PART I

SECTION H

SPECIAL CONTRACT REQUIREMENTS

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CLAUSE H.1 – FACILITIES

DOE agrees to continue to furnish and make available to the Contractor, for its possession and use in performing the work under this contract, the facilities designated as follows:

(a) The Government-leased land and water line easement under a Lease Agreement with the Trustees of Princeton University covering the premises designated as "C" and "D" Sites and specified water line easement, Lease No. DE-RL02-CH10328, which Lease Agreement isincorporated herein as Part III, Section J, Attachment J.5, Appendix E;

(b) The Government-owned buildings, utilities, equipment and other facilities situated at or near the James Forrestal Campus, Princeton Plasma Physics Laboratory, Plainsboro Township, Middlesex County, New Jersey; and

(c) Government-owned or leased facilities at such other locations as may be approved by DOE for use under this contract.

(d) Subject to mutual agreement, other facilities may be used in the performance of the work under this contract.

DOE reserves the right to make part of the above-mentioned land or facilities available to other Government agencies or other users on the basis that the responsibilities and undertakings of the Contractor will not be unreasonably interfered with. Before exercising its right to make any part of the land or facilities available to another agency or user, DOE will confer with the Contractor and ensure compliance with the provisions of Lease No. DE-RL02-CH10328.

CLAUSE H.2 - ADVANCE UNDERSTANDINGS REGARDING THE CONTRACTOR'S RESPONSIBILITY UNDER LEASE DE-RL02-CH10328

The Government and The Trustees of Princeton University have entered into a Lease Agreement covering the premises designated as "C" and "D" Sites, Lease No. DE-RL02-CH10328. A copy of the lease agreement, as amended, is attached to this Contract in Part III, Section J, Attachment J.5, Appendix E. The said Lease provides for the payment by the Government to Princeton of an annual lease charge during each year of the term of the Lease. The Contractor agrees to comply with the terms and conditions of said Lease, including the payment of the annual lease charge on behalf of the Government. Such charge, as the same may be adjusted from time to time pursuant to the terms of the Lease, shall be deemed an allowable cost under this Contract. For matters arising under the lease, any perceived or actual inconsistencies between the Lease and the other terms of this Contract shall be immediately brought to the attention of the Contracting Officer.

CLAUSE H.3 - LONG-RANGE PLANNING, PROGRAM DEVELOPMENT ANDBUDGETARY ADMINISTRATION

(a) Basic Considerations. Throughout the process of planning, and budget development and approval, the Parties recognize the desirability for close consultation, for advising each other of plans or developments on which subsequent

action will be required, and for attempting to reach mutual understanding in advance of the time that action needs to be taken.

(b) Laboratory Planning. It is the intent of the Parties to develop a laboratory strategic plan which will be updated at least annually. Development of the plan is a component of the strategic planning process by which the Parties, through mutual consultation, reach agreement on the general types and levels of activity which will be conducted at the Laboratory for the period covered by the plan. The plan provides guidance to the Contractor for long-range planning of Laboratory programs, site and facility development, and for budget preparation. It also serves as a baseline for placement of work at the Laboratory.

(c) DOE Approval. DOE approval of the program proposals and budget estimates will be reflected in work authorizations and financial plans developed and issued to the Contractor.

CLAUSE H.4 - WORK PROGRAMS

(a) Work programs shall be developed by the Contractor and approved by DOE in accordance with applicable DOE directives, and shall constitute work to be performed under this Contract during the pertinent periods involved. Such work programs may include program and project performance objectives and milestones. The Contractor shall consult with DOE, as necessary, during the process of developing work programs. Subject to the other provisions of this contract, changes in the agreed work program, not constituting major changes, may be made by the Contractor when it appears to the Contractor, to be in the best interest of the scientific and technical objectives of the agreed work program to do so. It is understood that the nature of the research and development work under this Contract is of a specialized character not readily reducible to production schedules. In view of these circumstances, it is agreed that the research and development work is performed on a best effort basis.

(b) Due to the critical character of the work from the standpoint of national significance, it is understood by the Parties hereto that very close collaboration will be required between the Contractor and DOE with respect to direction, emphasis, trends and adequacy of the total program.

(c) (1) The annual work program and budget are principal devices used by DOE in program development, integration, execution, and cost estimating. To make the work program and budget most effective in assuring comprehensive coverage of DOE missions, it is the responsibility of DOE to keep the operators of DOE's laboratories continually advised of DOE’s overall program goals, scientific and technological problems, and its current long range objectives. In light of such information, the Contractor will propose possible new objectives and present preliminary work programs in the area of its competence which, from its point of view, will either strengthen the overall DOE program or provide additional support in areas which, in the Contractor's judgment, are being inadequately exploited, or initiate new areas of investigation which appear of potential importance.

(2) It is the responsibility of DOE to formulate overall program budgets, taking into consideration the proposals submitted by the Contractor, consistent with funds appropriated by the Congress and all its other program needs.

(3) The Contractor shall prepare a final work program and budget consistent with DOE's overall program budget. Upon DOE approval, it is the Contractor's responsibility to conduct its work program within limits established by these approvals unless and until they are modified by DOE.

(d) In accordance with the basic considerations stated in paragraph (c) above, the Contractor and DOE will utilize the Program Budget procedures on a Government fiscal year basis for the establishment of the Laboratory Program Budget. Procedures for the presentation of work programs and cost estimates shall be jointly developed. In order to meet the requirements of Government budgetary practice, the Parties agree:

(1) As early as possible in each calendar year, DOE shall supply the Contractor with the dollar amounts for the Laboratory contained in the President's Budget, with Program assumptions and guidance which the Contractor will be expected to consider in the development of its program and budget, and with all changes to existing budget and accounting policies and procedures to be used in the current budget preparation.

(2) Prior to April 1 (or such other date as may be agreed upon) the Contractor shall submit to DOE for approval a comprehensive work program for the next two fiscal years, together with a description of the current work program, and the Contractor shall submit a budget estimate for the next two fiscal years, together with a revised budget estimate for the current fiscal year.

(3) As soon as possible after October 1 of each year, DOE shall issue Work Authorizations and an Approved Funding Program to the Contractor for the current fiscal year.

(e) (1) DOE approved work programs, program performance expectations and milestones as appropriate, and budget estimates shall be reflected in Work Authorizations/Annual Program Letters/Activity Data Sheets/Program Baseline Summaries and Approved Funding Programs. These documents will be issued to the Contractor as soon as possible after funds become available. If, in preparing Work Authorizations/Annual Program Letters/Activity Data Sheets/Program Baseline Summaries and Approved Funding Programs, it is determined that changes are needed in the work program and budget estimates submitted by the Contractor, DOE and the Contractor shall agree upon the changes in the work before final issuance of these documents, provided, however, that nothing herein shall preclude DOE from directing a change in the work pursuant to the clauses of the Contract entitled "Changes" and "Work Authorization".

(2) The Work Authorizations/Annual Program Letters, and with respect to any work that may be funded by the Office of Environmental Management, Program Baseline Summaries and Approved Funding Programs, specify the funds

available for work under the Contract for the fiscal year and, in addition, may establish limitations on costs to be incurred for individual portions of the work. The Contractor shall comply with such limitations and shall promptly notify the Contracting Officer, in writing, whenever it becomes apparent that there is likely to be an overrun with respect to any specific limitation in the Work Authorization/Annual Program Letters, and with respect to any work that may be funded by the Office of Environmental Management, Program Baseline Summaries, and Approved Funding Programs. Funds made available for work under the contract, and set forth in Approved Funding Programs or other funding documents, shall not be reduced except by written agreement of the Parties.

(3) Additional programs and projects to be conducted at the Laboratory within the scope of the Contract may be established by agreement between the DOE and the Contractor. However, nothing herein shall preclude DOE from directing a change in or assignment of work pursuant to the “Changes” or the “Work Authorization” clauses of the contract.

(f) A Contract modification shall be issued to the Contractor on or before September 30 of each year (or such other date as may be agreed upon) to provide additional funds, and further Contract modifications may be issued or entered into from time to time to provide appropriate modifications in the total amount of funds made available under the Contract. DOE agrees to use its best efforts to provide stable funding in support of the Contract work and it is DOE's intention that there shall be so provided at all times sufficient funds to support the work program at the level authorized by DOE.

(g) During the course of the work, DOE shall review the work program and its costs based upon information submitted by the Contractor and may, after consultation with the Contractor, revise the Work Authorizations and Approved Funding Programs established by DOE under paragraph (e) above. The Contractor shall make any necessary revisions to the documents cited in this clause consistent with DOE direction.

(h) It is the intent of the Contractor and DOE to agree from time to time upon long-term work programs covering certain portions of the work to be performed under this contract. However, nothing herein shall preclude DOE from directing a change in or assignment of work pursuant to the “Changes” or the “Work Authorization” clauses of the contract.

(i) The Contractor shall maintain current cost information adequate to reflect the cost of performing the work under this Contract at all times while the work is in progress, and shall prepare and furnish to the Government such written estimates of cost and information in support thereof as the Contracting Officer may request.

CLAUSE H.5 - DEFENSE AND INDEMNIFICATION OF EMPLOYEES

(a) The Parties recognize that, under applicable State law, the Contractor could be required to defend and indemnify its officers and employees from and against civil actions and other claims which arise out of the performance of work under this

Contract. Except for defense costs made unallowable by Section I clause entitled Payments and Advances, or the Major Fraud Act (41 U.S.C. §256(k)), the costs and expenses, including judgments, resulting from the defense and indemnification of employees from and against such civil actions and claims shall be allowable costs under this contract if incurred pursuant to the terms of Section I clause entitled Insurance–Litigation and Claims.

(b) Costs and expenses, including judgments, resulting from the defense and indemnification of employees from civil fraud actions filed in federal court by the Government will be unallowable where the employee pleads nolo contendere or the action results in a judgment against the defendant.

(c) Where in accordance with applicable State law, the Contractor determines it must defend an employee in a criminal action, DOE will consider in good faith, on a case-by-case basis, whether the Contractor has such an obligation. If DOE concurs, the costs and expenses, including judgments, resulting from the defense and indemnification of employees shall be allowable.

(d) The Contractor shall immediately furnish the Contracting Officer written notice of any such claim or civil action filed against any employee of the Contractor arising out of the work under this contract together with copies of all pleadings filed. The Contractor shall furnish to the Contracting Officer a written determination by the Contractor's counsel that the defense or indemnity of the employee is required by the provisions of applicable State law, that the employee was acting within the course and scope of employment at the time of the acts or omissions which gave rise to the claim or civil action, and that any exclusions set forth under applicable State law for fraud, corruption, malice, willful misconduct, or lack of good faith on the part of the employee does not apply. A copy of any letter asserting a reservation of rights under applicable State law with respect to the defense or indemnification of such employee shall also be provided to the Contracting Officer. The costs associated with the settlement of any such claim or civil action shall not be treated as an allowable cost unless approved in writing by the Contracting Officer.

