



Mission Support Alliance Provision

SPECIAL PROVISIONS - COST REIMBURSEMENT SUBCONTRACTS

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1.0 PREAMBLE

These Special Provisions are requirements of any Subcontract in which this Special Provision document is incorporated. These Special Provisions are applicable in their entirety unless specifically deleted or amended in the Subcontract and are in addition to the General Provisions and other Special Provisions that apply to this Subcontract. In the event of a conflict between these Special Provisions and the General Provisions, these Special Provisions shall take precedence.

If the terms of the Subcontract do not provide for payment of fee, any reference to fee herein shall be of no effect.

Clauses included or referenced herein which are applicable only to other types of Subcontracts or work scopes shall have no effect on this Subcontract.

2.0 COSTS ASSOCIATED WITH WHISTLEBLOWER ACTIONS

A. Definitions

1. Adverse Determination means:

- a. A judgment of liability against the Subcontractor and in favor of the employee in an action in a judicial forum;
- b. A recommended decision under 29 CFR 24.6 by an Administrative Law Judge that the Subcontractor has violated the employee provisions of the statutes or executive orders for which the Secretary of Labor has been assigned enforcement responsibility;
- c. An initial agency decision, under 10 CFR 708.10 that the Subcontractor has engaged in conduct prohibited by 10 CFR 708.5;
- d. Any decision against the Subcontractor by the head of an executive agency under Section 6006 of the Federal Acquisition Streamlining Act, Pub. L. 103-355 (adding Section 315 of the Federal Property and Administrative Services Act of 1949 (41 U. S. C. 251, et seq.);

2. **Retaliatory or Discriminatory Acts** means(s) discharge, demotion, reduction in pay, coercion, restraint, threats, intimidation or other similar negative action taken against an employee by the Subcontractor during the term of this Subcontract as a result of activities protected by the statutes enumerated in 29 CFR 24.1(a) or as a result of the employee's disclosure of information, participation in a proceeding or refusal to engage in illegal or dangerous activities as set forth in 10 CFR 708.5(a).

3. **Employee Action** means an action filed in Federal or state court for redress of retaliatory or discriminatory action by the Subcontractor, any administrative procedure brought by an employee or federal agency under 29 CFR Part 24, or any other complaint filed against the Subcontractor for retaliatory or



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discriminatory acts under 10 CFR Part 708 by an employee of any other Contractor or subcontractor which is cognizable under 10 CFR 708.

4. **Litigation Costs** include attorney, consultant, and expert witness fees, but exclude costs of settlements and judgments.
- B. All costs incurred in the investigation and/or defense of an employee action under this Subcontract Clause shall be differentiated and accounted for by the Subcontractor so as to be separately identifiable. Subsequent to an adverse determination, such costs, as well as costs associated with any interim relief that may be granted, may not be paid from any advanced funding provided pursuant to this Subcontract. Notwithstanding the foregoing, Buyer may, in appropriate circumstances, provide for conditional payment upon provisions of adequate security, or other adequate assurance, and agreements by the Subcontractor to repay all litigation costs incurred subsequent to an adverse determination, as well as any interim relief cost, plus interest, unless there is a final determination that the Subcontractor is not liable for any retaliatory or discriminatory acts. The allowance of such costs, notwithstanding any other provision of the Subcontract, will be determined in accordance with this Clause.
 - C. Litigation costs and settlement costs incurred in connection with the defense of, or a settlement of, an employee action is allowable if incurred by the Subcontractor before any adverse determination of the employee's claim, if approved as just and reasonable by Buyer and otherwise allowable under the Subcontract. Cost incurred in pursuit of mediation or other forms of alternative dispute resolution are allowable, if approved as just and reasonable by Buyer, and no adverse determination of the employee's claim has occurred. Additionally, Buyer may, in appropriate circumstances, reimburse the Subcontractor for litigation and costs of judgments and settlements, which, in aggregate, do not exceed any prior settlement offer approved by Buyer and rejected by the employee.
 - D. Except as provided in paragraphs 2.0-C., 2.0-D., and 2.0-E., any other cost associated with an employee action (including litigation costs connected with, a judgment resulting from, or settlement subsequent to the employee action) are not allowable unless the Subcontractor receives a judgment or final determination favorable to the Subcontractor. In such event, reasonable litigation costs incurred by the Subcontractor are allowable, and the Subcontractor may submit a request for reimbursement for all such costs incurred subsequent to the adverse determination.
 - E. Cost incurred by the Subcontractor as a result of an employee action for retaliatory or discriminatory acts that resulted from compliance with either (1) specific terms or conditions of the Subcontract or (2) written instructions from Buyer shall be allowable.
 - F. Reasonable litigation costs and settlement costs incurred by, and judgments entered by the Office of Hearings and Appeals against, the Subcontractor as a result of an employee action for discrimination under 10 CFR 708 are allowable where the Office of Contractor Employee Protection has issued a proposed disposition denying the relief being sought by the employee and the employee requests a hearing by the Office of Hearing and Appeals.



