

PART B

REQUESTS FOR PROPOSALS (RFP) 11-049F

THIS COST INCENTIVE SUBCONTRACT

by and between

THE TRUSTEES OF PRINCETON UNIVERSITY

(hereinafter called "Princeton", "Plasma Physics Laboratory", "PPPL", and "Buyer")

and

a Corporation having an office and place of business at _____
_____ (hereinafter called "Subcontractor", and "Seller").

WITNESSETH:

WHEREAS IT IS UNDERSTOOD THAT:

- (i) the United States of America (hereinafter referred to as the "Government"), acting through a duly authorized Contracting Officer (hereinafter called the "Contracting Officer") of the United States Department of Energy (hereinafter called the "Department" or "DOE"), has heretofore entered into a Contract identified as Contract No. DE-AC02-09CH11466 (which Contract is hereinafter referred to as the "Prime Contract"), with Princeton whereunder certain work was undertaken to be performed for the Government; and,
- (ii) the Buyer (either by such Prime Contract or by a Subcontract under such Prime Contract), has undertaken performance of all or a portion of such work; and,
- (iii) the Buyer desires to have the Subcontractor perform the work called for by this Agreement and the Subcontractor desires to so perform upon the Terms and Conditions of this Agreement as set forth herein;
- (iv) Now, THEREFORE, the Parties do mutually agree as follows:

ARTICLE I – STATEMENT OF WORK

The Subcontractor agrees to perform the requirements of STATEMENT WORK FOR MANAGING AND OPERATING FOOD SERVICES FOR PRINCETON PLASMA PHYSICS LABORATORY (PPPL), MOD-2011-006, dated 25 March 2011 (Subcontract SCHEDULE A)

ARTICLE II – PERIOD OF PERFORMANCE

This Subcontract for food (cafeteria and catering) services is effective from the date signed by both parties through 30 September 2014, with Subcontractor assuming responsibility for operating the cafeteria and providing catering services effective 1 October 2011.

ARTICLE III - CONSIDERATION

1. The parties agree that:
 - a. The Subcontractor shall be entitled to receive:
 - (1) Payment of an amount equal to _____ percent of the total manual food service sales, or \$ _____ per week, whichever is greater for administrative indirect costs incurred in the performance of the food service requirement.
 - (2) Payment of a Management Fee of _____ percent of total manual food service sales, or \$ _____ per week, whichever is greater, and
 - (3) That these payments will constitute part of the cost of operating the PPPL cafeteria, when determining Subsidy requirements.
 - b.. The annual revenue projected for food (cafeteria and catering) services for the period 1 October 2011 through 30 September 2012 is _____
_____ dollars (\$ _____), and

- c. The annual Subsidy projected for food services during that same period is _____ dollars (\$_____). This Subsidy level agreed to by the parties becomes the PPPL Subsidy cap.

The projected revenue and subsidy for the next year will be agreed to by the parties each September.

- d. The PPPL Subsidy cap for the period 1 October 2011 through 30 September 2012 is _____ dollars (\$_____) (See Section 6.1 of the .Statement of Work)
- e. Subcontract Subsidy will be reconciled and settled monthly following the procedure of Section 6.0 of the Subcontract STATEMENT OF WORK, Subcontract Section II.
2. SERVICE CONTRACT ACT. The SERVICE CONTRACT ACT OF 1965, as amended (May 1969) applies to this Subcontract. Subcontractor agrees that his personnel and the personnel of any lower-tier Subcontractor will receive, for work performed on-site at PPPL under this Agreement, wages and benefits that at least equal the U.S. Department of Labor Wage Determination announced for their job specialty and skill level (See Subcontract Section IV). PPPL is located in Middlesex County, NJ.

ARTICLE IV - KEY PERSONNEL

The following Subcontractor representative is designated as "Key Personnel" for the performance of this Subcontract, in accordance with CLAUSE A 27, of SCHEDULE B of this Agreement.

_____ Cafeteria Manager

ARTICLE V - TECHNICAL AND ADMINISTRATIVE REPRESENTATIVES

The following representatives of the Subcontractor and Princeton are hereby designated for this Subcontract:

1. Subcontractor's Representative is:

Administrative: () -

2. Princeton's Representatives are:

Technical:		(609) 243-
Administrative:	Larry L. Sutton	(609) 243-2441 -2021 fax lsutton@pppl.gov

3. The Princeton Technical Representative designated herein is responsible for day-to-day technical clarification and guidance as may be required within the scope of the work requirements contained in ARTICLE I - CHARACTER AND EXTENT OF SERVICES.

4. Agreement and/or actions taken by the Subcontractor, which by their nature effect a change to this Subcontract shall only be binding upon PPPL when such agreement or action is specifically authorized in writing by PPPL's Subcontract Administrator. All correspondence and communications between the Subcontractor and PPPL shall be addressed and directed to PPPL's Subcontract Administrator.

ARTICLE VI - ADDRESS FOR GENERAL CORRESPONDENCE, MONTHLY STATEMENT OF REVENUE AND OPERATING COSTS, AND INVOICES

Subcontractor's correspondence and Monthly Statement of Food and Vending Service Revenue and Operating Costs, with accompanying monthly invoice, shall be addressed to:

Princeton University
Plasma Physics Laboratory
P.O. Box CN-17
Princeton, New Jersey 08543
ATTENTION: Subcontract S0 -F Administrator

ARTICLE VII - OPTION TO EXTEND THE PERFORMANCE PERIOD

Subcontractor agrees that PPPL has the Option to extend the performance period of this Agreement in increments for up to thirty-six additional consecutive months. To exercise its Option PPPL must give the Subcontractor written notice at least 45 calendar days in advance of the termination date of the current performance period.

ARTICLE VIII - SUBCONTRACT DOCUMENTS

The following documents incorporated into and made a part of this Agreement are listed in order of precedence.

1. Cost Incentive Subcontract S0 -F, Subcontract (6 pages)
2. STATEMENT WORK FOR MANAGING AND OPERATING FOOD SERVICES FOR PRINCETON PLASMA PHYSICS LABORATORY (PPPL), MOD-2011-006, dated 25 March 2011 (Subcontract SCHEDULE A)
3. PPPL General Provisions and Special Terms and Conditions (Subcontract SCHEDULE B):
 - a. Part A Reference List - Common Clauses, and the text of the Clauses (PPL-PD-A; Rev. 17 2-2010)
 - b. Part B Reference List - Agreements in Excess of \$100,000, and the text of the Clauses (PPL-PD-B; Rev. 8, 12-2009)
 - c. Part C Reference List - Agreements in Excess of \$500,000, and the text of the Clauses (PPL-PD-C; Rev. 9, 12-2009)
 - d. Part E Reference List - Cost-Reimbursement-Type Agreements, and the text of the Clauses (PPL-PD-E; Rev. 8, 01-2010)
 - e. PPPL Service Contract Act General Provision, (PPL-PD-S; Rev. 4, 01-2010 (06/02) (5 pages)
 - f. Part T – Provisions for Work Performed on the PPPL Site, PPL-PD-T; Rev. 0, 12-2009
 - g. Employment Eligibility Verification (Jan 2009), PPL-PD-EVERIFY; Rev. 0, dated 09/2009
4. U.S. Department of Labor Employment Standards Administration Wage Determination No.: 2005 - 2349, Revision 10, dated 09/01/2010 (Subcontract SCHEDULE C)

Nothing follows on this page

IN WITNESS WHEREOF, the Parties hereto have executed this Subcontract Agreement.

WITNESS AS TO SIGNATURE ON
BEHALF OF PRINCETON

THE TRUSTEES OF PRINCETON
UNIVERSITY

BY: _____

BY: _____

TYPED: _____

TYPED: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

PPPL General Provisions for Non-Commercial Subcontracts
Reference List
Part A - Common Clauses

REQUEST FOR PROPOSALS (RFP) NO. 11-049F

The following clauses, the full texts of which are set forth below, are hereby incorporated in and made part of the above-cited subcontract.

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PPPL General Provisions for Non-Commercial Subcontracts

Part A - Common Clauses

A1. ISSUANCE UNDER GOVERNMENT CONTRACT (JUN 1987)

This subcontract is issued under a prime contract with the United States of America. It does not bind or purport to bind the Government notwithstanding any approval or consent that may be required hereunder.

A2. DEFINITIONS (JUN 2009)

(a) "Agency" means any executive department, military department or defense agency, or other agency or independent establishment of the U.S. Government.

(b) "Agency head" or "head of the agency" means the Secretary (Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, unless otherwise indicated, including any deputy or assistant chief official of the executive agency.

(c) "Commercial component" means any component that is a commercial item.

(d) "Commercial item" means--

(Not applicable if this Subcontract is for personal services; construction; architect-engineer services; or dismantling, demolition, or removal of improvements.)

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for nongovernmental purposes and that--

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (d)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (d)(1) or (d)(2) of this clause, but for--

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (d)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if --

(i) Such services are procured for support of an item referred to in paragraphs (d)(1), (2), (3), or (4) of this clause, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) —The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. For purposes of these services --

(i) "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

(7) Any item, combination of items, or service referred to in paragraphs (d)(1) through (d)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(e) "Component" means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11(a).

(f) "Contracting Officer" means a federal employee with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(g) "Nondevelopmental item" means--

PPPL General Provisions for Non-Commercial Subcontracts

Part A - Common Clauses

- (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
- (2) Any item described in paragraph (g)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or
- (3) Any item of supply being produced that does not meet the requirements of paragraph (g)(1) or (f)(2) solely because the item is not yet in use.
- (h) "Executive agency" means an instrumentality of the Federal Government bound by the Federal Acquisition Regulation.
- (i) Except as otherwise provided in this Subcontract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this Subcontract.
- (j) The term "DOE" means the Department of Energy.
- (k) The term "patent counsel" shall mean the DOE patent counsel.
- (l) The term "Princeton" shall mean the Trustees of Princeton University or any duly authorized representative or representatives thereof.
- (m) The term "Director of Procurement" shall mean the individual duly authorized to enter into contractual agreements on behalf of the Trustees of Princeton University and to manage the Procurement Division of the Princeton Plasma Physics Laboratory.
- (n) The term "Princeton Subcontract Administrator" shall mean the person within the Procurement Division who has been delegated authority by the Director of Procurement to act on behalf of the University in all administrative matters pertaining to the subcontract.
- (o) The term "Princeton Technical Representative" shall mean the person within the Princeton Plasma Physics Laboratory designated in writing by the Director of Procurement as being responsible for day-to-day monitoring of the Subcontractor's progress and ensuring the Subcontractor's compliance with the stated subcontract scope of work and related technical matters.
- A3. ANTI-KICKBACK PROCEDURES (JUL 1995)**
- (a) Definitions.
- "Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.
- "Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
- "Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
- "Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.
- "Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.
- "Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
- "Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.
- "Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.
- (b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from--
- (1) Providing or attempting to provide or offering to provide any kickback;
 - (2) Soliciting, accepting, or attempting to accept any kickback; or
 - (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.
- (c)(1) Reserved.
- (2) When the Subcontractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
 - (3) The Subcontractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

PPPL General Provisions for Non-Commercial Subcontracts

Part A - Common Clauses

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Subcontractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all lower tier subcontracts under this subcontract.

A4. PRINTING (DEC 2000)

(a) To the extent that duplicating or printing services may be required in the performance of this subcontract, the Subcontractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.

(b) The term "Printing" includes the following processes: Composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this subcontract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.

(c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.

(d) The Subcontractor shall include the substance of this clause in all lower tier subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations).

A5. ACCOUNTS, RECORDS, AND INSPECTION (JUN 2009)

(This clause is applicable to all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.)

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

accounts employed by the Subcontractor shall be satisfactory to Princeton and in accordance with generally accepted accounting principles consistently applied.

(b) Inspection and audit of accounts and records. All books of account and records relating to this subcontract shall be subject to inspection and audit by Princeton or its designees in accordance with the provisions of Clause AAC 2-2, Access to and Ownership of Records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the Subcontractor shall afford Princeton proper facilities for such inspection and audit.

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

(d) Disposition of records. Except as agreed upon by Princeton and the Subcontractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Subcontractor in connection with the work under this subcontract, other applicable credits, and fee accruals under this subcontract, shall be the property of the Government, and shall be delivered to Princeton or otherwise disposed of by the Subcontractor either as Princeton may from time to time direct during the progress of the work or, in any event, as Princeton shall direct upon completion or termination of this subcontract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause AAC 2-2, Access To And Ownership Of Records, all other records in the possession of the contractor relating to this subcontract shall be preserved by the Subcontractor for a period of three years after final payment under this subcontract or otherwise disposed of in such manner as may be agreed upon by Princeton and the Subcontractor.

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

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

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

PPPL General Provisions for Non-Commercial Subcontracts

Part A - Common Clauses

costs incurred are a factor in determining the amount payable to the lower tier subcontractor.

(h) Comptroller General.

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

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

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

A6. NOTICE TO PRINCETON OF LABOR DISPUTES (FEB 1997)

If the Subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this subcontract, the Subcontractor shall immediately give notice, including all relevant information, to Princeton's Subcontract Administrator.

A7. PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003)

(a) "International air transportation," means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

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

"U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under section 49 U.S.C. Chapter 411.

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

(c) If available, the Subcontractor, in performing work under this subcontract, to use U.S.-flag air carriers for

international air transportation of personnel (and their personal effects) or property.

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

STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

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

(End of Statement)

(e) The Subcontractor shall include the substance of this clause, including this paragraph (e), in each lower tier subcontract or purchase order under this subcontract that may involve international air transportation.

A8. ASSIGNMENT (OCT 1997)

(a) Neither this subcontract nor any interest therein nor claim there under shall be assigned or transferred by the Subcontractor except as expressly authorized in writing by Princeton.

(b) Princeton reserves the right to transfer its duties and obligations under this subcontract to any third party.

A9. MATERIAL AND WORKMANSHIP (APR 1984)

(a) All equipment, material, and articles incorporated into the work covered by this subcontract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this subcontract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Subcontractor may, at its option, use any equipment, material, article, or process that, in the judgment of Princeton, is equal to that named in the specifications, unless otherwise specifically provided in this subcontract.

(b) The Subcontractor shall obtain Princeton's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Subcontractor shall furnish to Princeton the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this subcontract or by Princeton, the Subcontractor shall also obtain Princeton's approval of the material or articles that the Subcontractor contemplates incorporating into the work. When requesting approval, the Subcontractor shall provide full information concerning the material or articles. When

PPPL General Provisions for Non-Commercial Subcontracts

Part A - Common Clauses

directed to do so, the Subcontractor shall submit samples for approval at the Subcontractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this subcontract shall be performed in a skillful and workmanlike manner. Princeton may require, in writing, that the Subcontractor remove from the work any employee Princeton deems incompetent, careless, or otherwise objectionable.

A10. INDEMNITY (OCT 1997)

(a) The Subcontractor agrees to indemnify and hold harmless the Trustees of Princeton University and the United States Government, and their respective officers, employees and agents (the "Indemnitees"), from and against any and all liabilities, of whatsoever kind or nature, arising out of or in any way connected with the Subcontractor's performance under this subcontract, excepting only (i) liability arising from affirmative acts of the Indemnitees, done with intent by the Indemnitees to cause loss, damage or injury, (ii) liability arising from the sole negligence of the Indemnitees; or (iii) any express liability as may be specified elsewhere in this subcontract.

(b) In the event of a claim or litigation arising out of Subcontractor's undertakings, activities or performance under this subcontract, the Subcontractor shall take charge of any such claim and/or litigation and shall be responsible for defending same at Subcontractor's expense through legal counsel designated by the Subcontractor or the Subcontractor's insurer. Princeton shall have the right, in its discretion and without expense to the Subcontractor, to provide counsel to participate with the Subcontractor's counsel in the conduct of the defense. The Subcontractor may, at the Subcontractor's own expense, negotiate a settlement of any such claim and/or litigation. The Subcontractor shall pay, at the Subcontractor's own expense, any and all judgments arising out of or resulting from any such claims or litigation.

A11. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) (ALTERNATE I) (JUL 1995)

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

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

Material (If none, insert None)

Identification No.

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

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

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

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

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

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

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

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

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

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

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph

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(h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

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

(i) Except as provided in paragraph (i)(2) the Subcontractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Subcontractor shall include a copy of the MSDS with the packing list or other suitable shipping document, which accompanies each shipment. Alternatively, the Subcontractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments to consignees, if authorized in writing by Princeton.

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

A12. WHISTLEBLOWER PROTECTION FOR SUBCONTRACTOR EMPLOYEES (DEC 2000)

(a) The Subcontractor shall comply with the requirements of the "DOE Contractor Employee Protection Program" at 10 CRF Part 708 for work performed on behalf of Princeton directly related to activities at DOE-owned or -leased facilities.

(b) The Subcontractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, involving work performed on behalf of Princeton directly related to activities at DOE-owned or -leased sites.

A13. RESOLUTION OF DISPUTES (FEB 2010)

(a) The Subcontractor and Princeton agree to make good faith efforts to settle any dispute or claim that arises under this Agreement through discussion and negotiation. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of alternative disputes resolution (ADR). In the event that non-binding mediation or arbitration is agreed upon, the site of the proceedings shall be within 50 miles of Princeton, New Jersey. The mediator or arbitrator shall allocate cost, except that there shall be no pre-decisional interest costs, and each party shall bear its own discretionary costs. In the event that ADR fails or is not used, the parties may litigate the matter in a court of competent jurisdiction within the State of New Jersey, except for those matters which by statute, regulation or terms of another Subcontract clause, are to be decided by a specific body or forum. Any such proceeding in state court shall be venued in Mercer County.