CLAUSE H.6 - ADVANCE UNDERSTANDINGS REGARDING ADDITIONAL ITEMS OF ALLOWABLE AND UNALLOWABLE COSTS AND OTHER MATTERS

Allowable costs under this Contract shall be determined according to the requirements of DEAR 970.5232-2, Payments and Advances. For purposes of effective Contract implementation, certain items of cost are being specifically identified below as allowable and/or unallowable under this Contract to the extent indicated:

I. ITEMS OF ALLOWABLE COSTS:

(a) Cost for the defense and indemnification of employees in accordance with the provisions of the clause entitled, "Defense and Indemnification of Employees".

(b) Rentals and leases of land, buildings, and equipment owned by third parties, allowances in lieu of rental, charges associated therewith and costs of alteration, remodeling and restorations where such items are used in the performance of the contract, except that such rentals and leases directly chargeable to the

contract shall be subject to such approval by the Contracting Officer as set forth in Part III, Attachment J.7, Appendix G.

(c) Notwithstanding the provisions of FAR cost principle 31.205-44, stipends and payments made to reimburse travel or other expenses of researchers and students who are not employed under this contract but are participating in research, educational or training activities under this contract to the extent such costs are incurred in connection with fellowship, international agreements, or other research, educational or training programs approved by the Contracting Officer.

(d) Notwithstanding the provisions of FAR cost principle 31.205-44, payments to educational institutions for tuition and fees, or institutional allowances, in connection with fellowship or other research, educational or training programs for researchers and students who are not employed under this contract.

(e) Costs incurred or expenditures made by the Contractor, as directed, approved or ratified by the Contracting Officer and not unallowable under any other provisions of this contract.

(f) Notwithstanding paragraph II (b) below, costs for the Contractor's Advisory Board, as required in accordance with Clause H.43, PPPL Advisory Board, and as approved by the Contracting Officer. The Contractor shall provide an annual accounting of these costs to the Contracting Officer for approval.

II. ITEMS OF UNALLOWABLE COSTS:

(a) Premium Pay for wearing radiation-measuring devices for Laboratory and all-tier cost-type subcontract employees.

(b) Home office expenses, whether direct or indirect, relating to activities of the Contractor, except as otherwise specifically agreed to in writing by the Contracting Officer.

CLAUSE H.7 – FACILITIES CAPITAL COST OF MONEY

The request for proposal for this contract did not require a cost proposal in which facilities capital cost of money would apply. Therefore, the Clause I.22, FAR 52.215-17, Waiver of Facilities Capital Cost of Money, is included in the contract. However, if during the performance of the contract the Contractor elects to claim facilities capital cost of money as an allowable cost, the Contractor shall submit, for approval of the Contracting Officer, a proposal for each specific project, including Form CASB-CMF which shows the calculation of the proposed amount (see FAR 31.205-10).

CLAUSE H.8A – WITHDRAWAL OF WORK

(a) The Contracting Officer reserves the right to have any of the work contemplated by Section C, Statement of Work, of this contract performed by either another contractor or performed by Government employees.

(b) Work may be withdrawn: (1) in order for the Government to conduct pilot programs; (2) if the Contractor's estimated cost of the work is considered unreasonable; (3) for less than satisfactory performance by the contractor; or (4) for any other reason deemed by the Contracting Officer to be in the best interests of the Government.

(c) If any work is withdrawn by the Contracting Officer, the contractor agrees to fully cooperate with the new performing entity and to provide whatever support is required.

(d) DOE may identify areas for direct federal contracts with small businesses that are currently provided under PPPL subcontracts and may be awarded in the future by DOE as prime contracts as the current subcontracts expire.

CLAUSE H.8B - ADMINISTRATION OF SUBCONTRACTS

(a) The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor unless assigned at the direction of DOE.

(b) The DOE reserves the right to direct the Contractor to assign to the DOE, or another Contractor, any subcontract awarded under this contract.

(c) The DOE reserves the right to identify specific work activities in Section C "Description/Specifications/Work Statement" to be removed (de-scoped) from the contract in order to contract directly for the specific work activities. The Department will work with the Contractor to identify the areas of work that can be performed by small businesses in order to maximize direct federal contracts with small businesses. The Contractor agrees to facilitate these actions. This facilitation will include identifying direct contracting opportunities valued at $5 million or above for small businesses for work presently performed under subcontracts, as well as work performed by Contractor employees. The Contractor shall notify the DOE one-year in advance of the expiration of any of its subcontracts valued at $5 million or above, or if applicable, one-year prior to the exercise of an option and/or the option notification requirement, if any, contained in the subcontracts. The DOE will review this information and the requirements of the Contractor to determine the appropriateness for small business opportunities. This review may result in the DOE electing to enter in contracts directly with small businesses for these areas of work. The Contracting Officer will give notice to the Contractor not less than 120 calendar days prior to the date for exercising the option and/or the expiration of the subcontract and/or prior to entering into contract for work being performed by Contractor employees. Following award of these direct federal contracts, DOE may assign administration of these contracts to the Contractor. The Contractor agrees to accept assignments from the DOE for the administration of these contracts. The parameters of the Contractor's responsibilities for the small business contracts and/or changes, if any, to this contract will be incorporated via a modification to the contract. The Contractor will accept management and administration responsibilities, if so determined.

(d) To the extent that DOE removes (de-scopes) work from this contract, any such removed or withdrawn work shall be treated as a change in accordance with the clause of this contract entitled, “Changes”. A “material change” for the purpose of this clause is defined as cumulative changes during a fiscal year that result in a plus or minus 10% change to the fee base contained in Part I, Clause B.3 (e)(2). To the extent that DOE assigns the administration of a contract to the Contractor, or removes (de-scopes) work, the Parties reserve the right to negotiate an equitable adjustment in the Contractor’s annual available performance fee. The negotiation of fee will be in accordance with the contract clause entitled, “Total Available Base Fee Amount and Performance Fee Award”. The Parties will also negotiate appropriate adjustments to the Contractor’s Subcontracting Plan or any other applicable contract terms and conditions impacted by such withdrawal or addition of work scope to recognize the changes to the Contractor’s subcontracting base and goals.

CLAUSE H.9 - PRIVACY ACT RECORDS

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a (Public Law 93-579) and implementing DOE Regulations (10 CFR 1008), the Contractor shall maintain the following "Systems of Records" on individuals in order to accomplish the United States Department of Energy functions:

Personnel Medical Records (DOE-33) (excepting Contractor employees)

Personnel Radiation Exposure Records (DOE-35) respecting Contractor Employees, DOE Employees, and Visitors to the Contract site.

Employee and Visitor Access Control Records (DOE-51)

Access Control Records of International Visits, Assignments, and Employment at DOE Facilities and Contractor Sites (DOE-52)

The parenthetical Department of Energy number designations for each system of records refers to the official "System of Records" number published by the United States Department of Energy in the Federal Register pursuant to the Privacy Act.

If DOE requires the Contractor to design, develop, or maintain additional systems of Government-owned records on individuals to accomplish an agency function in accordance with the Privacy Act of 1974 and 10 CFR 1008, the Contracting Officer, or designee, shall so notify the Contractor, in writing, and such Privacy Act system shall be deemed added to the above list whether incorporated by formal contract modification or not. The Parties shall mutually agree to a schedule for implementation of the Privacy Act with respect to each such system.

CLAUSE H.10 - ADDITIONAL DEFINITIONS

(a) “CH” means the DOE Office of Science, Chicago Office.

(b) “Contractor” means the Offeror as specified in Block 15A of Standard Form 33 for Contract No. DE-AC02-09CH11466.

(c) The term “DOE” means the Department of Energy, “FERC” means the Federal Energy Regulatory Commission, and “NNSA” means the National Nuclear Security Administration.

(d) The term "DOE Directive" means DOE Policies, Orders, Notices, Manuals, Regulations, Technical Standards and related documents, and Guides, including for purposes of this contract those portions of DOE's Accounting and Procedures Handbook applicable to integrated Contractors, issued by DOE. The term does not include temporary written instructions by the Contracting Officer for the purpose of addressing short-term or urgent DOE concerns relating to health, safety, or the environment.

(e) “Head of Agency” means: (i) The Secretary; (ii) Deputy Secretary; (iii) Under Secretaries of the Department of Energy and (iv) the Chairman, Federal Energy Regulatory Commission.

(f) ”Laboratory” means the Princeton Plasma Physics Laboratory (PPPL) consisting of all Government-owned property, facilities, and structures, as well as Government-leased land and other items of property as the Parties may mutually agree, in writing, from the time to time (hereinafter referred to as the “Laboratory Site”) at Princeton, New Jersey.

(g) The term "someone acting as the Laboratory Director" means the person appointed as Laboratory Director; Deputy Laboratory Director(s) acting in the absence of the Laboratory Director; or a person specified, in writing, to have authority to act in the absence of the Laboratory Director and Deputy Laboratory Director(s).

(h) With respect to Clauses H.14, I.129 and I.147 or I.148, the term “non-profit organization” means –
(1) a university or other institution of higher education,
(2) an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 as amended and exempt from taxation under section 501(a) and the Internal Revenue Code,
(3) any nonprofit scientific or educational organization qualified as a nonprofit by the laws of the State of its organization or incorporation, or
(4) a combination of qualifying entities organized for a nonprofit purpose (e.g., partnership, joint venture or limited liability company) each member of which meets the requirements of (1), (2), or (3) above.

(i) The term “Senior Procurement Executive” means, for DOE:
Department of Energy – Director, Office of Procurement and Assistance Management, DOE;
National Nuclear Security Administration – Administrator for Nuclear Security, NNSA; and
Federal Energy Regulatory Commission – Chairman, FERC.

CLAUSE H.11 - SERVICE CONTRACT ACT OF 1965 (41 U.S.C. 351)

The Service Contract Act of 1965 is not applicable to this contract. However, in accordance with Clause I.146, DEAR 970.5244-1 – CONTRACTOR PURCHASING

SYSTEM, subcontracts awarded by the Contractor are subject to the Act to the same extent and under the same conditions as contracts awarded by DOE. The Contractor and the Contracting Officer shall develop a procedure whereby DOE will determine if the Service Contract Act is applicable to particular subcontracts. In cases determined to be covered by the Service Contract Act, the Contractor shall prepare SF-98 and 98A "Notice of Intention to Make a Service Contract" and forward it to the Contracting Officer or his designee to obtain a wage determination.

