

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

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.

<u>NO.</u>	<u>Clause Title</u>	<u>Page No.</u>
A1.	ISSUANCE UNDER GOVERNMENT CONTRACT (JUN 1987)	1
A2.	DEFINITIONS (MAY 2002)	1
A3.	ANTI-KICKBACK PROCEDURES (JUL 1995)	2
A4.	PRINTING (DEC 2000)	3
A5.	ACCOUNTS, RECORDS, AND INSPECTION (DEC 2000)	3
A6.	NOTICE TO PRINCETON OF LABOR DISPUTES (FEB 1997)	4
A7.	PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN 1997)	4
A8.	INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)	4
A9.	ASSIGNMENT (OCT 1997)	6
A10.	PERMITS AND RESPONSIBILITIES (NOV 1991)	5
A11.	MATERIAL AND WORKMANSHIP (APR 1984)	6
A12.	TERMS AND CONDITIONS OF INSURANCE (OCT 1997)	6
A13.	INDEMNITY (OCT 1997)	7
A14.	CONTAMINANT SPILLS (OCT 2000)	7
A15.	ACCIDENT REPORTING (OCT 2001)	8
A16.	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)	8
A17.	WHISTLEBLOWER PROTECTION FOR SUBCONTRACTOR EMPLOYEES (DEC 2000)	8
A18.	RESOLUTION OF DISPUTES (OCT 1997)	9
A19.	COVENANT AGAINST CONTINGENT FEES (APR 1984)	9
A20.	WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000)	9
A21.	COMMERCIAL BILL OF LADING NOTATIONS (APR 1984)	10
A22.	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)	10
A23.	MATERIAL REQUIREMENTS (AUG 2000)	10
A24.	SUSPENSION OF WORK (OCT 1997)	11
A25.	GOVERNMENT-FURNISHED PROPERTY (APR 1984)	11
A26.	AUTHORIZATION AND CONSENT (JUL 1995)	11
A27.	PATENT INDEMNITY - SUBCONTRACTS (DEC 2000)	12
A28.	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2000)	12
A29.	ADDITIONAL DATA REQUIREMENTS (JUN 1987)	12

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

<u>No.</u>	<u>Clause Title</u>	<u>Page</u> <u>No.</u>
A30	RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)	12
A31	REFUND OF ROYALTIES (DEC 2000)	12
A32	BANKRUPTCY (JUL 1995)	13
A33	KEY PERSONNEL (APR 1994)	13
A34	SUSPECT/COUNTERFEIT PARTS	13
A35	FAR CLAUSES INCORPORATED BY REFERENCE	14
A36	DEAR CLAUSES INCORPORATED BY REFERENCE	14

**ADDITIONAL CLAUSES**

# PPPL General Provisions for Non-Commercial Subcontracts

## Part A - Common Clauses

### A1. ISSUANCE UNDER GOVERNMENT CONTRACT (JUN 1987)

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

### A2. DEFINITIONS (MAY 2002)

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

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

(c) "Commercial item" means--

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

(1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that--

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

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

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

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

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

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

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

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

services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services--

(i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

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

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

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

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

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

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

(f) "Nondevelopmental item" means--

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

# PPPL General Provisions for Non-Commercial Subcontracts

## Part A - Common Clauses

(2) Any item described in paragraph (f)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (f)(1) or (f)(2) solely because the item is not yet in use.

(g) Except as otherwise provided in this Subcontract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this Subcontract.

(h) The term "DOE" means the Department of Energy.

(i) The term "patent counsel" shall mean the DOE patent counsel.

(j) The term "Princeton" shall mean the Trustees of Princeton University or any duly authorized representative or representatives thereof.

(k) The term "Director of Procurement" shall mean the individual duly authorized to enter into contractual agreements on behalf of the Trustees of Princeton University and to manage the Procurement Division of the Princeton Plasma Physics Laboratory.

(l) The term "Subcontract Administrator" shall mean the person within the Procurement Division who has been delegated authority by the Director of Procurement to act on behalf of the University in all administrative matters pertaining to the subcontract.