(b) For substantive issues presented for mediation, arbitration, dispute, claim, litigation or other effort at resolution, the parties agree that, to the maximum extent possible and except for matters reserved by statute, regulation or specific clause of this Agreement, the Federal common law of government contracts will govern the construction and interpretation of this Agreement or work performed under this Agreement or claims of breach of this Agreement, regardless of the forum or venue in which any party may bring any such action. For purposes of this Agreement, the Federal common law of government contracts will consist of the interpretation of contract clauses and the law enunciated and applied to government contracts by the Boards of Contract Appeals, the Comptroller General (CG), and the Federal Courts having jurisdiction over the Boards or the CG. The term "Boards of Contract Appeals" means those established under the Contract Disputes Act of 1978, 41 U.S.C. 607(a)(1), and their successor bodies. Patent related disputes arising under this Agreement shall be resolved in accordance with the provisions of the Patent Rights clause of this Agreement, as well as applicable federal law and regulation.

(c) Pending settlement or final judgment with regard to the dispute, the Subcontractor shall proceed diligently with the performance hereof in accordance with Princeton's direction and instructions.

A14. COVENANT AGAINST CONTINGENT FEES (APR 1984)

(a) The Subcontractor warrants that no person or agency has been employed or retained to solicit or obtain this subcontract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, Princeton shall have the right to annul this contract without liability or, in its discretion, to deduct from the subcontract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts or subcontracts under Government contracts nor holds itself out as being able to obtain any Government contracts or subcontracts under Government contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government

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Part A - Common Clauses

employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

A15. PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006)

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. App. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States that may be transported by ocean vessel are—

(1) Acquired for a U.S. Government agency account;

(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

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

(c) (1) The subcontractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to Princeton.

(2) The subcontractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

(A) Sponsoring U.S. Government agency.

(B) Name of vessel.

(C) Vessel flag of registry.

(D) Date of loading.

(E) Port of loading.

(F) Port of final discharge.

(G) Description of commodity.

(H) Gross weight in pounds and cubic feet if available.

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

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

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

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

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

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

(4) Subcontracts or purchase orders for the acquisition of commercial items unless—

(i) This contract is—

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

(B) A construction contract; or

(ii) The supplies being transported are—

(A) Items the subcontractor is reselling or distributing to the Government without adding value. (Generally, the subcontractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(B) Shipped in direct support of U.S. military—

(1) Contingency operations;

(2) Exercises; or

(3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

Office of Costs and Rates
Maritime Administration
400 Seventh Street, SW
Washington DC 20590
Phone: (202) 366-4610.

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Part A - Common Clauses

A16. COMMERCIAL BILL OF LADING NOTATIONS (FEB 2006)

When Princeton authorizes supplies to be shipped on a commercial bill of lading and the Subcontractor will be reimbursed these transportation costs as direct allowable costs, the Subcontractor shall ensure before shipment is made that the commercial shipping documents are annotated as follows:

(a) if the Government is shown as the consignor or consignee, the annotation shall be:

"Transportation is for the U.S. Department of Energy and the actual total transportation charges paid to the carrier(s) are assignable to, and shall be reimbursed by, the Government.

(b) If the Government is not shown as the consignor or consignee, the annotation shall be:

"Transportation is for the U.S. Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignee shall be reimbursed by Princeton, pursuant to cost-reimbursement contract No. DE-AC02-09CH11466. This may be confirmed by contacting U.S. Department of Energy, Princeton Site Office, P.O. Box 102, Princeton, NJ 08542, fax 609-243-2032.

A17. PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEP 2006)

(a) The Government suspends or debar contractors to protect the Government's interests. The Subcontractor shall not enter into any lower tier subcontract in excess of \$30,000 with a contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Subcontractor shall require each proposed lower tier subcontractor, whose lower tier subcontract will exceed \$30,000, to disclose to the Subcontractor, in writing, whether as of the time of award of the lower tier subcontract, the lower tier subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Subcontractor shall notify Princeton's Subcontract Administrator, in writing, before entering into a sub-subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information in the Excluded Parties List System). The notice must include the following:

- (1) The name of the lower tier subcontractor.
- (2) The Subcontractor's knowledge of the reasons for the lower tier subcontractor being in the Excluded Parties List System.
- (3) The compelling reason(s) for doing business with the lower tier subcontractor notwithstanding its inclusion in the Excluded Parties List System.

(4) The systems and procedures the Subcontractor has established to ensure that it is fully protecting the Government's interests when dealing with such lower tier subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

A18. MATERIAL REQUIREMENTS (AUG 2000)

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

"New" means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; provided that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.

"Reconditioned" means restored to the original normal operating condition by readjustments and material replacement.

"Recovered material" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

"Remanufactured" means factory rebuilt to original specifications.

"Virgin material" means--

(1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

(2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

(b) Unless this subcontract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Subcontractor shall provide supplies that are new, reconditioned, or remanufactured, as defined in this clause.

(c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.

(d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to the Princeton for approval.

(e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, may be used in subcontract performance if the Subcontractor has proposed the use of such supplies, and Princeton has authorized their use.

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Part A - Common Clauses

A19. GOVERNMENT-FURNISHED PROPERTY (JUN 2007)

(a) Definitions. As used in this clause—

"Acquisition cost" means the cost to acquire a tangible capital asset including the purchase price of the asset and costs necessary to prepare the asset for use. Costs necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use.

"Cannibalize" means to remove serviceable parts from one item of equipment in order to install them on another item of equipment.

"Subcontractor-acquired property" means property acquired, fabricated, or otherwise provided by the Subcontractor for performing a contract, and to which the Government has title.

"Subcontractor inventory" means—

(1) Any property acquired by and in the possession of a Subcontractor or lower-tier subcontractor under a subcontract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire subcontract;

(2) Any property that the Government is obligated or has the option to take over under any type of subcontract, e.g., as a result either of any changes in the specifications or plans thereunder or of the termination of the subcontract (or lower-tier subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire subcontract.

"Subcontractor's managerial personnel" means the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

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

(2) All or substantially all of the Subcontractor's operation at any one plant or separate location; or

(3) A separate and complete major industrial operation.

"Demilitarization" means rendering a product unusable for, and not restorable to, the purpose for which it was designed or is customarily used.

"Discrepancies incident to shipment" means any differences (e.g., count or condition) between the items documented to have been shipped and items actually received.

"Equipment" means a tangible asset that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a subcontract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use.

"Government-furnished property" means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Subcontractor for performance of a subcontract.

"Government property" means all property owned or leased by the Government. Government property includes both Government-furnished and Subcontractor-acquired property.

"Material" means property that may be consumed or expended during the performance of a subcontract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end-item. Material does not include equipment, special tooling and special test equipment.

"Nonseverable" means property that cannot be removed after construction or installation without substantial loss of value or damage to the installed property or to the premises where installed.

"Plant equipment" as used in this part, means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

"Precious metals" means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

"Property" means all tangible property, both real and personal.

"Property Administrator" means an authorized representative of the Contracting Officer appointed in accordance with agency procedures, responsible for administering the subcontract requirements and obligations relating to Government property in the possession of a Subcontractor. For purposes of this subcontract, Princeton will function as the Property Administrator.

"Provide" means to furnish, as in Government-furnished property, or to acquire, as in subcontractor-acquired property.

"Real property" means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

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Part A - Common Clauses

"Sensitive property" means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

"Surplus property" means excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA).

(b) Property management.

- (1) The Subcontractor shall have a system to manage (control, use, preserve, protect, repair and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Subcontractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective control of Government property, consistent with voluntary consensus standards and/or industry-leading practices and standards for Government property management except where inconsistent with law or regulation. During the period of performance, the Subcontractor shall disclose any significant changes to their property management system to Princeton prior to implementation.
- (2) The Subcontractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, disposition, or via a completed investigation, evaluation, and final determination for lost, damaged, destroyed, or stolen property. This requirement applies to all Government property under the Subcontractor's accountability, stewardship, possession or control, including its vendors or lower-tier subcontractors (see paragraph (f)(1)(v) of this clause).
- (3) The Subcontractor shall include the requirements of this clause in all lower-tier subcontracts under which Government property is acquired or furnished for subcontract performance.
- (c) Use of Government property. The Subcontractor shall use Government property, either furnished or acquired under this subcontract, only for performing this subcontract, unless otherwise provided for in this subcontract or approved by Princeton. The Subcontractor shall not modify, cannibalize, or make alterations to Government property unless this subcontract specifically identifies the modifications, alterations or improvements as work to be performed.
- (d) Government-furnished property.
 - (1) Princeton shall deliver to the Subcontractor the Government-furnished property described in this subcontract. Princeton shall furnish related data and information needed for the intended use of the

property. The warranties of suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the Subcontractor as subcontractor-acquired property and subsequently transferred to another subcontract with this Subcontractor.

- (2) The delivery and/or performance dates specified in this subcontract are based upon the expectation that the Government-furnished property will be suitable for subcontract performance and will be delivered to the Subcontractor by the dates stated in the subcontract.
 - (i) If the property is not delivered to the Subcontractor by the dates stated in the subcontract, Princeton shall, upon the Subcontractor's timely written request, consider an equitable adjustment to the subcontract.
 - (ii) In the event property is received by the Subcontractor, or for Government-furnished property after receipt and installation, in a condition not suitable for its intended use, Princeton shall, upon the Subcontractor's timely written request, advise the Subcontractor on a course of action to remedy the problem. Such action may include repairing, replacing, modifying, returning, or otherwise disposing of the property at Princeton's expense. Upon completion of the required action(s), Princeton shall consider an equitable adjustment to the subcontract (see also paragraph (f)(1)(ii)(A) of this clause).
 - (iii) Princeton may, at its option, furnish property in an "as-is" condition. The Subcontractor will be given the opportunity to inspect such property prior to the property being provided. In such cases, Princeton makes no warranty with respect to the serviceability and/or suitability of the property for subcontract performance. Any repairs, replacement, and/or refurbishment shall be at the Subcontractor's expense.
- (3)(i) Princeton may by written notice, at any time—
 - (A) Increase or decrease the amount of Government-furnished property under this subcontract;
 - (B) Substitute other Government-furnished property for the property previously furnished, to be furnished, or to be acquired by the Subcontractor for the Government under this subcontract; or
 - (C) Withdraw authority to use property.
 - (ii) Upon completion of any action(s) under paragraph (d)(3)(i) of this clause, and the Subcontractor's timely written request, Princeton shall consider an equitable adjustment to the Subcontract.
 - (e) Title to Government property.
 - (1) The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property

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- become a fixture or lose its identity as personal property by being attached to any real property.
- (2) Fixed-price subcontracts.
- (i) All Government-furnished property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause.
- (ii) Title to each item of equipment, special test equipment and special tooling acquired by the Subcontractor for the Government under this subcontract shall pass to and vest in the Government when its use in performing this subcontract commences or when Princeton has paid for it, whichever is earlier, whether or not title previously vested in the Government.
- (iii) If this subcontract contains a provision directing the Subcontractor to purchase material for which Princeton will reimburse the Subcontractor as a direct item of cost under this subcontract—
- (A) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and
- (B) Title to all other material shall pass to and vest in the Government upon—
- (1) Issuance of the material for use in subcontract performance;
- (2) Commencement of processing of the material or its use in subcontract performance; or
- (3) Reimbursement of the cost of the material by Princeton, whichever occurs first.
- (3) Title under Cost-Reimbursement or Time-and-Material Subcontracts or Cost-Reimbursable subcontract line items under Fixed-Price Subcontracts.
- (i) Title to all property purchased by the Subcontractor for which the Subcontractor is entitled to be reimbursed as a direct item of cost under this subcontract shall pass to and vest in the Government upon the vendor's delivery of such property.
- (ii) Title to all other property, the cost of which is reimbursable to the Subcontractor, shall pass to and vest in the Government upon—
- (A) Issuance of the property for use in subcontract performance;
- (B) Commencement of processing of the property for use in subcontract performance; or
- (C) Reimbursement of the cost of the property by Princeton, whichever occurs first.
- (iii) All Government-furnished property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (e)(3)(iii) (collectively referred to as "Government property)", are subject to the provisions of this clause.
- (f) Subcontractor plans and systems.
- (1) Subcontractors shall establish and implement property management plans, systems, and procedures at the contract, program, site or entity level to enable the following outcomes:
- (i) Acquisition of Property. The Subcontractor shall document that all property was acquired consistent with its engineering, production planning, and material control operations.
- (ii) Receipt of Government Property. The Subcontractor shall receive Government property (document the receipt), record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(1) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (e.g., stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment.
- (A) Government-furnished property. The Subcontractor shall furnish a written statement to Princeton containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.
- (B) Subcontractor-acquired property. The Subcontractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Subcontractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.
- (iii) Records of Government property. The Subcontractor shall create and maintain records of all Government property accountable to the subcontract, including Government-furnished and Subcontractor-acquired property.
- (A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by Princeton, contain the following:
- (1) The name, part number and description, manufacturer, model number, and National Stock Number (if needed for additional item identification tracking and/or disposition).
- (2) Quantity received (or fabricated), issued, and balance-on-hand.
- (3) Unit acquisition cost.
- (4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).
- (5) Unit of measure.

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- (6) Accountable contract number or equivalent code designation.
- (7) Location.
- (8) Disposition.
- (9) Posting reference and date of transaction.
- (10) Date placed in service.
- (B) Use of a Receipt and Issue System for Government Material. When approved by Princeton, the Subcontractor may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.
- (iv) Physical inventory. The Subcontractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon contract completion or termination. Princeton may waive this final inventory requirement, depending on the circumstances (e.g., overall reliability of the Subcontractor's system or the property is to be transferred to a follow-on contract).
- (v) Lower-tier subcontractor control.
 - (A) The Subcontractor shall award lower-tier subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of subcontract terms and conditions (e.g., extent of liability for loss, damage, destruction or theft of Government property).
 - (B) The Subcontractor shall assure its lower-tier subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the lower-tier subcontractor's property management system.
 - (vi) Reports. The Subcontractor shall have a process to create and provide reports of discrepancies; loss, damage, destruction, or theft; physical inventory results; audits and self-assessments; corrective actions; and other property related reports as directed by Princeton.
 - (A) Loss, damage, destruction, or theft. Unless otherwise directed by Princeton, the Subcontractor shall investigate and promptly furnish a written narrative of all incidents of loss, damage, destruction, or theft to Princeton as soon as the facts become known or when requested by Princeton.
 - (B) Such reports shall, at a minimum, contain the following information:
 - (1) Date of incident (if known).
 - (2) The name, commercial description, manufacturer, model number, and National Stock Number (if applicable).
- (3) Quantity.
- (4) Unique Item Identifier (if available).
- (5) Accountable Contract number.
- (6) A statement indicating current or future need.
- (7) Acquisition cost, or if applicable, estimated scrap proceeds, estimated repair or replacement costs.
- (8) All known interests in commingled property of which the Government property is a part.
- (9) Cause and corrective action taken or to be taken to prevent recurrence.
- (10) A statement that the Government will receive any reimbursement covering the loss, damage, destruction, or theft, in the event the Subcontractor was or will be reimbursed or compensated.
- (11) Copies of all supporting documentation.
- (12) Last known location.
- (13) A statement that the property did or did not contain sensitive or hazardous material, and if so, that the appropriate agencies were notified.
- (vii) Relief of stewardship responsibility. Unless the subcontract provides otherwise, the Subcontractor shall be relieved of stewardship responsibility for Government property when such property is—
 - (A) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the subcontract, including reasonable inventory adjustments of material as determined by Princeton; or Princeton granted relief of responsibility for loss, damage, destruction or theft of Government property;
 - (B) Delivered or shipped from the Subcontractor's plant, under Government instructions, except when shipment is to a lower-tier subcontractor or other location of the Subcontractor; or
 - (C) Disposed of in accordance with paragraphs (j) and (k) of this clause.
- (viii) Utilizing Government property.
 - (A) The Subcontractor shall utilize, consume, move, and store Government Property only as authorized under this subcontract. The Subcontractor shall promptly disclose and report Government property in its possession that is excess to subcontract performance.
 - (B) Unless otherwise authorized in this subcontract or by Princeton the Subcontractor shall not commingle Government property with property not owned by the Government.
- (ix) Maintenance. The Subcontractor shall properly maintain Government property. The Subcontractor's

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maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Subcontractor shall disclose and report to Princeton the need for replacement and/or capital rehabilitation.

