PPPL General Provisions for Non-Commercial Items or Services
Part I-K-(ITER) - Intellectual Property General Provisions

Reference List

SUBCONTRACT NO. _____

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

NOTE: THE FOLLOWING INTELLECTUAL PROPERTY GENERAL PROVISIONS CONTAINED IN GENERAL PROVISIONS SET PPL-PD-A ARE SUPERSEDED BY THE APPLICABLE CLAUSES ABOVE:

A23. ADDITIONAL DATA REQUIREMENTS (JUN 1987)

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

PPPL General Provisions for Non-Commercial Items or Services
Part I-K-(ITER) - Intellectual Property General Provisions

For purposes of this clause set, certain terms used in the clauses are construed to have the following meanings: "Seller" means the Subcontractor in direct privity of contract with Princeton; "Princeton" means Princeton University; "DOE Contracting Officer" means Princeton's Subcontract Administrator.

I-K1. PATENT RIGHTS-RETENTION BY THE SELLER -- ITER (SHORT FORM) (MAR 2007)

(This clause is applicable to Small Business, Non-Profit organizations and Educational Institutions.)

(a) Definitions.

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) "Made" when used in relation to any invention means the conception of first actual reduction to practice of such invention.

(3) "Nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of l954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) "Practical application" means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) "Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) "Subject invention" means any invention of the Seller conceived or first actually reduced to practice in the performance of work under this subcontract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of subcontract performance.

(7) "Agency licensing regulations" and "agency regulations concerning the licensing of Government-owned inventions" mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

(8) "Member" means members of the ITER Organization who are parties to the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (the Agreement).

(9) "ITER Organization" means the ITER International Fusion Energy Organization as described in the Agreement.

(10) "Council" means the principal organ of the ITER Organization composed of Representatives of the Members and as described in Article 6 of the Agreement.

(11) "Background patent" means a patent covering an invention or discovery which is not a Subject Invention and which is owned or controlled by the Seller at any time through the completion of this subcontract:

(i) Which the Seller, but not the Government, has the right to license to others without obligation to pay royalties thereon, and

(ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this subcontract.

(b) Allocation of principal rights. (1) Except as provided for in this clause, the Seller may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Seller retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) For each subject invention in which the Seller retains title, Seller hereby grants on an equal and non-discriminatory basis an irrevocable, non-exclusive, royalty free license to such subject invention to other Members and the

ITER Organization, with the right of the ITER Organization to sub-license, and the right of the other Members to sub-license within their respective territory, for the purposes of publicly sponsored fusion research and development programs.

(3) For each subject invention in which the Seller retains title, Seller shall make available on an equal and non-discriminatory basis a non-exclusive, license to such subject invention to the other Members for commercial fusion use, with the right to sub-license for such use by such Members' own domestic third parties within such Members' own territory on terms no less favorable than the basis upon which Seller licenses such subject inventions to third parties within or outside the USA. As long as such terms have been offered such license shall not be denied. The above license may be revoked only in case the licensee does not fulfil its contractual obligations.

(4) Seller is encouraged to enter into commercial arrangements with the other Members, Domestic Agencies, ITER contractors and third parties in order to allow use of subject inventions in fields other than fusion.

(5) For Sellers that license or sub-license subject inventions or background patents under this clause, Sellers will maintain records of any such licensing, which records will be available to other Members, such as through the ITER Organization.

(6) Seller agrees that any license for subject inventions granted by it to third parties of non-Members shall be subject to the rules on licensing to third parties determined by the Council. Such rules shall be determined by unanimous decision of the Council.

(7) For a subject invention jointly made with a Member or the ITER Organization, said invention shall be jointly-owned by the respective inventing entities. The joint owners shall enter into a co-ownership arrangement to allocate the terms of exercising the ownership of said invention.

(c) Invention disclosure, election of title, and filing of patent application by Seller. (1) The Seller will disclose each subject invention to the Department of Energy (DOE) within 2 months after the inventor discloses it in writing to Seller personnel responsible for patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the subcontract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the DOE, the Seller will promptly notify that agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Seller.

(2) The Seller will elect in writing whether or not to retain title to any such invention by notifying DOE within 2 years of disclosure to DOE. However, in any case where publication, on sale or public use has initiated the l-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by DOE to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Seller will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Seller will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (c)(l), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) Conditions when the Government may obtain title. The Seller will convey to the Federal agency, upon written request, title to any subject invention—

(1) If the Seller fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within 60 days after learning of the failure of the Seller to disclose or elect within the specified times.

(2) In those countries in which the Seller fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Seller has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Seller shall continue to retain title in that country.

(3) In any country in which the Seller decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum rights to Seller and protection of the Seller right to file. (1) The Seller will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Seller fails to disclose the invention within the times specified in paragraph (c) of this clause. The Seller's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Seller is a party and includes the right to grant sublicenses of the same scope to the extent the Seller was legally obligated to do so at the time the subcontract was awarded. The license is transferable only with the approval of the Federal agency, except when transferred to the successor of that part of the Seller's business to which the invention pertains.

(2) The Seller's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Seller has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Seller, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the Seller a written notice of its intention to revoke or modify the license, and the Seller will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Seller) after the notice to show cause why the license should not be revoked or modified. The Seller has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and agency regulations concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) Seller action to protect the Government's interest. (1) The Seller agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Seller elects to retain title, and (ii) convey title to DOE when requested under paragraph (d) of this clause and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Seller agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Seller each subject invention made under subcontract in order that the Seller can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Seller shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Seller will notify DOE of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Seller agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the subcontract) awarded by the United States Department of Energy. The Government has certain rights in the invention."