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- G. The provisions of this paragraph shall not apply to the defense of suits by employees or ex-employees of the Subcontractor under FAR 31.205-47.
- H. The Subcontractor shall insert or have inserted the substance of this Clause in all cost reimbursement subcontracts, with respect to work performed at a DOE-owned or -leased facility where 10 CFR 708 is also applicable under provisions of the Subcontract Clause entitled "Whistleblower Protection for Contractor Employees."

3.0 WITHDRAWAL OF WORK

- A. The Buyer may, at its option and during the performance of this Subcontract unilaterally have any of the work contemplated in the Statement of Work of this Subcontract, performed by either another Subcontractor or to have the work performed by Buyer or its employees.
- B. Work may be withdrawn; (1) in order for Buyer to conduct pilot programs; (2) if the Subcontractor's estimated cost of the work is considered unreasonable; (3) for less than satisfactory performance by the Subcontractor; or (4) for any other reason deemed by the Buyer to be in the best interests of Buyer
- C. If the withdrawn work has been authorized under an annual Work Authorization Directive, the work shall be terminated in accordance with the procedures in the Subcontract Clause entitled "Termination (Cost-Reimbursement)."
- D. If any work is withdrawn by the Buyer, the Subcontractor agrees to fully cooperate with the new performing entity and to provide whatever support is required.

4.0 LAWS, REGULATIONS, AND DOE DIRECTIVES

- A. In performing work under this Subcontract, the Subcontractor shall comply with the requirements of:
 - 1. Federal, state and local laws and regulations, unless relief has been granted in writing by the appropriate regulatory agency; and
 - 2. Those DOE directives, or parts thereof, identified in the List of Applicable Directives contained in this Contract.
- B. Buyer may, from time to time, revise the List of Applicable Directives (List) by unilateral modification to the Subcontract to add, modify, or delete specific requirements. Prior to revising the List, Buyer shall notify the Subcontractor in writing of Buyer's intent to revise the List and provide the Subcontractor with the opportunity to (1) assess the effect of the Subcontractor's compliance with the revised List on Subcontract cost and funding, technical performance, and schedule and (2) identify any potential inconsistencies between the revised List and the other terms and conditions of the Subcontract, including an alternative set of requirements incorporated by reference in accordance with paragraph 5.0-D. Within 30 days after receipt of Buyer's notice, the Subcontractor shall advise Buyer in writing of the potential impact of the Subcontractor's compliance with the revised List. Based on the information provided by



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the Subcontractor and any other information available, Buyer will decide whether to revise the List, and so advise the Subcontractor not later than 30 days prior to the effective date of the revision of the List. The Subcontractor and Buyer shall identify and, if appropriate, agree to any changes to other Subcontract terms and conditions, including cost and schedule, associated with the revision of the List.