- (x) Property closeout. The Subcontractor shall promptly perform and report to Princeton subcontract property closeout, to include reporting, investigating and securing closure of all loss, damage, destruction, or theft cases; physically inventorying all property upon termination or completion of this subcontract; and disposing of items at the time they are determined to be excess to contractual needs.
- (2) The Subcontractor shall establish and maintain Government accounting source data, as may be required by this subcontract, particularly in the areas of recognition of acquisitions and dispositions of material and equipment.
- (3) The Subcontractor shall establish and maintain procedures necessary to assess its property management system effectiveness, and shall perform periodic internal reviews and audits. Significant findings and/or results of such reviews and audits pertaining to Government property shall be made available to Princeton.
- (g) Systems analysis.
 - (1) Princeton and the Government shall have access to the Subcontractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Subcontractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.
 - (2) Records of Government property shall be readily available to authorized Government personnel and shall be safeguarded from tampering or destruction.
 - (3) Should it be determined by Princeton that the Subcontractor's property management practices are inadequate or not acceptable for the effective management and/or control of Government property under this subcontract, and/or present an undue risk to the Government, the Subcontractor shall immediately take all necessary corrective actions as directed by Princeton.
 - (4) The Subcontractor shall ensure Princeton and the Government access to lower subcontractor premises, and all Government property located at lower-tier subcontractor premises, for the purposes of reviewing, inspecting and evaluating the lower-tier subcontractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.
- (h) Subcontractor Liability for Government Property.
 - (1) Unless otherwise provided for in the subcontract, the Subcontractor shall not be liable for loss, damage, destruction, or theft to the Government property furnished or acquired under this subcontract, except when any one of the following applies—
 - (i) The risk is covered by insurance or the Subcontractor is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with 31.205-19.
 - (ii) The loss, damage, destruction, or theft is the result of willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel. Subcontractor's managerial personnel, in this clause, means the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Subcontractor's business; all or substantially all of the Subcontractor's operation at any one plant or separate location; or a separate and complete major industrial operation.
 - (iii) Princeton has, in writing, revoked the Government's assumption of risk for loss, damage, destruction, or theft, due to a determination under paragraph (g) of this clause that the Subcontractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Subcontractor failed to take timely corrective action. If the Subcontractor can establish by clear and convincing evidence that the loss, damage, destruction, or theft of Government property occurred while the Subcontractor had adequate property management practices or the loss, damage, destruction, or theft of Government property did not result from the Subcontractor's failure to maintain adequate property management practices, the Subcontractor shall not be held liable.
 - (2) The Subcontractor shall take all reasonable actions necessary to protect the Government property from further loss, damage, destruction, or theft. The Subcontractor shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and take such other action as the Princeton directs.
 - (3) The Subcontractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, damage, destruction, or theft of Government property.
 - (4) Upon the request of Princeton, the Subcontractor shall, at Princeton's expense, furnish to Princeton all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.
 - (i) Equitable adjustment. Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy and Princeton shall not be liable to suit for breach of contract for the following:

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- (1) Any delay in delivery of Government-furnished property.
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use.
- (3) An increase, decrease, or substitution of Government-furnished property.
- (4) Failure to repair or replace Government property for which Princeton is responsible.
- (j) Subcontractor inventory disposal. Except as otherwise provided for in this subcontract, the Subcontractor shall not dispose of Subcontractor inventory until authorized to do so by Princeton.
- (1) Scrap to which the Government has obtained title under paragraph (e) of this clause.
 - (i) Subcontractor with an approved scrap procedure.
 - (A) The Subcontractor may dispose of scrap resulting from production or testing under this subcontract without Government approval. However, if the scrap requires demilitarization or is sensitive property, the Subcontractor shall submit the scrap on an inventory disposal schedule.
 - (B) For scrap from other than production or testing the Subcontractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures), except that inventory disposal schedules shall be submitted for scrap aircraft or aircraft parts and scrap that—
 - (1) Requires demilitarization;
 - (2) Is a classified item;
 - (3) Is generated from classified items;
 - (4) Contains hazardous materials or hazardous wastes;
 - (5) Contains precious metals; or
 - (6) Is dangerous to the public health, safety, or welfare.
 - (ii) Subcontractor without an approved scrap procedure. The Subcontractor shall submit an inventory disposal schedule for all scrap. The Subcontractor may not dispose of scrap resulting from production or testing under this contract without Princeton approval.
 - (2) Predisposal requirements.
 - (i) Once the Subcontractor determines that Subcontractor-acquired property is no longer needed for subcontract performance, the Subcontractor in the following order of priority—
 - (A) May contact Princeton if use of the property in the performance of other Government contracts is practical;
 - (B) May purchase the property at the acquisition cost; or
 - (C) Shall make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices).
 - (ii) The Subcontractor shall list, on Standard Form 1428, Inventory Disposal Schedule, property that was not used in the performance of other Government contracts under paragraph (j)(2)(i)(A) of this clause, property that was not purchased under paragraph (j)(2)(i)(B) of this clause, and property that could not be returned to a supplier under paragraph (j)(2)(i)(C) of this clause.
 - (3) Inventory disposal schedules.
 - (i) The Subcontractor shall use Standard Form 1428, Inventory Disposal Schedule, to identify—
 - (A) Government-furnished property that is no longer required for performance of this subcontract, provided the terms of another Government contract do not require the Government to furnish that property for performance of this subcontract;
 - (B) Subcontractor-acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that subcontract; and
 - (C) Termination inventory.
 - (ii) The Subcontractor may annotate inventory disposal schedules to identify property the Subcontractor wishes to purchase from the Government.
 - (iii) Unless the Princeton has agreed otherwise, or the subcontract requires electronic submission of inventory disposal schedules, the Subcontractor shall prepare separate inventory disposal schedules for—
 - (A) Special test equipment with commercial components;
 - (B) Special test equipment without commercial components;
 - (C) Printing equipment;
 - (D) Information technology (e.g., computers, computer components, peripheral equipment, and related equipment);
 - (E) Precious metals;
 - (F) Mononuclear hazardous materials or hazardous wastes; or
 - (G) Nuclear materials or nuclear wastes.
 - (iv) The Subcontractor shall describe the property in sufficient detail to permit an understanding of its intended use. Property with the same description,

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- condition code, and reporting location may be grouped in a single line item.
- (4) Submission requirements. The Subcontractor shall submit inventory disposal schedules to Princeton no later than—
- (i) 30-days following the Subcontractor's determination that a Government property item is no longer required for performance of this contract;
- (ii) 60 days, or such longer period as may be approved by Princeton, following completion of subcontract deliveries or performance; or
- (iii) 120 days, or such longer period as may be approved by Princeton following subcontract termination in whole or in part.
- (5) Corrections. Princeton may—
- (i) Reject a schedule for cause (e.g., contains errors, determined to be inaccurate); and
- (ii) Require the Subcontractor to correct an inventory disposal schedule.
- (6) Post submission adjustments. The Subcontractor shall notify Princeton at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of Princeton, or upon expiration of the notice period, the Subcontractor may make the necessary adjustments to the inventory schedule.
- (7) Storage.
- (i) The Subcontractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. Princeton's failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule may entitle the Subcontractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.
- (ii) The Subcontractor shall obtain Princeton's approval to remove Government property from the premises where the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Subcontractor to transport or store the property shall not increase the price or fee of this Subcontract or any Government contract. The storage facility shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Subcontractor of any liability for such property under this subcontract.
- (8) Disposition instructions.
- (i) If Princeton does not furnish disposition instructions to the Subcontractor within 45 days following acceptance of a scrap list, the Subcontractor may dispose of the listed scrap in accordance with the Subcontractor's approved scrap procedures.
- (ii) The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Subcontractor inventory as directed by Princeton. If not returned to Princeton, the Subcontractor shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.
- (iii) Princeton may require the Subcontractor to demilitarize the property prior to shipment or disposal. In such cases, the Subcontractor may be entitled to an equitable adjustment under paragraph (i) of this clause.
- (9) Disposal proceeds. As directed by Princeton, the Subcontractor shall credit the net proceeds from the disposal of Subcontractor inventory to the subcontract, or to the Treasury of the United States as miscellaneous receipts.
- (10) Lower-tier subcontractor inventory disposal schedules. The Subcontractor shall require its lower-tier subcontractors to submit inventory disposal schedules to the Subcontractor in accordance with the requirements of paragraph (j)(4) of this clause.
- (k) Abandonment of Government property.
- (1) Princeton shall not abandon sensitive Government property or termination inventory without the Subcontractor's written consent.
- (2) Princeton, upon notice to the Subcontractor, may abandon any nonsensitive Government property in place, at which time all obligations of the Government regarding such property shall cease.
- (3) Princeton has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.
- (l) Communication. All communications under this clause shall be in writing.
- (m) Subcontracts outside the United States. If this subcontract is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

A20. AUTHORIZATION AND CONSENT (DEC 2007)

(This clause is mandatory for agreements in excess of the simplified acquisition threshold)

- (a) The Government authorizes and consents to all use and manufacture, in performing this Subcontract or any subcontract at any tier, of any invention described in and covered by a United States patent—(1) Embodied in the structure or composition of any article the delivery of which is accepted by Princeton under this subcontract;

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or (2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a lower-tier subcontractor with (i) specifications or written provisions forming a part of this subcontract or (ii) specific written instructions given by Princeton's Subcontract Administrator directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this subcontract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent herein above granted.

(b) The Subcontractor shall include the substance of this clause, including this paragraph (b), in all lower-tier subcontracts that are expected to exceed the simplified acquisition threshold. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

[If this agreement is primarily for R&D work the following will be substituted for paragraph (a)]

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

A21. PATENT INDEMNITY (APR 1984) (Modified per DEAR 970.5227-6) (DEC 2000)

(a) The Subcontractor shall indemnify Princeton and the United States of America and their officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this subcontract, or out of the use or disposal by or for the account of Princeton of such supplies or construction work.

(b) This indemnity shall not apply unless the Subcontractor shall have been informed as soon as practicable by Princeton of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to—

(1) An infringement resulting from compliance with specific written instructions of Princeton directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Subcontractor;

(2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or

(3) A claimed infringement that is unreasonably settled without the consent of the subcontractor, unless required by final decree of a court of competent jurisdiction.

A22. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)

(a) The Subcontractor shall report to Princeton, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Subcontract of which the Subcontractor has knowledge.

(b) In the event of any claim or suit against Princeton or the Government on account of any alleged patent or copyright infringement arising out of the performance of this subcontract or out of the use of any supplies furnished or work or services performed under this subcontract, the Subcontractor shall furnish, through Princeton, to the Government, when requested by Princeton, all evidence and information in the Subcontractor's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of Princeton except where the Subcontractor has agreed to indemnify Princeton and the Government.

(c) The Subcontractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the simplified acquisition threshold.

A23. ADDITIONAL DATA REQUIREMENTS (JUN 1987)

(This clause is mandatory in subcontracts for experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be \$500,000 or less).

(a) In addition to the data (as defined in the clause at 52.227-14, Rights in Data--General clause or other equivalent included in this subcontract) specified elsewhere in this subcontract to be delivered, Princeton's Subcontract Administrator may, at any time during subcontract performance or within a period of 3 years after acceptance of all items to be delivered under this subcontract, order any data first produced or specifically used in the performance of this subcontract.

(b) The Rights in Data--General clause or other equivalent included in this subcontract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Subcontractor to deliver any data the withholding of which is authorized by the Rights in Data--General or other equivalent clause of this subcontract, or data which are specifically identified in this subcontract as not subject to this clause.

(c) When data are to be delivered under this clause, the Subcontractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

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(d) Princeton's Subcontract Administrator may release the Subcontractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

A24. RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)

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

A25. RIGHTS IN DATA--GENERAL (DEC 2007) [with Alternate V and DEAR 927.409(a)]

(a) Definitions.

- (1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
- (2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.
- (3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. For the purposes of this clause, the term does not include data incidental to the administration of this Subcontract, such as financial, administrative, cost and pricing, or management information.
- (4) Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
- (5) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (g)(2) of this section if included in this clause.
- (6) Restricted computer software, as used in this clause, means computer software developed at

private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (g)(3) of this section if included in this clause.

- (7) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.
- (8) Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.
 - (b) Allocation of rights.
 - (1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in—
 - (i) Data first produced in the performance of this Subcontract;
 - (ii) Form, fit, and function data delivered under this Subcontract;
 - (iii) Data delivered under this Subcontract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this Subcontract; and
 - (iv) All other data delivered under this Subcontract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.
 - (2) The Subcontractor shall have the right to—
 - (i) Assert copyright in data first produced in the performance of this Subcontract to the extent provided in paragraph (c)(1) of this clause;
 - (ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of this Subcontract, unless provided otherwise in paragraph (d) of this clause;
 - (iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
 - (iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.
 - (c) Copyright—
 - (1) Data first produced in the performance of this Subcontract.
 - (i) Unless provided otherwise in paragraph (d) of this clause, the Subcontractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the

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- performance of this Subcontract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the Contracting Officer is required to assert copyright in all other data first produced in the performance of this Subcontract.
- (ii) When authorized to assert copyright to the data, the Subcontractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including Subcontract number).
 - (iii) For data other than computer software, the Subcontractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Subcontractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.
- (2) Data not first produced in the performance of this Subcontract. The Subcontractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this Subcontract any data not first produced in the performance of this Subcontract unless the Subcontractor—
- (i) Identifies the data; and
 - (ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this Subcontract) or as otherwise provided in a collateral agreement incorporated in or made part of this Subcontract.
- (3) Removal of copyright notices. The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.
- (d) Release, publication, and use of data. The Subcontractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of this Subcontract, except—
- (1) As prohibited by Federal law or regulation (e.g., export control or national security laws or regulations);
 - (2) As expressly set forth in this Subcontract; or
 - (3) The Subcontractor agrees not to assert copyright in computer software first produced in the performance of this Subcontract without prior written permission of the DOE Patent Counsel assisting the contracting activity. When such permission is granted, the Patent Counsel shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data.
- The Subcontractor, when requested, shall promptly deliver to Patent Counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.
- (e) Unauthorized marking of data.
 - (1) Notwithstanding any other provisions of this Subcontract concerning inspection or acceptance, if any data delivered under this Subcontract are marked with the notices specified in paragraph (g)(3) or (g) (4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this Subcontract, the Contracting Officer may at any time either return the data to the Subcontractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 253d, the following procedures shall apply prior to canceling or ignoring the markings.
 - (i) The Contracting Officer will make written inquiry to the Subcontractor affording the Subcontractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
 - (ii) If the Subcontractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.
 - (iii) If the Subcontractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Subcontractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Subcontractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Subcontractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.
 - (2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.
 - (3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the

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Subcontractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this Subcontract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this Subcontract.

- (f) Omitted or incorrect markings.
- (1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.
- (2) If the unmarked data has not been disclosed without restriction outside the Government, the Subcontractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Subcontractor's expense. The Contracting Officer may agree to do so if the Subcontractor—
 - (i) Identifies the data to which the omitted notice is to be applied;
 - (ii) Demonstrates that the omission of the notice was inadvertent;
 - (iii) Establishes that the proposed notice is authorized; and
 - (iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.
- (3) If data has been marked with an incorrect notice, the Contracting Officer may—
 - (i) Permit correction of the notice at the Subcontractor's expense if the Subcontractor identifies the data and demonstrates that the correct notice is authorized; or
 - (ii) Correct any incorrect notices.
- (g) Protection of limited rights data and restricted computer software.
 - (1) The Subcontractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Subcontractor shall—
 - (i) Identify the data being withheld; and
 - (ii) Furnish form, fit, and function data instead.
 - (2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.
 - (3) [Reserved]
- (h) Lower-Tier Subcontracting. The Subcontractor shall obtain from its lower-tier subcontractors all data and rights therein necessary to fulfill the Subcontractor's obligations to the Government under this Subcontract. If a lower-tier subcontractor refuses to accept terms affording the Government those rights, the Subcontractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.
 - (i) Relationship to patents or other rights. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

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

A26. BANKRUPTCY (JUL 1995)

In the event the Subcontractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Subcontractor agrees to furnish, by certified mail or electronic commerce method authorized by the subcontract, written notification of the bankruptcy to Princeton's Subcontract Administrator responsible for administering the subcontract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this subcontract.

A27. KEY PERSONNEL (APR 1994)

(Applicable when invoked in the Subcontract Agreement)

The personnel specified in an attachment to this subcontract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Subcontractor shall notify Princeton's Subcontract Administrator reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Subcontractor without the written consent of Princeton's Subcontract Administrator, provided that Princeton's Subcontract Administrator may ratify in writing such diversion and such ratification shall constitute the consent required by this clause. The attachment to this subcontract may be amended from time to time during the course of the subcontract to either add or delete personnel, as appropriate.

A28. SUSPECT/COUNTERFEIT PARTS (MAY 2002)

- (a) "Suspect/counterfeit parts" are parts that may be of new manufacture, but labeled to represent a different class of parts, or used and/or refurbished parts, complete with false labeling, that are represented as new parts. Three categories of suspect/counterfeit parts exist:

PPPL General Provisions for Non-Commercial Subcontracts

Part A - Common Clauses

(1) Fasteners, including bolts and nuts, made of carbon steel (designated as grade five or grade eight) or stainless steel, with headmarks or stamps shown on the headmark list that was prepared by the United States Customs Service (the list is provided as a separate attachment to this Agreement, or is available upon request from Princeton);

(2) Piping valves and flanges bearing labels that falsely indicate that the items meet recognized ASME or ASTM consensus standards; and

(3) Used or refurbished molded-case electrical circuit breakers or similar type switch gear.

(b) Supplies furnished to Princeton under this Agreement shall not include suspect/counterfeit parts nor shall such parts be used in performing any work under this Agreement whether on or off the PPPL site.

(c) If suspect/counterfeit parts are furnished under this Agreement and are found on the PPPL site, such parts shall be impounded by Princeton or be removed by the Subcontractor as directed by Princeton. The Subcontractor shall promptly replace such parts with supplies acceptable to Princeton, and the Subcontractor shall be liable for all costs relating to impoundment, removal and replacement.

(d) The rights of Princeton under this clause are in addition to any other rights provided by law or under this Agreement.

A29. PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

If the Government in any way reduces Princeton's contract fee in accordance with the provisions of the clause at Part 52.203-10 of the Federal Acquisition Regulation entitled "Price or Fee Adjustment for Illegal or Improper Activity" for violations of the Act by the Subcontractor, the Subcontractor and Princeton agree that:

- (a) Princeton shall be entitled to a commensurate reduction (or set-off) in the Subcontract price or fee.
- (b) Princeton may, at its sole discretion, terminate the Subcontract for default.
- (c) The rights and remedies of Princeton specified in (a) and (b) are not exclusive, and are in addition to any other rights and remedies provided by law or under this Subcontract.