CLAUSE H.12 - WALSH-HEALY PUBLIC CONTRACTS ACT (OCT 2010) *[M069 – 6/27/11]*

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed $15,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

(a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

CLAUSE H.13 - STANDARDS OF CONTRACTOR PERFORMANCE EVALUATION *[M077 – 9/28/11]*

(a) Use of objective standards of performance, self assessment and performance evaluation:

(1) The Parties agree that the Contractor will utilize a comprehensive performance-based management approach for overall Laboratory management. The performance-based management approach will include the use of performance goals, objectives, measures, and targets, agreed to in advance of each performance evaluation period, as standards against which the Contractor's overall performance of the scientific and technical mission obligations under this Contract will be assessed. The performance criteria will be limited in number and focus on results to drive improved performance and increased effective and efficient management of the Laboratory.

(2) The Parties agree to utilize the process described within Part III, Section J, Attachment J.2, Appendix B - "Performance Evaluation and Measurement Plan" (PEMP) to evaluate the performance of the Laboratory. The Parties further agree that the evaluation process described in Appendix B will be reviewed annually and modified, if necessary, by agreement of the Parties. If agreement of the

Parties cannot be reached, the Contracting Officer has the unilateral right to establish the evaluation process.

(3) The Parties agree that the Contractor will conduct an ongoing self-assessment process as the principal means of determining its compliance with the Contract Statement of Work and performance indicators identified within Part III, Section J, Appendix B. To assist the DOE in accomplishing the appropriate level of oversight, the Contractor shall work in partnership and cooperation with DOE and other external organization, as appropriate, in the self-assessment process. This work includes, but is not limited to, the development and execution of self-assessments and the utilization of the results for continuous improvement.

(4) The Contractor shall provide periodic updates, as requested by the DOE, on the performance against the Appendix B. The Contractor shall provide a formal status briefing at mid-year and year-end. Specific due dates and formats for the above-mentioned briefings shall be agreed to by the Laboratory Director and the DOE Princeton Site Office Manager.

(5) DOE, as a part of its responsibility for oversight, evaluation, and information exchange, shall provide an annual programmatic appraisal and other appraisals, and reviews of the Contractor's performance of authorized work in accordance with the terms and conditions of this Contract. The Office of Science, through the DOE Princeton Site Office Manager, has the lead responsibility for oversight of the programs and activities conducted by the Contractor.

(6) The Contracting Officer shall annually provide a written assessment of the Laboratory's performance to the Contractor, which shall be based upon the process described in Appendix B. The Parties acknowledge that the performance levels achieved against the specific performance goals, objectives, measures, and targets shall be the primary, but not sole, criteria for determining the Contractor's final performance evaluation and rating. The Contractor's self-assessment results, to include results of any third party reviews which may have been conducted during the evaluation period, will be considered at all levels to assess and evaluate the Contractor's performance. The Contracting Officer may also consider other relevant information not specifically measured by the objectives and measures established within Appendix B that is deemed to have an impact (either positive or negative) on the Contractor's performance. Other relevant information that may be used by the Contracting Officer may include, but is not limited to, information gained from peer reviews, operational awareness, outside agency reviews (i.e., Office of Inspector General (OIG), Government Accountability Office (GAO), Defense Contract Audit Agency (DCAA), etc.) conducted throughout the year, annual reviews (if needed), and DOE "for cause" reviews. Contractor success in meeting or exceeding performance expectations in a particular management or operations functional area may be rewarded with less frequent – or no – review of the functional area. Conversely, marginal performance or "for cause" situations may result in more frequent reviews.

(b) Standards of performance measure review:

(1) The Parties agree to review the PEMP elements (goals, objectives, measures, and targets, and expected levels of performance) contained in Appendix B annually and to modify them upon the agreement of the Parties; provided, however, that if the Parties cannot reach agreement on all the goals, objectives, measures, and targets, for the next period, the Contracting Officer shall have the unilateral right to establish reasonable new goals, objectives, measures, and targets and/or to modify and/or delete existing goals, objectives, measures, and targets. It is expected that the goals, objectives, measures, and targets will be modified by the Contractor and the DOE as new areas of emphasis or priorities emerge which the Parties may agree warrant recognition in the performance-based integrated management approach.

(2) Failure to include a goal, objective, measure, or target in the contract Appendix B does not eliminate the Contractor's obligation to comply with all applicable terms and conditions as set forth elsewhere within the contract.

(3) In the event the Contracting Officer decides to exercise the rights set forth in paragraphs (a)(6) or (b)(1) above, he/she will notify the Contractor, in writing, of the intended decision ten days prior to issuance.

CLAUSE H.14 - CAP ON LIABILITY

(a) The Parties have agreed that the Contractor's liability, for certain obligations it has assumed under this contract, shall be limited as set forth in paragraph (b) below. These limitations or caps shall only apply to obligations the Contractor has assumed pursuant to the following clauses:

(1) The clause titled "Property", paragraph (f)(1)(i)(C);

(2) The clause titled "Insurance--Litigation and Claims", (h), with respect to prudent business judgment only; and

(3) The clause titled "Insurance--Litigation and Claims", (j)(2), except for punitive damages resulting from the willful misconduct or lack of good faith on the part of the Contractor's managerial personnel as defined in the clause titled, Property.

(b) The Contractor shall be liable each fiscal year for an amount not-to-exceed 1.25 times the maximum performance fee available for that fiscal year. The annual cap which will apply shall be based on the fiscal year in which the Contractor's act or failure to act was the proximate cause of the liability assumed by the Contractor. In the event the Contractor's act or failure to act overlaps more than one fiscal year, the limitation will be the annual limitation for the last fiscal year in which the Contractor's act or failure to act occurred. If the Contractor's cumulative obligations for a fiscal year equal the amount of the annual limitation of liability, the Contractor shall have no further responsibility for the costs of the liabilities it has assumed for that fiscal year pursuant to (a)(1) through (3) above.

CLAUSE H.15 - INTELLECTUAL AND SCIENTIFIC FREEDOM

(a) The Parties recognize the importance of fostering an atmosphere at the Laboratory conducive to scientific inquiry and the development of new knowledge and creative and innovative ideas related to important national interests.

(b) The Parties further recognize that the free exchange of ideas among scientists and engineers at the Laboratory and colleagues at universities, colleges, and other laboratories or scientific facilities is vital to the success of the scientific, engineering, and technical work performed by Laboratory personnel.

(c) In order to further the goals of the Laboratory and the national interest, it is agreed by the Parties that the scientific and engineering personnel at the Laboratory shall be accorded the rights of publication or other dissemination of research, and participation in open debate and in scientific, educational, or professional meetings or conferences, subject to the limitations included in technology transfer agreements and such other limitations as may be required by the terms of this Contract, including, but not limited to the clause of this Contract entitled, “Security.” Nothing in this clause is intended to alter the obligations of the Parties to protect classified or unclassified controlled nuclear information as provided by law.

(d) Nothing in the Section I clause entitled "Public Affairs" or the Section H clause respecting “Lobbying Restriction” are intended to limit the rights of the Contractor or its employees to publicize and to accurately state the results of its scientific research.

CLAUSE H.16 – DOE MENTOR PROTÉGÉ PROGRAM

The Department of Energy has established a Mentor-Protégé Program to encourage its prime contractors to assist small businesses, firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. Consistent with the provisions set forth in DEAR 919.70, the Contractor shall Mentor at least one active Protégé company at all times during the performance on this contract. Mentor and Protégé firms will develop and submit “lessons learned” evaluations to DOE at the conclusion of the contract.

CLAUSE H.17 - APPLICATION OF DOE CONTRACTOR REQUIREMENTS DOCUMENTS

(a) Performance. The Contractor will perform the work of this Contract in accordance with each of the Contractor Requirements Documents (CRDs) appended to this contract as Part III, Section J, Attachment J.9, Appendix I, DOE Directives/List B until such time as the Contracting Officer approves the substitution of an alternative procedure, standard, system of oversight, or assessment mechanism resulting from the process described below.

(b) Laws and Regulations Excepted. The process described in this clause shall not affect the application of otherwise applicable laws and regulations of the United States, including regulations of the Department of Energy.

(c) Deviation Processes in Existing Orders. This clause does not preclude the use of deviation processes provided for in existing DOE directives.

(d) Proposal of Alternative. The Laboratory Director may, at any time during performance of this contract, propose an alternative procedure, standard, system of oversight, or assessment mechanism to the requirements in a listed CRD by submitting to the Contracting Officer a signed proposal describing the nature and scope of the alternative procedure, standard, system of oversight, or assessment mechanism (alternative), the anticipated benefits, including any cost benefits, to be realized by the Contractor in performance under the contract, and a schedule for implementation of the alternate. In addition, the Contractor shall include an assurance signed by the Laboratory Director that the revised alternative is an adequate and efficient means to meet the objectives underlying the CRD. Upon request, the Contractor shall promptly provide the Contracting Officer any additional information that will aid in evaluating the Contractor's proposal.

(e) Action of the Contracting Officer. The Contracting Officer shall within sixty (60) days:
(1) deny application of the proposed alternative;
(2) approve the proposed alternative, with conditions or revisions;
(3) approve the proposed alternative; or
(4) provide a date by which a decision will be made (not to exceed an additional 60 days).

(f) Implementation and Evaluation of Performance. Upon approval in accordance with (e)(2) or (e)(3) above, the Contractor shall implement the alternative. In the case of a conditional approval under (e)(2) above, the Contractor shall provide the Contracting Officer with an assurance statement, signed by the Laboratory Director, that the revised alternative is an adequate and efficient means to meet the objectives underlying the CRD. Additionally, the statement shall describe any changes to the schedule for implementation. The Contractor shall then implement the revised alternative. DOE will evaluate performance of the approved alternative from the date scheduled by the Contractor for implementation.

(g) Application of Additional or Modified CRDs. During performance of the contract, the Contracting Officer may notify the Contractor that he or she intends to unilaterally add CRDs not then listed in Appendix I or modifications to listed CRDs. Upon receipt of that notice, the Contractor, within thirty (30) calendar days, may, in accordance with paragraph (d) of this clause, propose an alternative procedure, standard, system of oversight, or assessment mechanism. The resolution of such a proposal shall be in accordance with the process set out in paragraphs (e) and (f) of this clause. If an alternative proposal is not submitted by the Contractor within the thirty (30) calendar day period, or, if made, is denied by the Contracting Officer under paragraph (e), the Contracting Officer may unilaterally add the CRD or modification to Appendix I. The Contractor and the Contractor Officer shall identify

and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, resulting from the addition of the CRD or modification.

