

Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

6. "Subject Invention" means any invention of the Subcontractor conceived or first actually reduced to practice in the performance of work under this subcontract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of subcontract performance.
7. "Agency licensing regulations" and "agency regulations concerning the licensing of Government-owned inventions" mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

B. Allocation of principal rights.

The Subcontractor may retain the entire right, title, and interest throughout the world to each Subject Invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any Subject Invention in which the Subcontractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the Subject Invention throughout the world.

C. Invention disclosure, election of title, and filing of patent application by Subcontractor.

1. The Subcontractor will disclose each Subject Invention to the Department of Energy (DOE) within 2 months after the inventor discloses it in writing to Subcontractor personnel responsible for patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the subcontract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the DOE, the Subcontractor will promptly notify that agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Subcontractor.
2. The Subcontractor will elect in writing whether or not to retain title to any such invention by notifying DOE within 2 years of disclosure to DOE. However, in any

case where publication, on sale, or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by DOE to a date that is no more than 60 days prior to the end of the statutory period.

3. The Subcontractor will file its initial patent application on a Subject Invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Subcontractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
4. Requests for extension of the time for disclosure, election, and filing under subparagraphs (C)(1), (2), and (3) of this clause may, at the discretion of the agency, be granted.

D. Conditions when the Government may obtain title.

The Subcontractor will convey to the Federal agency, upon written request, title to any Subject Invention--

1. If the Subcontractor fails to disclose or elect title to the Subject Invention within the times specified in paragraph (C) of this clause, or elects not to retain title; provided, that DOE may only request title within 60 days after learning of the failure of the Subcontractor to disclose or elect within the specified times.
2. In those countries in which the Subcontractor fails to file patent applications within the times specified in paragraph (C) of this clause; provided, however, that if the Subcontractor has filed a patent application in a country after the times specified in paragraph (C) of this clause, but prior to its receipt of the written request of the Federal agency, the Subcontractor shall continue to retain title in that country.
3. In any country in which the Subcontractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a Subject Invention.

E. Minimum rights to Subcontractor and protection of the Subcontractor right to file.

1. The Subcontractor will retain a nonexclusive royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the Subcontractor fails to disclose the invention within the times specified in paragraph (C) of this clause. The Subcontractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Subcontractor is a party and includes the right to grant sublicenses of the same scope to the extent the Subcontractor was legally obligated to do so at the time the subcontract was awarded. The license is transferable only with the approval of the Federal agency, except when transferred to the successor of that part of the Subcontractor's business to which the invention pertains.
2. The Subcontractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of Subject Invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Subcontractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Subcontractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
3. Before revocation or modification of the license, DOE will furnish the Subcontractor a written notice of its intention to revoke or modify the license, and the Subcontractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Subcontractor) after the notice to show cause why the license should not be revoked or modified. The Subcontractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and agency regulations concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

F. Subcontractor action to protect the Government's interest.

1. The Subcontractor agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to--
 - (i) Establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the Subcontractor elects to retain title, and

- (ii) Convey title to DOE when requested under paragraph (D) of this clause and to enable the Government to obtain patent protection throughout the world in that Subject Invention.
2. The Subcontractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Subcontractor each Subject Invention made under subcontract in order that the Subcontractor can comply with the disclosure provisions of paragraph (C) of this clause, and to execute all papers necessary to file patent applications on Subject Inventions and to establish the Government's rights in the Subject Inventions. This disclosure format should require, as a minimum, the information required by subparagraph (C)(1) of this clause. The Subcontractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
3. The Subcontractor will notify DOE of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.
4. The Subcontractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement, "This invention was made with Government support under (identify the subcontract) awarded by the United States Department of Energy. The Government has certain rights in the invention."

G. Lower-tier Subcontracts.

1. The Subcontractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The lower-tier subcontractor will retain all rights provided for the Subcontractor in this clause, and the Subcontractor will not, as part of the consideration for awarding the lower-tier subcontract, obtain rights in the lower-tier subcontractor's Subject Inventions.
2. The Subcontractor shall include in all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause at 952.227-13.

3. In the case of subcontracts, at any tier, DOE, lower-tier subcontractor, and the Subcontractor agree that the mutual obligations of the parties created by this clause constitute a subcontract between the lower-tier subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (J) of this clause.

H. Reporting on utilization of Subject Inventions.

The Subcontractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Subcontractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received, by the Subcontractor, and such other data and information as DOE may reasonably specify. The Subcontractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by that agency in accordance with paragraph (J) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Subcontractor.

I. Preference for United States industry.

Notwithstanding any other provision of this clause, the Subcontractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any product embodying the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Subcontractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

J. March-in rights.

The Subcontractor agrees that, with respect to any Subject Invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Subcontractor, an assignee or exclusive licensee of a Subject Invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Subcontractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that--

1. Such action is necessary because the Subcontractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the Subject Invention in such field of use;
2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Subcontractor, assignee, or their licensees;
3. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Subcontractor, assignee, or licensees; or
4. Such action is necessary because the agreement required by paragraph (I) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such agreement.

K. Special provisions for subcontracts with nonprofit organizations.

If the Subcontractor is a nonprofit organization, it agrees that--

1. Rights to a Subject Invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Subcontractor;
2. The Subcontractor will share royalties collected on a Subject Invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the Subject Invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
3. The balance of any royalties or income earned by the Subcontractor with respect to Subject Inventions, after payment of expenses (including payments to inventors) incidental to the administration of Subject Inventions will be utilized for the support of scientific research or education; and
4. It will make efforts that are reasonable under the circumstances to attract licensees of Subject Inventions that are small business firms, and that it will give a preference to a small business firm when licensing a Subject Invention if the Subcontractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Subcontractor is also satisfied that

the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Subcontractor. However, the Subcontractor agrees that the Secretary of Commerce may review the Subcontractor's licensing program and decisions regarding small business applicants, and the Subcontractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Subcontractor could take reasonable steps to more effectively implement the requirements of this subparagraph (K)(4).