A30. COMPLIANCE WITH INTERNET PROTOCOL VERSION 6 (IPV6) IN ACQUIRING INFORMATION TECHNOLOGY (JAN 2006)

If this purchase order or subcontract involves the acquisition of Information Technology (IT) that uses Internet Protocol (IP) technology, the Subcontractor agrees that: (1) all deliverables that involve IT that uses IP (products, services, software, etc.) will comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products; and (2) it has IPv6 technical support for development and implementation and fielded product man-agreement available. If the Subcontractor plans to offer a deliverable that involves IT that is not initially compliant, the Subcontractor agrees to: (1)

obtain Princeton's approval before starting work on the deliverable; (2) provide a migration path and firm commitment to upgrade to IPv6 for all application and product features by June 2008; and (3) have IPv6 technical support for development and implementation and fielded product management available.

Should the Subcontractor find that the statement of work or specifications of this purchase order or subcontract do not conform to the IPv6 standard, it must notify Princeton of such nonconformance and act in accordance with instructions of Princeton.

A31. ENVIRONMENTALLY PREFERABLE PURCHASING FOR DESKTOP OR LAPTOP COMPUTERS OR MONITORS (2007)

When the Subcontract requires the specification or delivery of desktop or laptop computers or monitors in a DOE facility, the Subcontractor will specify or deliver Electronic Product Environmental Acquisition Tool (EPEAT) registered products conforming to the IEEE 1680-2006 Standard, provided such products are available, are life cycle cost efficient, and meet applicable performance requirements. Information on EPEAT-registered computer products is available at www.epeat.net.

A32. WALSH-HEALY PUBLIC CONTRACTS ACT (JAN 2009)

If this contract is for the manufacturing or furnishing of materials, supplies, articles, or equipment in an amount that exceeds or may exceed \$10,000.00 and is otherwise subject to the Walsh-Healy Public Contracts Act, as amended (41 U.S. Code 35), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

A33. COMMON SECURITY CONFIGURATIONS IN INFORMATION TECHNOLOGY ACQUISITIONS (APR 2009) (applicable to acquisition of computer hardware and software)

All information technology acquired under this Subcontract shall include and incorporate the appropriate information technology security policies and requirements, including use of common security configurations available from the National Institute of Standards and Technology's website at <http://checklists.nist.gov>.

PPPL General Provisions for Non-Commercial Subcontracts

Part A - Common Clauses

AAC 1 & 2. CLAUSES, STATUTES OR EXECUTIVE ORDERS INCORPORATED BY REFERENCE: The Subcontractor agrees to comply with the following Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses by reference, as they exist on the effective date of this contract, with the same force and effect as if they were in full text. For FAR provisions incorporated by reference, "Government" means "Princeton", Contracting Officer" means "Princeton Plasma Physics Laboratory's Procurement Division Buyer or Subcontract Administrator", except where statute or regulation vests authority exclusively in specific agencies or individuals, and "Contractor" means "Supplier". The FAR clauses are available through the General Services Administration (GSA) at <http://www.acqnet.gov/far/> and the DEAR clauses area available at <http://www.management.energy.gov/DEAR.htm>, or they may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. To the maximum extent practicable, the Subcontractor shall incorporate, and require its subcontractors, divisions, subsidiaries or affiliates at all tiers to incorporate commercial items or non-developmental items as components of items to be supplied under this Agreement. The Subcontractor is not required to include any FAR provisions or clauses other than those listed below to the extent that they are applicable and as may be required to establish the reasonableness of prices under FAR 15, in a subcontract at any tier for commercial items or components. The Subcontractor shall include the terms of this clause, including this statement, in lower-tier subcontracts awarded under this Agreement.

AAC 1 FAR CLAUSES INCORPORATED BY REFERENCE

<u>Clause:</u>	<u>Title:</u>	<u>FAR Reference:</u>
AAC 1-1	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (For All Agreements where access to a Princeton IT resource is required, OR an on-site presence of more than 6 months is required)	52.204-9
AAC 1-2	FACILITIES CAPITAL COST OF MONEY (This clause is applicable if the Subcontractor separately identifies facilities capital cost of money in its proposal)	52.215-16
AAC 1-3	WAIVER OF FACILITIES CAPITAL COST OF MONEY (This clause is applicable if the Subcontractor DOES NOT separately identify facilities capital cost of money in its proposal)	52.215-17
AAC1-4	UTILIZATION OF SMALL BUSINESS CONCERNS	52.219-8
AAC 1-5	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT OVERTIME COMPENSATION (This clause applies to subcontracts that may require or involve the employment of laborers and mechanics)	52.222-4
AAC 1-6	WALSH-HEALEY PUBLIC CONTRACTS ACT	52.222-20
AAC 1-7	PROHIBITION OF SEGREGATED FACILITIES(This clause is applicable to subcontracts greater than \$10,000)	52.222-21
AAC 1-8	EQUAL OPPORTUNITY (This clause is applicable to subcontracts greater than \$10,000)	52.222-26
AAC 1-9	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (This clause is applicable to subcontracts greater than \$10,000.	52.222-36
AAC 1-10	COMBATING TRAFFICKING IN PERSONS	52.222-50
AAC 1-11	BUY AMERICAN ACT – SUPPLIES (This clause is applicable to subcontracts valued greater than \$25,000)	52.225-1
AAC 1-12	STATE OF NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX	52.229-10
AAC 1-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	52.225-13
AAC 1-14	SUBCONTRACTS FOR COMMERCIAL ITEMS	52.244-6

AAC 2 DEAR CLAUSES INCORPORATED BY REFERENCE

<u>Clause:</u>	<u>Title:</u>	<u>DEAR Reference:</u>
AAC 2-1	SENSITIVE FOREIGN NATIONS CONTROLS	952.204-71
AAC 2-2	ACCESS TO AND OWNERSHIP OF RECORDS (This clause applies to cost-reimbursement type subcontracts if any of the following factors is present: (1) the value of the subcontract is greater than \$2 million (unless specifically waived by Princeton); (2) Princeton determines that the subcontract is, or involves, a critical task related to Princeton's contract with DOE; or (3) the subcontract includes Clause T2, Integration of Environment, Safety, and Health into Work Planning and Execution, or a similar clause.)	970.5204-3

PPPL General Provisions for Non-Commercial Subcontracts
Part A - Common Clauses

AAC 2-3	REFUND OF ROYALTIES (This clause applies to subcontracts at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds \$250)	970.5227-8
AAC 2-4	STATE AND LOCAL TAXES	970.5229-1
AAC2-5	RESEARCH MISCONDUCT (This clause is applicable to subcontracts for research)	952.235-71
AAC2-6	COMPUTER SECURITY (applicable to all subcontracts where access is provided to computers owned, leased or operated on behalf of the DOE)	952.204-77

PPPL General Provisions For Non-Commercial Subcontracts
Reference List
Part B - Agreements in Excess of \$100,000

REQUEST FOR PROPOSALS (RFP) NO. 11-049F

The following clauses, the full texts of which are set forth below, are hereby incorporated in and made part of the above-cited subcontract.

<u>No.</u>	<u>Clause Title</u>	<u>Page No.</u>
B1	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)	1
B2	INTEGRITY OF UNIT PRICES (OCT 1997)	1
B3	TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)	1
B4	ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997)	2
B5	CLAUSES, STATUTES OR EXECUTIVE ORDERS INCORPORATED BY REFERENCE	3

ADDITIONAL APPLICABLE CLAUSES

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PPPL General Provisions for Non-Commercial Subcontracts

Part B - Agreements in Excess of \$100,000

B1. RESTRICTIONS ON SUBCONTRACTOR SALES (SEP 2006)

- (a) Except as provided in paragraph (b) of this clause, the Subcontractor shall not enter into any agreement with an actual or prospective lower-tier subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such lower-tier subcontractors directly to Princeton or the Government of any item or process (including computer software) made or furnished by the lower-tier subcontractor under this Subcontract or under any follow-on production subcontract.
- (b) The prohibition in paragraph (a) above does not preclude the Subcontractor from asserting rights that are otherwise authorized by law or regulation.
- (c) The Subcontractor agrees to incorporate the substance of this clause, including this paragraph (c), in all lower-tier subcontracts under this subcontract that exceed \$100,000.

B2. INTEGRITY OF UNIT PRICES (OCT 1997)

(Does NOT apply to construction, A/E or utility services, petroleum products, or services where supplies are NOT required)

- (a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.
- (b) **Reserved**
- (c) The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold in FAR Part 2; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.

B3. TOXIC CHEMICAL RELEASE REPORTING (AUG 2003) (This clause is applicable to subcontracts awarded as a result of competition)

- (a) Unless otherwise exempt, the Subcontractor, as owner or operator of a facility used in the performance of this Subcontract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Subcontractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the Subcontract.
- (b) A Contractor-owned or -operated facility used in the performance of this Subcontract is exempt from the requirement to file an annual Form R if --
- (1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;
 - (2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);
 - (3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);
 - (4) The facility does not fall within Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:
 - (i) Major group code 10 (except 1011, 1081, and 1094).
 - (ii) Major group code 12 (except 1241).
 - (iii) Major group codes 20 through 39.
 - (iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).
 - (v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.)), or 5169, 5171, 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or
- (5) The facility is not located in the United States or its outlying areas.
- (c) If the Subcontractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the Subcontract circumstances change so that any of its owned or operated facilities used in the performance of this Subcontract is no longer exempt --
- (1) The Subcontractor shall notify Princeton; and

PPPL General Provisions for Non-Commercial Subcontracts

Part B - Agreements in Excess of \$100,000

- (2) The Subcontractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall --
- (i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and
 - (ii) Continue to file the annual Form R for the life of the Subcontract for such facility.
- (d) Princeton may terminate this Subcontract or take other action as appropriate, if the Subcontractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

B4. ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997)

(This clause is applicable for subcontracts for advisory and assistance services.)

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

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

(1) Use of Subcontractor's Work Product. (i) The Subcontractor shall be ineligible to participate in any capacity in Department of Energy (DOE) contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the Subcontractor's performance of work under this subcontract for a period of five (5) years after the completion of this subcontract. Furthermore, unless so directed in writing by Princeton, the Subcontractor shall not perform any advisory and assistance services work under this subcontract on any of its products or services or the products or services of another firm if the Subcontractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Subcontractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this Subcontract, the Subcontractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Subcontractor shall be ineligible to perform or participate in any capacity in any contractual effort that is based on such statement of work or specifications. The Subcontractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by Princeton, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the Subcontractor from offering or selling its standard and commercial items to Princeton and the Government.

(2) Access to and use of information. (i) If the Subcontractor, in the performance of this Subcontract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Subcontractor agrees that without prior written approval of the contracting officer it shall not:

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for the Department of Energy based on such information for a period of six (6) months after either the completion of this Subcontract or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the Department of Energy.

(ii) In addition, the Subcontractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this subcontract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The Subcontractor may use technical data it first produces under this Subcontract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this Subcontract.

(c) Disclosure after award. (1) The Subcontractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this subcontract, occur during the performance of this subcontract, it shall make an immediate and full disclosure of such changes in writing to Princeton. Such disclosure may include a description of any action that the Subcontractor has taken or proposes to take to

PPPL General Provisions for Non-Commercial Subcontracts

Part B - Agreements in Excess of \$100,000

avoid, neutralize, or mitigate any resulting conflict of interest. The Department of Energy may, however, direct Princeton to terminate the subcontract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the Subcontractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the contracting officer, DOE may direct Princeton to terminate this subcontract for default.

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

(e) Waiver. Requests for waiver under this clause shall be directed in writing to the contracting officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the contracting officer may grant such a waiver in writing.

(f) Lower-Tier Subcontracts.

(1) The Subcontractor shall include a clause, substantially similar to this clause, including this paragraph (f), in lower-tier subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving the performance of advisory and assistance services as that term is defined at FAR 37.201. The terms "contract," "contractor," and "contracting officer" shall be appropriately modified to preserve the Government's rights.

(2) Prior to the award under this Subcontract of any such lower-tier subcontracts for advisory and assistance services, the Subcontractor shall obtain from the proposed lower-tier subcontractor or consultant the disclosure required by DEAR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Subcontractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Subcontractor. If the conflict cannot be avoided or neutralized, the Subcontractor must obtain the approval of the DOE contracting officer prior to entering into the lower-tier subcontract.

B5. CLAUSES, STATUTES OR EXECUTIVE ORDERS INCORPORATED BY REFERENCE: The Subcontractor agrees to comply with the following Federal Acquisition Regulation (FAR) clauses by reference, as they exist on the effective date of this contract, with the same force and effect as if they were in full text. For FAR provisions incorporated by reference, "Government" means "Princeton", "Contracting Officer" means "Princeton Plasma Physics Laboratory's Procurement Division Buyer or Subcontract Administrator", except where statute or regulation vests authority exclusively in specific agencies or individuals, and "Contractor" means "Subcontractor". The FAR clauses are available through the General Services Administration (GSA) at <http://www.acqnet.gov/far/> or they may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. To the maximum extent practicable, the Subcontractor shall incorporate, and require its subcontractors, divisions, subsidiaries or affiliates at all tiers to incorporate commercial items or non-developmental items as components of items to be supplied under this Agreement. The Subcontractor is not required to include any FAR provisions or clauses other than those listed below to the extent that they are applicable and as may be required to establish the reasonableness of prices under FAR 15, in a subcontract at any tier for commercial items or components. The Subcontractor shall include the terms of this clause, including this statement, in lower-tier subcontracts awarded under this Agreement.

<u>Clause:</u>	<u>Title:</u>	<u>FAR Reference:</u>
B5-1	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	52.203-12
B5-2	EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIET NAM ERA, AND OTHER ELIGIBLE VETERANS	52.222-35
B5-3	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIET NAM ERA, AND OTHER ELIGIBLE VETERANS	52.222-37
B5-4	NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES	52.222-39

NOTHING FOLLOWS

PPPL General Provisions For Non-Commercial Subcontracts
Reference List

Part C - Agreements in Excess of \$500,000

REQUEST FOR PROPOSALS (RFP) NO. 11-049F

The following clauses, the full texts of which are set forth below, are hereby incorporated in and made part of the above-cited subcontract.

<u>No.</u>	<u>Clause Title</u>	<u>Page No.</u>
C1.	LOWER-TIER SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)	1
C2.	LOWER-TIER SUBCONTRACTOR COST OR PRICING DATA -- MODIFICATIONS (OCT 1997)	1
C3.	COST ACCOUNTING STANDARDS (OCT 2008)	1
C4.	DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (OCT 2008)	2
C5.	COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTION (OCT 2008)	3
C6.	ADMINISTRATION OF COST ACCOUNTING STANDARDS (MAR 2008)	4
C7.	COST ACCOUNTING STANDARDS INDEMNITY (FEB 2003)	7
C8.	DISPLACED EMPLOYEE HIRING PREFERENCE (JUNE 1997)	8
C9.	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2007)	
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ADDITIONAL APPLICABLE CLAUSES

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PPPL General Provisions For Non-Commercial Subcontracts

Part C - Agreements In Excess Of \$500,000

C1. LOWER-TIER SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)

(This clause is applicable when subcontract is more than \$650,000 except contracts based on adequate price competition, where prices are set by law or regulation, or subcontract is for acquisition of a commercial item)

(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 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 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.

C2. LOWER-TIER SUBCONTRACTOR COST OR PRICING DATA -- MODIFICATIONS (OCT 1997)

(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 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 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.

C3. COST ACCOUNTING STANDARDS (OCT 2008)

(a) Unless the subcontract is exempt under 48 CFR Parts 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 contracts and subcontracts being performed by the Subcontractor and which contain a Cost Accounting Standards (CAS) clause. If the Subcontractor has notified Princeton 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 Government.

(2) Follow consistently the Subcontractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this subcontract. If any change in cost accounting practices is made for the purposes of any contract or 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

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with any CAS (or modifications to CAS) that hereafter become applicable to a contract or subcontract of the Subcontractor. Such compliance shall be required prospectively from the date of applicability to such contract or 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 Princeton 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 the United States.

(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 sub-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 Princeton. Such adjustment shall provide for recovery of the increased costs to Princeton, 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 Princeton was made to the time the adjustment is effected. In no case shall Princeton recover costs greater than the increased cost to Princeton 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 Princeton.

(b) **Reserved**

(c) The Subcontractor shall permit any authorized representatives of the 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-subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the lower-subcontractor's signed Certificate of Current Cost or Pricing Data. If the lower-tier subcontract is awarded to a business unit that 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.

C4. DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (OCT 2008)

(This clause is applicable when subcontract amount is over \$650,000 but less than \$50 million, and the Subcontractor certifies it is eligible for and elects to use modified CAS coverage)

(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 Princeton 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 Government.

(3)(i) Follow consistently the Subcontractor's cost accounting practices. A change to such practices may be proposed, however, by either Princeton or the Subcontractor, and the Subcontractor agrees to negotiate with Princeton 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 Princeton has made the finding required in 48 CFR 9903.201-6(c), that the change is desirable and not detrimental to the interests of Princeton, 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 Princeton.

(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 Princeton. Such adjustment shall provide for recovery of the increased costs to Princeton together with

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interest thereon computed at the annual rate of interest established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)), from the time the payment by Princeton was made to the time the adjustment is effected.

(b) **Reserved**

(c) The Subcontractor shall permit any authorized representatives of Princeton or the 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 \$650,000.

(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.

C5. COST ACCOUNTING STANDARDS--EDUCATIONAL INSTITUTION (OCT 2008)

(This clause is applicable to negotiated subcontracts over \$650,000 with educational institutions)

(a) Unless the contract 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 contract, shall--

(1) (CAS-covered Subcontracts Only). If a business unit of an educational institution 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 Princeton 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 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 contract or 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 Part 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 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) that hereafter becomes applicable to a subcontract or a 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 Princeton 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 paragraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by Princeton.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this subcontract.

(iv) Agree to an equitable adjustment as provided in the Changes clause of this subcontract, if the subcontract cost is materially affected by an OMB Circular A-21 accounting principle amendment which, on becoming effective after the date of subcontract award, requires the Subcontractor to make a change to the Subcontractor's established cost accounting practices.