(h) Deficiency and Remedial Action. If, during performance of this contract, the Contracting Officer determines that an alternative procedure, standard, system of oversight, or assessment mechanism adopted through the operation of this clause is not satisfactory, the Contracting Officer may, in his or her sole discretion, determine that corrective action is necessary and require the Contractor to prepare a corrective action plan for the Contracting Officer's approval. If the Contracting Officer is not satisfied with the corrective action taken, the Contracting Officer may direct corrective action to remedy the deficiency, including, if appropriate, the reinstatement of the CRD.

CLAUSE H.18 - EXTERNAL REGULATION

The Parties commit to full cooperation with regard to complying with any statutory mandate regarding external regulation of Laboratory facilities, whether by the Nuclear Regulatory Commission, the Occupational Safety and Health Administration, the Environmental Protection Agency, and/or State and local entities with regulatory oversight authority, and including but not limited to the conduct of pilot programs simulating external regulation, and the application for materials, facilities, or other licenses by or on behalf of the DOE.

CLAUSE H.19A – SEPARATE ENTITY

(a) The work performed under this Contract shall be by a separate entity, either an autonomous organization or an identifiable separate operating unit of a parent organization. The separate entity, whether a new corporate or legal entity formed solely to perform this contract or as a qualifying part of an existing legal or corporate entity, must be set up solely to perform this Contract.

(b) If the Contractor forms a new separate corporate or legal entity from its parent organization(s) to perform the work under this Contract, the new separate corporate or legal entity shall also be totally responsible for all Contract activities.

1. The Contractor shall provide a Guarantee of performance from its parent company in the form set forth in the Part III, Section J, Attachment J.12, Appendix L, entitled, Performance Guarantee. If the Contractor is a joint venture, newly-formed Limited Liability Company (LLC), or other similar entity where more than one company is involved in a business relationship created for the purpose of this procurement, the parent companies of all the entities forming the new entity shall each provide Guarantees for joint and several liability for the performance of the Contractor.

2. In the event any of the signatories to the Guarantee of performance enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

CLAUSE H.19B – RESPONSIBLE CORPORATE OFFICIAL *[M135 – 10/2/13]*

The Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor separate entity performing the Contract, and who is accountable for the Contractor regarding Contractor performance issues:

Name: Christopher L. Eisgruber
Position: President
Company/Organization: Princeton University
Address: 1 Nassau Hall, Princeton, New Jersey 08544
Phone: (609) 258-6100
Facsimile: (609) 258-1615
Email: eisgrube@Princeton.edu

Should the responsible parent corporate official change during the period of the Contract, the Contractor shall promptly notify the Contracting Officer in writing of the change.

CLAUSE H. 20 - NO THIRD PARTY BENEFICIARIES *[M092 – 5/3/12]*

This Contract is for the exclusive benefit and convenience of the parties hereto. Nothing contained herein shall be construed as granting, vesting, creating or conferring any right of action or any other right or benefit upon past, present, or future employees of the Contractor, or upon any other third party. This provision is not intended to limit or impair the rights which any person may have under applicable Federal statutes.

CLAUSE H.21 - WORKFORCE TRANSITION

(a) Hiring Preference. Subject to the availability of funds, the Contractor shall offer employment to all Incumbent Employees as defined in paragraph (e)(1) of the Clause entitled, "Employee Compensation: Pay and Benefits," who, as of the date the Contractor assumes responsibility for the contract, are in good standing and are engaged in performance of work within the scope of work under this Contract.

(b) Discretionary Incumbent Management Employees Excepted. It is the Contractor's prerogative to establish its own management structure. Therefore, the hiring preference set forth in paragraph (a) above is not applicable to Discretionary Incumbent Management Employees. Discretionary Incumbent Management Employees are individuals permanently assigned to the positions of Laboratory Director, Deputy Laboratory Director, and Chief Scientist. The Contractor may offer employment to said employees, in either their current positions or other positions, at the Contractor's sole discretion.

(1) For those positions listed above any changes in job positions or classifications shall be accompanied by a commensurate alteration in compensation.

(2) Nothing in this paragraph shall preclude the Contractor from separating employees when in its judgment it is appropriate to do so based on the employee's performance or conduct.

CLAUSE H.22 – EMPLOYEE COMPENSATION: PAY AND BENEFITS *[M092 – 5/3/12; M135 – 10/2/13; M199 – 9/28/15]*

(a) Total Compensation System

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system consistent with FAR 31.205-6 and DEAR 970.3102-05-6; "Compensation for Personal Services" ("Total Compensation System"). DOE-approved standards, if any, shall be applied to the Total Compensation System. The Contractor's Total Compensation System shall be fully documented, consistently applied, and acceptable to the Contracting Officer. Periodic appraisals of contractor performance with respect to the Contractors' Total Compensation System will be conducted.

(1) The description of the Contractor Employee Compensation Program should include the following components;

a. Philosophy and strategy for all pay delivery programs.

b. System for establishing a job worth hierarchy.

c. Method for relating internal job worth hierarchy to external market.

d. System that links individual and/or group performance to compensation decisions.

e. Method for planning and monitoring the expenditure of funds.

f. Method for ensuring compliance with applicable laws and regulations.

g. System for communicating the programs to employees.

h. System for internal controls and self-assessment.

i. System to ensure that reimbursement of compensation, including stipends, for employees who are on joint appointments with a parent or other organization shall be on a pro-rated basis.

(b) Reports and Information

The Contractor shall provide the Contracting Officer with the following reports and information with respect to pay and benefits provided under this Contract:

(1) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.

(2) A list of the top five most highly compensated executives as defined in FAR 31.205- 6(p)(2)(ii) and their total cash compensation at the time of Contract award, and at the time of any subsequent change to their total cash compensation. This should be the same information provided to the System for Award Management (SAM) per FAR 52.204-10.

(3) The Compensation and Benefits Report no later than March 1 of each year.

(c) Pay and Benefit Programs

The Contractor shall maintain pay and benefit programs for its Employees; provided, however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program.

(1) Cash Compensation

(A) The Contractor shall submit the following to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:

(i) Any proposed major compensation program design changes prior to implementation.

(ii) An Annual Compensation Increase Plan (CIP). The Compensation Increase Plan (CIP) for a Contractor that has received Contracting Officer approval for having an Employee Compensation Program with the components identified under (a)(1) above should include the following components and data:

(1) Market analysis summary, including a comparison of average pay to market average pay.

(2) Merit Fund requests for each Employee Group (i.e., S&E, Administrative, Technical, Exempt/Non-Exempt)

(3) Aging factors used for escalating survey data

(4) Projection of escalation in the market

(5) Information to support proposed structure adjustments, if any.

(6) Analysis to support special adjustments or promotions that exceed the 1% Promotion/Adjustment fund authorized under Section III of Appendix A.

(7) Discussion of recruitment/retention issues (e.g., turnover and hiring) relevant to the proposed increase amounts

(8) A discussion of the impact of budget and business constraints on the CIP amount.

(9) Information to support a request for variable pay authorization. (10)

(a) Reimbursed salary levels are used to establish the annual CIP fund.

(b) The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous plan year.

(c) All pay actions granted under the compensation increase plan are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end.

(d) Specific Employee or Payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the contractor and the Contracting Officer.

(e) The Contracting Officer may adjust the CIP amount after approval based on major changes in factors that significantly affect the plan amount (for example, in the event of a major reduction in force or significant ramp-up).

(f) The Contractor may make minor shifts of merit funds between employment categories (e.g., Scientist/Engineer, Admin, Exempt, Non- Exempt) after approval of the CIP in order to meet the compensation requirements of its organization, subject to the following guidelines:

- Minor shift is defined as up to 10% of the approved merit funds from one employment category to another (e.g, 10% of Admin merit funds shifted to Technician employment category)
- Total merit increase expenditures will be limited to the total merit fund approved.
- Contractors will notify the Contracting Officer that funds have been shifted.

(iii) Individual compensation actions for the top contractor official (e.g., laboratory director/plant manager or equivalent) and key personnel not included in the CIP. For those key personnel included in the CIP, DOE will approve salaries upon the initial contract award and when key personnel are replaced during the life of the contract. DOE will have access to all individual salary reimbursements. This access is provided for transparency; DOE will not approve individual salary actions (except as previously indicated).

(B) The Contracting Officer's approval of individual compensation actions will be required only for the top contractor official (e.g., laboratory director/plant manager or equivalent) and key personnel as indicated in (c)(1)(A)(iii) above. The Contractor shall not be reimbursed for the top contractor official's incentive compensation. The base salary reimbursement level for the top contractor official establishes the maximum allowable salary reimbursement under the contract when compared to subordinate compensation, which would include base salary and any potential incentive compensation under an incentive compensation agreement. Unusual circumstances may require a deviation for an individual on a case-by-case basis. Any such deviations must be approved by the Contracting Officer.

(C) Severance Pay is not payable to an employee under this Contract if the employee:

(i) Voluntarily separates, resigns or retires from employment, (unless associated with a workforce restructuring action in accordance with Section XII of Appendix A)

(ii) Is offered employment with a successor/replacement contractor,(iii) Is offered employment with a parent or affiliated company, or (iv)Is discharged for cause.

(D) Service Credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement contract.

(d) Pension and Other Benefit Programs

(1) No presumption of allowability will exist when the Contractor implements a new benefit plan or makes changes to existing benefit plans for Employees or until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans.

(2) Cost reimbursement for Employee pension and other benefit programs sponsored by the Contractor will be based on the Contracting Officer's approval of Contractor actions pursuant to an approved "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" as described below.

(3) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (A) and (B) below. The studies shall be used by the Contractor in calculating the cost of benefits under existing benefit plans. An Employee Benefits Value (Ben-Val) Study Method using no less than 15 comparator organizations and an Employee Benefits Cost Survey comparison Method shall be used in this evaluation to establish an appropriate comparison method. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan.

(A) The Ben-Val, every two years for each benefit tier (e.g., group of employees receiving a benefit package based on date of hire), which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Employees measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value studies do not address post retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources and,

(B) An Employee Benefits Cost Study Comparison, annually for each benefit tier that analyzes the Contractor's employee benefits cost for Employees on a per capita basis per full time equivalent employee and as a percent of payroll and compares it with the cost reported by the U.S. Department of Labor's Bureau of Labor Statistics or other Contracting Officer approved broad based national survey.

(4) When the net benefit value exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the Contracting Officer for approval, unless waived in writing by the Contracting Officer.

(5) When the average total benefit per capita cost or total benefit cost as a percent of payroll exceeds the comparator group by more than five percent, the Contractor shall submit an analysis of the specific plan costs that are above the per capita cost range or total benefit cost as a percent of payroll and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range or total benefit cost as a percent of payroll, unless waived in writing by the Contracting Officer.

(6) Within two years of Contracting Officer approval of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and per capita cost range or percent of payroll as approved by the Contracting Officer.

(7) The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the Contracting Officer in writing.