(g) Subcontracts. (1) The Seller will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Seller in this clause, and the Seller will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Seller shall include in all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause at 48 CFR 952.227-13, modified as necessary to include the definitions (a)(8) – (a)(11) herein, and the license rights to other Members and the ITER Organization for subject inventions in which the Seller obtains as set forth in (b)(2) – (b)(7) herein, and for Background patents as set forth in (m) herein, after consultation with DOE Patent Counsel.

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

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

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

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

(1) Such action is necessary because the Seller or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Seller, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Seller, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for subcontracts with nonprofit organizations. If the Seller is a nonprofit organization, it agrees that-- (1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment

is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Seller;

(2) The Seller will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Seller with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) Subject to the licensing requirements to Members and the ITER Organization set forth herein, it will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Seller determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Seller is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Seller. However, the Seller agrees that the Secretary of Commerce may review the Seller's licensing program and decisions regarding small business applicants, and the Seller will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Seller could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

(l) Communications. (1) The Seller shall direct any notification, disclosure, or request to DOE provided for in this clause to the DOE patent counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer.

(2) Each exercise of discretion or decision provided for in this clause, except subparagraph (k)(4), is reserved for the DOE Patent Counsel and is not a claim or dispute and is not subject to the Contract Disputes Act of 1978.

(3) Upon request of the DOE Patent Counsel or the Contracting Officer, the Seller shall provide any or all of the following:

(i) a copy of the patent application, filing date, serial number and title, patent number, and issue date for any subject invention in any country in which the Seller has applied for a patent;

(ii) a report, not more often than annually, summarizing all subject inventions which were disclosed to DOE individually during the reporting period specified; or

(iii) a report, prior to closeout of the subcontract, listing all subject inventions or stating that there were none.

(m) Background Patents. (1) Background patents shall remain the property of the party that owns the background patent.

(2) Seller, which has incorporated background patents, into the items provided to the ITER Organization which background patent is required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities, or
- to maintain or repair the item provided

hereby grants on an equal and non-discriminatory basis an irrevocable, non-exclusive, royalty free license to such background patent to other Members and to the ITER Organization, with the right of the ITER Organization to sub-license and the right of Members to sub-license to their research institutes and institutes of higher education within their respective territory for the purposes of publicly sponsored fusion research and development programs.

(3) Seller, which has incorporated background patents, in the execution of this subcontract shall make sure that the component incorporating the background patent is available on reasonable terms and conditions, or use its best efforts to grant on an equal and non-discriminatory basis a non-exclusive license to the other Members for commercial fusion use, with the right to sub-license for such use by such Members' own domestic third parties within such Members' own territory, on terms no less favorable than the basis upon which Seller licenses such background patents to third parties within or outside the USA. As long as such terms have been offered, such license shall not be denied. The above license may be revoked only in case the licensee does not fulfil its contractual

obligations. However, in individual cases and for good cause shown in writing, the requirement for such a license may be waived by DOE. Such waiver may be granted in advance of execution of the subcontract or after the subject invention has been made.

(4) Seller is encouraged to make available for commercial purposes other than those set out in paragraph (3) to the other Members, any background patent incorporated into the items provided to the ITER Organization which background patent was required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,
- to maintain or repair the item provided, or
- when decided necessary by the Council, in advance of any public procurement.

Such background patent, if licensed by the owners to the Members, shall be licensed on an equal and non-discriminatory basis.

(5) Seller shall identify in a timely manner its background patents to DOE with a view to obtaining for the ITER Organization and the Members access to the background patents in conformity with the Agreement.

I-K2. PATENT RIGHTS-ACQUISITION BY THE GOVERNMENT – ITER (MAR 2007)

(This clause is applicable if the subcontractor is a large business or a foreign entity.)

(a) Definitions.

(1) "Invention", as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) "Practical application", as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(3) "Subject invention", as used in this clause, means any invention of the Seller conceived or first actually reduced to practice in the course of or under this subcontract.

(4) "Patent Counsel", as used in this clause, means the Department of Energy Patent Counsel assisting the procuring activity.

(5) "DOE patent waiver regulations", as used in this clause, means the Department of Energy patent waiver regulations at 10 CFR Part 784.

(6) “Agency licensing regulations" and "applicable agency licensing regulations", as used in this clause, mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

(7) “Member” means members of the ITER Organization who are parties to the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (the Agreement).

(8) “ITER Organization” means the ITER International Fusion Energy Organization as described in the Agreement.

(9) “Council” means the principal organ of the ITER Organization composed of Representatives of the Members and as described in Article 6 of the Agreement.

(10) “Background patent” means a patent covering an invention or discovery which is not a Subject Invention and which is owned or controlled by the Seller at any time through the completion of this subcontract:

(i) Which the Seller, but not the Government, has the right to license to others without obligation to pay royalties thereon, and

(ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this subcontract.

(b) Allocations of principal rights. (1) Assignment to the Government. The Seller agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Seller under subparagraph (b)(2) and paragraph (d) of this clause.

(2) Greater rights determinations. (i) The Seller, or an employee-inventor after consultation with the Seller, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulations. A request for a determination of whether the Seller or the employee-inventor is entitled to acquire such greater rights must be submitted to the Patent Counsel with a copy to the DOE Contracting Officer at the time of the first disclosure of the invention pursuant to subparagraph (e)(2) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the DOE Contracting Officer for good cause shown in writing by the Seller. Each determination of greater rights under this subcontract shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

(ii) Within two (2) months after the filing of a patent application, the Seller shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and, promptly upon issuance of a patent, provide the patent number and issue date for any subject invention in any country for which the Seller has been granted title or the right to file and prosecute on behalf of the United States by the Department of Energy.

(iii) Not less than thirty (30) days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.