(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 Princeton. Such adjustment shall provide for recovery of the increased costs to

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Princeton, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by Princeton was made to the time the adjustment is effected. In no case shall Princeton recover costs greater than the increased cost to Princeton, in the aggregate, on the relevant contracts 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 Princeton.

(b) **Reserved**

(c) The Subcontractor shall permit any authorized representatives of Princeton or the 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 applicable 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 Subcontractor's signed Certificate of Current Cost or Pricing Data, 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 48 CFR 9903.201-4 shall be inserted.

(2) This requirement shall apply only to negotiated lower-tier subcontracts in excess of \$650,000.

(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.

C.6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (MAR 2008)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (b) through (i) and (k) through (n) of this clause:

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

"Affected CAS-covered contract or subcontract" means a contract or subcontract subject to CAS rules and regulations for which a Contractor or subcontractor—

(1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or

(2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

"Cognizant Federal agency official (CFAO)" means the Contracting Officer assigned by the cognizant Federal agency to administer the CAS.

"Desirable change" means a compliant change to a Contractor's established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

"Fixed-price contracts and subcontracts" means—

(1) Fixed-price contracts and subcontracts described at FAR 16.202, 16.203, (except when price adjustments are based on actual costs of labor or material, described at 16.203-1(a)(2)), and 16.207;

(2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (FAR Subpart 16.4);

(3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (FAR Subpart 16.5); and

(4) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (FAR Subpart 16.6).

"Flexibly-priced contracts and subcontracts" means—

(1) Fixed-price contracts and subcontracts described at FAR 16.203-1(a)(2), 16.204, 16.205, and 16.206;

(2) Cost-reimbursement contracts and subcontracts (FAR Subpart 16.3);

(3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (FAR Subpart 16.4);

(4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (FAR Subpart 16.5); and

(5) The materials portion of time-and-materials contracts and subcontracts (FAR Subpart 16.6).

"Noncompliance" means a failure in estimating, accumulating, or reporting costs to—

(1) Comply with applicable CAS; or

(2) Consistently follow disclosed or established cost accounting practices.

"Required change" means—

(1) A change in cost accounting practice that a Contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently become applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or

(2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the Contractor to remain in compliance.

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"Unilateral change" means a change in cost accounting practice from one compliant practice to another compliant practice that a Contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

(b) Submit to the CFAO a description of any cost accounting practice change as outlined in paragraphs (b)(1) through (3) of this clause (including revisions to the Disclosure Statement, if applicable), and any written statement that the cost impact of the change is immaterial. If a change in cost accounting practice is implemented without submitting the notice required by this paragraph, the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR 52.230-2, Cost Accounting Standards; paragraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; or paragraph (a)(2) of the clause at FAR 52.230-5, Cost Accounting Standards—Educational Institution.

(1) When a description has been submitted for a change in cost accounting practice that is dependent on a contract award and that contract is subsequently awarded, notify the CFAO within 15 days after such award.

(2) For any change in cost accounting practice not covered by (b)(1) of this clause that is required in accordance with paragraphs (a)(3) and (a)(4)(i) of the clause at FAR 52.230-2; or paragraphs (a)(3), (a)(4)(i), or (a)(4)(iv) of the clause at FAR 52.230-5; submit a description of the change to the CFAO not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change.

(3) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2 and FAR 52.230-5; or with paragraph (a)(3) of the clause at FAR 52.230-3, submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. If the change includes a proposed retroactive date submit supporting rationale.

(4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) of the clause at FAR 52.230-2 and FAR 52.230-5; or by paragraph (a)(4) of the clause at FAR 52.230-3)—

(i) Within 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) after the date of agreement with the CFAO that there is a noncompliance; or

(ii) In the event of Contractor disagreement, within 60 days after the CFAO notifies the Contractor of the determination of noncompliance.

(c) When requested by the CFAO, submit on or before a date specified by the CFAO—

(1) A general dollar magnitude (GDM) proposal in accordance with paragraph (d) or (g) of this clause. The Contractor may submit a detailed cost-impact (DCI) proposal in lieu of the requested GDM proposal provided the DCI proposal is in accordance with paragraph (e) or (h) of this clause;

(2) A detailed cost-impact (DCI) proposal in accordance with paragraph (e) or (h) of this clause;

(3) For any request for a desirable change that is based on the criteria in FAR 30.603-2(b)(3)(ii), the data necessary to demonstrate the required cost savings; and

(4) For any request for a desirable change that is based on criteria other than that in FAR 30.603-2(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change.

(d) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the GDM proposal shall—

(1) Calculate the cost impact in accordance with paragraph (f) of this clause;

(2) Use one or more of the following methods to determine the increase or decrease in cost accumulations:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly-priced contracts and subcontracts;

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The estimated increase or decrease in cost accumulations by Executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) For unilateral changes, the increased or decreased costs to the Government for each of the following

groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts; and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(e) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the DCI proposal shall—

(1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;

(2) Show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to include—

(i) Only those affected CAS-covered contracts and subcontracts having an estimate to complete exceeding a specified amount; and

(ii) An estimate of the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (e)(2)(i) of this clause;

(3) Use a format acceptable to the CFAO but, as a minimum, include the information in paragraph (d)(3) of this clause; and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(f) For GDM and DCI proposals that are subject to the requirements of paragraph (d) or (e) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs were incurred (*i.e.*, whether or not the final indirect rates have been established).

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- (2) For unilateral changes—
 - (i) Determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:
 - (A) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is increased cost to the Government.
 - (B) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is decreased cost to the Government;
 - (ii) Determine the increased or decreased cost to the Government for fixed-priced contracts and subcontracts as follows:
 - (A) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is increased cost to the Government.
 - (B) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is decreased cost to the Government;
 - (iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased costs to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the cost impact been known at the time the contracts and subcontracts were negotiated; and
 - (iv) Calculate the increased cost to the Government in the aggregate.
- (3) For equitable adjustments for required or desirable changes—
 - (i) Estimated increased cost accumulations are the basis for increasing contract prices, target prices and cost ceilings; and
 - (ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, target prices and cost ceilings.
- (g) For any noncompliant cost accounting practice subject to paragraph (b)(4) of this clause, prepare the GDM proposal as follows:
 - (1) Calculate the cost impact in accordance with paragraph (i) of this clause.
 - (2) Use one or more of the following methods to determine the increase or decrease in contract and subcontract prices or cost accumulations, as applicable:
 - (i) A representative sample of affected CAS-covered contracts and subcontracts.
 - (ii) When the noncompliance involves cost accumulation the change in indirect rates multiplied by the applicable base for only flexibly-priced contracts and subcontracts.
 - (iii) Any other method that provides a reasonable approximation of the total increase or decrease.
 - (3) Use a format acceptable to the CFAO but, as a minimum, include the following data:
 - (i) The total increase or decrease in contract and subcontract price and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:
 - (A) Fixed-price contracts and subcontracts.
 - (B) Flexibly-priced contracts and subcontracts.
 - (ii) The increased or decreased cost to the Government for each of the following groups:
 - (A) Fixed-price contracts and subcontracts.
 - (B) Flexibly-priced contracts and subcontracts.
 - (iii) The total overpayments and underpayments made by the Government during the period of noncompliance.
 - (4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.
- (h) For any noncompliant practice subject to paragraph (b)(4) of this clause, prepare the DCI proposal as follows:
 - (1) Calculate the cost impact in accordance with paragraph (i) of this clause.
 - (2) Show the increase or decrease in price and cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to—
 - (i) Include only those affected CAS-covered contracts and subcontracts having—
 - (A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and
 - (B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and
 - (ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (h)(2)(i) of this clause.
 - (3) Use a format acceptable to the CFAO that, as a minimum, include the information in paragraph (g)(3) of this clause.
 - (4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.
- (i) For GDM and DCI proposals that are subject to the requirements of paragraph (g) or (h) of this clause, calculate the cost impact as follows:
 - (1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs are incurred (*i.e.*, whether or not the final indirect rates have been established).
 - (2) For noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:
 - (i) When the negotiated contract or subcontract price exceeds what the negotiated price would have been had the Contractor used a compliant practice, the difference is increased cost to the Government.
 - (ii) When the negotiated contract or subcontract price is less than what the negotiated price would have been had the Contractor used a compliant practice, the difference is decreased cost to the Government.
 - (3) For noncompliances that involve accumulating costs, determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:
 - (i) When the costs that were accumulated under the noncompliant practice exceed the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is increased cost to the Government.

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- (ii) When the costs that were accumulated under the noncompliant practice are less than the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is decreased cost to the Government.
- (4) Calculate the total increase or decrease in contract and subcontracts incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the Contractor used a compliant practice.
- (5) Calculate the increased cost to the Government in the aggregate.
- (j) If the Contractor does not submit the information required by paragraph (b) or (c) of this clause within the specified time, or any extension granted by the CFAO, the CFAO may take one or both of the following actions:
- (1) Withhold an amount not to exceed 10 percent of each subsequent amount payment to the Contractor's affected CAS-covered contracts, (up to the estimated general dollar magnitude of the cost impact), until such time as the Contractor provides the required information to the CFAO.
- (2) Issue a final decision in accordance with FAR 33.211 and unilaterally adjust the contract(s) by the estimated amount of the cost impact.
- (k) Agree to—
- (1) Contract modifications to reflect adjustments required in accordance with paragraph (a)(4)(ii) or (a)(5) of the clauses at FAR 52.230-2 and 52.230-5; or with paragraph (a)(3)(i) or (a)(4) of the clause at FAR 52.230-3; and
- (2) Repay the Government for any aggregate increased cost paid to the Contractor.
- (l) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5—
- (1) So state in the body of the subcontract, in the letter of award, or in both (do not use self-deleting clauses);
- (2) Include the substance of this clause in all negotiated subcontracts; and
- (3) Within 30 days after award of the subcontract, submit the following information to the Contractor's CFAO:
- (i) Subcontractor's name and subcontract number.
- (ii) Dollar amount and date of award.
- (iii) Name of Contractor making the award.
- (m) Notify the CFAO in writing of any adjustments required to subcontracts under this contract and agree to an adjustment to this contract price or estimated cost and fee. The Contractor shall—
- (1) Provide this notice within 30 days after the Contractor receives the proposed subcontract adjustments; and
- (2) Include a proposal for adjusting the higher-tier subcontract or the contract appropriately.
- (n) For subcontracts containing the clause or substance of the clause at FAR 52.230-2, FAR 52.230-3, or FAR 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

C7. COST ACCOUNTING STANDARDS INDEMNITY (FEB 2003)

Reference is made to the clauses C3, C4 and C6 herein, respectively entitled COST ACCOUNTING STANDARDS, DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING STANDARDS and ADMINISTRATION OF COST ACCOUNTING STANDARDS. The Subcontractor agrees to be liable for and to indemnify Princeton against any increased costs or interest thereon resulting from any failure of the Subcontractor to comply with any prescribed standards or disclosed practices.

C8. DISPLACED EMPLOYEE HIRING PREFERENCE (JUNE 1997)

(a) Definition. "Eligible employee" means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its contractors with respect to work under its contract with the Department at the time the particular position is available.

(b) Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the Subcontractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this subcontract.

(c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

C9. SUBCONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2007)

(This clause is applicable to subcontracts in excess of \$5,000,000 and a performance period of more than 120 days except when the subcontract is performed entirely outside the United States.)

(a) Definition. "United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) Code of business ethics and conduct. (1) Within 30 days after subcontract award, unless Princeton establishes a longer time period, the Subcontractor shall—

- (i) Have a written code of business ethics and conduct; and
- (ii) Provide a copy of the code to each employee engaged in performance of the subcontract.

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Part C - Agreements In Excess Of \$500,000

- (2) The Subcontractor shall promote compliance with its code of business ethics and conduct.
- (c) Awareness program and internal control system for other than small businesses. This paragraph (c) does not apply if the Subcontractor has represented itself as a small business concern pursuant to the award of this subcontract. The Subcontractor shall establish within 90 days after subcontract award, unless Princeton establishes a longer time period –
 - (1) An ongoing business ethics and business conduct awareness program; and
 - (2) An internal control system.
 - (i) The Subcontractor's internal control system shall –
 - (A) Facilitate timely discovery of improper conduct in connection with Government contracts; and
 - (B) Ensure corrective measures are promptly instituted and carried out.
 - (ii) For example, the Subcontractor's internal control system should provide for –
 - (A) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Subcontractor's code of business ethics and conduct and the special requirements of Government contracting;
 - (B) An internal reporting mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports;
 - (C) Internal and/or external audits, as appropriate; and
 - (D) Disciplinary action for improper conduct.
- (d) Subcontracts. The Subcontractor shall include the substance of this clause, including this paragraph (d) in lower tier subcontracts that have a value in excess of \$5,000,000 and a performance period of more than 120 days, except when the lower tier subcontract –
 - (1) Is for the acquisition of a commercial item; or
 - (2) Is performed entirely outside the United States.

C10. DISPLAY OF HOTLINE POSTER(S) (DEC 2007)

(This clause is applicable to subcontracts in excess of \$5,000,000 and a performance period of more than 120 days except when the subcontract is performed entirely outside the United States.

- (a) Definition. "United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.
- (b) Display of fraud hotline poster(s). Except as provided in paragraph (c) –
 - (1) During subcontract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this subcontract and at subcontract work sites—
 - (i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and
 - (ii) Any DHS fraud hotline poster subsequently identified by Princeton.
 - (2) Additionally, if the Subcontractor maintains a company website as a method of providing information to employees, the Subcontractor shall display an electronic version of the poster(s) at the website.
- (3) Any required posters may be obtained as follows;

Poster(s)	Obtain from
DOE Hotline Poster	http://g.energy.gov/hotline.htm

- (c) If the Subcontractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Subcontractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.
- (d) Lower Tier Subcontracts. The Subcontractor shall include the substance of this clause, including this paragraph (d), in all lower tier subcontracts that exceed \$5,000,000, except when the lower tier subcontract –
 - (1) Is for the acquisition of a commercial items; or
 - (2) Is performed entirely outside the United States.

C11. CLAUSES, STATUTES OR EXECUTIVE ORDERS INCORPORATED BY REFERENCE: The Subcontractor agrees to comply with the following Federal Acquisition Regulation (FAR) clauses by reference, as they exist on the effective date of this contract, with the same force and effect as if they were in full text. For FAR provisions incorporated by reference, "Government" means "Princeton", Contracting Officer" means "Princeton Plasma Physics Laboratory's Procurement Division Buyer or Subcontract Administrator", except where statute or regulation vests authority exclusively in specific agencies or individuals, and "Contractor" means "Supplier". The FAR clauses are available through the General Services Administration (GSA) at <http://www.acqnet.gov/far/> or they may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. To the maximum extent practicable, the Subcontractor shall incorporate, and require its subcontractors, divisions, subsidiaries or affiliates at all tiers to incorporate commercial items or non-developmental items as components of items to be supplied under this Agreement. The Subcontractor is not required to include any FAR provisions or clauses other than those listed below to the extent that they are applicable and as may be required to establish the reasonableness of prices under FAR 15, in a subcontract at any tier for commercial items or components. The Subcontractor shall include the terms of this clause, including this statement, in lower-tier subcontracts awarded under this Agreement.

<u>No.</u>	<u>Clause Title</u>	<u>FAR Reference</u>
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**PPPL General Provisions For Non-Commercial Subcontracts
Part C - Agreements In Excess Of \$500,000**

C11-1 SMALL BUSINESS SUBCONTRACTING PLAN (Applicable for Agreements in
excess of \$550,000)

52.219-9

NOTHING FOLLOWS

PPPL General Provisions for Non-Commercial Subcontracts
Reference List
Part E - Cost-Reimbursement-Type Subcontracts

REQUESTS FOR PROPOSALS (RFP) NO. 11-049F

The following clauses, the full texts of which are set forth below, are hereby incorporated in and made part of the above-cited subcontract.

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ADDITIONAL APPLICABLE CLAUSES

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Part E - Cost-Reimbursement-Type Subcontracts

E1. ALLOWABLE COST AND PAYMENT (DEC 2002)

(a) Invoicing.

(1) Princeton will make payments to the Subcontractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by Princeton in accordance with Federal Acquisition Regulation (FAR) Subpart 31.2, as supplemented by Subpart 931.2 of the Department of Energy Acquisition Regulations in effect on the date of this Subcontract and the terms of this Subcontract. The Subcontractor may submit to an authorized representative of Princeton, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this Subcontract.

(2) Subcontract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the subcontract are subcontract financing payments.

(3) The designated payment office will make interim payments for subcontract financing on the 30th day after the designated billing office receives a proper payment request. In the event that Princeton requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the subcontract, the designated payment office is not compelled to make payment by the specified due date.

(b) Reimbursing costs.

(1) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only-

(i) Those recorded costs that, at the time of the request for reimbursement, the Subcontractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the subcontract;

(ii) When the Subcontractor is not delinquent in paying costs of subcontract performance in the ordinary course of business, costs incurred, but not necessarily paid, for-

(A) Supplies and services purchased directly for the subcontract and associated financing payments to lower-tier subcontractors, provided payments determined due will be made-

(1) In accordance with the terms and conditions of a subcontract or invoice; and

(2) Ordinarily prior to the submission of the Subcontractor's next payment request to Princeton;

(B) Materials issued from the Subcontractor's inventory and placed in the production process for use on the subcontract;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Subcontractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to lower-tier subcontractors.

(2) Accrued costs of Subcontractor contributions under employee pension plans shall be excluded until actually paid unless-

(i) The Subcontractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Subcontractor's indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this subcontract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(4) Any statements in specifications or other documents incorporated in this subcontract by reference designating performance of services or furnishing of materials at the Subcontractor's expense or at no cost to Princeton shall be disregarded for purposes of cost-reimbursement under this clause.