- C. The ES&H requirements on the List may be superseded, in whole or in part, and with respect to all or part of the activities under this Subcontract, by an alternative set of requirements developed through a DOE-approved process (e.g., the Standards/Requirements Identification process or the Necessary and Sufficient process) and approved by Buyer pursuant to that process. An alternative set of requirements may be incorporated into the List by reference but, in any case, shall be construed as requirements of the Subcontractor as if included on the List. Any proposed changes to the alternative set of requirements shall be developed and approved in accordance with the applicable DOE-approved process.
- D. The Subcontractor shall be responsible for compliance with the requirements made applicable to this Subcontract, regardless of the performer of the work. Consequently, the Subcontractor shall be responsible for flowing down the necessary provisions to subcontracts at any tier to which the Subcontractor determines such requirements apply.

5.0 FAR AND DEAR CLAUSES

- A. All subsequent FAR and DEAR clauses have been flowed down verbatim. For these clauses only:
 - (1) Wherever necessary to make the context of the clauses set forth below applicable to this Subcontract, the term "disputes" shall mean "claims"; "Contractor" shall mean "Subcontractor"; "Government," and "Contracting Officer," and equivalent phrases shall mean "Buyer," except the terms "Government," and "Contracting Officer" do not change: (1) in the phrases "Government Property," "Government-Owned Equipment," (2) when a right, act, authorization, or obligation can be granted or performed only by the Government or the Prime Contract Contracting Officer or duly authorized representative, (3) when access to proprietary financial information or other proprietary data is required, (4) when title to property is to be transferred directly to the Government, and (5) as otherwise noted below.

6.0 FAR 52.216-7 ALLOWABLE COST AND PAYMENT (DEC 2002)

- A. Invoicing
 - 1. The Buyer shall make payments to the Contractor when requested as work progresses, but not more often than once every 4 weeks, in amounts determined to be allowable by the Buyer in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this Contract and the terms of this Contract. The Contractor may submit to an authorized representative of the Buyer, in such form and reasonable detail as the



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representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this Contract.

B. Reimbursing costs.

1. For the purpose of reimbursing allowable costs (except as provided in subparagraph B. 2. below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only:
 - a. Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the Contract;
 - b. When the Contractor is not delinquent in paying costs of Contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:
 - i. Materials issued from the Contractor's inventory and placed in the production process for use on the Contract;
 - ii. Direct labor;
 - iii. Direct travel;
 - iv. Other direct in-house costs; and
 - v. Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Buyer contracts; and
 - c. The amount of progress payments that have been paid to the Contractor's subcontractors under similar cost standards.
2. Contractor contributions to any pension or other postretirement benefit, profit-sharing or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes provided, that the Contractor pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Contractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Contractor actually makes the payment.
3. Notwithstanding the audit and adjustment of invoices or vouchers under paragraph G. below, allowable indirect costs under this Contract shall be obtained by applying indirect cost rates established in accordance with paragraph D. below.



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4. Any statements in specifications or other documents incorporated in this Contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Buyer or the Buyer shall be disregarded for purposes of cost-reimbursement under this Clause.
- C. Small business concerns - A small business concern may be paid more often than every 2 weeks and may invoice and be paid for recorded costs for items or services purchased directly for the Contract, even though the concern has not yet paid for those items or services.
- 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. The Contractor shall, within 90 days after the expiration of each of its fiscal years, or by a later date approved by the Buyer, submit to the cognizant Buyer responsible for negotiating its final indirect cost rates and, if required by agency procedures, to the cognizant audit activity proposed final indirect cost rates for that period and supporting cost data specifying the contract and/or subcontract to which the rates apply. The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Buyer or Buyer representative and Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.
 3. The Contractor and the appropriate Buyer or Buyer representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (1) the agreed-upon final annual indirect cost rates, (2) the bases to which the rates apply, (3) the periods for which the rates apply, (4) any specific indirect cost items treated as direct costs in the settlement, and (5) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this Contract. The understanding is incorporated into this Contract 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 Disputes Clause.
- E. Billing rates - Until final annual indirect cost rates are established for any period, Buyer shall reimburse the Contractor at billing rates established by the Buyer or the Contracting Officer 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.