(iv) Upon request, the Seller shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) Minimum rights acquired by the Government

(1) With respect to each subject invention to which the Department of Energy grants the Seller principal or exclusive rights, the Seller agrees as follows:

(i) The Seller hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

(ii) The Seller agrees that with respect to any subject invention in which DOE has granted it title, DOE has the right in accordance with the procedures in the DOE patent waiver regulations to require the Seller, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Seller, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if it determines that—

(A) Such action is necessary because the Seller or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Seller, assignee, or their licensees;

(C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Seller, assignee, or licensees; or

(D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(iii) The Seller agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Seller or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Seller, and such other data and information as DOE may reasonably specify. The Seller also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subparagraph (c)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the Seller, its licensee, or assignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Seller agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges

on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(v) The Seller agrees to provide for the Government's paid-up license pursuant to subparagraph (c)(1)(i) of this clause in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subparagraph (c)(1)(ii) of this clause, and for the reporting of utilization information as required by subparagraph (c)(1)(iii) of this clause, whenever the instrument transfers principal or exclusive rights in a subject invention.

(vi) For each subject invention in which the Seller retains title, Seller hereby grants on an equal and non-discriminatory basis an irrevocable, non-exclusive, royalty free license to such subject invention to other Members and the ITER Organization, with the right of the ITER Organization to sub-license, and the right of the other Members to sub-license within their respective territory, for the purposes of publicly sponsored fusion research and development programs.

(vii) For each subject invention in which the Seller retains title, Seller shall make available on an equal and non-discriminatory basis a non-exclusive, license to such subject invention to the other Members for commercial fusion use, with the right to sub-license for such use by such Members` own domestic third parties within such Members` own territory on terms no less favorable than the basis upon which Seller licenses such subject inventions to third parties within or outside the USA. As long as such terms have been offered such license shall not be denied. The above license may be revoked only in case the licensee does not fulfil its contractual obligations.

(viii) Seller is encouraged to enter into commercial arrangements with the other Members, Domestic Agencies, ITER contractors and third parties in order to allow use of subject inventions in fields other than fusion.

(ix) For Sellers that license or sub-license subject inventions or background patents under this clause, Sellers will maintain records of any such licensing, which records will be available to other Members, such as through the ITER Organization.

(x) Seller agrees that any license for subject inventions granted by it to third parties of non-Members shall be subject to the rules on licensing to third parties determined by the Council. Such rules shall be determined by unanimous decision of the Council.

(xi) For a subject invention jointly made with a Member or the ITER Organization, said invention shall be jointly-owned by the respective inventing entities. The joint owners shall enter into a co-ownership arrangement to allocate the terms of exercising the ownership of said invention.

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

(d) Minimum rights to the Seller. (1) The Seller is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Seller fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Seller's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Seller is a part and includes the right to grant sublicenses of the same scope to the extent the Seller was legally obligated to do so at the time the subcontract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Seller's business to which the invention pertains.

(2) The Seller's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Seller has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Seller, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the Seller a written notice of its intention to revoke or modify the license, and the Seller will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Seller) after the notice to show cause why the license should not be revoked or modified. The Seller has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR Part 404 concerning the licensing of Government-owned inventions, any decision concerning the

revocation or modification of its license.

(4) The Seller may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the conditions in subparagraphs (d)(4)(i) through (d)(4)(vii) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.

(i) The recipient of such rights, when specifically requested by DOE, and three years after issuance of a foreign patent disclosing the subject invention, shall furnish DOE a report stating:

(A) The commercial use that is being made, or is intended to be made, of said invention, and

(B) The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.

(ii) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary of Energy or designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.

(iii) If noted elsewhere in this subcontract as a condition of the grant of an advance waiver of the Government's title to inventions under this subcontract, or, if no advance waiver was granted but a waiver of the Government's title to an identified invention is granted pursuant to subparagraph (b)(2) of this clause upon a determination by the Secretary of Energy that it is in the Government's best interest, this license shall include the right of the Government to sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.

(iv) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right to terminate the foreign patent rights granted in this subparagraph (d)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.

(v) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right, commencing four years after foreign patent rights are accorded under this subparagraph (d)(4), to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, and in appropriate circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing:

(A) If the Secretary of Energy or designee determines, upon review of such material as he deems relevant, and after the recipient of such rights or other interested person has had the opportunity to provide such relevant and material information as the Secretary or designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or

(B) Unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.

(vi) If the Seller is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures for such period of time as specified by Patent Counsel, but in no event shall the Government or its employees be liable for any publication thereof.

(vii) Subject to the license specified in subparagraphs (d)(1), (2), and (3) of this clause, the Seller or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the subcontractor or inventor fails to have a patent application filed in a timely manner or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the Seller or inventor shall, not less than 60 days before the expiration period for any action required by any patent office, notify the Patent Counsel of such failure or decision, and deliver to the Patent Counsel, the executed instruments necessary for the conveyance specified in this paragraph.

(e) Invention identification, disclosures, and reports. (1) The Seller shall establish and

maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Seller personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this subcontract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Seller shall furnish the DOE Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Seller shall disclose each subject invention to the DOE Patent Counsel with a copy to the DOE Contracting Officer within 2 months after the inventor discloses it in writing to Seller personnel responsible for patent matters or, if earlier, within 6 months after the Seller becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Seller. The disclosure to DOE shall be in the form of a written report and shall identify the subcontract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Seller shall promptly notify DOE Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Seller. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Seller contends in writing at the time the invention is disclosed that is was not so made.

(3) The Seller shall furnish the DOE Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the DOE Contracting Officer) from the date of the subcontract, listing all subject inventions during that period, and including a statement that all subject inventions have been disclosed (or that there are not such inventions) and that the procedures required by subparagraph (e)(1) of this clause have been followed.

(ii) A final report, within 3 months after completion of the contracted work listing all subject inventions or containing a statement that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Seller agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Seller each subject invention made under subcontract in order that the Seller can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause.