(c) Small business concerns. A small business concern may receive more frequent payments than every 2 weeks.

(d) Final indirect cost rates.

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2)(i) The Subcontractor shall submit an adequate final indirect cost rate proposal to Princeton (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Subcontractor and granted in

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Part E - Cost-Reimbursement-Type Subcontracts

writing by Princeton. The Subcontractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Subcontractor's actual cost experience for that period. Princeton or the appropriate Government representative and the Subcontractor shall establish the final indirect cost rates as promptly as practical after receipt of the Subcontractor's proposal.

(3) The Subcontractor and Princeton or the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected subcontract and/or lower-tier subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, subcontract obligation, or specific cost allowance or disallowance provided for in this subcontract. The understanding is incorporated into this subcontract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Resolution of Disputes clause.

(5) Within 120 days (or longer period if approved in writing by Princeton) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Subcontractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

(6)(i) If the Subcontractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, Princeton may-

(A) Determine the amounts due to the Subcontractor under the subcontract; and

(B) Record this determination in a unilateral modification to the subcontract.

(ii) This determination constitutes the final decision of Princeton in accordance with the Resolution of Disputes clause.

(e) Billing rates. Until final annual indirect cost rates are established for any period, Princeton shall reimburse the Subcontractor at billing rates established by Princeton or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates-

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) Quick-closeout procedures. Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) Audit. At any time or times before final payment, Princeton may have the Subcontractor's invoices or vouchers and statements of cost audited. Any payment may be-

(1) Reduced by amounts found by Princeton not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

(h) Final payment.

(1) Upon approval of a completion invoice or voucher submitted by the Subcontractor in accordance with paragraph (d)(5) of this clause, and upon the Subcontractor's compliance with all terms of this subcontract, Princeton shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Subcontractor shall pay to Princeton any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Subcontractor or any assignee under this subcontract, to the extent that those amounts are properly allocable to costs for which the Subcontractor has been reimbursed by Princeton. Reasonable expenses incurred by the Subcontractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by Princeton. Before final payment under this subcontract, the Subcontractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver-

(i) An assignment to Princeton, in form and substance satisfactory to Princeton, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Subcontractor has been reimbursed by Princeton under this subcontract; and

(ii) A release discharging Princeton, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this subcontract, except-

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Subcontractor to third parties arising out of the performance of this subcontract; provided, that the claims are not known to the Subcontractor on the date of the execution of the release, and that the Subcontractor gives notice of the claims in writing to Princeton within 6 years following the release date or notice of final payment date, whichever is earlier; and

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(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Subcontractor under the patent clauses of this subcontract, excluding, however, any expenses arising from the Subcontractor's indemnification of Princeton against patent liability.

E2. FIXED FEE (MAR 1997)

(a) Princeton shall pay the Subcontractor for performing this Subcontract the fixed fee specified in the Subcontract.

(b) Payment of the fixed fee shall be made as specified in the Subcontract; provided that after payment of 85 percent of the fixed fee, Princeton's Subcontract Administrator may withhold further payment of fee until a reserve is set aside in an amount that Princeton's Subcontract Administrator considers necessary to protect Princeton's interest. This reserve shall not exceed 15 percent of the total fixed fee or \$100,000, whichever is less. Princeton shall release 75 percent of all fee withholds under this Subcontract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this Subcontract, provided the Subcontractor has satisfied all other Subcontract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. Princeton's Subcontract Administrator may release up to 90 percent of the fee withholds under this contract based on the Subcontractor's past performance related to the submission and settlement of final indirect cost rate proposals.

E3. LIMITATION OF COST (APR 1984)

(This clause applies to fully funded subcontracts)

(a) The parties estimate that performance of this Subcontract, exclusive of any fee, will not cost Princeton more than (1) the estimated cost specified in the Subcontract or, (2) if this is a cost-sharing subcontract, Princeton's share of the estimated cost specified in the Subcontract. The Subcontractor agrees to use its best efforts to perform the work specified in the Subcontract and all obligations under this Subcontract within the estimated cost, which, if this is a cost-sharing subcontract, includes both Princeton's and the Subcontractor's share of the cost.

(b) The Subcontractor shall notify Princeton in writing whenever it has reason to believe that -

(1) The costs the Subcontractor expects to incur under this Subcontract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Subcontract; or

(2) The total cost of the performance of this Subcontract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Subcontractor shall provide Princeton a revised estimate of the total cost of performing this Subcontract.

(d) Except as required by other provisions of this Subcontract, specifically citing and stated to be an exception to this clause -

(1) Princeton is not obligated to reimburse the Subcontractor for costs incurred in excess of (i) the estimated cost specified in the Subcontract or, (ii) if this is a cost-sharing subcontract, the estimated cost to Princeton specified in the Subcontract; and

(2) The Subcontractor is not obligated to continue performance under this Subcontract (including actions under the Termination clause of this subcontract) or otherwise incur costs in excess of the estimated cost specified in the Subcontract, until Princeton (i) notifies the Subcontractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this Subcontract. If this is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the Subcontract.

(e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than Princeton, shall affect this Subcontract's estimated cost to Princeton. In the absence of the specified notice, Princeton is not obligated to reimburse the Subcontractor for any costs in excess of the estimated cost to Princeton specified in the Subcontract, whether those excess costs were incurred during the course of the subcontract or as a result of termination.

(f) If the estimated cost specified in the Subcontract agreement is increased, any costs the Subcontractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless Princeton issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the estimated cost to Princeton specified in the Subcontract, unless they contain a statement increasing the estimated cost.

(h) If this Subcontract is terminated or the estimated cost is not increased, Princeton and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under this Subcontract, based upon the share of costs incurred by each.

E4. LIMITATION OF FUNDS (APR 1984)

(This clause applies to incrementally funded subcontracts)

(a) The parties estimate that performance of this Subcontract will not cost Princeton more than (1) the estimated cost specified in the Subcontract or, (2) if this is a cost-sharing subcontract, Princeton's share of the estimated cost specified in the Subcontract. The Subcontractor agrees to use its best efforts to perform the work specified in the Subcontract and all obligations under this Subcontract within the estimated cost, which, if

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this is a cost-sharing subcontract, includes both Princeton's and the Subcontractor's share of the cost.

(b) The Subcontract specifies the amount presently available for payment by Princeton and allotted to this subcontract, the items covered, Princeton's share of the cost if this is a cost-sharing subcontract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that Princeton will allot additional funds incrementally to the subcontract up to the full estimated cost to Princeton specified in the Subcontract, exclusive of any fee. The Subcontractor agrees to perform, or have performed, work on the subcontract up to the point at which the total amount paid and payable by Princeton under the subcontract approximates but does not exceed the total amount actually allotted by Princeton to the Subcontract.

(c) The Subcontractor shall notify Princeton in writing whenever it has reason to believe that the costs it expects to incur under this Subcontract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the Subcontract by Princeton or, (2) if this is a cost-sharing subcontract, the amount then allotted to the Subcontract by Princeton plus the Subcontractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Subcontract.

(d) Sixty days before the end of the period specified in the Subcontract, the Subcontractor shall notify Princeton in writing of the estimated amount of additional funds, if any, required to continue timely performance under the Subcontract or for any further period specified in the Subcontract or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the Subcontract or another agreed-upon date, upon the Subcontractor's written request Princeton will terminate this Subcontract on that date in accordance with the provisions of the Termination clause of this Subcontract. If the Subcontractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and Princeton may terminate this Subcontract on that later date.

(f) Except as required by other provisions of this Subcontract, specifically citing and stated to be an exception to this clause -

(1) Princeton is not obligated to reimburse the Subcontractor for costs incurred in excess of the total amount allotted by Princeton to this Subcontract; and

(2) The Subcontractor is not obligated to continue performance under this Subcontract (including actions under the Termination clause of this Subcontract) or otherwise incur costs in excess of (i) the amount then allotted to the Subcontract by Princeton or, (ii) if this is a cost-sharing subcontract, the amount then allotted by Princeton to the Subcontract plus the Subcontractor's corresponding share, until Princeton notifies the Subcontractor in

writing that the amount allotted by Princeton has been increased and specifies an increased amount, which shall then constitute the total amount allotted by Princeton to this Subcontract.

(g) The estimated cost shall be increased to the extent that (1) the amount allotted by Princeton or, (2) if this is a cost-sharing subcontract, the amount then allotted by Princeton to the Subcontract plus the Subcontractor's corresponding share, exceeds the estimated cost specified in the Subcontract. If this is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the Subcontract.

(h) No notice, communication, or representation in any form other than that specified in subparagraph (f)(2) above, or from any person other than Princeton's Subcontract Administrator shall affect the amount allotted by Princeton to this Subcontract. In the absence of the specified notice, Princeton is not obligated to reimburse the Subcontractor for any costs in excess of the total amount allotted by Princeton to this Subcontract, whether incurred during the course of the Subcontract or as a result of termination.

(i) When and to the extent that the amount allotted by Princeton to the Subcontract is increased, any costs the Subcontractor incurs before the increase that are in excess of (1) the amount previously allotted by Princeton or, (2) if this is a cost-sharing subcontract, the amount previously allotted by Princeton to the Subcontract plus the Subcontractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless Princeton issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by Princeton specified in the Subcontract, unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause shall affect the right of Princeton to terminate this Subcontract. If this Subcontract is terminated, Princeton and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the Subcontract, based upon the share of costs incurred by each.

(l) If Princeton does not allot sufficient funds to allow completion of the work, the Subcontractor is entitled to a percentage of the fee specified in the Subcontract equaling the percentage of completion of the work contemplated by this Subcontract.

E5. STOP-WORK ORDER (AUG 1989) (ALTERNATE I) (APR 1984)

(a) Princeton may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Subcontractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Subcontractor shall immediately comply with its terms and take all

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reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, Princeton shall either--

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the Termination clause of this Subcontract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume work. Princeton shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the Subcontract that may be affected, and the Subcontract shall be modified, in writing, accordingly, if--

- (1) The stop-work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this Subcontract; and
- (2) The Subcontractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if Princeton decides the facts justify the action, Princeton may receive and act upon the claim submitted at any time before final payment under this Subcontract.

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

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

E6. CHANGES--COST-REIMBURSEMENT (AUG 1987)

(a) Princeton may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Subcontract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.)
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for Princeton in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing.
- (6) Place of delivery.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this Subcontract, whether or not changed by the order, or otherwise effects any other terms and conditions of this Subcontract, Princeton shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Subcontract accordingly.

(c) The Subcontractor must submit any "proposal for adjustment" (hereafter referred to as proposal) under this clause within 30 days from the date of receipt of the written order. However, if Princeton decides that the facts justify it, Princeton may receive and act upon a proposal submitted before final payment of the Subcontract.

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

(e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this Subcontract and, if this Subcontract is incrementally funded, the funds allotted for the performance of this Subcontract, shall not be increased or considered to be increased except by specific written modification of the Subcontract indicating the new Subcontract estimated cost and, if this Subcontract is incrementally funded, the new amount allotted to the Subcontract. Until this modification is made, the Subcontractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this Subcontract.

E7. FOREIGN TRAVEL (AUG 2009)

Subcontractor foreign travel shall be conducted pursuant to the requirements contained in Department of Energy (DOE) Order 551.1C, or its successor, Official Foreign Travel, or any subsequent version of the order in effect at the time of award.

E8. TERMINATION (COST-REIMBURSEMENT) (SEP 1996) (MODIFIED)

(a) Princeton may terminate performance of work under this Subcontract in whole or, from time to time, in part, if--

- (1) Princeton determines that a termination is in Princeton's interest; or
- (2) The Subcontractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by Princeton's Subcontract Administrator) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) Princeton's Subcontract Administrator shall terminate by delivering to the Subcontractor a Notice of Termination specifying whether termination is for default of the Subcontractor or for convenience of Princeton, the

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extent of termination, and the effective date. If, after termination for default, it is determined that the Subcontractor was not in default or that the Subcontractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Subcontractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of Princeton.

(c) After receipt of a Notice of Termination, and except as directed by Princeton's Subcontract Administrator, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as lower-tier subcontracts in this clause), except as necessary to complete the continued portion of the Subcontract.

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

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

(5) With approval or ratification to the extent required by Princeton's Subcontract Administrator, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts, the cost of which would be reimbursable in whole or in part, under this Subcontract; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by Princeton's Subcontract Administrator, deliver to Princeton (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the Subcontract had been completed, would be required to be furnished to Princeton, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this Subcontract, the cost of which the Subcontractor has been or will be reimbursed under this Subcontract.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that Princeton's Subcontract Administrator may direct, for the protection and preservation of the property related to this Subcontract that is in the possession of the Subcontractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by Princeton's Subcontract Administrator, any property of the types referred to in subparagraph (c)(6) of this clause; provided, however, that the Subcontractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, Princeton's Subcontract Administrator. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Princeton under this Subcontract, credited to the price or cost of the work, or paid in any other manner directed by Princeton's Subcontract Administrator.

(d) The Subcontractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by Princeton's Subcontract Administrator upon written request of the Subcontractor within this 120-day period.

(e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Subcontractor may submit to Princeton's Subcontract Administrator a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by Princeton's Subcontract Administrator. The Subcontractor may request Princeton to remove those items or enter into an agreement for their storage. Within 15 days, Princeton will accept the items and remove them or enter into a storage agreement. Princeton's Subcontract Administrator may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

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

(g) Subject to paragraph (f) of this clause, the Subcontractor and Princeton's Subcontract Administrator may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The Subcontract shall be amended, and the Subcontractor paid the agreed amount.

(h) If the Subcontractor and Princeton's Subcontract Administrator fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the

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termination of work, Princeton's Subcontract Administrator shall determine, on the basis of information available, the amount, if any, due the Subcontractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this Subcontract, not previously paid, for the performance of this Subcontract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by Princeton's Subcontract Administrator; however, the Subcontractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Subcontract if not included in subparagraph (h)(1) of this clause.

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

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

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

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Subcontractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the Subcontract, determined as follows:

(i) If the Subcontract is terminated for the convenience of Princeton, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the Subcontract, but excluding lower-tier subcontract effort included in lower-tier subcontractors' termination proposals, less previous payments for fee.

(ii) If the Subcontract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by Princeton is to the total number of articles (or amount of services) of a like kind required by the Subcontract.

(5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) of this clause.

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation as supplemented in Subpart 970.31 of the Department of Energy Acquisition Regulation, in effect on the date of this Subcontract, shall

govern all costs claimed, agreed to, or determined under this clause.

(j) The Subcontractor shall have the right of appeal, under the Resolution of Disputes clause, from any determination made by Princeton's Subcontract Administrator under paragraph (f), (h) or (i) of this clause, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If Princeton's Subcontract Administrator has made a determination of the amount due under paragraph (f), (h) or (i) of this clause, Princeton shall pay the Subcontractor (1) the amount determined by Princeton's Subcontract Administrator if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

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

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

(2) Any claim which Princeton has against the Subcontractor under this Subcontract; and

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

(l) The Subcontractor and Princeton's Subcontract Administrator must agree to any equitable adjustment in fee for the continued portion of the Subcontract when there is a partial termination. Princeton's Subcontract Administrator shall amend the Subcontract to reflect the agreement.

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

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

(n) The provisions of this clause relating to fee are inapplicable if this Subcontract does not include a fee.

PPPL General Provisions for Non-Commercial Subcontracts

Part E - Cost-Reimbursement-Type Subcontracts

E9. EXCUSABLE DELAYS (APR 1984)

(a) Except for defaults of subcontractors at any tier, the Subcontractor shall not be in default because of any failure to perform this Subcontract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Subcontractor and the lower-tier subcontractor, and without the fault or negligence of either, the Subcontractor shall not be deemed to be in default, unless -

(1) The subcontracted supplies or services were obtainable from other sources;

(2) Princeton ordered the Subcontractor in writing to purchase these supplies or services from the other source; and

(3) The Subcontractor failed to comply reasonably with this order.

(c) Upon request of the Subcontractor, Princeton shall ascertain the facts and extent of the failure. If Princeton determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of Princeton under the termination clause of this Subcontract.

E10. INSPECTION OF SUPPLIES-COST-REIMBURSEMENT (MAY 2001)

(This clause is applicable if the primary purpose of the Subcontract is the furnishing of supplies)

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

"Subcontractor's managerial personnel" means any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--

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

(2) All or substantially all of the Subcontractor's operation at a plant or separate location where the subcontract is being performed; or

(3) A separate and complete major industrial operation connected with performing this subcontract.

"Supplies" includes but is not limited to raw materials, components, intermediate assemblies, end products, lots

of supplies, and, when the contract does not include the Warranty of Data clause, data.

(b) The Subcontractor shall provide and maintain an inspection system acceptable to Princeton covering the supplies, fabricating methods, and special tooling under this contract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to Princeton during subcontract performance and for as long afterwards as the subcontract requires.

(c) Princeton has the right to inspect and test the subcontract supplies, to the extent practicable at all places and times, including the period of manufacture, and in any event before acceptance. Princeton may also inspect the plant or plants of the Subcontractor or any lower tier subcontractor engaged in the subcontract performance. Princeton shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If Princeton performs inspection or test on the premises of the Subcontractor or a lower tier subcontractor, the Subcontractor shall furnish and shall require lower tier subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise specified in the subcontract, Princeton shall accept supplies as promptly as practicable after delivery, and supplies shall be deemed accepted 60 days after delivery, unless accepted earlier.