L. Communications.

1. The Subcontractor shall direct any notification, disclosure, or request to DOE provided for in this clause to the DOE Patent Counsel assisting the DOE subcontracting activity, with a copy of the communication to the DOE Contracting Officer through NREL.
2. Each exercise of discretion or decision provided for in this clause, except subparagraph (K)(4), is reserved for the DOE Patent Counsel and is not a claim or dispute and is not subject to the Contract Disputes Act of 1978.
3. Upon request of the DOE Patent Counsel or the DOE, the Subcontractor shall provide any or all of the following:
 - (i) A copy of the patent application, filing date, serial number and title, patent number, and issue date for any Subject Invention in any country in which the Subcontractor has applied for a patent;
 - (ii) A report, not more often than annually, summarizing all Subject Inventions which were disclosed to DOE individually during the reporting period specified; or
 - (iii) A report, prior to closeout of the subcontract, listing all Subject Inventions or stating that there were none.

ATTACHMENT 1
(For Reference)

PATENT RIGHTS-ACQUISITION BY THE GOVERNMENT (FEB 1995)
Derived from DEAR 952.227-13

The clause applies unless the awardee is a domestic small business or domestic nonprofit organization at the time of award, and the award is for the conduct of research, development or demonstration

As prescribed at 927.303(c), insert the following clause:

A. Definitions.

1. "Invention," as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).
2. "Practical application," as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
3. "Subject Invention," as used in this clause, means any invention of the Subcontractor conceived or first actually reduced to practice in the course of or under this subcontract.
4. "Patent Counsel," as used in this clause, means the Department of Energy Patent Counsel assisting the procuring activity.
5. "DOE patent waiver regulations," as used in this clause, means the Department of Energy patent waiver regulations at 41 CFR 9-9.109-6 or successor regulations. See 10 CFR part 784.
6. "Agency licensing regulations" and "applicable agency licensing regulations," as used in this clause, mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

B. Allocations of principal rights.

1. Assignment to the Government.

The Subcontractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each Subject Invention, except to the extent that rights are retained by the Subcontractor under subparagraph (B)(2) and paragraph (D) of this clause.

2. Greater rights determinations.

- (i) The Subcontractor, or an employee-inventor after consultation with the Subcontractor, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (D) of this clause on identified inventions in accordance with the DOE patent waiver regulations. A request for a determination of whether the Subcontractor or the employee-inventor is entitled to acquire such greater rights must be submitted to the Patent Counsel with a copy to the DOE through NREL at the time of the first disclosure of the invention pursuant to subparagraph (E)(2) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the DOE for good cause shown in writing by the Subcontractor. Each determination of greater rights under this subcontract shall be subject to paragraph (C) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.
- (ii) Within two (2) months after the filing of a patent application, the Subcontractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and, promptly upon issuance of a patent, provide the patent number and issue date for any Subject Invention in any country for which the Subcontractor has been granted title or the right to file and prosecute on behalf of the United States by the Department of Energy.
- (iii) Not less than thirty (30) days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.
- (iv) Upon request, the Subcontractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

C. Minimum rights acquired by the Government.

1. With respect to each Subject Invention to which the Department of Energy grants the Subcontractor principal or exclusive rights, the Subcontractor agrees as follows:
 - (i) The Subcontractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each Subject Invention throughout the world by or on behalf of the Government of the United States (including any Government agency).
 - (ii) The Subcontractor agrees that with respect to any Subject Invention in which DOE has granted it title, DOE has the right in accordance with the procedures in the DOE patent waiver regulations (10 CFR part 784) to require the Subcontractor, an assignee, or exclusive licensee of a Subject Invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if it determines that--
 - a. Such action is necessary because the Subcontractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the Subject Invention in such field of use;
 - b. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Subcontractor, assignee, or their licensees;
 - c. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Subcontractor, assignee, or licensees; or
 - d. Such action is necessary because the agreement required by paragraph (I) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such agreement.
 - (iii) The Subcontractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Subcontractor or its

licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Subcontractor, and such other data and information as DOE may reasonably specify. The Subcontractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subparagraph (C)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the Subcontractor, its licensee, or assignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government or NREL.

- (iv) The Subcontractor agrees, when licensing a Subject Invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a Subject Invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.
- (v) The Subcontractor agrees to provide for the Government's paid-up license pursuant to subparagraph (C)(1)(i) of this clause in any instrument transferring rights in a Subject Invention and to provide for the granting of licenses as required by subparagraph (C)(1)(ii) of this clause, and for the reporting of utilization information as required by subparagraph (C)(1)(iii) of this clause, whenever the instrument transfers principal or exclusive rights in a Subject Invention.

- 2. Nothing contained in this paragraph (C) shall be deemed to grant to the Government any rights with respect to any invention other than a Subject Invention.

D. Minimum rights to the Subcontractor.

- 1. The Subcontractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government obtains title, unless the Subcontractor fails to disclose the Subject Invention within the times specified in subparagraph (E)(2) of this clause. The Subcontractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Subcontractor is a part and includes the right to grant sublicenses of the same scope to the extent the Subcontractor was legally obligated to do so at the time the

subcontract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Subcontractor's business to which the invention pertains.

2. The Subcontractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Subcontractor has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Subcontractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
3. Before revocation or modification of the license, DOE will furnish the Subcontractor a written notice of its intention to revoke or modify the license, and the Subcontractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Subcontractor) after the notice to show cause why the license should not be revoked or modified. The Subcontractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR Part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.
4. The Subcontractor may request the right to acquire patent rights to a Subject Invention in any foreign country where the Government has elected not to secure such rights, subject to the conditions in subparagraphs (D)(4)(i) through (D)(4)(vii) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (E)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.
 - (i) The recipient of such rights, when specifically requested by DOE, and three years after issuance of a foreign patent disclosing the Subject Invention, shall furnish DOE a report stating:
 - a. The commercial use that is being made, or is intended to be made, of said invention, and
 - b. The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.