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- 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, the Buyer may have the Contract's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the Buyer not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.
- H. Final payment.
 - 1. The Contractor shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but no later than one year (or longer, as the Buyer may approve in writing) from the completion date. Upon approval of that invoice or voucher, and upon the Contractor's compliance with all terms of this Contract, the Buyer shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
 - 2. The Contractor shall pay to the Buyer any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this Contract, to the extent that those amounts are properly allocable to costs for which the Buyer has reimbursed the Contractor. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Buyer. Before final payment under this Contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver--
 - a. An assignment to the Buyer, in form and substance satisfactory to the Buyer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Buyer under this Contract; and
 - b. A release discharging Buyer and the Contractor, their officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this Contract, except:
 - i. Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
 - ii. Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this Contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Buyer within 6 years following the release date or notice of final payment date, whichever is earlier; and
 - iii. Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of



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this Contract, excluding, however, any expenses arising from the Contractor's indemnification of the Buyer against patent liability.

7.0 DEPARTMENT OF ENERGY AND FEDERAL ACQUISITION CLAUSES

FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

- A. The Buyer, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.
- B. The price or fee reduction referred to in paragraph (a) of this clause shall be –
1. For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
 2. For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or “fee floor” specified in the contract;
 3. For cost-plus-award-fee contracts --
 - a) The base fee established in the contract at the time of contract award;
 - b) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.
 4. For fixed-price-incentive contracts, the Buyer may --
 - a) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
 - b) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.



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5. For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.
 - a. The Buyer may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.
 - b. In addition to the remedies in paragraphs (a) and (c) of this clause, the Buyer may terminate this contract for default. The rights and remedies of the Buyer specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (JUL 2005)

- A. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract shall be the property of the Buyer and shall be delivered to the Buyer or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of the contract.
- B. Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause. [The contracting officer shall identify which of the following categories of records will be included in the clause.]
 1. Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except for those records described by the contract as being maintained in Privacy Act systems of records.
 2. Confidential contractor financial information, and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);
 3. Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3, Accounts, Records, and Inspection, are described as the property of the Buyer; and



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4. Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and \
5. The following categories of records maintained pursuant to the technology transfer clause of this contract:
 - a. Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.
 - b. The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.
 - c. Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Buyer.
- C. Contract completion or termination. In the event of completion or termination of this contract, copies of any of the contractor-owned records identified in paragraph (b) of this clause, upon the request of the Buyer, shall be delivered to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- D. Inspection, copying, and audit of records. All records acquired or generated by the contractor under this contract in the possession of the contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Buyer or its designees at all reasonable times, and the contractor shall afford the Buyer or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the contracting officer, the contractor shall deliver such records to a location specified by the contracting officer for inspection, copying, and audit. The Buyer or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- E. Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.
- F. Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Buyer or the contractor. In addition, the contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal. The Buyer may waive application of these record retention schedules, if, upon termination or completion of the contract,



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the Buyer exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.

- G. Subcontracts. The contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:
1. The value of the subcontract is greater than \$2 million (unless specifically waived by the contracting officer);
 2. The contracting officer determines that the subcontract is, or involves, a critical task related to the contract; or
 3. The subcontract includes 48 CFR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

DEAR 952.215-70 KEY PERSONNEL (DEC 2000)

- A. The personnel listed below or elsewhere in this Contract are considered essential to the work being performed under this Contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must: (1) Notify Buyer reasonably in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this Contract; and (3) obtain Buyer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity the Contractor may remove or suspend such person at once, although the Contractor must notify Buyer prior to or concurrently with such action.
- B. The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the Contract to add or delete personnel.

FAR 52.216-8, FIXED FEE (MAR 1997)

- A. Buyer shall pay the Contractor for performing this Contract the fixed fee specified in the Schedule.
- B. Payment of the fixed fee shall be made as specified in the Schedule; provided, that after payment of 85 percent of the fixed fee, Buyer may withhold further payment of fee until a reserve is set aside in an amount that Buyer considers necessary to protect the Buyer's interest. This reserve shall not exceed 15 percent of the total fixed fee, or \$100,000, whichever is less. The Buyer shall release 75 percent of all fee withholds under this Contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this Contract, provided the Contractor has satisfied all other Contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final on prior years' settlements. The Buyer may release up to 90 percent of the fee withholds under this



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Contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

FAR 52.216-10, INCENTIVE FEE (MAR 1997)