(f) At any time during subcontract performance, but no later than 6 months (or such other time as may be specified in the subcontract) after acceptance of the supplies to be delivered under the subcontract, Princeton may require the Subcontractor to replace or correct any supplies that are nonconforming at time of delivery. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. Except as otherwise provided in paragraph (h) of this clause, the cost of replacement or correction shall be included in allowable cost, determined as provided in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Subcontractor shall not tender for acceptance supplies required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g)(1) If the Subcontractor fails to proceed with reasonable promptness to perform required replacement or correction, Princeton may--

(i) By subcontract or otherwise, perform the replacement or correction and charge to the Subcontractor any increased cost or make an equitable reduction in any fixed fee paid or payable under the subcontract;

(ii) Require delivery of undelivered supplies at an equitable reduction in any fixed fee paid or payable under the subcontract; or

(iii) Terminate the subcontract for default.

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Part E - Cost-Reimbursement-Type Subcontracts

(2) Failure to agree on the amount of increased cost to be charged to the Subcontractor or to the reduction in the fixed fee shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) of this clause, Princeton may at any time require the Subcontractor to correct or replace, without cost to Princeton, nonconforming supplies, if the non-conformances are due to-

(1) Fraud, lack of good faith, or willful misconduct on the part of the Subcontractor's managerial personnel; or

(2) The conduct of one or more of the Subcontractor's employees selected or retained by the Subcontractor after any of the Subcontractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause applies in the same manner to corrected or replacement supplies as to supplies originally delivered.

(j) The Subcontractor shall have no obligation or liability under this subcontract to replace supplies that were nonconforming at the time of delivery, except as provided in this clause or as may be otherwise provided in the subcontract.

(k) Except as otherwise specified in the subcontract, the Subcontractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

E11. INSPECTION OF SERVICES-COST-REIMBURSEMENT (APR 1984)

(This clause is applicable if the primary purpose of this subcontract is services)

(a) Definition. "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.

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

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

(d) If any of the services performed do not conform with Subcontract requirements Princeton may require the Subcontractor to perform the services again in conformity with Subcontract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, Princeton may (1) require the Subcontractor to take necessary action to ensure that future performance conforms to Subcontract

requirements and (2) reduce any fee payable under the Subcontract to reflect the reduced value of the services performed.

(e) If the Subcontractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with Subcontract requirements, Princeton may (1) by contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or (2) terminate the Subcontract for default.

E12. INSURANCE-LIABILITY TO THIRD PERSONS (MAR 1996) (MODIFIED)

(a) (1) Except as provided in subparagraph (a)(2) of this clause, and irrespective of whether or not the work to be performed is conducted on-site at Princeton or in a separate locality, the Subcontractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, in the amounts set forth in the Princeton general provisions clause entitled "Terms and Conditions of Insurance," and such other insurance as Princeton may require under this Subcontract. When the terms of this clause conflict with the terms of the Princeton general provisions entitled "Terms and Conditions of Insurance," the terms of this clause shall govern.

(2) The Subcontractor may, with the approval of Princeton, maintain a self-insurance program, provided that, with respect to workers' compensation, the Subcontractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as Princeton may require or approve and with insurers approved by Princeton.

(b) The Subcontractor agrees to submit for Princeton's approval, to the extent and in the manner required by Princeton, any other insurance that is maintained by the Subcontractor in connection with the performance of this Subcontract and for which the Contractor seeks reimbursement.

(c) The Subcontractor shall be reimbursed-

(1) For that portion (i) of the reasonable cost of insurance allocable to this Subcontract, and (ii) required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this Subcontract. These liabilities must arise out of the performance of this Subcontract, whether or not caused by the negligence of the Subcontractor or of the Subcontractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by Princeton. These liabilities are for-

PPPL General Provisions for Non-Commercial Subcontracts

Part E - Cost-Reimbursement-Type Subcontracts

- (i) Loss of or damage to property (other than property owned, occupied, or used by the Subcontractor, rented to the Subcontractor, or in the care, custody, or control of the Subcontractor); or
 - (ii) Death or bodily injury.
- (d) Princeton's liability under paragraph (c) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this Subcontract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- (e) The Subcontractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)--
- (1) For which the Subcontractor is otherwise responsible under the express terms of any clause specified in the Subcontract Agreement or elsewhere in the Subcontract;
 - (2) For which the Subcontractor has failed to insure or to maintain insurance as required by Princeton; or
 - (3) That result from willful misconduct or lack of good faith on the part of any of the Subcontractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of--
- (i) All or substantially all of the Subcontractor's business;
 - (ii) All or substantially all of the Subcontractor's operations at any one plant or separate location in which this Subcontract is being performed; or
 - (iii) A separate and complete major industrial operation in connection with the performance of this Subcontract.
- (f) The provisions of paragraph (e) of this clause shall not restrict the right of the Subcontractor to be reimbursed for the cost of insurance maintained by the Subcontractor in connection with the performance of this Subcontract, other than insurance required in accordance with this clause; provided, that such cost is allowable under the Allowable Cost and Payment clause of this Subcontract.
- (g) If any suit or action is filed or any claim is made against the Subcontractor, the cost and expense of which may be reimbursable to the Subcontractor under this Subcontract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Subcontractor shall--
- (1) Immediately notify Princeton and promptly furnish copies of all pertinent papers received;
 - (2) Authorize Princeton representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(3) Authorize Princeton representatives to settle or defend the claim and to represent the Subcontractor in or to take charge of any litigation, if required by Princeton, when the liability is not insured or covered by bond. The Subcontractor may, at its own expense, be associated with Princeton representatives in any such claim or litigation.

E13. RESERVED

E14. TAXES-COST-REIMBURSEMENT CONTRACTS WITH FOREIGN GOVERNMENTS (MAR 1990)

(a) Any tax or duty from which the United States Government is exempt by agreement with the Government of the successor states of the former Soviet Union (the Ukraine, Belarus, Kazakstan, Russia, the Baltic States of Latvia and Lithuania, and Uzbekistan), or from which Princeton or any lower-tier subcontractor under this subcontract is exempt under the laws of the successor states of the former Soviet Union (the Ukraine, Belarus, Kazakstan, Russia, the Baltic States of Latvia and Lithuania, and Uzbekistan), shall not constitute an allowable cost under this subcontract.

(b) If the Subcontractor or any lower-tier subcontractor under this subcontract obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that was reimbursed under this subcontract, the amount of the reduction shall be paid or credited at the time of such offset to the Government of the United States as the Contracting Officer directs.

E15. SUBMISSION OF TRANSPORTATION DOCUMENTS FOR AUDIT (FEB 2006)

(a) The Subcontractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid by the Subcontractor under a cost-reimbursement subcontract.

(b) The Subcontractor shall only submit for audit those bills of lading with freight shipment charges exceeding \$100. Bills under \$100 shall be retained on-site by the Subcontractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

(c) Subcontractors shall submit the above referenced transportation documents to --

U.S. Department of Energy
Princeton Site Office
U.S. Rt. 1 North, Forrestal Campus C Site
Room B290 LSB
Princeton, NJ 08542

PPPL General Provisions for Non-Commercial Subcontracts

Part E - Cost-Reimbursement-Type Subcontracts

EEC1. CLAUSES, STATUTES OR EXECUTIVE ORDERS INCORPORATED BY REFERENCE: The Subcontractor agrees to comply with the following Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses by reference, as they exist on the effective date of this contract, with the same force and effect as if they were in full text. For FAR provisions incorporated by reference, "Government" means "Princeton", "Contracting Officer" means "Princeton Plasma Physics Laboratory's Procurement Division Buyer or Subcontract Administrator", except where statute or regulation vests authority exclusively in specific agencies or individuals, and "Contractor" means "Supplier". The FAR clauses are available through the General Services Administration (GSA) at <http://www.acqnet.gov/far/> and the DEAR clauses area available at <http://www.management.energy.gov/DEAR.htm>, or they may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. To the maximum extent practicable, the Subcontractor shall incorporate, and require its subcontractors, divisions, subsidiaries or affiliates at all tiers to incorporate commercial items or non-developmental items as components of items to be supplied under this Agreement. The Subcontractor is not required to include any FAR provisions or clauses other than those listed below to the extent that they are applicable and as may be required to establish the reasonableness of prices under FAR 15, in a subcontract at any tier for commercial items or components. The Subcontractor shall include the terms of this clause, including this statement, in lower-tier subcontracts awarded under this Agreement.

<u>Clause:</u>	<u>Title:</u>
EEC 1-1	PROPERTY (ALTERNATE I)

DEAR Reference:
970.5245-1

**PPPL Additional Provisions for Non-Commercial Subcontracts
Part S – Service Contract Act**

REQUEST FOR PROPOSALS (RFP) NO. 11-049F

The following clause, the full text of which is set forth below, is hereby incorporated in and made part of the above-cited subcontract.

**S1. SERVICE CONTRACT ACT OF 1965,
AS AMENDED (NOVEMBER 2007)**

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

“Act” means the Service Contract Act of 1965, as amended (41 U.S.C. 351, *et seq.*).

“Contractor,” when this clause is used in any subcontract, shall be deemed to refer to the subcontractor, except in the term “Government Prime Contractor.”

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

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

(c) *Compensation.*

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

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

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

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify

**PPPL Additional Provisions for Non-Commercial Subcontracts
Part S – Service Contract Act**

the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

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

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of

contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

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

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

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

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

(d) *Obligation to furnish fringe benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (c)(2) of this

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clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

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

(f) *Successor contracts.* If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in

such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

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

(i) Records.

(1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act—

(A) Name and address and social security number;

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

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

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

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of

paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

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

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

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

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

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

(k) *Withholding of payments and termination of contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an

PPPL Additional Provisions for Non-Commercial Subcontracts Part S – Service Contract Act

appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Act.

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

such agreements shall be reported promptly after negotiation thereof.

(n) *Seniority list.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Rulings and interpretations.* Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) Contractor's certification.

(1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

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

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(q) *Variations, tolerances, and exemptions involving employment.* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

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

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

(3) The Administrator will also withdraw, annul, or cancel such certificates

in accordance with the regulations in 29 CFR parts 525 and 528.

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

(s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision—

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

**PPPL Additional Provisions for Non-Commercial Subcontracts
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(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

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

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

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

S2. CLAUSES, STATUTES OR EXECUTIVE ORDERS INCORPORATED BY REFERENCE: The Subcontractor agrees to comply with the following Federal Acquisition Regulation (FAR) clauses by reference, as they exist on the effective date of this contract, with the same force and effect as if they were in full text. For FAR provisions incorporated by reference, "Government" means "Princeton", Contracting Officer" means "Princeton Plasma Physics Laboratory's Procurement Division Buyer or Subcontract Administrator", except where statute or regulation vests authority exclusively in specific agencies or individuals, and "Contractor" means "Supplier". The FAR clauses are available through the General Services Administration (GSA) at <http://www.acqnet.gov/far/> or they may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. To the maximum extent practicable, the Subcontractor shall incorporate, and require its subcontractors, divisions, subsidiaries or affiliates at all tiers to incorporate commercial items or non-developmental items as components of items to be supplied under this Agreement. The Subcontractor is not required to include any FAR provisions or clauses other than those listed below to the extent that they are applicable and as may be required to establish the reasonableness of prices under FAR 15, in a subcontract at any tier for commercial items or components. The Subcontractor shall include the terms of this clause, including this statement, in lower-tier subcontracts awarded under this Agreement.

<u>No.</u>	<u>Clause Title</u>	<u>FAR Reference</u>
S 2-1	FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT – PRICE ADJUSTMENTS (MULTIPLE YEAR AND OPTION CONTRACTS) (This clause applies to fixed price, time and materials, or labor hour service contracts over \$100,000 that are multiple year contracts or contracts with option to renew)	52.222-43
S 2-2	FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT – PRICE ADJUSTMENTS (This clause applies to fixed price, time and materials, or labor hour service contracts over \$100,000 that are not multiple year contracts or contracts with option to renew)	52.222-44

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REQUEST FOR PROPOSALS (RFP) 11-049F

The following clauses, the full text of which are set forth below, are hereby incorporated in and made part of the above-cited subcontract.

T1. PERMITS AND RESPONSIBILITIES (NOV 1991)

The Subcontractor shall, without additional expense to Princeton, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Subcontractor shall also be responsible for all damages to persons or property that occur as a result of the Subcontractor's fault or negligence. The Subcontractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work that may have been accepted under the contract.

T2. COMPLIANCE WITH 10 CFR 851 AND PRINCETON WORKER SAFETY AND HEALTH PROGRAM BY INTEGRATION OF ENVIRONMENT, SAFETY AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2009)

(a) In performing work under this Subcontract, the Subcontractor and all of its lower-tier subcontractors at all levels shall comply with all applicable federal, state and local environment, safety and health laws and regulations. The Subcontractor and all of its lower-tier subcontractors at all levels must comply with 10 CFR 851 Worker Safety and Health Program, Princeton's Worker Safety and Health Program, and DEAR 970.5223- 1, Integration of ES&H into Work Planning and Execution (Dec. 2000). Compliance with 10 CFR 851 and DEAR 970.5223-1 is to be guided by following paragraphs (b) through (g) set forth below.

(b) The Subcontractor shall perform work safely, in a manner ensuring adequate protection for employees, the public, and the environment and will be held accountable for the safe performance of work. The Subcontractor will exercise a degree of care commensurate with the work and the associated hazards. The Subcontractor will ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral and visible part of the Subcontractor's work planning and execution process. The Subcontractor will, in the performance of work, ensure that:

- (1) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities, and will retain records respecting such competency and qualifications, making them available upon request.
- (2) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public and the environment is

a priority whenever activities are planned and performed.

- (3) Prior to work performance, the associated hazards will be evaluated and a set of ES&H standards and requirements will be established and implemented to provide assurance that employees, the public, and the environment are protected from adverse consequences.
 - (4) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis will be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
 - (5) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Subcontractor and lower-tier subcontractor employees managing or supervising employees performing work.
 - (6) Clear and unambiguous lines of authority and responsibility for ensuring ES&H compliance will be established and maintained at all organizational levels.
- (c) The Subcontractor, relative to the Statement of Work and Subcontract specifications, agrees to accept Princeton's DOE-approved Worker Safety and Health Program and the Integrated Safety Management System as its own, and perform and manage work in accordance with such program. The Subcontractor shall demonstrate through documentation and work practices that performance of work under this Subcontract:
- (1) fulfills the scope of work set out in the Subcontract;
 - (2) identifies and analyzes specific, task-level hazards associated with the work;
 - (3) develops and implements hazard controls;
 - (4) allows the performance of work within the controls
 - (5) provides feedback on the adequacy of controls and continued improvement in safety management.
- (d) In performing work in accordance with Princeton's DOE-approved Worker Safety



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and Health Program and the Integrated Safety Management System the Subcontractor will, prior to initiation of work:

- (1) Demonstrate well-established safety protocols applicable to the scope of work and consistent with the requirements of this clause.
- (2) Prior to commencement of work on any construction activity, the Subcontractor must prepare a written Integrated Safety Management (ISM) Plan (construction project safety and health plan) that implements the requirements of items A-G below for the construction work under their responsibility and obtain approval of the plan by the Princeton Technical Representative prior to commencement of any work covered by the plan. In the plan, the Subcontractor must designate the individual(s) responsible for its on-site implementation, specify qualifications for those individuals, and provide a list of those project activities for which subsequent job hazard analyses are to be performed (see item A). The level of detail within the ISM Plan should be commensurate with the size, complexity and risk level of the construction project. In addition, the Subcontractor must:

- A. Prepare, and have approved by the Princeton Technical Representative, job hazard analyses (JHAs) in accordance with Princeton procedure ESH-004 prior to commencement of affected work. The JHAs must identify foreseeable hazards and protective measures, and address further hazards revealed by any supplemental information provided by the Princeton Technical Representative.
- B. Provide (for approval by the Princeton Technical Representative) drawings and/or other documentation of protective measures for which applicable OSHA standards require preparation by a Professional Engineer or other qualified individual (these should be included in the ISM Plan).
- C. Identify for approval by the Princeton Technical Representative competent persons for activities as required by applicable OSHA standards (these should be included in the ISM Plan).
- D. Ensure workers are aware of foreseeable hazards and the protective measures as defined by

the JHAs, and require that workers acknowledge being so informed.

- E. Ensure that workers not following the safe work practices are subject to the Subcontractor's disciplinary process.
 - F. Maintain a designated representative onsite during all active construction that is knowledgeable of the associated hazards and has the authority to act on behalf of the Subcontractor; and that makes frequent and regular inspections of the construction worksite to identify and correct any instances of noncompliance with project safety and health requirements.
 - G. Instruct workers to report to the Subcontractor's designated representative, hazards not previously identified or evaluated. If immediate corrective action is not possible or the hazard falls outside the project scope, the Subcontractor must immediately notify affected workers, post appropriate warning signs, modify the appropriate JHAs, implement needed interim control measures, and notify the Princeton Technical Representative of the action taken. The Subcontractor or the designated representative must stop work in the affected area until appropriate protective measures are established.
- (e) The Subcontractor's on-site ES&H activities will be subject to review by the Technical Representative of this Subcontract. Other representatives of PPPL may conduct periodic inspections of the Subcontractor's on-site offices, equipment, work and storage areas for compliance with the applicable ES&H requirements. The Princeton Administrative Representative for this Subcontract will notify the Subcontractor in writing of any observed non-compliance with applicable ES&H requirements. The Subcontractor shall immediately take appropriate corrective action. The Subcontractor shall advise the Princeton Administrative Representative, in writing, within five (5) working days of the corrective action taken on any safety non-compliance noted. If the Subcontractor fails or refuses to correct the safety non-compliance, Princeton may perform, or cause to be performed, the necessary corrective work and unilaterally charge the Subcontractor for the cost thereof. Such charges will be deducted from payments otherwise due the Subcontractor under this Subcontract. Repeated or willful non-compliances with applicable ES&H requirements by the Subcontractor shall

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constitute a default under other provisions of this Subcontract and Princeton may terminate the Subcontract in accordance with those provisions.