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

(f) Examination of records relating to inventions. (1) The DOE Contracting Officer or any authorized representative shall, until 3 years after final payment under this subcontract, have the right to examine any books (including laboratory notebooks), records, and documents of the Seller relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this subcontract to determine whether--

(i) Any such inventions are subject inventions;

(ii) The Seller has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause;

(iii) The Seller and its inventors have complied with the procedures.

(2) If the DOE Contracting Officer learns of an unreported Seller invention which the DOE Contracting Officer believes may be a subject invention, the Seller may be required to disclose

the invention to DOE for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Withholding of payment (NOTE: This paragraph does not apply to sub-subcontracts). (1) Any time before final payment under this subcontract, Princeton may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this subcontract, whichever is less, shall have been set aside if, in the DOE Contracting Officer's opinion, the Seller fails to--

(i) Convey to the Government, using a DOE-approved form, the title and/or rights of the Government in each subject invention as required by this clause;

(ii) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (e)(1) of this clause;

(iii) Disclose any subject invention pursuant to subparagraph (e)(2) of this clause;

(iv) Deliver acceptable interim reports pursuant to subparagraph (e)(3)(i) of this clause; or

(v) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) of this clause.

(2) Such reserve or balance shall be withheld until the DOE Contracting Officer has determined that the Seller has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this subcontract shall not be made before the Seller delivers to the DOE Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) of this clause, and acceptable final report pursuant to subparagraph (e)(3)(ii) of this clause, and the Patent Counsel has issued a patent clearance certification to the DOE Contracting Officer.

(4) Princeton may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the subcontract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) Subcontracts - lower-tier. (1) The Seller shall include the clause at 48 CFR 952.227-11 (suitably modified to identify the parties, add Definitions (a)(7) through (a)(10) herein, include the license rights to other Members and the ITER Organization for subject inventions as set forth in (c)(1)(vi) through (xi) herein, and for Background patents as set forth in (k) herein, after consultation with DOE Patent Counsel) in all subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the Seller shall include this clause (suitably modified to identify the parties). The Seller shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Seller--

(i) Shall promptly submit a written notice to the DOE Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and
(ii) Shall not proceed with such subcontract without the written authorization of the DOE Contracting Officer.

(3) In the case of subcontracts at any tier, DOE, the subcontractor, and Seller agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.

(4) The Seller shall promptly notify the DOE Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the DOE Contracting Officer, the Seller shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The Seller shall identify all subject inventions of the subcontractor of which it acquires knowledge in the performance of this subcontract and shall notify the Patent Counsel,

with a copy to the DOE Contracting Officer, promptly upon identification of the inventions.

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

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

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

(k) Background Patents. (1) Background patents shall remain the property of the party that owns the Background patent.

(2) Seller, which has incorporated background patents into the items provided to the ITER Organization, which background patent is required

(i) to construct, operate, use or integrate technology for research and development in relation to the ITER facilities, or

(ii) to maintain or repair the item provided, or

(iii) when decided necessary by the Council, in advance of any public procurement,

hereby grants on an equal and non-discriminatory basis an irrevocable, non-exclusive, royalty free license to such background patent to other Members and to the ITER Organization, with the right of the ITER Organization to sub-license and the right of Members to sub-license to their research institutes and institutes of higher education within their respective territory for the purposes of publicly sponsored fusion research and development programs.

(3) Seller, which has incorporated background patents in the execution of this subcontract, shall make sure that the component incorporating the background patent is available on reasonable terms and conditions, or use its best efforts to grant on an equal and non-discriminatory basis a non-exclusive license to the other Members for commercial fusion use, with the right to sub-license for such use by such Members' own domestic third parties within such Members' own territory, on terms no less favorable than the basis upon which Seller licenses such background patents to third parties within or outside the USA. As long as such terms have been offered, such license shall not be denied. The above license may be revoked only in case the licensee does not fulfil its contractual obligations. However, in individual cases and for good cause shown in writing, the requirement for such a license may be waived by DOE. Such waiver may be granted in advance of execution of the subcontract or after the subject invention has been made.

(4) Seller is encouraged to make available for commercial purposes other than those set out in paragraph (3) to the other Members, any background patent incorporated into the items provided to the ITER Organization which background patent was required:

(i) to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,

(ii) to maintain or repair the item provided, or

(iii) when decided necessary by the Council, in advance of any public procurement.

Such background patent, if licensed by the owners to the Members, shall be licensed on an equal and non-discriminatory basis.

(5) Seller shall identify in a timely manner its background patents to DOE with a view to obtaining for the ITER Organization and the Members access to the background patents in conformity with the Agreement.

(l) Publication. It is recognized that during the course of the work under this subcontract, the Seller or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this subcontract. In order that public disclosure of such information will not adversely

affect the patent interests of DOE or the Seller, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

(m) Forfeiture of rights in unreported subject inventions. (1) The Seller shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Seller fails to report to Patent Counsel within six months after the time the Seller:

(i) Files or causes to be filed a United States or foreign patent application thereon; or

(ii) Submits the final report required by subparagraph (e)(2)(ii) of this clause, whichever is later.

(2) However, the Seller shall not forfeit rights in a subject invention if, within the time specified in subparagraph (m)(1) of this clause, the Seller:

(i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the subcontract and delivers the decision to Patent Counsel, with a copy to the DOE Contracting Officer; or

(ii) Contending that the invention is not a subject invention, the Seller nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the DOE Contracting Officer; or

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

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited, the Seller shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (m) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

I-K3. TECHNICAL DATA – ITER (JUN 2011)

1. RIGHTS IN DATA – GENERAL

(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)(3) if incorporated into 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)(4) of this clause if incorporated into this subcontract.

(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, including permitting Members to do so, as necessary to comply with the ITER agreement.

(9) "Member," as used in this clause, means members of the ITER Organization who are parties to the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (the Agreement).