- (ii) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary of Energy or designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.
- (iii) If noted elsewhere in this subcontract as a condition of the grant of an advance waiver of the Government's title to inventions under this subcontract, or, if no advance waiver was granted but a waiver of the Government's title to an identified invention is granted pursuant to subparagraph (B)(2) of this clause upon a determination by the Secretary of Energy that it is in the Government's best interest, this license shall include the right of the Government to sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.
- (iv) Subject to the rights granted in subparagraphs (D)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right to terminate the foreign patent rights granted in this subparagraph (D)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.
- (v) Subject to the rights granted in subparagraphs (D)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right, commencing four years after foreign patent rights are accorded under this subparagraph (D)(4), to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, and in appropriate circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing:
 - a. If the Secretary of Energy or designee determines, upon review of such material as he deems relevant, and after the recipient of such rights or other interested person has had the opportunity to provide such relevant and material information as the Secretary or designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or

- b. Unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.
- (vi) If the Subcontractor is to file a foreign patent application on a Subject Invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures for such period of time as specified by Patent Counsel, but in no event shall the Government or its employees be liable for any publication thereof.
- (vii) Subject to the license specified in subparagraphs (D)(1), (2), and (3) of this clause, the Subcontractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the Subcontractor or inventor fails to have a patent application filed in a timely manner or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the Subcontractor or inventor shall, not less than 60 days before the expiration period for any action required by any patent office, notify the Patent Counsel of such failure or decision, and deliver to the Patent Counsel, the executed instruments necessary for the conveyance specified in this paragraph.

E. Invention identification, disclosures, and reports.

1. The Subcontractor shall establish and maintain active and effective procedures to assure that Subject Inventions are promptly identified and disclosed to Subcontractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this subcontract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of Subject Inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Subcontractor shall furnish the DOE a description of such procedures for evaluation and for determination as to their effectiveness.
2. The Subcontractor shall disclose each Subject Invention to the DOE Patent Counsel with a copy to the DOE Contracting Officer within 2 months after the inventor discloses it in writing to Subcontractor personnel responsible for patent matters or, if earlier, within 6 months after the Subcontractor becomes aware that a Subject Invention has been made, but in any event before any on sale, public

use, or publication of such invention known to the Subcontractor. The disclosure to DOE shall be in the form of a written report and shall identify the subcontract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Subcontractor shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Subcontractor. The report should also include any request for a greater rights determination in accordance with subparagraph (B)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Subcontractor contends in writing at the time the invention is disclosed that it was not so made.

3. The Subcontractor shall furnish the DOE through NREL the following:
 - (i) Interim reports every 12 months (or such longer period as may be specified by the DOE) from the date of the subcontract, listing Subject Inventions during that period, and certifying that all Subject Inventions have been disclosed (or that there are not such inventions) and that the procedures required by subparagraph (E)(1) of this clause have been followed.
 - (ii) A final report, within 3 months after completion of the subcontracted work listing all Subject Inventions or certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such lower-tier subcontracts.
4. The Subcontractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Subcontractor each Subject Invention made under subcontract in order that the Subcontractor can comply with the disclosure provisions of paragraph (C) of this clause, and to execute all papers necessary to file patent applications on Subject Inventions and to establish the Government's rights in the Subject Inventions. This disclosure format should require, as a minimum, the information required by subparagraph (E)(2) of this clause.

5. The Subcontractor agrees, subject to FAR 27.302(j), that the Government and NREL may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

F. Examination of records relating to inventions.

1. The DOE or any authorized representative shall, until 3 years after final payment under this subcontract, have the right to examine any books (including laboratory notebooks), records, and documents of the Subcontractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this subcontract to determine whether--
 - (i) Any such inventions are Subject Inventions;
 - (ii) The Subcontractor has established and maintains the procedures required by subparagraphs (E)(1) and (4) of this clause;
 - (iii) The Subcontractor and its inventors have complied with the procedures.
2. If the DOE learns of an unreported Subcontractor invention which the DOE believes may be a Subject Invention, the Subcontractor may be required to disclose the invention to DOE for a determination of ownership rights.
3. Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

G. Withholding of payment

(NOTE: This paragraph does not apply to lower-tier subcontracts.)

1. Any time before final payment under this subcontract, the DOE through NREL may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this subcontract, whichever is less, shall have been set aside if, in the DOE's opinion, the Subcontractor fails to--
 - (i) Convey to the Government, using a DOE-approved form, the title and/or rights of the Government in each Subject Invention as required by this clause.
 - (ii) Establish, maintain, and follow effective procedures for identifying and disclosing Subject Inventions pursuant to subparagraph (E)(1) of this clause;

- (iii) Disclose any Subject Invention pursuant to subparagraph (E)(2) of this clause;
 - (iv) Deliver acceptable interim reports pursuant to subparagraph (E)(3)(i) of this clause; or
 - (v) Provide the information regarding lower-tier subcontracts pursuant to subparagraph (H)(4) of this clause.
2. Such reserve or balance shall be withheld until the DOE has determined that the Subcontractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.
 3. Final payment under this subcontract shall not be made before the Subcontractor delivers to the DOE all disclosures of Subject Inventions required by subparagraph (E)(2) of this clause, and acceptable final report pursuant to subparagraph (E)(3)(ii) of this clause, and the Patent Counsel has issued a patent clearance certification to the DOE Contracting Officer.
 4. The DOE through NREL may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the subcontract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