(8) Cost reimbursement for post-retirement benefits other than pensions (PRBs) is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service not less than 5 years under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.

(9) Each contractor sponsoring a Defined Benefit pension plan and/or postretirement benefit plan will participate in the annual plan management process which includes written responses to a questionnaire regarding plan management, providing forecasted estimates of future reimbursements in connection with the plan and participating in a conference call to discuss the contractor submission.

(10) Each contractor will respond to quarterly data calls issued through ibenefits, or its successor system.

(e) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs

(1) Employees working for the Contractor shall only accrue credit for service under this Contract after the date of Contract award.

(2) Except for Commingled Plans in existence as of the effective date of the contract, any pension plan maintained by the Contractor for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan that provides credit for service not performed under a DOE cost-reimbursement contract. When deemed appropriate by the Contracting Officer, Commingled Plans shall be converted to separate plans at the time of new contract award or the extension of a contract.

(f) Basic Requirements

The Contractor shall adhere to the requirements set forth below in the establishment and administration of pension plans that are reimbursed by DOE pursuant to cost reimbursement contracts for management and operation of DOE facilities and pursuant to other cost reimbursement facilities contracts. Pension Plans include Defined Benefit and Defined Contribution plans.

(1) The Contractor shall become a sponsor of the existing pension and other benefit plans (or comparable successor plans), including other post-retirement benefit (PRB) plans, as applicable, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans consistent with the requirements of ERISA and the Internal Revenue Code (IRC). The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of Contract performance.

(2) DOE approval is required prior to implementing any change to a pension plan covering prime cost reimbursement contracts for management and operation of DOE facilities and other contracts when designated. Changes shall be in accordance with and pursuant to the terms and conditions of the contract.

(3) Each contractor pension plan shall be subjected to a limited-scope audit annually that satisfies the requirements of ERISA section 103, except that every third year the contractor must conduct a full-scope audit satisfying ERISA section 103. Alternatively, the contractor may conduct a full-scope audit satisfying ERISA section 103 annually. In all cases, the Contractor must submit the audit results to the contracting officer. In years in which a limited scope audit is conducted, the contractor must provide the contracting officer with a copy of the qualified trustee or custodian's certification regarding the investment information that provides the basis for the plan sponsor to satisfy reporting requirements under ERISA section 104.

(4) The Contractor shall comply with the requirements of ERISA if applicable to the pension plan and any other applicable laws.

(g) Reporting Requirements for Designated Contracts

The following reports shall be submitted to DOE as soon as possible after the last day of the plan year by the contractor responsible for each designated pension plan funded by DOE but no later than the dates specified below:

(1) Actuarial Valuation Reports. The annual actuarial valuation report for each DOE-reimbursed pension plan and when a pension plan is commingled, the contractor shall submit separate reports for DOE's portion and the plan total by the due date for filing IRS Form 5500.

(2) Forms 5500. Copies of IRS Forms 5500 with Schedules for each DOE-funded pension plan, no later than that submitted to the IRS.

(3) Forms 5300. Copies of all forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin-off, or merger of a plan submitted to the IRS.

(h) Changes to Pension plans

At least sixty (60) days prior to the adoption of any changes to a pension plan, the Contractor shall submit the information required below, as applicable, to the Contracting Officer for approval or disapproval and a determination as to whether

the costs are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

(1) For proposed changes to pension plans and pension plan funding, the Contractor shall provide the following to the Contracting Officer:

(A) a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout;

(B) except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the counsel used by the plan for purposes of compliance with all legal requirements applicable to private sector defined benefit pension plans;

(C) the Summary Plan Description; and,

(D) any such additional information as requested by the Contracting Officer.

(2) Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval. The justification must:

(A) demonstrate the effect of the plan changes on the contract net benefit value or per capita benefit costs,

(B) provide the dollar estimate of savings or costs, and

(C) provide the basis of determining the estimated savings or cost.

(i) Terminating Plans

(1) DOE contractors shall not terminate any pension plan (Commingled or site specific) without requesting Departmental approval at least 60 days prior to the scheduled date of plan termination.

(j) Special Programs

Contractors must advise DOE and receive prior approval for each early-out program, window benefit, disability program, plan-loan feature, employee contribution refund, asset reversion, or incidental benefit.

(k) Definitions

(1) Commingled Plans. Cover employees from the contractor's private operations and its DOE contract work.

(2) Current Liability. The sum of all plan liabilities to employees and their beneficiaries. Current liability includes only benefits accrued to the date of valuation. This liability is commonly expressed as a present value.

(3) Defined Benefit Pension Plan. Provides a specific benefit at retirement that is determined pursuant to the formula in the pension plan document.

(4) Defined Contribution Pension Plan. Provides benefits to each participant based on the amount held in the participant's account. Funds in the account may be comprised of employer contributions, employee contributions, investment returns

on behalf of that plan participant and/or other amounts credited to the participant's account.

(5) Pension Fund. The portfolio of investments and cash provided by employer and employee contributions and investment returns. A pension fund exists to defray pension plan benefit outlays and (at the option of the plan sponsor) the administrative expenses of the plan.

(6) Separate Plan. Must satisfy IRC Sec. 414(l) definition of a single plan, designate assets for the exclusive benefit of employees under DOE contract, exist under a separate plan document (having its own DOL plan number) that is distinct from corporate plan documents and identify the contractor as the plan sponsor.

CLAUSE H.23 - POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS *[M135 – 10/2/13]*

(a) If this Contract expires or terminates and DOE has awarded a contract under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the pension or other benefit plans covering active or retired contractor employees with respect to service at Princeton Plasma Physics Laboratory (collectively, the "Plans"), the Contractor shall cooperate and transfer to the new contractor its responsibility for sponsorship, management and administration of the Plans consistent with direction from the Contracting Officer. If a Commingled plan is involved, the contractor shall:

(1) spin off the DOE portion of any Commingled Plan used to cover employees working at the DOE facility into a separate plan. The new plan will normally provide benefits similar to those provided by the commingled plan and shall carry with it the DOE assets on an accrual basis market value, including DOE assets that have accrued in excess of DOE liabilities.

(2) bargain in good faith with DOE or the successor contractor to determine the assumptions and methods for establishing the liabilities involved in a spinoff. DOE and the contractor(s) shall establish an effective date of spinoff. On or before the same day as the contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.

(b) If this Contract expires or terminates and DOE has not awarded a contract to a new contractor under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the Plans, or if the Contracting Officer determines that the scope of work under the Contract has been completed (any one such event may be deemed by the Contracting Officer to be "Contract Completion" for purposes of this clause), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this Contract, the following actions shall occur regarding the Contractor's obligations regarding the Plans at the time of Contract Completion:

(1) Subject to subparagraph (2) below, and notwithstanding any legal obligations independent of the Contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the Plans, in accordance with applicable legal requirements.

(2) The parties shall exercise their best efforts to reach agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion. However, if the parties have not reached agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion, unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor's responsibilities for continued provision of pension and welfare benefits under the Plans, including but not limited to continued sponsorship of the Plans, in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting Officer, the Contractor's costs will be reimbursed pursuant to applicable Contract provisions.

CLAUSE H.24 - LABOR RELATIONS *[M135 – 10/2/13]*

(a) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.

(b) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto and shall consult with and obtain the approval of the Contracting Officer regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this Contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or other benefit plans.

(c) The Contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR, Subpart 22.1 and DEAR, Subpart 970.2201 and all applicable Federal and State Labor Relations laws.

(d) The Contractor will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives,

unfair labor practice, work stoppages, picketing, labor arbitrations, and settlement agreements and will furnish such additional information as may be required from time to time by the Contracting Officer.

CLAUSE H.25 - CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATIONS OR ALLEGED VIOLATIONS, FINES, AND PENALTIES

(a) The Contractor shall accept, in its own name, service of notices of violations or alleged violations (NOVs/NOAVs) issued by Federal or State regulators to the Contractor resulting from the Contractor's performance of work under this contract, without regard to liability. The allowability of the costs associated with fines and penalties shall be subject to the other provisions of this contract.

(b) The Contractor shall notify DOE promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties.

CLAUSE H.26 - ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES

(a) The Parties commit to full cooperation with regard to acquiring any necessary permits or licenses required by environmental, safety and health (ES&H) laws, codes, ordinances, and regulations of the United States, states or territories, municipalities or other political subdivisions, and which are applicable to the performance of work under this contract. It is recognized that certain ES&H permits will be obtained jointly as co-permittees, and other permits will be obtained by either party as the sole permittee. The Contractor, unless otherwise directed by the Contracting Officer, shall procure all necessary non-ES&H permits or licenses.

(b) This clause allocates the responsibilities of DOE and the Contractor, referred to collectively as the "Parties", for implementing the environmental requirements at facilities within the scope of the contract. In this Clause, the term "environmental requirements" means requirements imposed by applicable Federal, State, and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders, compliance agreements, permits, and licenses.

(c) (i) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party causing the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both Parties without regard to the allocation of responsibility or liability under this contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports, or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty. The allowability of the costs associated with fines and penalties assessed against the Contractor shall be subject to the other provisions of this contract.

(ii) In the event that the Contractor is deemed to be the primary party causing the violation, and the costs of fines and penalties proposed by the regulatory agency to be assessed against the Government (or the Government and Contractor jointly) are determined by the Government to be presumptively unallowable if allocated against the Contractor, then the Contractor shall be afforded the opportunity to participate in negotiations to settle or mitigate the penalties with the regulatory authority. If the Contractor is the sole party of the enforcement action, the Contractor shall take the lead role in the negotiations and the Government shall participate and have final authority to approve or reject any settlement involving costs charged to the contract.

(d) DOE agrees that if bonds, insurance, or administrative fees are required as a condition for permits obtained by the Contractor under this contract, and the Contractor has been directed by the Contracting Officer to obtain such permits after the Contractor has notified the Contracting Officer of the costs of complying with such conditions, such costs shall be allowable. In the event such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with the acceptable form of financial responsibility. Under no circumstances shall the Contractor be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.

CLAUSE H.27 - WORKERS' COMPENSATION *[M135 – 10/2/13]*

(a) Contractors, other than those whose workers' compensation coverage is provided through a state funded arrangement or a corporate benefits program, shall submit to the Contracting Officer for approval all new compensation policies and all initial proposals for self-insurance (contractors shall provide copies to the Contracting Officer of all renewal policies for workers compensation).

(b) Workers compensation loss income benefit payments, when supplemented by other programs (such as salary continuation, short-term disability) are to be administered so that total benefit payments from all sources shall not exceed 100 percent of the employee's net pay.

(c) Contractors approve all workers compensation settlement claims up to 100,000. Settlement claims above the $100,000 require Contracting Officer approval.