- A. General. Buyer shall pay the Contractor for performing this Contract a fee determined as provided in this Contract.
- B. Target cost and target fee. The target cost and target fee specified in the Schedule are subject to adjustment if the Contract is modified in accordance with paragraph D. below.
 - 1. **Target cost**, as used in this Contract, means the estimated cost of this Contract as initially negotiated, adjusted in accordance with paragraph D below.
 - 2. **Target fee**, as used in this Contract, means the fee initially negotiated on the assumption that this Contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph D of this Clause.
- C. Withholding of payment. Normally, Buyer shall pay the fee to the Contractor as specified in the Schedule. However, when Buyer considers that performance or cost indicates that the Contractor will not achieve target, Buyer shall pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates that the Contractor will earn a fee significantly above the target fee, Buyer may, at the sole discretion of Buyer, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, Buyer may withhold further payment of fee until a reserve is set aside in an amount that Buyer considers necessary to protect the Buyer's interest. This reserve shall not exceed 15 percent of the applicable fee, or \$100,000, whichever is less. The Buyer shall release 75 percent of all fee withholds under this Contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this Contract, provided the Contractor has satisfied all other Contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final on prior years' settlements. The Buyer may release up to 90 percent of the fee withholds under this Contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.
- D. Equitable adjustments. When the work under this Contract is increased or decreased by a modification to this Contract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to this Contract.
- E. Fee payable.
 - 1. The fee payable under this Contract shall be the target fee increased by _____ [Buyer insert Contractor's participation] cents for every dollar that the total allowable cost is less than the target cost or decreased by _____ [Buyer insert



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Contractor's participation] cents for every dollar that the total allowable cost exceeds the target cost. In no event shall the fee be greater than _____ [Buyer insert percentage] percent or less than _____ [Buyer insert percentage] percent of the target cost.

2. The fee shall be subject to adjustment, to the extent provided in paragraph D. above, and within the minimum and maximum fee limitations in subparagraph E. 1. of this Clause, when the total allowable cost is increased or decreased as a consequence of (1) payments made under assignments or (2) claims excepted from the release as required by paragraph H. 2. of the Allowable Cost and Payment Clause.
3. If this Contract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of this Contract.
4. For the purpose of fee adjustment, "total allowable cost" shall not include allowable costs arising out of:
 - a. Any of the causes covered by the Excusable Delays Clause to the extent that they are beyond the control and without the fault or negligence of the Contractor or any subcontractor;
 - b. The taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the Contractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;
 - c. Any direct cost attributed to the Contractor's involvement in litigation as required by Buyer pursuant to a clause of this Contract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;
 - d. The purchase and maintenance of additional insurance not in the target cost and required by the Buyer, or claims for reimbursement for liabilities to third persons pursuant to the Insurance Liability to Third Persons Clause;
 - e. Any claim, loss, or damage resulting from a risk for which the Contractor has been relieved of liability by the Buyer Property Clause; or
 - f. Any claim, loss, or damage resulting from a risk defined in the Contract as unusually hazardous or as a nuclear risk and against which the Buyer has expressly agreed to indemnify the Contractor.
5. All other allowable costs are included in "total allowable cost" for fee adjustment in accordance with this paragraph (E), unless otherwise specifically provided in this Contract.



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- F. Contract modification. The total allowable cost and the adjusted fee determined as provided in this Clause shall be evidenced by a modification to this Contract signed by the Contractor and Buyer.
- G. Inconsistencies. In the event of any language inconsistencies between this Clause and provisioning documents or Buyer options under this Contract, compensation for spare parts or other supplies and services ordered under such documents shall be determined in accordance with this Clause.

FAR 52.216-11, COST CONTRACT--NO FEE AND ALTERNATE I (APR 1984)

- A. Buyer shall not pay the Contractor a fee for performing this Contract.
- B. After payment of 80 percent of the total estimated cost shown in the Schedule, Buyer may withhold further payment of allowable cost until a reserve is set aside in an amount that Buyer considers necessary to protect the Buyer's interest. This reserve shall not exceed one percent of the total estimated cost shown in the Schedule, or \$100,000, whichever is less.