H. Lower-tier Subcontracts.

1. The Subcontractor shall include the clause at 48 CFR 952.227-11 (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the lower-tier subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the Subcontractor shall include this clause (suitably modified to identify the parties). The Subcontractor shall not, as part of the consideration for awarding the lower-tier subcontract, obtain rights in the lower-tier subcontractor's Subject Inventions.
2. In the event of a refusal by a prospective lower-tier subcontractor to accept such a clause the Subcontractor--

- (i) Shall promptly submit a written notice to the DOE through NREL setting forth the lower-tier subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and
 - (ii) Shall not proceed with such lower-tier subcontract without the written authorization of the DOE.
3. In the case of subcontracts at any tier, DOE, the lower-tier subcontractor, and Subcontractor agree that the mutual obligations of the parties created by this clause constitute a subcontract between the lower-tier subcontractor and DOE with respect to those matters covered by this clause.
4. The Subcontractor shall promptly notify the DOE through NREL in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the lower-tier subcontractor, the applicable patent rights clause, the work to be performed under the lower-tier subcontract, and the dates of award and estimated completion. Upon request of the DOE, the Subcontractor shall furnish a copy of such lower-tier subcontract, and, no more frequently than annually, a listing of the lower-tier subcontracts that have been awarded.
5. The Subcontractor shall identify all Subject Inventions of the lower-tier subcontractor of which it acquires knowledge in the performance of this subcontract and shall notify the Patent Counsel, with a copy to the DOE through NREL, promptly upon identification of the inventions.

I. Preference for United States industry.

Unless provided otherwise, no Subcontractor that receives title to any Subject Invention and no assignee of any such Subcontractor shall grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any products embodying the Subject Invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Subcontractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

J. Atomic energy.

1. No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this subcontract.

2. Except as otherwise authorized in writing by the DOE, the Subcontractor will obtain patent agreements to effectuate the provisions of subparagraph (E)(1) of this clause from all persons who perform any part of the work under this subcontract, except nontechnical personnel, such as clerical employees and manual laborers.

K. Background Patents.

1. "Background Patent" means a domestic patent covering an invention or discovery which is not a Subject Invention and which is owned or controlled by the Subcontractor at any time through the completion of this subcontract:
 - (i) Which the Subcontractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and
 - (ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a

subject of the research, development, or demonstration work performed under this subcontract.
2. The Subcontractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any Background Patent for purposes of practicing a subject of this subcontract by or for the Government in research, development, and demonstration work only.
3. The Subcontractor also agrees that upon written application by DOE, it will grant to responsible parties, for purposes of practicing a subject of this subcontract, nonexclusive licenses under any Background Patent on terms that are reasonable under the circumstances. If, however, the Subcontractor believes that exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Subcontractor.
4. Notwithstanding subparagraph (K)(3) of this clause, the Subcontractor shall not be obligated to license any Background Patent if the Subcontractor demonstrates to the satisfaction of the Secretary of Energy or designee that:
 - (i) A competitive alternative to the subject matter covered by said Background Patent is commercially available or readily introducible from one or more other sources; or

- (ii) The Subcontractor or its licensees are supplying the subject matter covered by said Background Patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

L. Publication.

It is recognized that during the course of the work under this subcontract, the Subcontractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this subcontract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Subcontractor, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

M. Forfeiture of rights in unreported Subject Inventions.

1. The Subcontractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any Subject Invention which the Subcontractor fails to report to Patent Counsel within six months after the time the Subcontractor:
 - (i) Files or causes to be filed a United States or foreign patent application thereon; or
 - (ii) Submits the final report required by subparagraph (E)(2)(ii) of this clause, whichever is later.
2. However, the Subcontractor shall not forfeit rights in a Subject Invention if, within the time specified in subparagraph (M)(1) of this clause, the Subcontractor:
 - (i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the subcontract and delivers the decision to Patent Counsel, with a copy to the DOE through NREL; or
 - (ii) Contending that the invention is not a Subject Invention, the Subcontractor nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the DOE through NREL; or

(iii) Establishes that the failure to disclose did not result from the Subcontractor's fault or negligence.

3. Pending written assignment of the patent application and patents on a Subject Invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this subcontract), the Subcontractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (M) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to Subject Inventions.

APPENDIX D-1

**CLAUSES FOR SUBCONTRACTS
IN EXCESS OF \$500,000**

APPENDIX D-1

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CLAUSES

CLAUSE 1 - PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997) - *Derived from FAR 52.215-10*

- A. If any price, including profit or fee, negotiated in connection with this subcontract, or any cost reimbursable under this subcontract, was increased by any significant amount because--
1. The Subcontractor or a lower-tier subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data,
 2. A lower-tier subcontractor or prospective lower-tier subcontractor furnished the Subcontractor cost or pricing data that were not complete, accurate, and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data, or
 3. Any of these parties furnished data of any description that were not accurate,
- the price or cost shall be reduced accordingly and the subcontract shall be modified to reflect the reduction.
- B. Any reduction in the subcontract price under paragraph (A) of this clause due to defective data from a prospective lower-tier subcontractor that was not subsequently awarded the lower-tier subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which--
1. The actual lower-tier subcontract or
 2. The actual cost to the Subcontractor, if there was no lower-tier subcontract,
- was less than the prospective lower-tier subcontract cost estimate submitted by the Subcontractor; provided, that the actual lower-tier subcontract price was not itself affected by defective cost or pricing data.
- C. 1. If the NREL Subcontract Administrator determines under paragraph (A) of this clause that a price or cost reduction should be made, the Subcontractor agrees not to raise the following matters as a defense:
- (i) The Subcontractor or lower-tier subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the subcontract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) The NREL Subcontract Administrator should have known that the cost or pricing data in issue were defective even though the Subcontractor or lower-tier subcontractor took

no affirmative action to bring the character of the data to the attention of the NREL Subcontract Administrator.