(d) The Contractor shall obtain approval from the CO before making any significant change to its workers compensation coverage and shall furnish reports as may be required from time to time by the CO.

CLAUSE H.28 - ADDITIONAL LABOR REQUIREMENTS

The Contractor shall conduct payroll and job-site audits and conduct investigations of complaints as authorized by DOE on all Davis Bacon activity, including any subcontracts, as may be necessary to determine compliance with the Davis-Bacon Act. Where violations are found, the Contractor shall report them to the DOE Contracting Officer. The Contracting Officer may require that the Contractor assist in the determination of the amount of restitution and withholding of funds from a subcontractor

so that sufficient funds are withheld to provide restitution for back wages due for workers inappropriately classified and paid, fringe benefits owed, overtime payments due, and liquidated damages assessed.

The Contractor shall notify the Contracting Officer of any complaints and significant labor standards violations whether caused by the Contractor or subcontractors. The Contractor shall assist DOE and or/the Department of Labor in the investigation of any alleged violations or disputes involving labor standards. The Contractor shall furnish a Davis-Bacon Semi-Annual Enforcement Report to DOE by April 21 and October 21 each year.

CLAUSE H.29 – LOBBYING RESTRICTION (FULL-YEAR CONTINUING APPROPRIATIONS ACT, 2011) *[M069 – 6/27/11]*

The contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

CLAUSE H.30 - PERFORMANCE BASED MANAGEMENT AND OVERSIGHT

(a) Performance-based management shall be the key enabling mechanism for establishing the DOE-Contractor expectations on oversight and accountability. DOE expectations (outside of individual program performance and requirements of laws and regulations) and performance targets shall be established through the Performance Evaluation and Measurement Plan (PEMP) pursuant to the clause entitled “Standards of Contractor Performance Evaluation”. This PEMP shall establish the expected strategic results in the areas of mission accomplishment, stewardship and operational excellence. Mission performance goals shall be established by agreement with each major customer of the Laboratory, and customer evaluation will be the primary means of evaluating mission performance. Stewardship and operational goals shall be established by agreement with DOE. Contractor self-assessment, third party certification, and Contractor and DOE independent oversight, as appropriate, shall be the primary means for assessing stewardship and operational performance. Routine DOE oversight of Contractor performance will be conducted at the systems level.

(b) The performance-based management system shall be the primary vehicle for addressing issues associated with performance expectations. In the event of a substantive performance shortfall in any area, the appropriate improvement expectations and targets will be incorporated into the PEMP and tracked through self-assessment and independent oversight, as appropriate.

(c) Compliance with applicable Federal, State and local laws and regulations, and permits and licenses, shall be primarily determined by the cognizant regulatory agency and DOE will primarily rely upon the determination of the external regulators in assessing Contract compliance. DOE oversight will be achieved through periodic

assessments at the management system level, including review of Contractor self-assessments and assessments by independent third parties.

CLAUSE H.31 - LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2008)

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

CLAUSE H.32 – COMMON SECURITY CONFIGURATIONS IN INFORMATION TECHNOLOGY ACQUISITIONS *[M019 – 10/27/09]*

All information technology acquisitions shall include the appropriate information technology security policies and requirements, including use of common security configurations available from the National Institute of Standards and Technology's website at http://checklists.nist.gov commensurate with the mission of the contract and conducive to the research and development efforts of the laboratory. This requirement shall be included in all subcontracts which are for information technology acquisitions; and the Laboratory CIO shall annually certify, by September 30th, to the DOE Site Office Contracting Officer that this requirement is being incorporated into information technology acquisitions.

CLAUSE H.33 – COUNTERINTELLIGENCE *[M016 – 9/11/09]*

(a) The Contractor shall take all reasonable precautions in the work under this contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 475.1, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.

(b) The contractor shall identify a qualified (i.e., Access Authorized-cleared) employee to serve as the Counterintelligence Point-of-Contact, who will communicate with the Counterintelligence Directorate, Brookhaven Field Office (BFO) (Serving the Northeast Region) and perform the functions identified in the Counterintelligence Support Plan between the Counterintelligence Directorate, BFO, and the Contractor.

CLAUSE H.34- DISPOSAL OF REAL PROPERTY

Disposal of any permanent or temporary interest in real property shall require the prior approval of the Contracting Officer.

CLAUSE H.35 – ACTIVITIES DURING CONTRACT TRANSITION

(a) The Contractor will commence Transition Activities as soon as possible after the award of the contract, or as otherwise directed below, and complete the following activities (to the extent identified in the Contractor's proposal) within sixty (60) days, after contract award, except as otherwise authorized by the Contracting Officer. It is currently estimated that Transition Activities will be completed by March 31, 2009. After completion of these activities, and such other Transition Activities as may be authorized by the Contracting Officer, the Contractor shall advise the Contracting Officer that it is ready to assume full responsibility for the Laboratory. Upon receipt of written notification from the Contracting Officer that the Transition Activities are considered complete, the Contractor shall assume full responsibility for the Laboratory, effective 12:01 A.M., the next day.

(1) Scientific Research. Complete the activities that will allow the Contractor to assume control of PPPL's scientific programs and facilities.

(2) Management Systems. Analyze and initiate enhancements, if needed, to the existing management systems (e.g., ISM and ISSM Finance, Property, Procurement, Information Management, Life Cycle Asset Management, Human Resources) to assure system adequacy.

(3) Assignment of Existing Agreements. Initiate and complete the planning to assume the responsibility for existing regulatory (e.g., environmental permits) and commercial agreements (e.g., subcontracts, purchase orders, leases, etc.) to be assigned to the Contractor by the Trustees of Princeton University, or otherwise taken over by Contractor. Initiate the assumption of said responsibility with the objective of being eighty-five percent (85%) complete by the end of the transition period.

(4) Joint Reconciliation Property Inventory. Initiate and complete the planning for a joint reconciliation property inventory with the Trustees of Princeton University, see Clauses I.147(i)(2)(ii) or I.148(i)(2)(ii), in accordance with overall guidance provided by the Contracting Officer.

(5) Litigation Management. Contractor shall consult with the Trustees of Princeton University and DOE to determine whether Contractor should assume some level of management of any litigation resulting from laboratory operations predating the effective date of this contract. The decision should be based on consideration of cost efficiency, named parties, relevance of retrospective insurance, and DOE litigation management guidelines.

(6) Human Resources

(a) Initiate transition of the workforce without break in service as operations cease under Contract DE-AC02-76CH03073.

(b) Conduct work force planning, documented in the form of a plan, to be submitted to the Contracting Officer for review and approval at the end of the Transition Period. The Plan will identify critical-skills necessary to meet mission and contract requirements, provide a gap analysis, and outline the strategy for the recruitment and/or retention of those skills.

(c) If the Contractor intends to utilize "Joint Appointees," determine how said "Joint Appointees" will be utilized; terms to be utilized; and a description of the reimbursement process to be negotiated with the appointees' home organizations.

(d) Determine the terms and conditions of employment that will be applicable to the bargaining unit workforce, demonstrating consistency with the respective collective bargaining agreements previously providing coverage.

(e) Provide to the Contracting Officer for approval, the Human Resources Compensation Plan required under Clause H.22(a), specifically addressing:

(i) The framework for the pension and health/welfare benetifts applicable to the transferring workforce, with assessments in the form of a Benefit Value Study and Cost Comparison Survey of the benefit value and cost relative to those provided by Princeton University for PPPL employees.

(ii) The framework of the total compensation package applicable to new hires under the contract.

(f) Determine the strategy for meeting the requirements identified in Clause H.22(g).

(g) Initiate the change in sponsorship of benefit programs, as applicable.

(h) Initiate analysis of workers' compensation program relative to the DOE Incurred Loss Retrospective Rating Insurance Plan.

(7) <u>Worker Safety and Health Program</u>

(a) The Contractor shall submit its strategy for maintaining the effectiveness and sustainability of the current WSHP as part of its transition plan.

(b) In accordance with 10 CFR 851, the Contractor adopts as its own and assumes FULL responsibility for complying with the current DOE-approved Worker Safety and Health Program (WSHP) for PPPL until it can submit a revised WSHP to the Princeton Site Office and receive DOE Approval.

(b) Except as provided in paragraph (c) below, or as otherwise specifically agreed to by the Contractor and the Contracting Officer, all of the provisions of this contract shall apply to the Contractor's performance of Transition Activities.

(c) The following contract articles or portions thereof as noted below do not apply to the Contractor's Transition Activities:

(1) Clause C.4 - Statement of Work;

(2) Clause F.1 - Period of Performance, except that pertaining to the Transition Period;

(3) Clause H.1 – Facilities

(4) Clause H.3 - Long-Range Planning, Program Development and Budgetary Administration;

(5) Clause H.13 - Standards of Contractor Performance Evaluation;

(6) Clause H.14 - Cap on Liability;

(7) Clause H.25 - Contractor Acceptance of Notices of Violations or Alleged Violations, Fines, and Penalties;

(8) Clause H.26 - Allocation of Responsibilities for Contractor Environmental Compliance Activities;

(9) Clause I.15 - Required Sources for Helium and Helium Usage Data;

(10) Clause I.112 - Total Available Fee: Base Fee Amount and Performance Fee Amount;

(11) Clause I.113 - Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts;

(12) Clause I.114 - Work For Others Program (Non-DOE Funded Work);

(13) Clause I.133 - Preexisting Conditions;

(14) Clause I.139 - Work for Others Funding Authorization; and

(15) Appendix B - Performance Evaluation and Measurement Plan.

(d) Contractor agrees to perform the activities set forth in paragraph (a) above, including relocation of Contractor's "Key Personnel," as described in its Cost Proposal, at an allowable cost not to exceed $187,274.00. In the event the actual cost of said activities exceeds such amount, including any costs for relocation of Contractor's "Key Personnel" incurred after the conclusion of the transition period, Contractor agrees that it will be solely responsible for costs greater than said amount.

CLAUSE H.36 – SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT

The Contractor shall provide in accordance with DOE requirements, a Special Financial Institution Account Agreement which shall be in place prior to assuming full responsibility for the performance of the contract. This agreement shall be included as Part III, Section J, Attachment J.3, Appendix C.

CLAUSE H.37 – CONTRACTOR RESOURCES, COMMITMENTS AND AGREEMENTS

(a) The resources proposed by the Contractor and accepted by the Government are incorporated into the contract as set forth in Part III, Section J, Attachment J.6, Appendix F.

(b) If the Contractor fails to provide any or all of these resources or to make progress toward providing these resources, the Government may exercise any of its rights and remedies under the contract, including those contained in the provision of the Section I clause entitled, "Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts, Alternate I."

(c) Any costs incurred by the Contractor in providing any of these resources are expressly unallowable under the contract.