(m) The term "Princeton Technical Representative" shall mean the person within the Princeton Plasma Physics Laboratory designated in writing by the Director of Procurement as being responsible for day-to-day monitoring of the Subcontractor's progress and ensuring the Subcontractor's compliance with the stated subcontract scope of work and related technical matters.

### **A3. ANTI-KICKBACK PROCEDURES (JUL 1995)**

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from--

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) Reserved.

(2) When the Subcontractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Subcontractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

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

# PPPL General Provisions for Non-Commercial Subcontracts

## Part A - Common Clauses

Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Subcontractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all lower tier subcontracts under this subcontract, which exceed \$100,000.

#### **A4. PRINTING (DEC 2000)**

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

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

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

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

#### **A5. ACCOUNTS, RECORDS, AND INSPECTION (DEC 2000)**

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

(b) Inspection and audit of accounts and records. All books of account and records relating to this subcontract shall be subject to inspection and audit by Princeton or its designees in accordance with the provisions of Clause- A.36-2, Access to and Ownership of Records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the Subcontractor shall afford Princeton proper facilities for such inspection and audit.

(c) Audit of lower tier subcontractors' records. The Subcontractor also agrees, with respect to any lower tier subcontracts (including fixed-price or unit-price

subcontracts or purchase orders) where, under the terms of the lower tier subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the lower tier subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through Princeton.

(d) Disposition of records. Except as agreed upon by Princeton and the Subcontractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Subcontractor in connection with the work under this subcontract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the Subcontractor either as Princeton may from time to time direct during the progress of the work or, in any event, as Princeton shall direct upon completion or termination of this subcontract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause- A.36-2, Access To And Ownership Of Records, all other records in the possession of the contractor relating to this subcontract shall be preserved by the Subcontractor for a period of three years after final payment under this subcontract or otherwise disposed of in such manner as may be agreed upon by Princeton and the Subcontractor.

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

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

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

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

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

(h) Comptroller General.

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving

# PPPL General Provisions for Non-Commercial Subcontracts

## Part A - Common Clauses

transactions related to this subcontract or a lower tier subcontract hereunder.

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

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

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

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

### **A7. PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN 1997)**

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

"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

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

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

(c) The Subcontractor agrees, in performing work under this subcontract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

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

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

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

(End of Statement)

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

### **A8. INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)**

(a) For the purposes of this clause,

(1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and

(2) Employees include subcontractor employees.

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

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Subcontractor and lower tier subcontractor employees managing or supervising employees performing work.

(2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the

# PPPL General Provisions for Non-Commercial Subcontracts

## Part A - Common Clauses

environment are protected from adverse consequences.

(6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.

(7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by Princeton and the Subcontractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the Subcontractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.

(c) The Subcontractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the Subcontractor will:

- (1) Define the scope of work;
- (2) Identify and analyze hazards associated with the work;
- (3) Develop and implement hazard controls;
- (4) Perform work within controls; and
- (5) Provide feedback on adequacy of controls and continue to improve safety management.

(d) The System shall describe how the Subcontractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to Princeton's program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the Subcontractor will measure system effectiveness.

(e) The Subcontractor shall submit to the Princeton documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the Princeton. Guidance on the preparation, content, review, and approval of the System will be provided by the Princeton. On an annual basis, the Subcontractor shall review and update, for Princeton's approval, its safety performance objectives, performance measures, and commitments consistent with and in response to Princeton's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the Subcontractor's business processes for work planning, budgeting, authorization, execution, and change control.

(f) The Subcontractor shall comply with, and assist Princeton in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives either invoked or incorporated by reference in each individual subcontract clause of this subcontract. Subcontractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this subcontract.

(g) The Subcontractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Subcontractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Princeton may issue an order stopping work in whole or in part. Any stop work order issued by a contracting officer under this clause (or issued by the Subcontractor to a lower tier subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the Princeton issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Princeton. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(h) Regardless of the performer of the work, the Subcontractor is responsible for compliance with the ES&H requirements applicable to this subcontract. The Subcontractor is responsible for flowing down the ES&H requirements applicable to this contract to subcontracts at any tier to the extent necessary to ensure the Subcontractor's compliance with the requirements.