- (iii) The subcontract was based on an agreement about the total cost of the subcontract and there was no agreement about the cost of each item procured under the subcontract.
 - (iv) The Subcontractor or lower-tier subcontractor did not submit a Certificate of Current Cost or Pricing Data.
2. (i) Except as prohibited by subdivision (C)(2)(ii) of this clause, an offset in an amount determined appropriate by the NREL Subcontract Administrator based upon the facts shall be allowed against the amount of a subcontract price reduction if --
- a. The Subcontractor certifies to the NREL Subcontract Administrator that, to the best of the Subcontractor's knowledge and belief, the Subcontractor is entitled to the offset in the amount requested; and
 - b. The Subcontractor proves that the cost or pricing data were available before the "as of" date specified on the Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if --
- a. The understated data were known by the Subcontractor to be understated before the "as of" date specified on the Certificate of Current Cost or Pricing Data; and
 - b. NREL proves that the facts demonstrate that the subcontract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on the Certificate of Current Cost or Pricing Data.
- D. If any reduction in the subcontract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Subcontractor shall be liable to and shall pay to NREL at the time such overpayment is repaid --
- 1. Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Subcontractor to the date NREL is repaid by the Subcontractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621 (a)(2), and
 - 2. A penalty equal to the amount of the overpayment, if the Subcontractor or lower-tier subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

CLAUSE 2 - PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA -- MODIFICATIONS (OCT 1997)

Derived from FAR 52-215-11

- A. This clause shall become operative only for any modification to this subcontract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.
- B. If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this subcontract, was increased by any significant amount because
1. The Subcontractor or a lower-tier subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data,
 2. A lower-tier subcontractor or prospective lower-tier subcontractor furnished the Subcontractor cost or pricing data that were not complete, accurate, and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data, or
 3. Any of these parties furnished data of any description that were not accurate,
- the price or cost shall be reduced accordingly and the subcontract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (A) of this clause.
- C. Any reduction in the subcontract price under paragraph (B) of this clause due to defective data from a prospective lower-tier subcontractor that was not subsequently awarded the lower-tier subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which--
1. The actual lower-tier subcontract, or
 2. The actual cost to the Subcontractor, if there was no lower-tier subcontract,
- was less than the prospective lower-tier subcontract cost estimate submitted by the Subcontractor; provided that the actual lower-tier subcontract price was not itself affected by defective cost or pricing data.
- D. 1. If the NREL Subcontract Administrator determines under paragraph (B) of this clause that a price or cost reduction should be made, the Subcontractor agrees not to raise the following matters as a defense:
- (i) The Subcontractor or lower-tier subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the subcontract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

- (ii) The NREL Subcontract Administrator should have known that the cost or pricing data in issue were defective even though the Subcontractor or lower-tier subcontractor took no affirmative action to bring the character of the data to the attention of the NREL Subcontract Administrator.
 - (iii) The subcontract was based on an agreement about the total cost of the subcontract and there was no agreement about the cost of each item procured under the subcontract.
 - (iv) The Subcontractor or lower-tier subcontractor did not submit a Certificate of Current Cost or Pricing Data.
2. (i) Except as prohibited by subdivision (D)(2)(ii) of this clause, an offset in an amount determined appropriate by the NREL Subcontract Administrator based upon the facts shall be allowed against the amount of a subcontract price reduction if --
- a. The Subcontractor certifies to the NREL Subcontract Administrator that, to the best of the Subcontractor's knowledge and belief, the Subcontractor is entitled to the offset in the amount requested; and
 - b. The Subcontractor proves that the cost or pricing data were available before the "as of" date specified on the Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if --
- a. The understated data were known by the Subcontractor to be understated before the "as of" date specified on the Certificate of current Cost or Pricing Data; and
 - b. NREL proves that the facts demonstrate that the subcontract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on the Certificate of Current Cost or Pricing Data.
- E. If any reduction in the subcontract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Subcontractor shall be liable to and shall pay to NREL at the time such overpayment is repaid --
- 1. Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Subcontractor to the date NREL is repaid by the Subcontractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621 (a)(2), and
 - 2. A penalty equal to the amount of the overpayment, if the Subcontractor or lower-tier subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

CLAUSE 3 - LOWER-TIER SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)

Derived from FAR 52.215-12

- A. Before awarding any lower-tier subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any lower-tier subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Subcontractor shall require the lower-tier subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.
- B. The Subcontractor shall require the lower-tier subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (A) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the lower-tier subcontract or lower-tier subcontract modification.
- C. In each lower-tier subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Subcontractor shall insert either --
 - 1. The substance of this clause, including this paragraph (C), if paragraph (A) of this clause requires submission of cost or pricing data for the lower-tier subcontract; or
 - 2. The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data -- Modifications.

CLAUSE 4 - LOWER-TIER SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS (OCT 1997)

Derived from FAR 52.215-13

- A. The requirements of paragraphs (B) and (C) of this clause shall --
 - 1. Become operative only for any modification to this subcontract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4; and
 - 2. Be limited to such modifications.
- B. Before awarding any lower-tier subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any lower-tier subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Subcontractor shall require the lower-tier subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.
- C. The Subcontractor shall require the lower-tier subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (B) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the lower-tier subcontract or lower-tier subcontract modification.

- D. The Subcontractor shall insert the substance of this clause, including this paragraph (D), in each lower-tier subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

CLAUSE 5 - LOWER-TIER SUBCONTRACTOR'S CERTIFICATE OF CURRENT COST OR PRICING DATA (OCT 1997)
Derived from FAR 15.406-2 (FD)

- A. When cost or pricing data are required, the Subcontractor shall require the lower-tier subcontractor to execute a Certificate of Current Cost or Pricing Data, using the format in this paragraph, and shall include the executed certificate in the subcontract file.

Lower-tier Subcontractor's Certificate of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.401 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Subcontractor or to the Subcontractor's representative in support of ____* are accurate, complete, and current as of ____**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Subcontractor that are part of the proposal.