(10) "ITER Organization," as used in this clause, means the ITER International Fusion Energy Organization as described in the Agreement.

(11) "Council," as used in this clause, means the principal organ of the ITER Organization composed of Representatives of the Members and as described in Article 6 of the Agreement.

(12) "Background data," as used in this clause, means limited rights data and restricted computer software owned or controlled by the Seller at any time through completion of the subcontract and developed outside the scope of this subcontract.

(b) Allocation of rights. (1) Except as provided in paragraph (c) of this clause, the Government and Members 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 Seller 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 Seller in the performance of this subcontract, unless provided otherwise in paragraph (d) of this clause;

(iii) Substantiate 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 which 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 subparagraph (d) of this clause, the Seller may, without prior approval of the Government, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this subcontract and published in academic, technical, or professional journals, symposia proceedings or similar works. The prior, express written permission of the Government 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 Seller shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgement of Government sponsorship (including the number of Princeton's prime Government contract and the number of this subcontract).

(iii) For data other than computer software the Seller 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 Seller 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 Seller shall not, without prior written permission of Princeton, incorporate in data delivered under this subcontract any data not first produced in the performance of this subcontract, unless the Seller –

(i) Indentifies the data; and
(ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c) (1) of this clause or if such data are restricted computer software, the Government shal acquire a copyright license as set forth in paragraph (g) (4) of this clause if incorporated into this subcontract or as otherwise may be provided in a collateral agreement incorporated in or made part of this subcontract.

(3) Removal of copyright notices. Princeton and 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.

(4) Dissemination of Information and Scientific Publications whether or not Copyrighted. Pursuant to (b)(1) of this clause, the Government may provide to each Member the right, for non commercial uses, to translate, reproduce, and publicly distribute Information directly arising from the execution of this subcontract. All publicly distributed copies of a copyrighted work prepared under this paragraph shall indicate the names of the authors of the work unless an author explicitly declines to be named. Seller agrees that to be in compliance with this paragraph it will provide, at a minimum, to DOE copies of all peer-reviewed manuscripts provided to scientific and technical journal publishers which may then be distributed to Members in accordance with the ITER Agreement. Seller agrees that the ITER Organization may impose a different requirement in order to be in compliance with this paragraph and that, if so, Seller agrees that this paragraph may be suitably modified to be in accordance with the ITER Organization's requirement. Seller agrees to provide copies of all peer-reviewed manuscripts, technical information and software as appropriate to DOE's Office of Scientific and Technical Information (OSTI) in accordance with DOE O 241.1A. Guidance on electronic submission is available at https://www.osti.gov/elink/.

(5) For data in which Seller has received permission to assert copyright, Seller hereby grants on an equal and non-discriminatory basis an irrevocable, non-exclusive, royalty free license to such data to other Members and the ITER Organization, with the right of the ITER Organization to sub-license, and the right of the other Members to sub-license within their respective territory, for the purposes of publicly sponsored fusion research and development programs.

(6) For data in which Seller has received permission to assert copyright, Seller shall make available on an equal and non-discriminatory basis a non-exclusive, license to such data to the other Members for commercial fusion use, with the right to sub-license for such use by such Members` own domestic third parties within such Members` own territory on terms no less favorable than the basis upon which Seller licenses such subject inventions to third parties within or outside the USA. As long as such terms have been offered such license shall not be denied. The above license may be revoked only in case the licensee does not fulfill its contractual obligations.

(7) Seller is encouraged to enter into commercial arrangements with the other Members, Domestic Agencies, ITER Contractors and third parties in order to allow use of data first produced in the performance of this subcontract in fields other than fusion.

(8) If Seller licenses or sub-licenses data first produced in the performance of this subcontract or background data under this clause, Seller will maintain records of any such licensing, which records will be available to other Members, such as through the ITER Organization.

(9) For data in which Seller has received permission to assert copyright jointly authored with a Member or the ITER Organization, said data shall be jointly-owned by the respective inventing entities. The joint owners shall enter into a co-ownership arrangement to allocate the

terms of exercising the ownership of said copyrighted data.

(d) Release, Publication and Use of Data. (1) The Seller shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Seller in the performance of this subcontract, except –

(i) As prohibited by Federal law or regulation (e.g., export control or national security laws of regulations);

(ii) As expressly set forth in this subcontract; or

(iii) If the Seller receives or is given access to data necessary for the performance of this subcontract that contain restrictive markings, the Seller shall treat the data in accordance with such marking unless specifically authorized otherwise in writing by Princeton..

(2) The Seller agrees not to assert copyright in computer software first produced in performance of this subcontract without prior written permission of the Government. When such permission is granted, the Government shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data. The Seller, when requested, shall promptly deliver to Princeton or to the Government a duly executed and approved instrument fully confirmatory of all rights to which Princeton and the Government are 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 subparagraphs (g)(3) or (g)(4) of this clause if incorporated into this subcontract 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, Princeton may at any time either return the data to the Seller, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 253(d), the following procedures shall apply prior to canceling or ignoring the markings.

(i) Princeton will make written inquiry to the Seller affording the Seller 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Seller 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 Princeton for good cause shown), Princeton 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 Seller provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, Princeton will consider such written justification and determine whether or not the markings are to be canceled or ignored. If Princeton determines that the markings are authorized, the Seller will be so notified in writing. If Princeton determines that the markings are not authorized, Princeton will furnish the Seller a written determination, which determination will become final regarding the appropriateness of the markings unless the Seller files suit in a court of competent jurisdiction within 90 days of receipt of Princeton's decision. Princeton will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by Princeton's determination becoming final (in which instance Princeton 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 subparagraph (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 Princeton's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Seller is not precluded by paragraph (e) of the clause from bringing a claim in accordance with the Resolution of Disputes clause of this subcontract, that may arise as the result of Princeton removing or ignoring authorized marking on data delivered under this subcontract.

