PPPL General Provisions
Part D - Fixed Price Supply or Service Subcontracts

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

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ADDITIONAL APPLICABLE CLAUSES

PPPL General Provisions for Non-Commercial Subcontracts
Part D - Fixed Price Supply or Service Subcontracts

D1 PAYMENT (OCT 1997)

Unless otherwise provided, terms of payment shall be net 30 days from the later of (1) receipt of the Subcontractor's proper invoice, if required, or (2) delivery of items/completion of work. Any offered discount shall be taken if payment is made within the discount period that the Subcontractor indicates. Payments shall be made either by check or by electronic funds transfer, at the option of Princeton. Payment shall be deemed to have been made as of the date of mailing or the date on which an electronic funds transfer was made.

D2. EXTRAS (APR 1984)

Except as otherwise provided in this subcontract, no payment for extras shall be made unless such extras and the price therefore have been authorized in writing by Princeton.

D3. CHANGES FIXED PRICE (AUG 1987) - ALTERNATE II (APR 1984)

(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 cost of, or the time required for, performance of any part of the work under this subcontract, whether or not changed by the order, Princeton shall make an equitable adjustment in the subcontract price, the delivery schedule, or both, and shall modify the subcontract.

(c) The Subcontractor must assert its right to an adjustment 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) If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, Princeton shall have the right to prescribe the manner of the disposition of the property.

(e) 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.

D4. INSPECTION (APR 1984)

Princeton has the right to inspect and evaluate the work performed or being performed under the subcontract, and the premises where work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If Princeton performs inspection or evaluation on the premises of the Subcontractor or lower tier subcontractor, the Subcontractor shall furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

D5. TERMINATION FOR CONVENIENCE OF PRINCETON (FIXED-PRICE) (SHORT FORM) (APR 1984)

(This clause is applicable to supply subcontracts valued at the Simplified Acquisition Threshold or less)

Princeton, by written notice, may terminate this subcontract, in whole or in part, when it is in Princeton's interest. If this subcontract is terminated, the rights, duties, and obligations of the parties, including compensation to the Subcontractor, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this subcontract.

D6. TERMINATION FOR CONVENIENCE OF PRINCETON (FIXED-PRICE) (APR 2012)
(This clause is applicable to subcontracts over the Simplified Acquisition Threshold)

(a) Princeton may terminate performance of work under this subcontract in whole or, from time to time, in part if Princeton determines that a termination is in Princeton's interest. Princeton shall terminate by delivering to the Subcontractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by Princeton, 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 lower tier subcontracts or orders (referred to as lower tier subcontracts in this clause) for materials, services, or facilities, 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, 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, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower tier subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by Princeton, transfer title and 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; and

(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.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that Princeton 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 Princeton or the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by Princeton or the Government, any property of the types referred to in paragraph (b)(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. 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.

(c) 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 upon written request of the Subcontractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Subcontractor may submit to Princeton a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by Princeton. The Subcontractor may request Princeton to remove those items or enter into an agreement for their storage. Within 15 days, Princeton will accept title to those items and remove them or enter into a storage agreement. Princeton 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.

(e) After termination, the Subcontractor shall submit a final termination settlement proposal to Princeton in the form and with the certification prescribed by Princeton. 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 upon written request of the Subcontractor within this 1-year period. However, if Princeton 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 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.

(f) Subject to paragraph (e) of this clause, the Subcontractor and Princeton may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, may not exceed the total Subcontract price as reduced by (1) the amount of payments previously made and (2) the Subcontract price of work not terminated. The Subcontract shall be modified, and the Subcontractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Subcontractor and Princeton fail to agree on the whole amount to be paid because of the termination of work,
Princeton shall pay the Subcontractor the amounts determined by Princeton as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The subcontract price for completed supplies or services accepted by Princeton (or sold or acquired under paragraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of--

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under paragraph (g)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated lower tier subcontracts that are properly chargeable to the terminated portion of the Subcontract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by Princeton under 49.202 of the Federal Acquisition Regulation, in effect on the date of this subcontract, to be fair and reasonable; however, if it appears that the Subcontractor would have sustained a loss on the entire Subcontract had it been completed, Princeton shall allow no profit under this subdivision (g)(2)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

(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.