- (f) The Subcontractor shall promptly evaluate and resolve any non-compliance with applicable ES&H requirements. If the Subcontractor fails to provide resolution or if, at any time, the Subcontractor's acts or failure to act causes substantial harm or an imminent danger to the environment, or health and safety of employees or the public, Princeton may issue an order stopping work in whole or in part and the Subcontractor shall be liable for the delay and any costs thereby incurred. Any stop-work order issued by Princeton under this clause (or issued by the Subcontractor to a lower-tier subcontractor in accordance with this clause) shall be without prejudice to any other legal or contractual rights of Princeton. In the event that Princeton issues a stop-work order, an order authorizing the resumption of the work may be issued at the discretion of Princeton. The Subcontractor shall not be entitled to an extension of time, or additional cost or fee, or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- (g) The Subcontractor is responsible for its lower-tier subcontractors' compliance with the ES&H requirements of this Subcontract. The Subcontractor shall include a clause substantially the same as this clause in lower-tier subcontracts involving complex or hazardous construction work on site at a DOE-owned or -leased facility. Such lower-tier subcontracts shall provide for the right to stop work under the conditions described herein.

T3. WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000)

(This clause is applicable if subcontract is greater than \$25,000 AND if Subcontractor personnel working on site at PPPL are performing functions subject to the requirements of 10 CFR 707.2, i.e., subcontracts that involve (i) access to or handling of classified information or special nuclear materials, (ii) high risk of danger to life, the environment, public health and safety, or national security; or (iii) transportation of hazardous materials to or from a DOE site.)

- (a) Program Implementation. The Subcontractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.
- (b) Remedies. In addition to any other remedies available to Princeton, subcontractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its

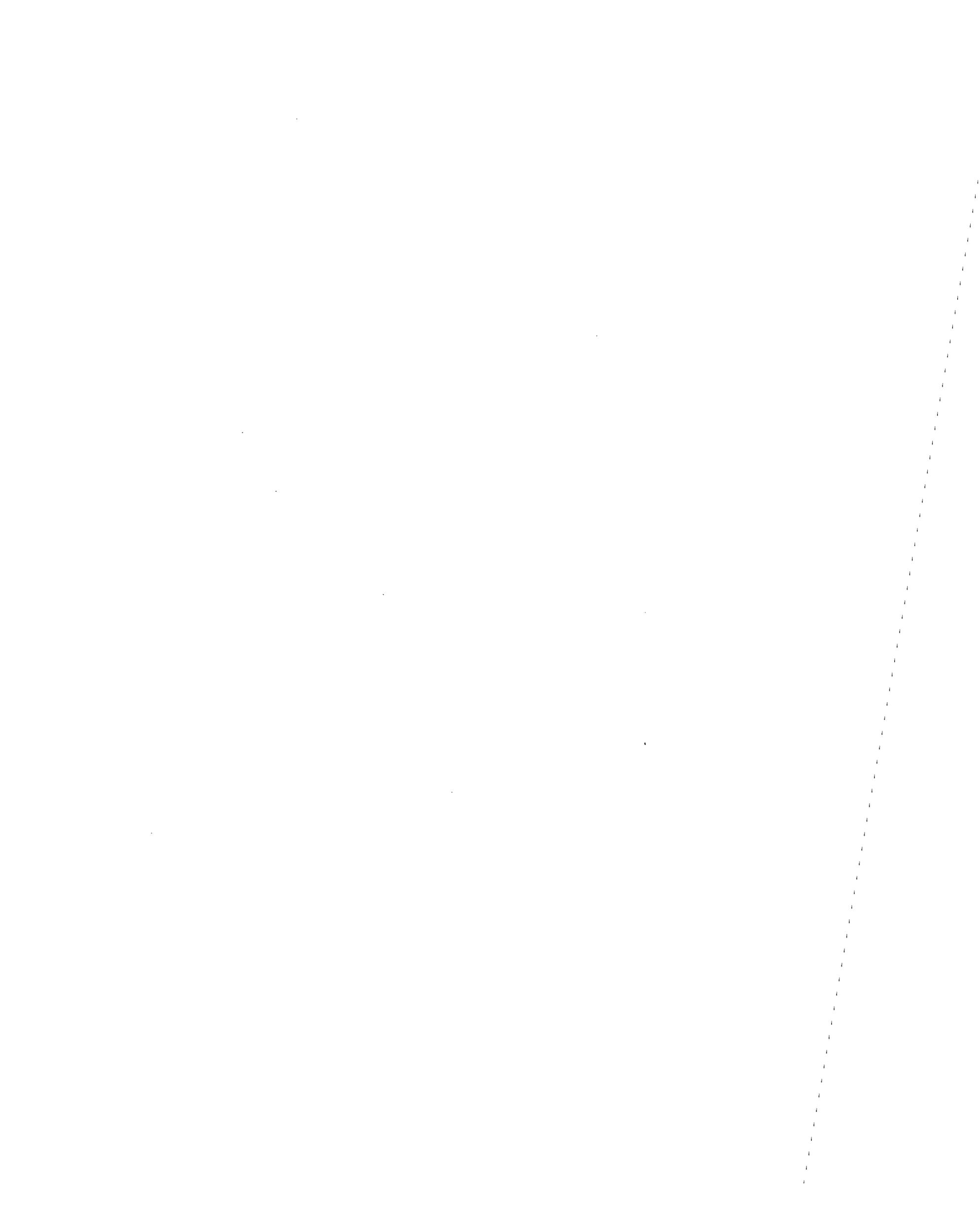
approved program may render the Subcontractor subject to: the suspension of subcontract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.

- (c) Lower Tier Subcontracts.
 - (1) The Subcontractor agrees to notify the Princeton Subcontract Administrator reasonably in advance of, but not later than 30 days prior to, the award of any lower tier subcontract the Subcontractor believes may be subject to the requirements of 10 CFR Part 707.
 - (2) Princeton shall require all lower-tier subcontracts subject to the provisions of 10 CFR Part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR Part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the lower-tier subcontract. Princeton shall review and approve each lower-tier subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR Part 707.
 - (3) The Subcontractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR Part 707.

T4. TERMS AND CONDITIONS OF INSURANCE (AUG 2009)

- (a) Where this Agreement requires the furnishing of on-site labor, the Subcontractor shall maintain and keep in force at Subcontractor's expense, the following minimum liability insurance coverage during the Agreement period of performance:

<u>TYPE</u>	<u>IN THE NAME OF</u>	<u>MINIMUM LIMITS</u>
(i) Workers Compensation	Subcontractor	Statutory
Employer's Liability		\$500,000
(ii) General Liability, including: Contractual Premises Operations, Products and Completed Operations, Independent Contractors and Personal Injury, Bodily Injury and Property Damage, Combined Single Limit Each Occurrence	Subcontractor	\$2,000,000
Aggregate		\$2,000,000



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(iii) Automobile Subcontractor \$1,000,000
Liability Bodily
Injury and
Property
Damage

(b) If the Subcontractor is required to maintain a professional license in order to practice his/her profession, Contractor must maintain professional liability insurance in the amount of \$2 million per occurrence. Professions this applies to, but is not limited to, include architects, engineers, attorneys, physicians, nurses and physical therapists. This sample list of professions is representative only and is not meant to be complete.

(c) The Subcontractor shall insert the substance of this clause, including this paragraph (c), in lower-tier subcontracts under this subcontract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in paragraph (a) above. At least 5 days before entry of each such subcontractor's personnel on the Government installation, the Subcontractor shall furnish (or ensure that there has been furnished) to PPPL a current certificate of insurance, meeting the requirements of paragraph (b) above, for each such subcontractor.

(d) The Automobile Liability insurance specified in subparagraph (a)(iii) shall provide coverage for any vehicle used by the Subcontractor.

(e) All policies shall be underwritten by a carrier licensed in the State of New Jersey and rated at least "A- " in Best's Key Rating Guide. "The Trustees of Princeton University, including its officers, employees and agents" and the U.S. Government shall be named as additional insureds in the General Liability policy specified in subparagraph (a)(ii). The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective (1) for such period as the laws of the State in which this subcontract is to be performed prescribe or (2) until 30 days after the insurer or the Subcontractor gives written notice to PPPL, whichever period is longer. Additionally, each policy of insurance shall contain an endorsement reading substantially as follows: "The insurer waives any right of subrogation against the United States of America and Princeton Plasma Physics Laboratory, which might arise by reason of any payment made under this policy."

(f) The amounts, where specified above, are minimums but shall not be construed to be sufficient for any particular subcontract. It shall be the Subcontractor's full responsibility to determine, obtain and maintain the insurance coverage necessary to adequately protect people and property during the performance of this Subcontract.

(g) The Subcontractor shall be solely responsible for payment of premiums and deductibles for all of the aforesaid insurance. Should any of the aforesaid insurance policies be cancelled or materially changed, the Subcontractor shall provide thirty (30) days prior

written notice to Princeton. The Subcontractor shall not change the levels of coverage or permit coverage to expire until all the Services have been completed and accepted.

(h) Certificate(s) evidencing the above insurance coverages, with statement thereon that Princeton and the U.S. Government is an additional named insured as required above, shall be sent to the Subcontract Administrator before the Subcontractor's work begins. Renewal certificates shall be provided annually until the Subcontractor's work is completed. The Subcontractor shall not enter Princeton's facilities to perform its work unless it is and remains insured in accordance with the above requirements, unless waived by mutual agreement of Princeton and the Subcontractor. The Subcontractor shall indemnify Princeton for any loss suffered by Princeton for the failure of the Subcontractor to be so insured.

T5. SUBCONTRACTOR EMPLOYEE STOP WORK AUTHORITY (MAR 2005)

In the event that a subcontractor employee becomes aware of a condition at the job site which creates an imminent danger to an individual, property and/or the environment, the subcontractor employee has the authority and responsibility to require that all work related to the dangerous condition be stopped immediately. Individuals who receive a notification to stop work must comply with that request immediately. Subcontractor employees who are capable of doing so should place the system/hardware in a safe shutdown status as part of the stop work. In those cases where the danger can be corrected immediately, work can resume when the situation is corrected and clearance to resume work is received from the Princeton Technical Representative. In those cases where the danger cannot be immediately corrected, The PPPL ES&H Division must be notified immediately (extension 3439). Work shall not resume until a report is completed and the ES&H Division authorizes resumption of the activity.

T6. ACCIDENT REPORTING (OCT 2001)

The Subcontractor shall immediately (i.e., within 15 minutes of discovery) report to Princeton's Technical Representative any and all accidents incident to work performed under this Subcontract at Princeton's facilities, and shall provide a written report of the incident in such detail as Princeton requires, if so directed. Subcontractor personnel, including lower tier subcontractor personnel, who become injured or ill while working at Princeton's facilities must report to Princeton's Occupational Medicine Office. The Subcontractor agrees to participate in, and cooperate with, any resulting DOE Accident Investigation Board.

T7. CONTAMINANT SPILLS (OCT 1997)

(a) The Subcontractor shall perform all work in accordance with and shall comply with all environmental laws, regulations, rules, orders, ordinances and requirements of any and all governmental authorities as well as the requirements of any insurance company which is then insuring the

PPPL Additional Provisions

Part T – Provisions for Work Performed on the PPPL Site

Subcontractor and/or performance of the Subcontractor's work.

All reasonable costs incurred by the PPPL in the clean up of such spills or discharges will be offset against amounts owed or payable to the Subcontractor on this and other Subcontracts with the PPPL. If such amounts are not sufficient to cover all reasonable costs of the spill clean up the Subcontractor will be billed for the remainder.

(b) Subcontractor shall be responsible for securing all environmental licenses, permits and approvals required for the performance of the Subcontractor's work and shall further be responsible for providing all notices required for performance of the work and for posting any bond or security which may be required for performance of Subcontractor's work.

(c) The Subcontractor is responsible for the prompt notification to the PPPL Emergency Services Unit (ESU) at (609) 243-3333 in the event of the discharge to the environment of any contaminant, including, but not limited to, petroleum hydrocarbons, e.g., fuels, motor oils and lubricating oils, which occurs as a result of any action taken by the Subcontractor's officers, employees, agents or lower tier subcontractors.

(d) A written follow-up report shall be submitted to the PPPL Technical Representative not later than 24 hours after the initial notification. The written report shall be in narrative form and, at a minimum, include the following:

(1) Description of the item spilled (including identity, quantity, manifest number (if applicable), etc.);

(2) Whether the amount spilled is required to be reported to the EPA or other federal, state or local agency, and if so whether it was reported;

(3) Exact time and location of the spill including a description of the area involved;

(4) Containment procedure initiated;

(5) Summary of any communications Subcontractor has with the press, federal, state or local officials;

(6) Description of clean up procedures employed, or to be employed, at the site including the location of the spill residue.

(e) In the event of such a discharge, the Subcontractor will be responsible for notification as required in (c) above and for complete and thorough remediation of the discharge in accordance with requirements of any and all governmental authorities.

(f) The Subcontractor is solely responsible for any and all spills or discharges of contaminants into the environment during the performance of this subcontract, which occur as a result of, or are contributed to, by the actions of its agents, employees, or lower tier subcontractors. The Subcontractor agrees to clean up such spills or leaks to the satisfaction of PPPL and in a manner that complies with the applicable federal, state and local laws and regulations. The clean up shall be at no cost to PPPL.

(g) In all cases in which a spill or discharge of contaminants into the environment is required to be reported to PPPL pursuant to subparagraph (c) of this clause, the PPPL reserves the option and right to take over and complete the clean up of the spill or discharge without the assistance of the Subcontractor. This right may be exercised at the sole discretion of the PPPL.



**PPPL GENERAL PROVISIONS
EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009)**

REQUEST FOR PROPOSALS (RFP) 11-051F

(a) Definitions. As used in this clause—

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply that is—

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

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

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

“Employee assigned to the contract” means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

“Princeton” means Princeton University, in its capacity as a prime Contractor to the United States Department of Energy and operator of the Princeton Plasma Physics Laboratory.

“Subcontract” means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor (such as Princeton) or another subcontractor.

“United States,” as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

(b) Enrollment and verification requirements.

(1) If Princeton’s subcontractor (hereinafter referred to as “Subcontractor”) is not enrolled as a Federal Contractor in E-Verify at time of subcontract award, the Subcontractor shall—

(i) Enroll. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) Verify all new employees. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the subcontract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) Verify employees assigned to the subcontract. For each employee assigned to the subcontract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee’s assignment to the subcontract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Subcontractor is enrolled as a Federal Contractor in E-Verify at time of subcontract award, the Subcontractor shall use E-Verify to initiate verification of employment eligibility of—

(i) All new employees.

(A) Enrolled 90 calendar days or more. The Subcontractor shall initiate verification of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the subcontract within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) Enrolled less than 90 calendar days. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Subcontractor shall initiate verification of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the subcontract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) Employees assigned to the contract. For each employee assigned to the subcontract, the Subcontractor shall initiate verification within 90 calendar days after date of subcontract award or within 30 days after assignment to the subcontract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Subcontractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or

**PPPL GENERAL PROVISIONS
EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009)**

local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Subcontractor may choose to verify only employees assigned to the subcontract, whether existing employees or new hires. The Subcontractor shall follow the applicable verification requirements at (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the subcontract.

(4) Option to verify employment eligibility of all employees. The Subcontractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the subcontract. The Subcontractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of—

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Subcontractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Subcontractor shall comply, for the period of performance of this contract, with the requirement of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Subcontractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Subcontractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Subcontractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Subcontractor, then the Subcontractor must reenroll in E-Verify.

(c) Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site:
<http://www.dhs.gov/E-Verify> .

(d) Individuals previously verified. The Subcontractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Subcontractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD) -12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) Lower-Tier Subcontracts. The Subcontractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each lower-tier subcontract that—

(1) Is for—

(i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than \$3,000; and

(3) Includes work performed in the United States.

(End of Clause)

**PPPL GENERAL PROVISIONS
EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009)**

REQUEST FOR PROPOSALS (RFP) 11-049F

(a) Definitions. As used in this clause—

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply that is—

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

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

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

“Employee assigned to the contract” means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

“Princeton” means Princeton University, in its capacity as a prime Contractor to the United States Department of Energy and operator of the Princeton Plasma Physics Laboratory.

“Subcontract” means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor (such as Princeton) or another subcontractor.

“United States,” as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

(b) Enrollment and verification requirements.

(1) If Princeton's subcontractor (hereinafter referred to as “Subcontractor”) is not enrolled as a Federal Contractor in E-Verify at time of subcontract award, the Subcontractor shall—

(i) Enroll. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) Verify all new employees. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the subcontract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) Verify employees assigned to the subcontract. For each employee assigned to the subcontract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the subcontract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Subcontractor is enrolled as a Federal Contractor in E-Verify at time of subcontract award, the Subcontractor shall use E-Verify to initiate verification of employment eligibility of—

(i) All new employees.

(A) Enrolled 90 calendar days or more. The Subcontractor shall initiate verification of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the subcontract within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) Enrolled less than 90 calendar days. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Subcontractor shall initiate verification of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the subcontract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) Employees assigned to the contract. For each employee assigned to the subcontract, the Subcontractor shall initiate verification within 90 calendar days after date of subcontract award or within 30 days after assignment to the subcontract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Subcontractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or

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(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Subcontractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Subcontractor shall comply, for the period of performance of this contract, with the requirement of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Subcontractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Subcontractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Subcontractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Subcontractor, then the Subcontractor must reenroll in E-Verify.

(c) Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify> .

(d) Individuals previously verified. The Subcontractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Subcontractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD) -12, Policy for a Common Identification Standard for Federal Employees and Contractors.

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(1) Is for—

(i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than \$3,000; and

(3) Includes work performed in the United States.

(End of Clause)