Firm _____

Signature _____

Name _____

Title _____

Date of execution*** _____

* Identify the proposal, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

** Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

*** Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the lower-tier subcontract price was agreed to.

- B. The certificate does not constitute a representation as to the accuracy of the lower-tier subcontractor's judgment on the estimate of future costs or projections. It applies to the data upon which the judgment or estimate was based. This distinction between fact and judgment should be clearly understood. If the lower-tier subcontractor had information reasonably available at the time of agreement showing that the negotiated price was not based on accurate, complete, and current data, the lower-tier

subcontractor's responsibility is not limited by any lack of personal knowledge of the information on the part of its negotiators.

- C. The Subcontractor and lower-tier subcontractor are encouraged to reach a prior agreement on criteria for establishing closing or cutoff dates when appropriate in order to minimize delays associated with proposal updates. Closing or cutoff dates should be included as part of the data submitted with the proposal and, before agreement on price, data should be updated by the lower-tier subcontractor to the latest closing or cutoff dates for which the data are available. Use of cutoff dates coinciding with reports is acceptable, as certain data may not be reasonably available before normal periodic closing dates (e.g., actual indirect costs). Data within the Subcontractor's or a lower-tier subcontractor's organization on matters significant to lower-tier subcontractor management and to the Subcontractor will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.
- D. Possession of a Certificate of Current Cost or Pricing Data is not a substitute for examining and analyzing the lower-tier subcontractor's proposal.
- E. If cost or pricing data are requested by the Subcontractor and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data and shall not be certified in accordance with this subsection.

CLAUSE 6 - NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

Derived from FAR 52.215-19 (FD)

- A. The Subcontractor shall make the following notifications in writing:
 - 1. When the Subcontractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Subcontractor shall notify the NREL Subcontract Administrator within thirty (30) days.
 - 2. The Subcontractor shall also notify the NREL Subcontract Administrator within thirty (30) days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- B. 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 under this subcontract that meet the applicability requirement of FAR 15.408(k).

CLAUSE 7 - SMALL BUSINESS SUBCONTRACTING PLAN (OCT 1999)

Derived from FAR 52.219-9

- A. This clause does not apply to small business concerns.
- B. Definitions. As used in this clause--

"Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

"Commercial plan" means a lower-tier subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

"Individual subcontract plan" means a lower-tier subcontracting plan that covers the entire subcontract period (including option periods), applies to a specific subcontract, and has goals that are based on the offeror's planned lower-tier subcontracting in support of the specific subcontract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the subcontract.

"Master plan" means a lower-tier subcontracting plan that contains all the required elements of an individual subcontract plan, except goals, and may be incorporated into individual plans, provided the master plan has been approved.

"Lower-tier Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a subcontractor or or lower-tier subcontractor calling for supplies or services required for performance of the lower-tier subcontract.

- C. The offeror, upon request by the NREL Subcontract Administrator, shall submit and negotiate a lower-tier subcontracting plan, where applicable, that separately addresses lower-tier subcontracting with small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual lower-tier subcontract plan, the plan must separately address lower-tier subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic subcontract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant subcontract. The lower-tier subcontracting plan shall be negotiated within the time specified by the NREL

Subcontract Administrator. Failure to submit and negotiate the lower-tier subcontracting plan shall make the offeror ineligible for award of a subcontract.

- D. The offeror's lower-tier subcontracting plan shall include the following:
1. Goals, expressed in terms of percentages of total planned lower-tier subcontracting dollars, for the use of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as lower-tier subcontractors. The offeror shall include all lower-tier subcontracts that contribute to subcontract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.
 2. A statement of--
 - (i) Total dollars planned to be lower-tier subcontracted for an individual subcontract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected lower-tier subcontracts to support the sales for a commercial plan;
 - (ii) Total dollars planned to be lower-tier subcontracted to small business concerns;
 - (iii) Total dollars planned to be lower-tier subcontracted to HUBZone small business concerns;
 - (iv) Total dollars planned to be lower-tier subcontracted to small disadvantaged business concerns; and
 - (v) Total dollars planned to be lower-tier subcontracted to women-owned small business concerns.
 3. A description of the principal types of supplies and services to be lower-tier subcontracted, and an identification of the types planned for lower-tier subcontracting to--
 - (i) Small business concerns;
 - (ii) HUBZone small business concerns;
 - (iii) Small disadvantaged business concerns; and
 - (iv) Women-owned small business concerns.
 4. A description of the method used to develop the lower-tier subcontracting goals in paragraph (d)(1) of this clause.

5. A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, HUBZone, small disadvantaged and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing lower-tier subcontracting opportunities) in this clause.
6. A statement as to whether or not the offeror included indirect costs in establishing lower-tier subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with--
 - (i) Small business concerns;
 - (ii) HUBZone small business concerns;
 - (iii) Small disadvantaged business concerns; and
 - (iv) Women-owned small business concerns.
7. The name of the individual employed by the offeror who will administer the offeror's lower-tier subcontracting program, and a description of the duties of the individual.
8. A description of the efforts the offeror will make to assure that small business, HUBZone small business, small disadvantaged business and women-owned small business concerns have an equitable opportunity to compete for lower-tier subcontracts.
9. Assurances that the offeror will include the clause of this subcontract entitled "Utilization of Small Business Concerns" in all lower-tier subcontracts that offer further subcontracting opportunities, and that the offeror will require all lower-tier subcontractors (except small business concerns) that receive lower-tier subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.
11. Assurances that the offeror will--
 - (i) Cooperate in any studies or surveys as may be required;

- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the lower-tier subcontracting plan;
 - (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms or as provided in agency regulations and in paragraph (j) of this clause; and
 - (iv) Ensure that its lower-tier subcontractors agree to submit SF 294 and SF 295.
11. A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award lower-tier subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
- (i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
 - (ii) Organizations contacted in an attempt to locate sources that are small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.
 - (iii) Records on each lower-tier subcontract solicitation resulting in an award of more than \$100,000, indicating--
 - a. Whether small business concerns were solicited and, if not, why not;
 - b. Whether HUBZone small business concerns were solicited and, if not, why not;
 - c. Whether small disadvantaged business concerns were solicited and, if not, why not;
 - d. Whether women-owned small business concerns were solicited and, if not, why not; and
 - e. If applicable, the reason award was not made to a small business concern.