Alternate I (APR 1984). In a contract for research and development with an educational institution or a nonprofit organization, for which the Buyer has determined that withholding of a portion of allowable costs is not required, delete paragraph B. of the basic clause.

FAR 52.222-2, PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)

- A. The use of overtime is authorized under this Contract if the overtime premium cost does not exceed* ___ or the overtime premium is paid for work:
 - 1. Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
 - 2. By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
 - 3. To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
 - 4. That will result in lower overall costs to Buyer and the Buyer.
- B. Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for Contract completion and shall--
 - 1. Identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit Buyer to evaluate the necessity for the overtime;



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2. Demonstrate the effect that denial of the request will have on the Contract delivery or performance schedule;
3. Identify the extent to which approval of overtime would affect the performance or payments in connection with other Buyer contracts, together with identification of each affected contract; and
4. Provide reasons why the required work cannot be performed by using multi-shift operations or by employing additional personnel.

* Insert either "zero" or the dollar amount agreed to during negotiations. The inserted figure does not apply to the exceptions in paragraph (a)(1) through (a)(4) of the clause.

FAR 52.232-20, LIMITATION OF COST (APR 1984)

- A. The parties estimate that performance of this Contract, exclusive of any fee, will not cost Buyer more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, Buyer's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this Contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Buyer's and the Contractor's share of the cost.
- B. The Contractor shall notify Buyer in writing whenever it has reason to believe that:
 1. The costs the Contractor expects to incur under this Contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or
 2. The total cost for the performance of this Contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.
- C. As part of the notification, the Contractor shall provide Buyer a revised estimate of the total cost of performing this Contract.
- D. Except as required by other provisions of this Contract, specifically citing and stated to be an exception to this Clause:
 1. Buyer is not obligated to reimburse the Contractor for costs incurred in excess of (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the estimated cost to Buyer specified in the Schedule; and
 2. The Contractor is not obligated to continue performance under this Contract (including actions under the Termination Clause of this Contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until Buyer (1) notifies the Contractor in writing that the estimated cost has been increased and (2) provides a revised estimated total cost of performing this Contract. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.



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- E. No notice, communication, or representation in any form other than that specified in subparagraph D. 2., above, or from any person other than Buyer, shall affect this Contract's estimated cost to Buyer. In the absence of the specified notice, Buyer is not obligated to reimburse the Contractor for any costs in excess of the estimated cost or, if this is a cost-sharing contract, for any costs in excess of the estimated cost to Buyer specified in the Schedule, whether those excess costs were incurred during the course of the Contract or as a result of termination.
- F. If the estimated cost specified in the Schedule is increased, any costs the Contractor 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 Buyer 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 Buyer specified in the Schedule, unless they contain a statement increasing the estimated cost.
- H. If this Contract is terminated or the estimated cost is not increased, Buyer and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the Contract, based upon the share of costs incurred by each.

FAR 52.232-22, LIMITATION OF FUNDS (APR 1984)

- A. The parties estimate that performance of this Contract will not cost Buyer more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, Buyer's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this Contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Buyer's and the Contractor's share of the cost.
- B. The Schedule specifies the amount presently available for payment by Buyer and allotted to this Contract, the items covered, Buyer's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that Buyer will allot additional funds incrementally to the Contract up to the full estimated cost to Buyer specified in the Schedule, exclusive of any fee. The Contractor agrees to perform, or have performed, work on the Contract up to the point at which the total amount paid and payable by Buyer under the Contract approximates but does not exceed the total amount actually allotted by Buyer to the Contract.
- C. The Contractor shall notify Buyer in writing whenever it has reason to believe that the costs it expects to incur under this Contract 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 Contract by Buyer or, (2) if this is a cost-sharing contract, the amount then allotted to the Contract by Buyer plus the Contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.