(f) Omitted or Incorrect Markings. (1) Data delivered to Princeton without any restrictive markings shall be deemed to have been furnished with unlimited rights. Princeton and the Government are 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 Seller may request, within 6 months (or a longer time approved by Princeton in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the

Seller's expense. Princeton may agree to do so if the Seller –

(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 use of the proposed notice is authorized; and

(iv) Acknowledges that Princeton and the Government have no liability for the disclosure, use, or reproduction of any such 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, Princeton may (i) permit correction at the Seller's expense if the Seller identifies the data and demonstrates that the correct notice is authorized; or (ii) correct any incorrect notices.

(g) Protection and Licensing of Limited Rights Data and Restricted Computer Software (Background Data). (1) Except as otherwise provided for in paragraphs (5) - (8) below, the Seller 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 Seller 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 data base for delivery to Princeton shall be treated as limited rights data and not restricted computer software.

(3) [Reserved.]

(4) [Reserved]

(5)(a) Seller, which has incorporated background data into the items provided to the ITER Organization which background data is required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,
- to maintain or repair the item,
- When decided necessary by the Council in advance of any public procurement, or
- For safety, for quality assurance and quality control reasons as required by regulatory authorities,

hereby grants the ITER Organization an irrevocable, non-exclusive, royalty-free license to use such background data including manuals or instructional training materials for the construction, operation, maintenance and repair of the ITER facilities.

(5)(b) When Seller makes background data available to the ITER Organization, it must be clearly marked so, and transmitted pursuant to an arrangement for confidentiality and in accordance with this clause. The recipient of such information shall use it only for purposes set forth in paragraph (5) and shall preserve its confidentiality to the extent provided in that arrangement. Compensation for damages arising from the misuse of such background data by the ITER Organization shall be paid by the ITER Organization.

(6) Seller, which has incorporated background data such as know how or trade secrets into the items provided to the ITER Organization which background data is required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,
- to maintain or repair the item provided, or
- when decided necessary by the Council, in advance of any public procurement,

shall grant a commercial license to such background data or supply the same items incorporating the background data to the receiving party by means of private contracts with financial compensation for publicly sponsored fusion research and development programs of a Member on terms no less favorable than the basis upon which Seller licenses such background data or supplies the same items to third parties within or outside the USA. As long as such terms have been offered, such license or supply of such item shall not be denied. The license, if granted, may be revoked only in case the licensee does not fulfill its contractual obligations. However, in individual cases and for good cause shown in writing, the requirement for such a license may be waived by DOE. Such waiver may be granted in advance of execution of the subcontract.

(7) Seller which has incorporated background data, in the execution of this subcontract shall make sure that the component incorporating the background data is available on reasonable terms and conditions, or use its best efforts to grant on an equal and non-discriminatory basis a non-exclusive license to the other Members for commercial fusion use, with the right to sub-license for such use by such Members' own domestic third parties within such

Members' own territory, on terms no less favorable than the basis upon which Seller licenses such background data to third parties within or outside the USA. As long as such terms have been offered, such license shall not be denied. The above license may be revoked only in case the licensee does not fulfil its contractual obligations. However, in individual cases and for good cause shown in writing, the requirement for such a license may be waived by DOE. Such waiver may be granted in advance of execution of the subcontract.

(8) Seller is encouraged to make available for commercial purposes other than those set out in paragraph (7), to the other Members, any background data incorporated into the items provided to the ITER Organization which background data was required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,
- to maintain or repair the item provided, or
- when decided necessary by the Council, in advance of any public procurement.

Such background data, if licensed by the owners to the Members, shall be licensed on an equal and non-discriminatory basis.

(9) Seller shall identify in a timely manner its background data to DOE with a view to obtaining for the ITER Organization and the Members access to the background data in conformity with the Agreement.

(h) Subcontracting. The Seller shall obtain from its subcontractors all data and rights therein necessary to fulfill the Seller's obligations to Princeton and the Government under this subcontract. If a subcontractor refuses to accept terms affording Princeton and the Government those rights, the Seller shall promptly notify Princeton of the refusal and shall not proceed with the subcontract award without authorization in writing from Princeton.

(i) Relationship to Patents or Other Rights. Nothing contained in this clause shall imply a license to Princeton or the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to Princeton or the Government.

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

2 – ADDITIONAL DATA REQUIREMENTS

(Note: This paragraph does not apply to this subcontract if the subcontract is for the conduct of basic or applied research, as set out elsewhere in this subcontract, to be performed solely by a college or university, and the estimated cost is not in excess of $500,000.)

(a) In addition to the data (as defined in the Rights in Data - General clause included in this subcontract) specified elsewhere in this subcontract to be delivered, Princeton 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 included in this subcontract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Seller to deliver any data the withholding of which is authorized by the Rights in Data - General 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 Seller will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) Princeton may release the Seller 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.

I-K4 (DELETED)

I-K5 TECHNICAL DATA (EDUCATIONAL INSTITUTIONS) – ITER (JUN 2011)

1. RIGHTS IN DATA – GENERAL

(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. The term does not include information incidental to contract administration, such as financial, administrative, cost or 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, formula, 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) if incorporated into 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 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) if incorporated into 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 right 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 including permitting Members to do so, as necessary to comply with the ITER agreement.

(9) “Member,” as used in this clause, means members of the ITER Organization who are parties to the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (the Agreement).

(10) “ITER Organization,” as used in this clause, means the ITER International Fusion Energy Organization as described in the Agreement.

(11) ”Council,” as used in this clause, means the principal organ of the ITER Organization composed of Representatives of the Members and as described in Article 6 of the Agreement.

(12) “Background data,” as used in this clause, means limited rights data and restricted computer software owned or controlled by the Seller at any time through completion of the subcontract and developed outside the scope of this subcontract.