(i) The Subcontractor shall include a clause substantially the same as this clause in lower tier subcontracts involving complex or hazardous work on site at a DOE-owned or-leased facility. Such lower tier subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the Subcontractor may choose not to require its lower tier subcontractor's to submit a Safety Management System for the Subcontractor's review and approval.

### **A9. ASSIGNMENT (OCT 1997)**

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

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

### **A10. PERMITS AND RESPONSIBILITIES (NOV 1991)**

The Subcontractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Subcontractor shall also be responsible for all

# PPPL General Provisions for Non-Commercial Subcontracts

## Part A - Common Clauses

damages to persons or property that occur as a result of the Subcontractor's fault or negligence. The Subcontractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work that may have been accepted under the contract.

**A11. MATERIAL AND WORKMANSHIP (APR 1984)**

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

(b) The Subcontractor shall obtain Princeton's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Subcontractor shall furnish to Princeton the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this subcontract or by Princeton, the Subcontractor shall also obtain Princeton's approval of the material or articles that the Subcontractor contemplates incorporating into the work. When requesting approval, the Subcontractor shall provide full information concerning the material or articles. When directed to do so, the Subcontractor shall submit samples for approval at the Subcontractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

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

**A12. TERMS AND CONDITIONS OF INSURANCE (OCT 1997)**

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

TYPE	IN THE NAME OF	MINIMUM LIMITS
(i) Workers Compensation Employer's Liability	Subcontractor	Statutory \$500,000
(ii) General Liability, including: Contractual, Premises Operations Products	Subcontractor	

Operations, Products and Completed Operations, Independent Contractors and Personal Injury. Bodily Injury & Property Damage Each Occurrence Aggregate		\$2,000,000 \$2,000,000
(iii) Automobile Liability Bodily Injury & Property Damage	Subcontractor	\$1,000,000

(b) If the dollar value of this Agreement is \$500,000 or more, the Subcontractor shall maintain and keep in force at Subcontractor's expense, the following minimum liability insurance coverage during performance under this Subcontract:

TYPE	IN THE NAME OF	MINIMUM LIMITS
Owner's Protective Liability, including: Bodily Injury Each Occurrence Aggregate Property Damage Each Occurrence Aggregate	The Trustees of Princeton University, including its officers, employees and agents.	\$1,000,000 \$2,000,000  \$500,000 \$500,000

(c) "The Trustees of Princeton University, including its agents and employees" shall be named as additional insureds in the General Liability policy specified in subparagraph (a)(ii).

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

(e) The Subcontractor shall secure the Owner's Protective Liability insurance specified in subparagraph (b) with the same carrier that is furnishing the other General Liability insurance coverage.

(f) All policies shall be underwritten by a carrier licensed in the state of New Jersey and rated at least "A" in Best's.

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

(h) Certificate(s) evidencing the above insurance coverages, with statement thereon that Princeton is an additional named insured as required above, shall be sent to the Subcontract Administrator before the Subcontractor's work begins. Renewal certificates shall be provided annually until the Subcontractor's work is completed. The Subcontractor shall not enter

# PPPL General Provisions for Non-Commercial Subcontracts

## Part A - Common Clauses

Princeton's facilities to perform its work unless it is and remains insured in accordance with the above requirements, unless waived by mutual agreement of Princeton and the Subcontractor. The Subcontractor shall indemnify Princeton for any loss suffered by Princeton for the failure of the Subcontractor to be so insured.

### **A13. INDEMNITY (OCT 1997)**

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

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

### **A14. CONTAMINANT SPILLS (OCT 1997)**

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

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

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

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

- (1) Description of the item spilled (including identity, quantity, manifest number (if applicable), etc.);
- (2) Whether the amount spilled is required to be reported to the EPA or other federal, state or local agency, and if so whether it was reported;
- (3) Exact time and location of the spill including a description of the area involved;
- (4) Containment procedure initiated;
- (5) Summary of any communications Subcontractor has with the press, federal, state or local officials;
- (6) Description of clean up procedures employed, or to be employed, at the site including the location of the spill residue.