- (iv) Records of any outreach efforts to contact--
 - a. Trade associations;
 - b. Business development organizations; and
 - c. Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources.
- (v) Records of internal guidance and encouragement provided to buyers through--
 - a. Workshops, seminars, training, etc.; and
 - b. Monitoring performance to evaluate compliance with the program's requirements.
- (vi) On a subcontract-by-subcontract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each lower-tier subcontractor. Subcontractors having commercial plans need not comply with this requirement.

E. In order to effectively implement this plan to the extent consistent with efficient subcontract performance, the subcontractor shall perform the following functions:

1. Assist small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the subcontractor's lists of potential small business, HUBZone small business, small disadvantaged business, and women-owned small business lower-tier subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
2. Provide adequate and timely consideration of the potentialities of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.
3. Counsel and discuss lower-tier subcontracting opportunities with representatives of small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.
4. Provide notice to lower-tier subcontractors concerning penalties and remedies for misrepresentations of business status as small, HUBZone small, small disadvantaged, or

women-owned small business for the purpose of obtaining a lower-tier subcontract that is to be included as part or all of a goal contained in the subcontractor's lower-tier subcontracting plan.

- F. A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the lower-tier subcontracting plan required of the offeror by this clause; provided--
1. The master plan has been approved;
 2. The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the NREL Subcontract Administrator; and;
 3. Goals and any deviations from the master plan deemed necessary by the NREL Subcontract Administrator to satisfy the requirements of this subcontract are set forth in the individual subcontracting plan.
- G. A commercial plan is the preferred type of lower-tier subcontracting plan for subcontractors furnishing commercial items. The commercial plan shall relate to the offeror's planned lower-tier subcontracting generally, for both commercial and Government business, rather than solely to the Government subcontract. Commercial plans are also preferred for lower-tier subcontractors that provide commercial items under a prime contract, whether or not the prime subcontractor is supplying a commercial item.
- H. Prior compliance of the offeror with other such lower-tier subcontracting plans under previous contracts will be considered by the NREL Subcontract Administrator in determining the responsibility of the offeror for award of the contract.
- I. The failure of the subcontractor or lower-tier subcontractor to comply in good faith with--
1. The clause of this subcontract entitled "Utilization Of Small Business Concerns;" or
 2. An approved plan required by this clause, shall be a material breach of the subcontract.
- J. The subcontractor shall submit the following reports:
1. Standard Form 294, Subcontracting Report for Individual Contracts. This report shall be submitted to the NREL Subcontract Administrator semiannually and at subcontract completion. The report covers lower-tier subcontract award data related to this subcontract. This report is not required for commercial plans.

2. Standard Form 295, Summary Subcontract Report. This report encompasses all the subcontracts with the awarding agency. It must be submitted semi-annually for subcontracts with the Department of Defense and annually for subcontracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all lower-tier subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the subcontractor's format, of lower-tier subcontract awards, in whole dollars, to small disadvantaged business concerns by Standard Industrial Classification (SIC) Major Group. For a commercial plan, the subcontractor may obtain from each of its lower-tier subcontractors a predominant SIC Major Group and report all awards to that lower-tier subcontractor under its predominant SIC Major Group.

(End of clause)

Alternate I (Jan 1999).

When subcontracting by sealed bidding rather than by negotiation, substitute the following paragraph C. for paragraph C. of the basic clause:

- C. The apparent low bidder, upon request by the NREL Subcontract Administrator, shall submit a lower-tier subcontracting plan, where applicable, that separately addresses lower-tier subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the bidder is submitting an individual subcontract plan, the plan must separately address lower-tier subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant subcontract. The lower-tier subcontracting plan shall be submitted within the time specified by the NREL Subcontract Administrator. Failure to submit the lower-tier subcontracting plan shall make the bidder ineligible for the award of a contract.

Alternate II (Jan 1999).

As prescribed in 19.708(b)(1), substitute the following paragraph C. for paragraph C. of the basic clause:

- C. Proposals submitted in response to this solicitation shall include a lower-tier subcontracting plan that separately addresses lower-tier subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual subcontract plan, the plan must separately address lower-tier subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic subcontract and separate parts for each option (if any). The plan shall be included in and made a part of the

resultant subcontract. The lower-tier subcontracting plan shall be negotiated within the time specified by the NREL Subcontract Administrator. Failure to submit and negotiate a lower-tier subcontracting plan shall make the offeror ineligible for award of a subcontract.

CLAUSE 8 - COST ACCOUNTING STANDARDS (APR 1998)

Derived from FAR 52.230-2

(Generally not applicable for Small Business, Foreign Government, Fixed Price, or Subcontracts under \$500,000)

- A. Unless the subcontract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Subcontractor, in connection with this subcontract, shall --
1. (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Subcontractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this subcontract shall be the same as the practices currently disclosed and applied on all other subcontracts and lower-tier subcontracts being performed by the Subcontractor and which contain a Cost Accounting Standards (CAS) clause. If the Subcontractor has notified the NREL Subcontract Administrator that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of NREL/Government.
 2. Follow consistently the Subcontractor's cost accounting practices in accumulating and reporting subcontract performance cost data concerning this subcontract. If any change in cost accounting practices is made for the purposes of any subcontract or lower-tier subcontract subject to CAS requirements, the change must be applied prospectively to this subcontract and the Disclosure Statement must be amended accordingly. If the subcontract price or cost allowance of this subcontract is affected by such changes, adjustment shall be made in accordance with subparagraph (A)(4) or (A)(5) of this clause, as appropriate.
 3. Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this subcontract or, if the Subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Subcontractor's signed certificate of current cost or pricing data. The Subcontractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a subcontract or lower-tier subcontract of the Subcontractor. Such compliance shall be required prospectively from the date of applicability to such subcontract or lower-tier subcontract.
 4. (i) Agree to an equitable adjustment as provided in the Changes clause of this subcontract if the subcontract cost is affected by a change which, pursuant to subparagraph (A)(3) of this clause, the Subcontractor is required to make to the Subcontractor's established cost accounting practices.