(b) Allocations of rights. (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government and Members 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 Seller shall have the right to:

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Seller in the performance of this subcontract, unless provided otherwise in paragraph (d) of this clause;

(ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(iii) Substantiate 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) Establish claim to copyright subsisting in data first produced in the performance of this subcontract to the extent provided in subparagraph (c)(1) of this clause.

(c) Copyright. (1) Data first produced in the performance of this subcontract. Except as otherwise specifically provided in this subcontract, the Seller may establish claim to copyright subsisting in any data first produced in the performance of this subcontract. When claim to copyright is made, the Seller shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including the number of Princeton's prime Government contract and the number of this subcontract) to the data when such data are delivered to Princeton, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Seller grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such 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 Seller grants to the Government and others acting on its behalf, a paid up, nonexclusive, irrevocable worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.

(2) Data not first produced in the performance of this subcontract. The Seller shall not, without prior written permission of Princeton, incorporate in data delivered under this subcontract any data not first produced in the performance of this subcontract and which contains the copyright notice of 17 U.S.C. 401 and 402, unless the Seller identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in this subcontract or as otherwise may be provided in a collateral agreement incorporated in or made part of this subcontract.

(3) Removal of copyright notices. Princeton and the Government agree not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(4) Dissemination of Information and Scientific Publications whether or not Copyrighted. Pursuant to (b)(1) of this clause, the Government may provide to each Member the right, for non commercial uses, to translate, reproduce, and publicly distribute Information directly arising from the execution of this subcontract. All publicly distributed copies of a copyrighted work prepared under this paragraph shall indicate the names of the authors of the work unless an author explicitly declines to be named. Seller agrees that to be in compliance with this paragraph it will provide, at a minimum, to DOE copies of all peer-reviewed manuscripts provided to scientific and technical journal publishers which may then be distributed to Members in accordance with the ITER Agreement. Seller agrees that the ITER Organization may impose a different requirement in order to be in compliance with this paragraph and that, if so, Seller agrees that this paragraph may be suitably modified to be in accordance with the ITER Organization's requirement. Seller agrees to provide copies of all peer-reviewed manuscripts, technical information and software as appropriate to DOE's Office of Scientific and Technical Information (OSTI) in accordance with DOE O 241.1A. Guidance on electronic submission is available at https://www.osti.gov/elink/.

(5) For data in which Seller has received permission to assert copyright, Seller hereby grants on an equal and non-discriminatory basis an irrevocable, non-exclusive, royalty free license to such data to other Members and the ITER Organization, with the right of the ITER Organization to sub-license, and the right of the other Members to sub-license within their respective territory, for the purposes of publicly

sponsored fusion research and development programs.

(6) For data in which Seller has received permission to assert copyright, Seller shall make available on an equal and non-discriminatory basis a non-exclusive, license to such data to the other Members for commercial fusion use, with the right to sub-license for such use by such Members` own domestic third parties within such Members` own territory on terms no less favorable than the basis upon which Seller licenses such subject inventions to third parties within or outside the USA. As long as such terms have been offered such license shall not be denied. The above license may be revoked only in case the licensee does not fulfil its contractual obligations.

(7) Seller is encouraged to enter into commercial arrangements with the other Members, Domestic Agencies, ITER Contractors and third parties in order to allow use of data first produced in the performance of this subcontract in fields other than fusion.

(8) If Seller licenses or sub-licenses data first produced in the performance of this subcontract or background data under this clause, Seller will maintain records of any such licensing, which records will be available to other Members, such as through the ITER Organization.

(9) For data in which Seller has received permission to assert copyright jointly authored with a Member or the ITER Organization, said data shall be jointly-owned by the respective inventing entities. The joint owners shall enter into a co-ownership arrangement to allocate the terms of exercising the ownership of said copyrighted data.

(d) Release, Publication and Use of Data. (1) The Seller shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Seller in the performance of this subcontract, except to the extent such data may be subject to Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this subcontract.

(2) The Seller agrees that to the extent it receives or is given access to data necessary for the performance of this subcontract which contain restrictive markings, the Seller shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by Princeton.

(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 subparagraphs (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this subcontract, Princeton may at any time either return the data to the Seller, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) Princeton shall make written inquiry to the Seller affording the Seller 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Seller fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by Princeton for good cause shown), Princeton 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 Seller provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, Princeton shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If Princeton determines that the markings are authorized, the Seller shall be so notified in writing. If Princeton determines that the markings are not authorized, Princeton shall furnish the Seller a written determination, which determination shall become final regarding the appropriateness of the markings unless the Seller files suit in a court of competent jurisdiction within 90 days of receipt of Princeton's decision. Princeton shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by Princeton's determination becoming final (in which instance Princeton shall 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 subparagraph (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) This paragraph (e) does not apply if this subcontract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.

(f) Omitted or Incorrect Markings. (1) Data delivered to Princeton without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and Princeton and the Government assume no liability for disclosure, use, or reproduction of such data. However, to the extent the data have not been disclosed without restriction outside the Government, the Seller may request, within 6 months (or a longer time approved by Princeton for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Seller's expense, and Princeton may agree to do so if the Seller:

(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 use of the proposed notice is authorized; and

(iv) Acknowledges that Princeton and the Government have no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) Princeton may also (i) permit correction at the Seller's expense of incorrect notices if the Seller identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) Protection and Licensing of Limited Rights Data and Restricted Computer Software (Background Data). (1) Except as otherwise provided for in paragraphs (4) – (7) below, when data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this subcontract and qualify as either limited rights data or restricted computer software, if the Seller desires to continue protection of such data, the Seller shall withhold such data and not furnish them to Princeton under this subcontract. As a condition to this withholding, the Seller shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to Princeton are to be treated as limited rights data and not restricted computer software.

(2) [Reserved.]