CLAUSE H.38 – AGREEMENTS AND COMMITMENTS *[M152 – 3/31/14]*

(a) The resources proposed by the Contractor and accepted by the Government are incorporated into the contract as set forth below: The Contractor has committed to provide an estimated $10.38M from April 1, 2009 to March 31, 2014 and $10.337M from April 1, 2014 to March 31, 2019 in financial obligations in the performance of this contract. The financial obligations are limited based upon the participation of the qualified Laboratory Employees. Details of the commitments are set forth in Section J.6, Appendix F – Contractor Resources, Commitments and Agreements. The Contractor shall provide the above described resources in the amount, manner, and schedule as specified in Contractor's response to Provision L.8 of RFP No. DE-RP02-08CH11466. If the Contractor fails to provide any or all of these resources or to make progress toward providing these resources, the Government may exercise any of its rights and remedies under the contract, including those contained in the provision of Section I clause entitled, "Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts."

(b) Any costs incurred by the Contractor in providing any of these resources are expressly unallowable under the contract.

CLAUSE H.39 – MODIFICATION AUTHORITY

Notwithstanding any of the other clauses of this contract, the Contracting Officer shall be the only individual authorized to:

(a) Accept nonconforming work,

(b) Waive any requirement of this contract, or

(c) Modify any term or condition of this contract.

CLAUSE H.40 – LOBBYING RESTRICTIONS (CONSOLIDATED APPROPRIATIONS ACT, 2012) *[M041 – 7/13/10; M097 – 6/19/12]*

The contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

CLAUSE H.41 - CONTRACTOR'S PRIVATELY FUNDED TECHNOLOGY TRANSFER ACTIVITIES

(a) Royalty Sharing with Inventors. The Contractor will share royalties collected on subject inventions which were elected and prosecuted under privately funded technology transfer with the inventor, including Federal employee co-inventors

(when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10. Such royalty sharing shall be in accordance with paragraph (h) of DEAR 970.5227-3, Technology Transfer Mission.

(b) Royalty Use. After payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, the balance of any royalties or income earned and retained by the Contractor during any fiscal year on subject inventions under this or any successor contract containing the same requirement, up to any amount equal to five percent of the budget of the facility for that fiscal year shall be used by the Contractor for scientific research, development, and education consistent with the research and development mission and objectives of the facility, including activities that increase the licensing potential of other inventions of the facility with 51 percent of the balance of such royalties or income earned and retained by the Contractor being used at the facility. If the balance exceeds five percent, 75 percent of the excess above five percent shall be paid by the Contractor to the Treasury of the United States and the remaining 25 percent shall be used by the Contractor only for the same purposes as described above. Royalties received by the Contractor which are required to be used at the facility shall be used in accordance with paragraph (h) of DEAR 970.5227-3, Technology Transfer Mission.

(c) Transfer of Patent Rights to a Successor Contractor. At the termination or expiration of this Contract, the following terms and conditions shall apply to subject inventions which were elected and prosecuted under privately funded technology transfer, licenses and royalties generated therefrom:

(1) For any license executed prior to termination or expiration of this Contract for a subject invention, the distribution of net royalties or income therefrom shall remain as prior to Contract termination or expiration and shall continue for the duration of such license. The percentage of such royalties or income being used at the facility shall go to the successor contractor at the facility for use at the facility pursuant to its contract or, in the absence of a successor contractor, to such other entity designated by the Government.

(2) For any assignment executed to a party other than an affiliate of the Contractor prior to termination or expiration of this Contract for a subject invention, the distribution of net royalties or income therefrom shall remain as prior to contract termination or expiration and shall continue for the duration of such assignment. The percentage of royalties or income being used at the facility shall go to the successor contractor at the facility for use at the facility pursuant to its contract or, in the absence of a successor contractor, to such other entity designated by the Government.

(3) Where title to a subject invention has been retained by the Contractor or an affiliate of the Contractor, the Contractor and Government shall enter negotiations prior to such termination or expiration with respect to retention of the title to the invention by the Contractor or its affiliate or transfer of such title to DOE or the successor contractor operator at the facility. Such negotiations shall

consider the equities of the parties with respect to each subject invention and shall take into consideration the presence of private investment, potential commercial use, assumption of patent related liabilities, effective technology transfer and the need to market the technology. Regardless of whether such negotiations are completed, the Government shall have the right to require the transfer of any such title to any subject invention to which title has been retained by the Contractor or an affiliate and the Parties shall thereafter complete negotiations regarding appropriate compensation.

(4) Where title to a subject invention is to be retained by the Contractor or its affiliate subsequent to termination or expiration of the Contract, the Contractor and the Government shall enter negotiations prior to such termination or expiration with respect to net royalties or income generated from assignments or licenses of such inventions effected subsequent to termination or expiration of the Contract and the distribution thereof between the Contractor and a successor contractor at the facility for use at the facility pursuant to its contract, in the absence of a successor contractor then to such other entity designated by the Government. Such negotiations shall consider the equities of the parties and other conditions as set forth in paragraph (3) above. However, the net royalty or income distribution to the facility for use by a successor contractor or other Government designated entity shall in no event be less than twenty-five percent (25%) of such net royalties or income.

(d) Costs. Except as otherwise specified in DEAR 970.5227-3, Technology Transfer Mission and DEAR 970.3102-05-30, Patent costs and technology transfer costs, no costs are allowable as direct or indirect costs for the preparation, filing or prosecution of patent applications or the payment of maintenance fees or licensing and marketing costs, including costs relating to litigation or other adverse claims, where the Contractor elects to retain title as part of his privately funded technology transfer activities.

(e) Liability of the Government. In situations involving privately funded technology transfer activities, the Contractor shall include in all license agreements and in any assignment the following clause unless otherwise approved or directed by the Contracting Officer following consultation with DOE Patent Counsel:

"This license (assignment) is entered into by the Licensor, independent from its Prime Contract with the Department of Energy. The Licensor is acting independently from the Government and in its own private capacity and is not acting on behalf of the U.S. Government, nor as its contractor nor its agent. Correspondingly, it is understood and agreed that the U.S. Government is not a party to this license and in no manner whatsoever shall be liable for nor assume any responsibility or obligation for any claim, cost or damages arising out of or resulting from this license agreement, the subject matter licensed, or any action or lack thereof by the Licensor or Licensee with respect thereto."

Further, the Contractor shall not include in any license agreement or assignment any guarantee or requirement which would obligate the Government to pay any costs or create any liability on behalf of the Government.

Further, the Contractor shall not include in any license agreement or assignment any guarantee or requirement which would obligate the Government to pay any costs or create any liability on behalf of the Government.

CLAUSE H.42 - IMPLEMENTATION OF ITER AGREEMENT ANNEX ON INFORMATION AND INTELLECTUAL PROPERTY

(a) Contractor agrees to be subject to the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (the ITER Agreement). Specifically, and without limitation, subject inventions and data produced in the performance of this contract under the ITER project, and subcontracts entered thereunder are subject to the license rights and other obligations provided for in the ITER Agreement's Annex on Information and Intellectual Property (the Annex) attached as Part III, Section J, Attachment J.14, Appendix N of this contract.

(b) Background intellectual property of the Contractor, as defined in the Annex, is also subject to the provisions of the ITER Agreement. In particular and under certain circumstances, Contractor shall use its best efforts to identify Background Intellectual Property (including patents and data) and grant a nonexclusive license in certain Background Intellectual Property to the Parties to the ITER Agreement (Members) for commercial fusion use. However, in individual cases and for good cause shown in writing, the requirement for such a license may be waived by DOE.

(c) Further, in accordance with the Annex, intellectual property generated by Contractor employees who are designated as seconded staff to the ITER organization shall be owned by the ITER Organization and the Contractor gets no rights to such intellectual property except those rights provided the Contractor by the Government as a result of the Government being a member of the ITER Organization. Contractor agrees that Contractor employee agreements will be suitably modified as necessary to effectuate this provision and that employees will be required to execute a separate secondment agreement with the ITER Organization.

(d) The Government may provide to each ITER Member, as defined in the ITER Agreement, the right, for non-commercial uses, to translate, reproduce, and publicly distribute data produced in the performance of this contract under the ITER project. Contractor will deliver, at a minimum, to DOE, copies of all ITER-generated peer-reviewed manuscripts provided to scientific and technical journal publishers which may then be distributed to Members in accordance with the ITER Agreement. Contractor agrees that the ITER Organization may impose a different delivery requirement in order to be in compliance with this paragraph and that, if so, Contractor agrees that this paragraph may be suitably modified to be in accordance with the ITER Agreement.

(e) Contractor shall include the ITER patent and data rights clauses transmitted to the Contractor from the U.S. ITER Project Office, suitably modified to identify the parties, in all ITER subcontracts, at any tier, for experimental, developmental, demonstration or research work and in subcontracts in which technical data or computer software is

expected to be produced or in subcontracts that contain a requirement for production or delivery of data.

CLAUSE H.43 - PPPL ADVISORY BOARD

In collaboration with DOE, the Contractor shall establish and maintain a high-level, broadly based Advisory Board to ensure that it receives independent scientific, technical, and management guidance and overview on the performance of the Contractor. The Contractor shall consult with DOE on the development or modification of a charter for the Board and report to the CO results from Advisory Board meetings. The Board shall include nationally prominent representatives from the academic community and from industry chosen for their diverse scientific and management skills and broad perspectives. Consistent with the provisions of the contract, the Board shall be responsible to the Contractor and shall provide overview and guidance concerning the performance of the Contractor relating to organization, planning, and program evaluation. In addition, the Board shall review and provide guidance to cooperative programs with universities, industry and other agencies, R&D emphasis and priority, and other appropriate issues to help ensure that PPPL continues to be a leading national R&D center of the highest quality.

CLAUSE H.44 – REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR (MAY 1997)

The Representations, Certifications, and Other Statements of the Offeror, dated 8 September 2008 for this contract are, by reference, hereby incorporated in and made a part of this contract.

CLAUSE H.45 – CONFERENCE SPENDING (MANAGEMENT AND OPERATING CONTRACTS) *[M041 – 7/13/10; M185 – 3/31/15; M199 – 9/28/15]*

The Contractor agrees that:

(a) The Contractor shall ensure that Contractor-sponsored conferences reflect the DOE/NNSA's commitment to fiscal responsibility, appropriate stewardship of taxpayer funds and support the mission of DOE/NNSA as well as other sponsors of work. In addition, the contractor will ensure conferences do not include any activities that create the appearance of taxpayer funds being used in a questionable manner.

(b) Determination of a Conference.

