receipt of any required patent clearance from DOE.
- 3. The payment terms of this subcontract shall mean net days from the date of receipt of an acceptable invoice or the date of receipt and acceptance of all deliverables, reporting requirements or closeout documentation for the period covered by the invoice, whichever is later.
- 4. An authorized representative of the Subcontractor shall sign the following certification on each invoice submitted for payment:

“I certify that this invoice is correct and proper for payment, and reimbursement for this time and the expenses has not and will not be received under any other Government contract or subcontract or other source of Government funds.

\_\_\_\_\_  
Authorized Official                      Date”

- 5. The Subcontractor is hereby notified that NREL may withhold payment on invoices submitted, if the Subcontractor has failed to comply with or is delinquent in the submission of the reporting or deliverable requirements under this subcontract, until such time as the Subcontractor has complied or submitted such reporting or deliverable requirements.

**B. Release of Claims**

The Subcontractor shall execute and deliver at the completion of this subcontract, a release of claims discharging the Government and NREL, their officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this subcontract, subject only to the following exceptions:

- 1. Specified claims, in stated amounts or in estimated amounts, where the amounts are not susceptible to exact statement by the Subcontractor.
- 2. Claims, together with reasonable incidental expenses, based upon the liabilities of the Subcontractor to third parties arising out of performing this subcontract, that are not known to the Subcontractor on the date of the execution of the release, and of which the Subcontractor gives notice in writing to the Subcontract Administrator not more than 6 years after the date of the

release or the date of any notice to the Subcontractor that NREL is prepared to make final payment, whichever is earlier.

3. Claims for reimbursement of costs (other than expenses of the Subcontractor by reason of its indemnification of NREL against patent liability), including reasonable incidental expenses, incurred by the Subcontractor under the terms of this subcontract relating to patents.

#### **ARTICLE 5 – OBLIGATION OF FUNDS AND FINANCIAL LIMITATIONS**

- A. Pursuant to the clause entitled “Limitation of Funds” in Appendix B, the amount of \$\*\*\*\*\*.00 has been allotted and is available for payment of allocable and allowable costs under this subcontract.
- B. The amount of \$\*\*\*\*\*.00, presently obligated by NREL with respect by NREL to this subcontract, may be unilaterally increased by NREL by written notice to the Subcontractor, and may be decreased by written agreement of the parties by formal modification of this subcontract.
- C. The giving of any notice by either party under this article, the article entitled “The Period of Performance” in this Schedule, or the clauses entitled “Limitation of Funds” and “Limitation of Cost” in Appendix B, as applicable, shall not be construed to waive or impair any rights of NREL to terminate this subcontract under the provisions of the termination clause(s) contained in Appendix B.

#### **ARTICLE 6 – LIMITATION OF FUNDS AND LIMITATION OF COST – SPECIAL (JULY 1999)**

The Limitation of Funds clause contained in Appendix B shall be operable during such time that NREL incrementally allots additional funds to this subcontract as set forth in Article 3 - Payments and Ceiling Amount. (The Limitation of Cost clause shall be inoperable during such time.)

The Limitation of Cost clause contained in Appendix B shall become operable at such time that NREL allots to this subcontract an amount equal to the total estimated NREL cost set forth in Article 3 - Payments and Ceiling Amount. (The Limitation of Funds clause shall be inoperable at such time.)

#### **ARTICLE 7 – APPLICABLE DOCUMENTATION**

In addition to the terms and conditions contained in this Schedule, the following documents are attached hereto and made a part of this subcontract:

- A. Appendix A, entitled “Statement of Work”, dated 08/20/08;
- B. Appendix B-6, entitled “Standard Terms and Conditions, dated 10/01/03;
- C. Attachment 1, entitled “Addendum to Appendix B-6 Standard Terms and Conditions” dated 10/01/07;
- D. Appendix C-3, entitled “Intellectual Property Provisions”, dated 10/22/98;
- E. Appendix D-1, entitled “Clauses for Subcontracts in Excess of \$500,000”, dated 11/01/03;
- F. Appendix F, entitled “Small Business (Lower-Tier) Subcontracting Plan” [If Applicable]; and,



- G. Subcontractor's technical proposal number (\*) dated \* together with any revisions, is hereby incorporated by reference. In the event there is a conflict between the Subcontractor's technical proposal and any other provisions of this subcontract, the latter shall prevail.