(3) [Reserved.]

(4) [Reserved]

(5)(a) Seller, which has incorporated background data into the items provided to the ITER Organization which background data is required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,
- to maintain or repair the item, or
- for safety, for quality assurance and quality control reasons as required by regulatory authorities,

hereby grants the ITER Organization an irrevocable, non-exclusive, royalty-free license to use such background data including manuals or instructional training materials for the construction, operation, maintenance and repair of the ITER facilities.

(b) When Seller makes background data available to the ITER Organization, it must be clearly marked so, and transmitted pursuant to an arrangement for confidentiality and in accordance with this clause. The recipient of such information shall use it only for purposes set forth in paragraph (4) and shall preserve its confidentiality to the extent provided in that arrangement. Compensation for damages arising from the misuse of such background data by the ITER Organization shall be paid by the ITER Organization.

(6) Seller, which has incorporated background data such as know how or trade secrets into the items provided to the ITER Organization which background data is required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,
- to maintain or repair the item provided, or
- when decided necessary by the Council, in advance of any public procurement,

shall grant a commercial license to such background data or supply the same items incorporating the background data to the receiving party by means of private contracts with financial compensation for publicly sponsored fusion research and development programs of a Member on terms no less favorable than the basis upon which Seller licenses such

background data or supplies the same items to third parties within or outside the USA. As long as such terms have been offered, such license or supply of such item shall not be denied. The license, if granted, may be revoked only in case the licensee does not fulfil its contractual obligations. However, in individual cases and for good cause shown in writing, the requirement for such a license may be waived by DOE. Such waiver may be granted in advance of execution of the subcontract.

(7) Seller which has incorporated background data, in the execution of this subcontract shall make sure that the component incorporating the background data is available on reasonable terms and conditions, or use its best efforts to grant on an equal and non-discriminatory basis a non-exclusive license to the other Members for commercial fusion use, with the right to sub-license for such use by such Members' own domestic third parties within such Members' own territory, on terms no less favorable than the basis upon which Seller licenses such background data to third parties within or outside the USA. As long as such terms have been offered, such license shall not be denied. The above license may be revoked only in case the licensee does not fulfil its contractual obligations. However, in individual cases and for good cause shown in writing, the requirement for such a license may be waived by DOE. Such waiver may be granted in advance of execution of the subcontract.

(8) Seller is encouraged to make available for commercial purposes other than those set out in paragraph (6) to the other Members, any background data incorporated into the items provided to the ITER Organization which background data was required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,
- to maintain or repair the item provided, or
- when decided necessary by the Council, in advance of any public procurement.

Such background data, if licensed by the owners to the Members, shall be licensed on an equal and non-discriminatory basis.

(8) Seller shall identify in a timely manner its background data to DOE with a view to obtaining for the ITER Organization and the Members access to the background data in conformity with the Agreement.

(h) Subcontracting. The Seller has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Seller's obligations to Princeton and the Government under this subcontract. If a subcontractor refuses to accept terms affording Princeton and the Government such rights, the Seller shall promptly bring such refusal to the attention of Princeton and not proceed with subcontract award without further authorization.

(i) Relationship to Patents. Nothing contained in this clause shall imply a license to Princeton or the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to Princeton or the Government.

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

2 – ADDITIONAL DATA REQUIREMENTS

(Note: This paragraph does not apply to this subcontract if the subcontract is for the conduct of basic or applied research, as set out elsewhere in this subcontract, to be performed solely by a college or university, and the estimated cost is not in excess of $500,000.)

(a) In addition to the data (as defined in the Rights in Data - General clause included in this subcontract) specified elsewhere in this subcontract to be delivered, Princeton 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 included in this subcontract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Seller to deliver any data

the withholding of which is authorized by the Rights in Data - General 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 Seller will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) Princeton may release the Seller 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.

I-K6. RIGHTS IN DATA--SPECIAL WORKS (DEC 2007)

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

"Data" means recorded information, regardless of form or the medium on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Unlimited rights" means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of Rights.

(1) The Government shall have—

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause for copyright.

(ii) The right to limit assertion of copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in that data, in accordance with paragraph (c)(1) of this clause.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause.

(2) The Contractor shall have, to the extent permission is granted in accordance with paragraph (c)(1) of this clause, the right to assert claim to copyright subsisting in data first produced in the performance of this contract.

(c) Copyright—

(1) Data first produced in the performance of this Subcontract.

(i) The Subcontractor shall not assert or authorize others to assert any claim to copyright subsisting in any data first produced in the performance of this Subcontract without prior written permission of the Contracting Officer. When copyright is asserted, the Contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including subcontract and prime contract number) to the data when delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Subcontractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all delivered data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this Subcontract and permission has not been granted as set forth in paragraph (c)(1)(i) of this clause, the Contracting Officer shall direct the Subcontractor to assign (with or without registration), or obtain the assignment of, the copyright to the Government or its designated assignee.

(2) Data not first produced in the performance of this Subcontract. The Subcontractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this Subcontract any data not first produced in the performance of this contract and which contain the copyright notice of 17 U.S.C. 401 or 402, unless the Subcontractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause.

(d) Release and use restrictions. Except as otherwise specifically provided for in this Subcontract, the Subcontractor shall not use, release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

(e) Indemnity. The Subcontractor shall indemnify Princeton, the Government and their officers, agents, and employees acting for Princeton and the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished

under this Subcontract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Subcontractor as soon as practicable of any claim or suit, affords the Subcontractor an opportunity under applicable laws, rules, or regulations to participate in the defense of the claim or suit, and obtains the Subcontractor's consent to the settlement of any claim or suit other than as required by final decree of a court of competent jurisdiction; and these provisions do not apply to material furnished to the Subcontractor by the Government and incorporated in data to which this clause applies.

NOTHING FOLLOWS