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

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

(g) In all cases in which a spill or discharge of contaminants into the environment is required to be reported to PPPL pursuant to subparagraph (c) of this clause, the PPPL reserves the option and right to take over and complete the clean up of the spill or discharge without the assistance of the Subcontractor. This right may be exercised at the sole discretion of the PPPL. All reasonable costs incurred by the PPPL in the clean up of such spills or discharges will be offset against amounts owed or payable to the Subcontractor on this and other Subcontracts with the PPPL. If such amounts are not sufficient to cover all reasonable costs of the spill clean up the Subcontractor will be billed for the remainder.

### **A15. ACCIDENT REPORTING (OCT 2001)**

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

### **A16. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)**

# PPPL General Provisions for Non-Commercial Subcontracts

## Part A - Common Clauses

(a) Hazardous material, as used in this clause, includes any material defined as hazardous under the latest version of Toxic Chemicals Subject to Section 313 of The Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11023) [herein after referred to as Section 313] (including revisions adopted during the term of the subcontract).

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

Material (If none, insert None)

---

---

---

Identification No.

---

---

---

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

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Section. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Section 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered non-responsive and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Section 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause or the certification submitted under paragraph (c) of this clause, the Subcontractor shall promptly notify Princeton and resubmit the data.

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

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

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

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

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

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

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

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

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

(i) Except as provided in paragraph (i)(2) the Subcontractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Section 313, for all hazardous materials identified in paragraph (b) of this clause.

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

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

### **A17. WHISTLEBLOWER PROTECTION FOR SUBCONTRACTOR EMPLOYEES (DEC 2000)**

**(This clause is applicable to all work performed on-site at PPPL)**

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

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

### **A18. RESOLUTION OF DISPUTES (OCT 1997)**

(a) The Subcontractor and Princeton agree to make good faith efforts to settle any dispute or claim that arises under this Agreement through discussion and

# PPPL General Provisions for Non-Commercial Subcontracts

## Part A - Common Clauses

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

(b) The parties agree that substantive issues presented for mediation, arbitration, dispute, claim, litigation or other effort at resolution shall be determined in accordance with the laws of the State of New Jersey, except for those matters reserved by statute, regulation or another subcontract clause for determination under federal law.

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

### **A19. COVENANT AGAINST CONTINGENT FEES (APR 1984)**

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

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

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

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

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act

regarding a Government contract on any basis other than the merits of the matter.

### **A20. WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000)**

**(This clause is applicable if subcontract is greater than \$25,000 AND if Subcontractor personnel work on site at PPPL are performing functions subject to the requirements of 10 CFR 707.2)**

(a) Program Implementation. The Subcontractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.

(b) Remedies. In addition to any other remedies available to Princeton subcontractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the Subcontractor subject to: the suspension of subcontract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.

(c) Lower Tier Subcontracts.

(1) The Subcontractor agrees to notify the Princeton reasonably in advance of, but not later than 30 days prior to, the award of any lower tier subcontract the Subcontractor believes may be subject to the requirements of 10 CFR part 707.

(2) Princeton shall require all subcontracts subject to the provisions of 10 CFR Part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR Part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. Princeton shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR Part 707.

(3) The Subcontractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

### **A21. COMMERCIAL BILL OF LADING NOTATIONS (APR 1984)**

If the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

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

"Transportation is for the U.S. Department of Energy and the actual total transportation charges paid to the

# PPPL General Provisions for Non-Commercial Subcontracts

## Part A - Common Clauses

carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government. "

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

"Transportation is for the U.S. Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No. DE-AC02-76CH03073. This may be confirmed by contacting U.S. Department of Energy, Princeton Area Office, P.O. Box 102, Princeton, NJ 08540, fax 609-243-2032.