#### **ARTICLE 8 – ORDER OF PRECEDENCE**

Any inconsistency in this subcontract shall be resolved by giving precedence in the following order:

- A. This Schedule;
- B. Statement of Work (Appendix A);
- C. Standard Terms and Conditions (Appendix B-6);
- D. Addendum to Standard Terms and Conditions (Attachment 1 to Appendix B-6);
- E. Intellectual Property Provisions (Appendix C-3);
- F. Clauses for Subcontracts in Excess of \$500,000 (Appendix D-1);
- G. Small Business (Lower-Tier) Subcontracting Plan (Appendix F) [If Applicable];
- H. Other provisions of this subcontract whether incorporated by reference or otherwise; and
- I. The subcontractor's technical proposal, if incorporated in this subcontract by reference or otherwise.

#### **ARTICLE 9 – RIGHTS TO PROPOSAL DATA**

Except for technical data contained on pages (\*) of the subcontractor's proposal dated \*\* which are asserted by the Subcontractor as being proprietary data, it is agreed that, as a condition of the award of this subcontract, and notwithstanding the provisions of any notice appearing on the proposal, the Government and NREL shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this subcontract is based.

#### **ARTICLE 10 – SUBCONTRACT ADMINISTRATION RESPONSIBILITIES**

- A. Signature Authority: This subcontract may only be modified by a formal modification signed by an authorized official of NREL.
- B. Subcontract Administration Responsibilities: The authorized official of NREL has designated \*\* as the Subcontract Administrator for this subcontract with the responsibilities for subcontract administration and negotiation of any modifications to this subcontract. The Subcontract Administrator's telephone number is 303-\*\*.
- C. Technical Monitoring Responsibilities: The authorized official of NREL has designated \*\* as the Technical Monitor for this subcontract with the responsibilities of monitoring the technical work or services to be performed under this subcontract. The Technical Monitor does not have the authority to make any commitments or authorize any changes which may affect the subcontract's price, scope of work, terms, or conditions. Any such changes shall be referred to the Subcontract Administrator designated in Paragraph B above. The Technical Monitor's telephone number is 303-\*\*.

**ARTICLE 11 – KEY PERSONNEL**

- A. It having been determined that the individuals, whose names appear below, are necessary for the successful performance of this subcontract, the Subcontractor agrees to assign or have assigned such individuals to the performance of the work under this subcontract and shall not reassign or remove any of them without the consent of the Subcontract Administrator by modification to this subcontract:

<u>Name</u>	<u>Project Title</u>	<u>Telephone No.</u>
*	*	*

- B. Whenever, for any reason, one or more of the designated key personnel designated above, is unavailable for assignment for work under this subcontract, the Subcontractor shall, with the approval of the Subcontract Administrator, replace such individual with an individual of substantially equal abilities and qualifications.

**ARTICLE 12 – PUBLICITY RELEASE AND PUBLIC AFFAIRS**

- A. Publicity release of any nature in connection with this subcontract shall be coordinated as provided in the “Public Affairs” clause of Appendix B. The Subcontractor shall not make without prior review and approval of the NREL Subcontract Administrator, any publicity release of any nature of general, non-technical information in connection with this subcontract. For purposes of this subcontract, general, non-technical information means any information concerning the existence of the subcontract, the identity of the parties, and the scope and general character of the research or technical activity. As used in this Article, “publicity release” does not include a lawful inspection of the Subcontractor’s records conducted pursuant to Federal or State public records access statutes. The Subcontractor may report specifics regarding the formation and execution of this subcontract in its internal publications without prior review and approval of the NREL Subcontract Administrator.
- B. Data rights are set forth in Appendix C hereof.

**ARTICLE 13 – WORKER SAFETY AND HEALTH REQUIREMENTS (SPECIAL) (AUG 2008)**

- A. **THE SUBCONTRACTOR SHALL BE RESPONSIBLE TO ENSURE THAT ALL WORK PERFORMED UNDER THIS SUBCONTRACT OR PURCHASE ORDER (INCLUSIVE OF LOWER-TIER SUBCONTRACTORS) IS PERFORMED IN ACCORDANCE WITH THE DEPARTMENT OF ENERGY’S “WORKER SAFETY AND HEALTH” RULE CODIFIED AT 10 CFR 851. THE SUBCONTRACTOR SHALL ENSURE THAT ALL WORK IS PERFORMED IN ACCORDANCE WITH NREL’S DOE-APPROVED SAFETY MANAGEMENT SYSTEM. THE SUBCONTRACTOR IS SUBJECT TO ALL APPLICABLE PROCEDURES FOR INVESTIGATING VIOLATIONS, ENFORCING COMPLIANCE WITH REQUIREMENTS, AND ASSESSING CIVIL PENALTIES OR FEE REDUCTIONS FOR VIOLATIONS UNDER THE 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 OR PURCHASE ORDER, THE SUBCONTRACTOR SHALL ALSO COMPLY WITH THE CLAUSE “INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION” (DEAR 970.5223-1). SUCH CLAUSE (DEAR 970.5223-1) IS INCLUDED IN NREL SUBCONTRACT APPENDIX B TERMS AND CONDITIONS AND INCORPORATED BY REFERENCE IN NREL PURCHASE ORDERS.**