(h) Except for normal spoilage, and except to the extent that Princeton expressly assumed the risk of loss, Princeton shall exclude from the amounts payable to the Subcontractor under paragraph (g) of this clause, the fair value, as determined by Princeton, for the loss of Princeton property.

(i) The cost principles and procedures of Part 31 of the Federal 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 Disputes clause, from any determination made by Princeton under paragraph (e), (g), or (l) of this clause, except that if the Subcontractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of 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 the provisions of this clause and not recovered by or credited to Princeton.

(l) If the termination is partial, the Subcontractor may file a proposal with Princeton for an equitable adjustment of the price(s) of the continued portion of the Subcontract. Princeton shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by Princeton.

(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 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 because of the circumstances.

(n) Unless otherwise provided in this subcontract or by statute, the Subcontractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Subcontractor's costs and expenses under this subcontract. The Subcontractor shall make these records and documents available to Princeton or the Government, at the Subcontractor's office, at all reasonable times, without any direct charge. If approved by Princeton, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

D7. TERMINATION FOR CONVENIENCE OF PRINCETON (SERVICES) (SHORT FORM) (APR 1984) (This clause is applicable to service subcontracts)

Princeton, by written notice, may terminate this Subcontract, in whole or in part, when it is in Princeton's interest. If this Subcontract is terminated, Princeton shall be liable only for payment under the payment provisions of this Subcontract for services rendered before the effective date of termination.

D8. TERMINATION FOR DEFAULT (APR 1984)

(a) (1) Princeton may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Subcontractor, terminate this Subcontract in whole or in part if the Subcontractor fails to --

(i) Deliver the supplies or to perform the services within the time specified in this Subcontract or any extension;

(ii) Make progress, so as to endanger performance of this Subcontract (but see subparagraph (a)(2) of this clause); or

(iii) Perform any of the other provisions of this Subcontract (but see subparagraph (a)(2) of this clause).

(2) Princeton's right to terminate this Subcontract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Subcontractor does not cure such failure within 10 days (or more if authorized in writing by Princeton's Administrative Representative) after receipt of the notice from Princeton specifying the failure.

(b) If Princeton terminates this Subcontract in whole or in part, it may acquire, under the terms and in the manner Princeton considers appropriate, supplies or services similar to those terminated, and the Subcontractor will be liable to Princeton for any excess costs for those supplies or services. However, the Subcontractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Subcontractor shall not be liable for any excess costs if the failure to perform the Subcontract arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes include

(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.

(d) If the failure to perform is caused by the default of a lower-tier subcontractor at any tier, and if the cause of the default is 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 liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Subcontractor to meet the required delivery schedule.

(e) If this Subcontract is terminated for default, Princeton may require the Subcontractor to transfer title and deliver to Princeton, as directed by Princeton, any

(1) completed supplies, and

(2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as “manufacturing materials” in this clause) that the Subcontractor has specifically produced or acquired for the terminated portion of this Subcontract.

Upon direction of Princeton, the Subcontractor shall also protect and preserve property in its possession in which Princeton or the Government has an interest.

(f) Princeton shall pay the Subcontract price for completed supplies delivered and accepted. The Subcontractor and Princeton shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Princeton may withhold from these amounts any sum Princeton determines to be necessary to protect Princeton against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Subcontractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Princeton.

(h) The rights and remedies of Princeton in this clause are in addition to any other rights and remedies provided by law or under this Subcontract.

D9. STOP-WORK ORDER (AUG 1989)

(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 for Default, or the Termination for Convenience of Princeton, clauses 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 or Subcontract price, or both, 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.