### **A22. PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)**

(a) The Government suspends or debar contractors to protect the Government's interests. The Subcontractor shall not enter into any lower tier subcontract in excess of \$25,000 with a contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Subcontractor shall require each proposed lower tier subcontractor, whose lower tier subcontract will exceed \$25,000, to disclose to the Subcontractor, in writing, whether as of the time of award of the lower tier subcontract, the lower tier subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

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

- (1) The name of the lower tier subcontractor.
- (2) The Subcontractor's knowledge of the reasons for the lower tier subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
- (3) The compelling reason(s) for doing business with the lower tier subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.
- (4) The systems and procedures the Subcontractor has established to ensure that it is fully protecting the Government's interests when dealing with such sub-subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

### **A23. MATERIAL REQUIREMENTS (AUG 2000)**

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

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

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

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

"Remanufactured" means factory rebuilt to original specifications.

"Virgin material" means--

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

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

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

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

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

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

### **A24. SUSPENSION OF WORK (OCT 1997)**

(a) Princeton's Subcontract Administrator may at any time, by written notice to the Subcontractor, require the Subcontractor to suspend, delay or interrupt all or any portion of the work called for by this subcontract for a period of up to 90 days after the notice is delivered to the Subcontractor, or for any other period to which the parties may agree. Upon receipt of the notice, the Subcontractor shall immediately comply with its provisions and take all reasonable steps, as directed by Princeton's Subcontract Administrator, to minimize the incurrence of costs associated with such suspension. Prior to expiration of the suspension notice, Princeton shall either: (1) cancel the suspension notice; or (2) terminate the work covered

# PPPL General Provisions for Non-Commercial Subcontracts

## Part A - Common Clauses

by the notice as provided in the Default, or the Termination for Convenience clause of this subcontract.

(b) If a suspension notice is canceled or allowed to expire, the Subcontractor shall resume work. Any claim by the Subcontractor resulting from a Suspension of Work Notice shall be governed by the changes clause of this agreement.

### **A25 GOVERNMENT-FURNISHED PROPERTY SHORT FORM) (APR 1984)**

**(This clause is applicable if Government property with value less than \$100,000 is furnished)**

(a) Princeton shall deliver to the Subcontractor, at the time and locations stated in this subcontract, the Government-furnished property described in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Subcontractor, Princeton's Subcontract Administrator shall equitably adjust affected provisions of this subcontract in accordance with the changes clause when--

(1) The Subcontractor submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

(b) Title to Government-furnished property shall remain in the Government. The Subcontractor shall use the Government-furnished property only in connection with this subcontract. The Subcontractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for Princeton or Government inspection at all reasonable times, unless the clause at Federal Acquisition Regulation 52.245-1, Property Records, is included in this Subcontract.

(c) Upon delivery of Government-furnished property to the Subcontractor, the Subcontractor assumes the risk and responsibility for its loss or damage, except--

(1) For reasonable wear and tear;

(2) To the extent property is consumed in performing this Subcontract; or

(3) As otherwise provided for by the provisions of this Subcontract.

(d) Upon completing this subcontract, the Subcontractor shall follow the instructions of Princeton's Subcontract Administrator regarding the disposition of all Government-furnished property not consumed in performing this subcontract or previously delivered to Princeton. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by Princeton's Subcontract Administrator. The net proceeds of any such disposal shall be credited to the subcontract price or shall be paid to the Government as directed by Princeton's Subcontract Administrator.

(e) If this subcontract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed

as "United States Government" and "United States Government-furnished," respectively.

### **A26. AUTHORIZATION AND CONSENT (JUL 1995)**

(a) The Government authorizes and consents to all use and manufacture, in performing this subcontract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by Princeton under this subcontract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a lower tier subcontractor with (i) specifications or written provisions forming a part of this subcontract or (ii) specific written instructions given by Princeton's Subcontract Administrator directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this subcontract or any lower tier subcontract hereunder, and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Subcontractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold]; however, omission of this clause from any lower tier subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

**Alternate II (APR 1984)(applicable if the Subcontract is for communications services with a common carrier where services are unregulated and prices are not set by tariff).**

The following is substituted for paragraph (a) of the clause:

(a) The Government authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this subcontract for communication services and facilities for which rates, charges, and tariffs are not established by a government regulatory body, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by Princeton under this subcontract or (2) used in the machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a lower tier subcontractor with specifications or written provisions forming a part of this subcontract or with specific written instructions given by Princeton's Subcontract Administrator directing the manner of performance.