- B. The Subcontractor shall have a structured approach to worker safety and health requirements that at a minimum include provisions for any of the following functional areas applicable to the work to be performed: (a) construction safety; (b) fire protection; (c) firearms safety; (d) explosives safety; (e) pressure safety; (f) electrical safety; (g) industrial hygiene; (h) occupational medicine; (i) biological safety; and (j) 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: (a) management responsibilities; (b) worker rights and responsibilities; (c) hazard identification and assessment; (d) hazard prevention and abatement; (e) training and information; and (f) 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 or purchase order. 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 ESH&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 or purchase order termination in accordance with the termination or default clauses of the subcontract or purchase order 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.

**ARTICLE 14 – SUBCONTRACTOR EMPLOYEE’S REFERENCE CHECKS, CRIMINAL BACKGROUND CHECKS, DRUG TESTING, AND NONDISCLOSURE AGREEMENT (AUG 2008-SUPPORT SERVICES)**

- A. Upon identification of an individual to perform work under this Subcontract, the Subcontractor shall perform a reference and background investigative report(s) on such individual prior to any performance. At a minimum, the reference and background check shall include each of the following:
1. Criminal background check for the past seven years in Colorado state criminal system.
  2. Criminal background check for the past seven years in other state criminal systems, as needed.
  3. Criminal background check for the past seven years in Federal criminal system.
  4. Drug Testing (Basic 10 Panel Screen).
  5. Department of Motor Vehicle Report (as applicable – See Article 5, Work Order Process).
  6. Professional Certification and License verification.
  7. Educational Credentials verification.
  8. Social Security Track.
  9. Employment Verification.
  10. Reference confirmation.
- B. The Subcontractor shall conduct a thorough review of the reference and background investigative report(s) and shall notify the NREL Subcontract Administrator of any findings that could adversely affect the Subcontractor’s personnel assignment.
- C. As deemed necessary, the NREL Subcontract Administrator may request to review an individual Subcontractor’s personnel reference and background investigative report(s). Prior to the release of the reference and background investigative report(s) to the NREL Subcontract Administrator, the Subcontractor shall obtain a signed release and consent from the individual Subcontractor’s personnel.
- D. The Subcontractor shall ensure that each Subcontractor’s personnel assigned to work under the Subcontract shall:
1. Satisfy all NREL access security requirements. (Please note that personnel who are not U.S. Citizens will require additional access requirements and processing time. Refer to Appendix B-6, Standard Terms and Conditions, Clause 3, Paragraph C.)
  2. Satisfactorily complete all required NREL Safety Orientation and Safety Training
  3. Complete and sign an NREL nondisclosure agreement.
- E. In the event that the Subcontractor fails to satisfy or complete the requirements set forth in this Article, NREL reserves the right to request the immediate removal of an individual Subcontractor’s personnel from assignment under the Subcontract by written notice to the Subcontractor (via facsimile, email, or letter mailed or otherwise delivered).

**ARTICLE 15 – SMALL BUSINESS (LOWER-TIER) SUBCONTRACTING PLAN [IF APPLICABLE]**

The Subcontractor's Small Business (Lower-tier) Subcontracting Plan dated \*\*/\*\*/\*\* is incorporated as Appendix F in this subcontract. The Subcontractor shall electronically submit the "Individual Subcontract Report" (ISR) semi-annually during subcontract performance for the periods ended March 31<sup>st</sup> and September 30<sup>th</sup>, based on the Government's fiscal year (October 1 through September 30). The ISR is due on or before the twenty-fifth (25<sup>th</sup>) day of the month following the close of the applicable period. The Subcontractor shall also electronically submit the "Summary Subcontract Report" (SSR) annually for the twelve months ended September 30<sup>th</sup>, at the close of each Government fiscal year. The ISR and SSR submissions shall be made electronically through the Electronic Subcontracting Reporting System (eSRS) at [www.esrs.gov](http://www.esrs.gov).

Additional instructions can be found at [http://www.nrel.gov/business\\_opportunities/related\\_docs.html](http://www.nrel.gov/business_opportunities/related_docs.html), under the document entitled "Instructions for Submitting Small Business Subcontracting Reports Through the Electronic Subcontracting Reporting System (eSRS)".