- (ii) Negotiate with the NREL Subcontract Administrator to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (A)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by NREL/Government.
 - (iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (A)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this subcontract.
5. Agree to an adjustment of the subcontract price or cost allowance, as appropriate, if the Subcontractor or a lower-tier subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by NREL/Government. Such adjustment shall provide for recovery of the increased costs to NREL/Government, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the NREL/Government was made to the time the adjustment is effected. In no case shall NREL/Government recover costs greater than the increased cost to NREL/Government, in the aggregate, on the relevant subcontracts subject to the price adjustment, unless the Subcontractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to NREL/Government.
- B. If the parties fail to agree whether the Subcontractor or a lower-tier subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by NREL/Government, such failure to agree will constitute a dispute under the Disputes Clause of this subcontract.
 - C. The Subcontractor shall permit any authorized representatives of NREL/Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
 - D. The Subcontractor shall include in all negotiated lower-tier subcontracts which the Subcontractor enters into, the substance of this clause, except paragraph (B), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the lower-tier subcontractor's award date or if the lower-tier subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the lower-tier subcontractor's signed Certificate of Current Cost or Pricing Data. If the lower-tier subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated lower-tier subcontracts in excess of \$500,000, except that the requirement shall not apply to negotiated lower-tier subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

**CLAUSE 9 - DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES
(APR 1998)**

Derived from FAR 52.230-3

- A. The Subcontractor, in connection with this subcontract, shall --
1. Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standard -- Cost Accounting Period, in effect on the date of award of this subcontract as indicated in 48 CFR Part 9904.
 2. (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5. If the Subcontractor has notified the NREL Subcontract Administrator that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the NREL/Government.
 3.
 - (i) Follow consistently the Subcontractor's cost accounting practices. A change to such practices may be proposed, however, by either the NREL/Government or the Subcontractor, and the Subcontractor agrees to negotiate with the NREL Subcontract Administrator the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this subcontract, and the Disclosure Statement, if affected, must be amended accordingly.
 - (ii) The Subcontractor shall, when the parties agree to a change to a cost accounting practice and the NREL Subcontract Administrator has made the finding required in 48 CFR 9903.201-6(b), that the change is desirable and not detrimental to the interests of the NREL/Government, negotiate an equitable adjustment as provided in the Changes clause of this subcontract. In the absence of the required finding, no agreement may be made under this subcontract clause that will increase costs paid by NREL/Government.
 4. Agree to an adjustment of the subcontract price or cost allowance, as appropriate, if the Subcontractor or a lower-tier subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by NREL/Government. Such adjustment shall provide for recovery of the increased costs to NREL/Government together with interest thereon computed at the annual rate of interest established under the Internal Revenue Code of 1986 (26 U.S.C. 6621), from the time the payment by NREL/Government States was made to the time the adjustment is effected.
- B. If the parties fail to agree whether the Subcontractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR 9903 and 9904 and as to any cost adjustment demanded by NREL/Government, such failure to agree will constitute a dispute under the Contract Disputes Clause of this subcontract.
- C. The Subcontractor shall permit any authorized representatives of the NREL/Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

- D. The Subcontractor shall include in all negotiated lower-tier subcontracts, which the Subcontractor enters into, the substance of this clause, except paragraph (B), and shall require such inclusion in all other subcontracts of any tier, except that --
1. If the lower-tier subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted.
 2. This requirement shall apply only to negotiated lower-tier subcontracts in excess of \$500,000.
 3. The requirement shall not apply to negotiated lower-tier subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

CLAUSE 10 - COST ACCOUNTING STANDARDS - EDUCATIONAL INSTITUTION (APR 1998)
Derived from FAR 52.230-5 (FD)

- A. Unless the subcontract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR 9903 are incorporated herein by reference and the Subcontractor, in connection with this subcontract, shall --
1. (CAS-covered Subcontracts Only). If a business unit of an educational institution is required to submit a Disclosure Statement, disclose in writing the Subcontractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for accumulating and allocating indirect costs. The practices disclosed for this subcontract shall be the same as the practices currently disclosed and applied on all other subcontracts and lower-tier subcontracts being performed by the Subcontractor and which contain a Cost Accounting Standards (CAS) clause. If the Subcontractor has notified the NREL Subcontract Administrator that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of NREL/Government.
 2. Follow consistently the Subcontractor's cost accounting practices in accumulating and reporting subcontract performance cost data concerning this subcontract. If any change in cost accounting practices is made for the purposes of any subcontract or lower-tier subcontract subject to CAS requirements, the change must be applied prospectively to this subcontract and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions, requires that a change in the Subcontractor's cost accounting practices be made after the date of this subcontract award, the change must be applied prospectively to this subcontract and the Disclosure Statement, if required, must be amended accordingly. If the subcontract price or cost allowance of this subcontract is affected by such changes, adjustment shall be made in accordance with subparagraph (A)(4) or (A)(5) of this clause, as appropriate.
 3. Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR 9905 in effect on the date of award of this subcontract or, if the Subcontractor has submitted cost or pricing data, on the date of final agreement on price as