### **A27. PATENT INDEMNITY SUBCONTRACTS (DEC 2000)**

Except as otherwise authorized by the Contracting Officer, the Subcontractor shall obtain indemnification of Princeton and the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a

# PPPL General Provisions for Non-Commercial Subcontracts

## Part A - Common Clauses

patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a secrecy order by the Government) from Subcontractor's lower tier subcontractors for any work subcontracted in accordance with FAR 48 CFR 52.227-3.

### **A28. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2000)**

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

(b) If any person files a claim or suit against Princeton or the Government on account of any alleged patent or copyright infringement arising out of the performance of this subcontract or out of the use of any supplies furnished or work or services performed hereunder, the Subcontractor shall furnish, through Princeton, to the Government, when requested by Princeton, all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Except where the Subcontractor has agreed to indemnify Princeton and the Government, the Subcontractor shall furnish such evidence and information at the expense of the Princeton.

(c) The Subcontractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all lower tier subcontracts at any tier expected to exceed \$25,000.

### **A29. ADDITIONAL DATA REQUIREMENTS (JUN 1987)**

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

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

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

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

### **A30. RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)**

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

### **A31 REFUND OF ROYALTIES (DEC 2000)**

(a) The subcontract price includes certain amounts for royalties, payable by the Subcontractor or lower tier subcontractors or both, reported to the Princeton in accordance with the Royalty Information provision of the solicitation.

(b) During performance of this subcontract, if any additional royalty payments are proposed to be charged to the Princeton as costs under the subcontract that were not included in the original subcontract price, the Subcontractor agrees to submit for approval of the Princeton prior to the execution of any licensing agreement the following information relating to each separate item of royalty or license fee:

- (1) Name and address of licensor;
- (2) Date of license agreement;
- (3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
- (4) Brief description, including any part or model numbers of each subcontract item or component on which the royalty is payable;
- (5) Percentage or dollar rate of royalty per unit;
- (6) Unit price of subcontract item;
- (7) Number of units; and
- (8) Total dollar amount of royalties.
- (9) In addition, if specifically requested by the Princeton, the Subcontractor shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents.

(c) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this subcontract or any subcontract hereunder. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this subcontract or lower tier subcontracts, or the copying of such data or data that is copyrighted.

(d) The Subcontractor shall furnish to Princeton, before final payment under this subcontract, a statement of royalties paid, or required to be paid, in connection with

# PPPL General Provisions for Non-Commercial Subcontracts

## Part A - Common Clauses

performing this contract and lower tier subcontracts hereunder.

(e) The Subcontractor is compensated for any royalties reported under paragraph (b) of this clause only to the extent that such royalties were included in the contract price and are determined by the Princeton to be properly chargeable to the Government and allocable to the contract.

(f) Princeton shall reduce the subcontract price to the extent any royalties that are included in the subcontract price are not, in fact, paid by the Subcontractor or are determined by Princeton not to be properly chargeable to the Princeton and allocable to the subcontract. The Subcontractor agrees to repay or credit the Princeton accordingly, as Princeton directs. Regardless of prior Princeton approval of any individual payments or royalties, Princeton may contest at any time the enforceability, validity, scope of, or title to, a patent or the proprietary nature of data pursuant to which Princeton makes a royalty or other payment.

(g) If at any time within 3 years after final payment under this subcontract, the Subcontractor for any reason is relieved in whole or in part from the payment of the royalties included in the final subcontract price as adjusted pursuant to paragraph (f) of this clause, the Subcontractor shall promptly notify the Princeton of that fact and shall promptly reimburse Princeton—in a corresponding amount.

(h) The Subcontractor agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to identify the parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the lower tier subcontract exceeds \$250.