**ARTICLE 16 – ALTERATIONS TO TERMS AND CONDITIONS**

Appendix B-6 and Addendum to Appendix B-6 are hereby modified by adding the following clause thereto:

**"CLAUSE 65 - ORGANIZATIONAL CONFLICTS OF INTEREST (SPECIAL) (MAY 2004)**

(Derived from DEAR 952.209-72 - JUNE 1997)

**A. Purpose**

The purpose of this clause is to ensure that the Subcontractor: (1) is not biased because of its financial, contractual, organizational, or other interests that relate to the work under this subcontract and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this subcontract.

**B. Scope**

The restrictions described herein shall apply to performance or participation by the Subcontractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Subcontractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

**1. Use of Subcontractor's Work Product**

- (i) The Subcontractor shall be ineligible to participate in any capacity in NREL or DOE contracts, subcontracts, or proposals therefor (solicited and unsolicited) that stem directly from the Subcontractor's work product under this subcontract for a period of five years after the completion of this subcontract. Furthermore, unless so directed in writing by the NREL Subcontract Administrator, the Subcontractor shall not perform any advisory and assistance services work under this subcontract on any of the Subcontractor's products or services or the products or services of another firm, if the Subcontractor is or has been substantially involved in the development or marketing of the firm's products or services. Nothing in this subparagraph shall preclude the

Subcontractor from competing for follow-on subcontracts for advisory and assistance services.

- (ii) If, under this subcontract, the Subcontractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Subcontractor shall be ineligible to perform or participate in any capacity in any contractual effort that is based on such statement of work or specifications. The Subcontractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the NREL Subcontract Administrator, in which case the restriction in this subparagraph shall not apply.
- (iii) Nothing in this paragraph shall preclude the Subcontractor from offering or selling its standard and commercial items to NREL or the Government.

## 2. Access to and use of information

- (i) If the Subcontractor, in the performance of this subcontract, obtains access to information, such as NREL or DOE plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data that has not been released or otherwise made available to the public, the Subcontractor agrees that without prior written approval of the NREL Subcontract Administrator it shall not:
  - a. Use such information for any private purpose unless the information has been released or otherwise made available to the public;
  - b. Compete for work for NREL or the Government based on such information for a period of six (6) months after either the completion of this subcontract or until such information is released or otherwise made available to the public, whichever is first;
  - c. Submit an unsolicited proposal to NREL or the Government that is based on such information until one year after such information is released or otherwise made available to the public; and
  - d. Release such information unless such information has previously been released or otherwise made available to the public by NREL or the Government.
- (ii) In addition, the Subcontractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this subcontract, it shall treat such information in accordance with any restrictions imposed on such information.
- (iii) The Subcontractor may use technical data it first produces under this subcontract for its private purposes consistent with subparagraphs (B) (2) (i) (a) and (d) of this clause and the patent, rights in data, and security provisions of this subcontract.

## C. Disclosure after award

- 1. The Subcontractor agrees that if changes, including additions, to the facts disclosed by it prior to award of this subcontract occur during the performance of this subcontract, it shall make an immediate and full disclosure of such changes in writing to the NREL Subcontract Administrator. Such disclosure may include a description of any action that the Subcontractor

has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. NREL may, however, terminate the subcontract for convenience if it deems such termination to be in the best interest of NREL and the Government.

- 2. In the event that the Subcontractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the NREL Subcontract Administrator, NREL may terminate this subcontract for default.

D. Remedies

For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this subcontract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, NREL may terminate the subcontract for default, disqualify the Subcontractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this subcontract.

E. Modification

Request for a modification of the requirements under this clause shall be directed in writing to the NREL Subcontract Administrator and shall include a full description of the requested modification and the reasons in support thereof. If it is determined to be in the best interests of NREL and the Government, the NREL Subcontract Administrator will notify the Subcontractor in writing that such modification is accepted.”

**ARTICLE 17 – INTEGRATION**

This subcontract contains the entire understanding between the parties, and there are no understandings or representations except those set forth or incorporated by reference herein. No subsequent modifications of this subcontract shall be of any force or effect unless in writing signed by a duly authorized official of NREL.

IN WITNESS WHEREOF, the parties hereto have executed this subcontract as of the date fully signed below.

ACCEPTED: \*

AUTHORIZED: MIDWEST RESEARCH INSTITUTE  
NATIONAL RENEWABLE ENERGY LABORATORY DIVISION

BY: \_\_\_\_\_ SAMPLE – DO NOT SIGN \_\_\_\_\_ BY: \_\_\_\_\_

NAME: \_\_\_\_\_ NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_ DATE: \_\_\_\_\_