(1) Definition. "Conference" is defined in the Federal Travel Regulation as, " [a] meeting, retreat, seminar, symposium, or event that involves attendee travel. The term ' conference' also applies to training activities that are considered to be conferences under 5 C.F.R.410.404. However, this definition is only a starting point. What constitutes a conference for the purpose of this guidance is a fact-based determination based on an evaluation of the criteria established in this attachment.

(2) Additional Indicia of Conferences. Conferences subject to this guidance are also often referred to by names other than "conference." Other common terms used include conventions, expositions, symposiums, seminars, workshops, or exhibitions. They typically involve topical matters of interest to, and the participation of, multiple agencies and/or nongovernmental participations. Indications of a formal conference often include but are not limited to registration, registration fees, a published substantive agenda, and scheduled speakers, or discussion panels. Individual events may qualify as conferences without meeting all of the indicia listed above, but will generally meet some of them. Please note that some training events may qualify as conferences for the purposes of this guidance, particularly if they take place in a hotel or conference center.

(3) Local Conferences. Events within the local duty location that do not require advance travel authorization may also qualify as a conference for the purposes of this guidance if the event exhibits other key indicia of a conference, especially the payment of a registration, exhibitor, sponsor, or conference fee.

(4) Exemptions. For the purposes of this guidance, the exemptions below apply and these types of activities should not be considered to be conferences even if the event meets the general definition of conference in section 1 above. Even where an event is considered exempt for this guidance, organizations are expected to continue to apply strict scrutiny to DOE's participation to ensure the best us of government funds and adherence with not only all applicable laws and policy, but the underlying spirit or principles, include ensuring that only personnel attend events that have a mission-essential need to do so, that expenses be kept to a minimum, and that participation in any associated social events be limited and restrained to the greatest degree practicable to avoid the appearance of impropriety. Exemptions from this guidance should be granted sparingly and only when events fully meet the definition and intent of the criteria below:

(i) Meetings necessary to carry out statutory oversight functions. This exemption would include activities such as investigations, inspections, audits, or non-conference planning site visits.

(ii) Meetings to consider internal agency business matters held in Federal facilities. This exemption would include activities such as meetings that take place as part of an organization's regular course of business, do not exhibit indicia of a formal conference as outlined above, and take place in a Federal facility.

(iii) Bi-lateral and multi-lateral international cooperation engagements that do not exhibit indicia of a formal conference as outlined above that are focused on diplomatic relations.

(iv) Formal classroom training which does not exhibit indicia of a formal conference as outlined above.

(v) Meetings such as Advisory Committee and Federal Advisory Committee meetings, Solicitation/Funding Opportunity Announcement Review Board meetings, peer review/objective review panel meetings, evaluation panel/board

meetings, and program kick-off and review meetings (including those for grants and contracts).

(c) Contractor-sponsored conferences include those events that meet the conference definition and either or both of the following:

(1) The Contractor provides funding to plan, promote, or implement an event, except in instances where the Contractor:

(i) covers participation costs in a conference for specified individuals (e.g., students, retirees, speakers, etc.) in a total amount not to exceed $10,000 (by individual contractor for a specific conference); or

(ii) purchases goods or services from the conference planners (e.g., attendee registration fees, renting booth space).

(2) The Contractor authorizes use of the official seal, or other seals/logos/ trademarks to promote a conference. Exceptions include non- M&O contractors who use their seal to promote a conference that is unrelated to their DOE contract(s) (e.g., if a DOE IT contractor were to host a general conference on cyber security).

(d) Attending a conference, giving a speech or serving as an honorary chairperson does not connote sponsorship.

(e) The Contactor will provide information on conferences they plan to sponsor with expected costs exceeding $100,000 in the Department's Conference Management Tool, including:

(1) Conference title, description, and date;

(2) Location and venue;

(3) Description of any unusual expenses (e.g., promotional items);

(4) Description of contracting procedures used (e.g., competition for space/support);

(5) Costs for space, food/beverages, audio visual, travel/per diem, registration costs, recovered costs (e.g., through exhibit fees); and

(6) Number of attendees.

(f) The Contractor will not expend funds on the proposed Contractor-sponsored conferences with expenditures estimated to exceed $100,000 until notified of approval by the Contracting Officer.

(g) For DOE-sponsored conferences, the Contractor will not expend funds on the proposed conference until notified by the Contracting Officer.

(1) DOE-sponsored conferences include events that meet the definition of a conference and where the Department provides funding to plan, promote, or implement the conference and/or authorizes use of the official DOE seal, or other seals/logos/ trademarks to promote a conference. Exceptions include instances where DOE:

(i) covers participation costs in a conference for specified individuals (e.g., students, retirees, speakers, etc.) in a total amount not to exceed $10,000 (by individual contractor for a specific conference); or

(ii) purchases goods or services from the conference planners (e.g., attendee registration fees, renting booth space); or providing funding to the conference planners through Federal grants.

(2) Attending a conference, giving a speech, or serving as an honorary chairperson does not connote sponsorship.

(3) The Contractor will provide cost and attendance information on their participation in all DOE-sponsored conference in the DOE Conference Management Tool.

(h) For non-Contractor sponsored conferences, the Contractor shall develop and implement a process to ensure costs related to conferences are allowable, allocable, reasonable, and further the mission of DOE/NNSA. This process must at a minimum:

(1) Track all conference expenses; and

(2) Require the Laboratory Director (or equivalent) or Chief Operating Officer approve a single conference with net costs to the contractor of $100,000 or greater.

(i) Contractors are not required to enter information on non-sponsored conferences in DOE's Conference Management Tool.

(j) Once funds have been expended on a non-sponsored conference, contractors may not authorize the use of their trademarks/logos for the conference, provide the conference planners with more than $10,000 for specified individuals to participate in the conference, orprovide any other sponsorship funding for the conference. If the Contractor does so, its expenditures for the conference may be deemed unallowable.

CLAUSE H.46 – REMOVED *[M080 – 12/8/11]*

CLAUSE H.47 – SPECIAL PROVISION FOR CERTAIN ADMINISTRATIVE SERVICES TO BE PROVIDED TO PPPL BY PRINCETON UNIVERSITY *[M152 – 3/31/14; M172 – 9/29/14; M185 – 3/31/15]*

The Contractor shall provide to PPPL the suite of human resources, accounting, legal, business computing, contract administration and Harold Furth Library services set forth in Section J.12, Appendix L – ADMINISTRATIVE SERVICES TO BE PROVIDED TO PPPL BY PRINCETON UNIVERSITY, at a fixed reimbursement amount of $1,600,000.00 for each year beginning April 1, 2015 and ending March 31, 2019. Said yearly fixed reimbursement amount shall remain constant during this four year Contract Period and will be invoiced on a monthly *pro rata* basis.

The Contractor represents that it will not otherwise charge the Government for these services as direct or indirect costs under this or any other Government contract or financial assistance agreement.

CLAUSE H.48 – SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (APR 2009) *[M001 – 3/20/09; M005 – 4/30/09]*

Preamble:

Work performed under this contract will be funded, in whole or in part, with funds appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act or Act). The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. The Act gives preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds made available by it for activities that can be initiated not later than June 17, 2009.

Contractors should begin planning activities for their first tier subcontractors, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related Guidance. For projects funded by sources other than the Recovery Act, Contractors should plan to keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning the how and where for the new reporting requirements. The Contractor will be provided these details as they become available. The Contractor must comply with all requirements of the Act. If the contractor believes there is any inconsistency between ARRA requirements and current contract requirements, the issues will be referred to the Contracting Officer for reconciliation.

Be advised that special provisions may apply to projects funded by the Act relating to:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Protecting whistleblowers; and
- Requiring prompt referral of evidence of a false claim to the Inspector General.

Definitions:

For purposes of this clause, "Covered Funds" means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the contract and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to Covered Funds – the contractor or subcontractor, as the case may be, if the contractor or subcontractor is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

A. Flow Down Provision

This clause must be included in every first-tier subcontract.

B. Segregation and Payment of Costs

Contractor must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects. Where Recovery Act funds are authorized to be used in conjunction with other funding to complete projects, tracking and reporting must be separate from the original funding source to meet the reporting requirements of the Recovery Act and OMB Guidance.

Invoices must clearly indicate the portion of the requested payment that is for work funded by the Recovery Act.

Note: For contractors currently using drawdown on a letter of credit, the current procedure remains in effect and is used for Recovery Act activity in lieu of invoicing.

C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Wage Rates

All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See http://www.dol.gov/esa/whd/contracts/dbra.htm.

E. Publication

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov , maintained by the Accountability and Transparency Board (the Board). The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Registration requirements

Contractor shall ensure that all first-tier subcontractors have a DUNS number and are registered in the Central Contractor Registration (CCR) no later than the date the first report is due under FAR 52.204-11 American Recovery and Reinvestment Act – Reporting Requirements.

G. Utilization of Small Business

Contractor shall to the maximum extent practicable give a preference to small business in the award of subcontracts for projects funded by Recovery Act dollars.

CLAUSE H.49 – LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2009) *[M012 – 8/7/09]*

The contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

CLAUSE H.50 – CONTRACTOR ASSURANCE SYSTEM *[M026 – 1/11/10]*

(a) The Contractor shall develop a contractor assurance system that is executed by the Contractor's Board of Directors (or equivalent corporate oversight entity) and implemented throughout the Contractor's organization. This system provides reasonable assurance that the objectives of the contractor management systems are being accomplished and that the systems and controls will be effective and efficient. The contractor assurance system, at a minimum, shall include the following key attributes:

(1) A comprehensive description of the assurance system with processes, key activities, and accountabilities clearly identified.

(2) A method for verifying/ensuring effective assurance system processes. Third party audits, peer reviews, independent assessments, and external certification (such as VPP and ISO 9001 or ISO 14001) may be used.

(3) Timely notification to the Contracting Officer of significant assurance system changes prior to the changes.

(4) Rigorous, risk-based, credible self-assessments, and feedback and improvement activities, including utilization of nationally recognized experts, and

other independent reviews to assess and improve the Contractor's work process and to carry out independent risk and vulnerability studies.

(5) Identification and correction of negative performance/compliance trends before they become significant issues.

(6) Integration of the assurance system with other management systems including Integrated Safety Management.

(7) Metrics and targets to assess performance, including benchmarking of key functional areas with other DOE contractors, industry and research institutions. Assure development of metrics and targets that result in efficient and cost effective performance.

(8) Continuous feedback and performance improvement.

(9) An implementation plan (if needed) that considers and mitigates risks.

(10) Timely and appropriate communication to the Contracting Officer, including electronic access, of assurance related information.

The initial contractor assurance system description shall be approved by the Contracting Officer.

(b) The Government may revise its level and/or mix of oversight of this contract when the Contracting Officer determines that the assurance system is or is not operating effectively.

CLAUSE H.51 – LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2010) *[M041 – 7/13/10]*

The contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.