### **A32. BANKRUPTCY (JUL 1995)**

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

### **A33. KEY PERSONNEL (APR 1994)**

**(Applicable when invoked in the Subcontract Agreement)**

**A35. CLAUSES, STATUTES OR EXECUTIVE ORDERS INCORPORATED BY REFERENCE:** The Subcontractor agrees to comply with the following Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses by reference, as they exist on the effective date of this contract, with the same force and effect as if they were in full text. For FAR provisions incorporated by reference, "Government" means "Princeton", Contracting Officer" means "Princeton Plasma Physics Laboratory's Procurement Division Buyer or Subcontract Administrator", except where

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

### **A34 SUSPECT/COUNTERFEIT PARTS (MAY 2002)**

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

- (1) Fasteners, including bolts and nuts, made of carbon steel (designated as grade five or grade eight) or stainless steel, with headmarks or stamps shown on the headmark list that was prepared by the United States Customs Service (the list is provided as a separate attachment to this Agreement, or is available upon request from Princeton);
- (2) Piping valves and flanges bearing labels that falsely indicate that the items meet recognized ASME or ASTM consensus standards; and
- (3) Used or refurbished molded-case electrical circuit breakers or similar type switch gear.

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

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

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

# PPPL General Provisions for Non-Commercial Subcontracts

## Part A - Common Clauses

statute or regulation vests authority exclusively in specific agencies or individuals, and "Contractor" means "Supplier". The FAR clauses are available through the General Services Administration (GSA) at <http://www.arnet.gov/far/>, and the DEAR clauses area available at <http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/Procurement/Acquisition+Regulation?OpenDocument>, or they may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. To the maximum extent practicable, the Subcontractor shall incorporate, and require its subcontractors, divisions, subsidiaries or affiliates at all tiers to incorporate commercial items or non-developmental items as components of items to be supplied under this Agreement. The Subcontractor is not required to include any FAR provisions or clauses other than those listed below to the extent that they are applicable and as may be required to establish the reasonableness of prices under FAR 15, in a subcontract at any tier for commercial items or components. The Subcontractor shall include the terms of this clause, including this statement, in lower-tier subcontracts awarded under this Agreement.

<u>Clause:</u>	<u>Title:</u>	<u>FAR Reference:</u>
A.35-1	FACILITIES CAPITAL COST OF MONEY (This clause is applicable if the Subcontractor separately identifies facilities capital cost of money in its proposal)	52.215-16
A.35-2	WAIVER OF FACILITIES CAPITAL COST OF MONEY (This clause is applicable if the Subcontractor DOES NOT separately identify facilities capital cost of money in its proposal)	52.215-17
A.35-3	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT OVERTIME COMPENSATION	52.222-4
A.35-4	WALSH-HEALEY PUBLIC CONTRACTS ACT	52.222-20
A.35-5	PROHIBITION OF SEGREGATED FACILITIES(This clause is applicable to subcontracts greater than \$10,000)	52.222-21
A.35-6	EQUAL OPPORTUNITY (This clause is applicable to subcontracts greater than \$10,000)	52.222-26
A.35-7	AFFIRMATIVE ACTION FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (This clause is applicable to subcontracts greater than \$25,000)	52.222-35
A.35-8	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES	52.222-36
A.35-9	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS	52.222-37
A.35-10	PRIVACY ACT	52.224-2
A.35-11	BUY AMERICAN ACT - BALANCE OF PAYMENTS PROGRAM - SUPPLIES(This clause is applicable to subcontracts valued greater than \$2,500 but less than \$25,000)	52.225-1
A.35-12	Reserved	
A.35-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	52.225-13
A.35-14	SUBCONTRACTS FOR COMMERCIAL ITEMS	52.244-6
A.35-15	BUY AMERICAN ACT CERTIFICATE	52.225-2

<u>Clause:</u>	<u>Title:</u>	<u>DEAR Reference:</u>
A.36-1	SENSITIVE FOREIGN NATIONS CONTROLS	952.204-71
A.36-2	ACCESS TO AND OWNERSHIP OF RECORDS	970.5204-3