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

SUBCONTRACT NO. _____

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

No.	Clause Title	Page No.
E1	ALLOWABLE COST AND PAYMENT (JUN 2011)	1
E2	FIXED FEE (JUN 2011)	3
E3	LIMITATION OF COST (APR 1984)	3
E4	LIMITATION OF FUNDS (APR 1984)	3
E5	STOP WORK ORDER (AUG 1989) (ALTERNATE I) (APR 1984)	4
E6	CHANGES—COST REIMBURSEMENT (AUG 1987)	5
E7	FOREIGN TRAVEL (JUN 2010)	5
E8	TERMINATION (COST-REIMBURSEMENT) (MAY 2004) (MODIFIED)	5
E9	EXCUSABLE DELAYS (APR 1984)	8
E10	INSPECTION OF SUPPLIES--COST-REIMBURSEMENT (MAY 2001)	8
E11	INSPECTION OF SERVICES--COST-REIMBURSEMENT (APR 1984)	9
E12	INSURANCE--LIABILITY TO THIRD PERSONS (MAR 1996) (MODIFIED)	9
E13	RESERVED	
E14	TAXES – FOREIGN COST REIMBURSEMENT CONTRACTS (MAR 1990)	10
E15	SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (JUN 1997)	10
EEC1	CLAUSES, STATUTES OR EXECUTIVE ORDERS INCORPORATED BY REFERENCE	11

ADDITIONAL APPLICABLE CLAUSES

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___	_____	____
___	_____	____
___	_____	____
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PPPL General Provisions for Non-Commercial Subcontracts
Part E - Cost-Reimbursement-Type Subcontracts

E1. ALLOWABLE COST AND PAYMENT (JUN 2011)

(a) Invoicing.

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

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

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

(b) Reimbursing costs.

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

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

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

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

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

(2) Ordinarily within 30 days of the submission of the Subcontractor's payment request to Princeton;

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

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

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

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

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

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

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

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

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

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

(d) Final indirect cost rates.

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

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

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

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

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

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

(5) Within 120 days (or longer period if approved in writing by Princeton) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Subcontractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled lower-tier subcontract amounts and rates. The Subcontractor is responsible for settling lower-tier subcontractor amounts and rates included in the completion invoice or voucher and providing status of lower-tier subcontractor audits to Princeton upon request.

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

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

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

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

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

(1) Shall be the anticipated final rates; and

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

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

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

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

(2) Adjusted for prior overpayments or underpayments.

(h) Final payment.

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

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

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

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

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

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

release date or notice of final payment date, whichever is earlier; and

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

E2. FIXED FEE (JUN 2011)

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

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

E3. LIMITATION OF COST (APR 1984)

(This clause applies to fully funded subcontracts)

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

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

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

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

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

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

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

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

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

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

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

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

E4. LIMITATION OF FUNDS (APR 1984)

(This clause applies to incrementally funded subcontracts)

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

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

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

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

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

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

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

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

(2) The Subcontractor is not obligated to continue performance under this Subcontract (including actions under the Termination clause of this Subcontract) or otherwise incur costs in excess of (i) the amount then allotted to the Subcontract by Princeton or, (ii) if this is a cost-sharing subcontract, the amount then allotted by Princeton to the Subcontract plus the Subcontractor's corresponding share, until Princeton notifies the Subcontractor in writing that the amount allotted by Princeton has been increased and specifies an increased amount, which shall then constitute the total amount allotted by Princeton to this Subcontract.

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

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

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

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

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

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

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

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

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

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination clause of this Subcontract.

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

(1) The stop-work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this Subcontract; and

(2) The Subcontractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if Princeton decides the facts justify the action, Princeton may receive and act upon the claim submitted at any time before final payment under this Subcontract.

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

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

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

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

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

(5) Method of shipment or packing.

(6) Place of delivery.

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

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

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

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

E7. FOREIGN TRAVEL (JUN 2010)

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

E8. TERMINATION (COST-REIMBURSEMENT) (MAY 2004) (MODIFIED)

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

(1) Princeton determines that a termination is in Princeton's interest; or

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

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

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

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

(1) Stop work as specified in the notice.

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

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

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

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

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

(7) Complete performance of the work not terminated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation as supplemented in Subpart 970.31 of the Department of Energy Acquisition Regulation, in effect on the date of this Subcontract, shall govern all costs claimed, agreed to, or determined under this clause.

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

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

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

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

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

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

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

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

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

E9. EXCUSABLE DELAYS (APR 1984)

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

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

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

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

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

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

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

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

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

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

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

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

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

"Supplies" includes but is not limited to raw materials, components, intermediate assemblies, end products, lots of supplies, and, when the contract does not include the Warranty of Data clause, data.

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

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

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

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

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

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

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

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

(iii) Terminate the subcontract for default.

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

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

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

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

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

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

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

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

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

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

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

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

(d) If any of the services performed do not conform with Subcontract requirements Princeton may require the Subcontractor to perform the services again in conformity with Subcontract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, Princeton may (1) require the Subcontractor to take necessary action to ensure that future performance conforms to Subcontract requirements and (2) reduce any fee payable under the Subcontract to reflect the reduced value of the services performed.

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

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

(a) (1) Except as provided in subparagraph (a)(2) of this clause, and irrespective of whether or not the work to be performed is conducted on-site at Princeton or in a separate locality, the Subcontractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, in the amounts set forth in the Princeton general provisions clause entitled “Terms and Conditions of Insurance,” and such other insurance as Princeton may require under this Subcontract. When the terms of this clause conflict with the terms of the Princeton general provisions entitled “Terms and Conditions of Insurance,” the terms of this clause shall govern. [Note: The clause entitled “Terms and Conditions of Insurance” is Clause T4 in PPPL General Provisions Part T (PPL-PD-T), which may be accessed via the ‘Procurement Forms’ link at http://procurement.pppl.gov/.]

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

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

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

(c) The Subcontractor shall be reimbursed--

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

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this Subcontract. These liabilities must arise out of the performance of this Subcontract, whether or not caused by the negligence of the Subcontractor or of the

Subcontractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by Princeton. These liabilities are for-

(i) Loss of or damage to property (other than property owned, occupied, or used by the Subcontractor, rented to the Subcontractor, or in the care, custody, or control of the Subcontractor); or

(ii) Death or bodily injury.

(d) Princeton's liability under paragraph (c) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this Subcontract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(e) The Subcontractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)--

(1) For which the Subcontractor is otherwise responsible under the express terms of any clause specified in the Subcontract Agreement or elsewhere in the Subcontract;

(2) For which the Subcontractor has failed to insure or to maintain insurance as required by Princeton; or

(3) That result from willful misconduct or lack of good faith on the part of any of the Subcontractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of--

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

(ii) All or substantially all of the Subcontractor's operations at any one plant or separate location in which this Subcontract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this Subcontract.

(f) The provisions of paragraph (e) of this clause shall not restrict the right of the Subcontractor to be reimbursed for the cost of insurance maintained by the Subcontractor in connection with the performance of this Subcontract, other than insurance required in accordance with this clause; provided, that such cost is allowable under the Allowable Cost and Payment clause of this Subcontract.

(g) If any suit or action is filed or any claim is made against the Subcontractor, the cost and expense of which may be reimbursable to the Subcontractor under this Subcontract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Subcontractor shall--

(1) Immediately notify Princeton and promptly furnish copies of all pertinent papers received;

(2) Authorize Princeton representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

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

E13. RESERVED

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

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

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

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

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

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

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

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

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

Clause:	Title:	DEAR Reference:
EEC 1-1	**PROPERTY (ALTERNATE I)**	**970.5245-1**