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- D. Sixty days before the end of the period specified in the Schedule, the Contractor shall notify Buyer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the Contract or for any further period specified in the Schedule 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 Schedule or another agreed-upon date, upon the Contractor's written request Buyer will terminate this Contract on that date in accordance with the provisions of the Termination Clause of this Contract. If the Contractor 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 Buyer may terminate this Contract on that later date.
- F. Except as required by other provisions of this Contract, specifically citing and stated to be an exception to this Clause:
 - 1. Buyer is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by Buyer to this Contract; and
 - 2. The Contractor is not obligated to continue performance under this Contract (including actions under the Termination Clause of this Contract) or otherwise incur costs in excess of (1) the amount then allotted to the Contract by Buyer or, (2) if this is a cost-sharing contract, the amount then allotted by Buyer to the Contract plus the Contractor's corresponding share, until Buyer notifies the Contractor in writing that the amount allotted by Buyer has been increased and specifies an increased amount, which shall then constitute the total amount allotted by Buyer to this Contract.
- G. The estimated cost shall be increased to the extent that (1) the amount allotted by Buyer or, (2) if this is a cost-sharing contract, the amount then allotted by Buyer to the Contract plus the Contractor's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.
- H. No notice, communication, or representation in any form other than that specified in subparagraph F. 2. above, or from any person other than Buyer, shall affect the amount allotted by Buyer to this Contract. In the absence of the specified notice, Buyer is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by Buyer to this Contract, whether incurred during the course of the Contract or as a result of termination.
- I. When and to the extent that the amount allotted by Buyer to the Contract is increased, any costs the Contractor incurs before the increase that are in excess of (1) the amount previously allotted by Buyer or, (2) if this is a cost-sharing contract, the amount previously allotted by Buyer to the Contract plus the Contractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless Buyer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.



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- J. Change orders shall not be considered an authorization to exceed the amount allotted by Buyer specified in the Schedule, unless they contain a statement increasing the amount allotted.
- K. Nothing in this Clause shall affect the right of Buyer to terminate this Contract. If this Contract is terminated, Buyer and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the Contract, based upon the share of costs incurred by each.
- L. If Buyer does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the Schedule equaling the percentage of completion of the work contemplated by this Contract.

FAR 52.233-3, PROTEST AFTER AWARD (AUG 1996) ALTERNATE I (JUN 1985)

- A. Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor 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. Upon receipt of the final decision in the protest, the Contracting Officer 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 contract.
- B. If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer 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 contract that may be affected, and the contract shall be modified, in writing, accordingly, if—
 - 1. The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - 2. The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.



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- C. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer 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, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- E. The Government's rights to terminate this contract at any time are not affected by action taken under this clause.
- F. If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

FAR 52.242-1, NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)

- A. Notwithstanding any other clause of this Contract:
 - 1. Buyer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this Contract that have been determined not to be allowable under the Contract terms; and
 - 2. The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to Buyer, with justification for allowance of the costs. If the Contractor does respond within 60 days, Buyer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.
- B. Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect Buyer's rights to take exception to incurred costs.

FAR 52.242-3 PENALTIES FOR UNALLOWABLE COSTS (MAY 2001)

- A. *Definition.* "Proposal," as used in this clause, means either --
 - 1. A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which --
 - a. Relates to any payment made on the basis of billing rates; or



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- b. Will be used in negotiating the final contract price; or
 - c. The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.
- B. Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. 256, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR).
- C. The Contractor shall not include in any proposal any cost that is unallowable, as defined in Subpart 2.1 of the FAR, or an executive agency supplement to the FAR.
- D. If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to --
 - 1. The amount of the disallowed cost allocated to this contract; plus
 - 2. Simple interest, to be computed --
 - a. On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and
 - b. Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).
- E. If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.
- F. Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, *et seq.*).
- G. Pursuant to the criteria in FAR 42.709-5, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.
- H. Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Buyer of any unallowable cost which has been paid by the Buyer to the Contractor.

FAR 52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)

- A. The Contractor shall --



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1. Certify any proposal to establish or modify final indirect cost rates;
 2. Use the format in paragraph (c) of this clause to certify; and
 3. Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.
- B. Failure by the Contractor to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the Contracting Officer.
- C. The certificate of final indirect costs shall read as follows:

Certificate of Final Indirect Costs

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and
2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

FAR 52.242-15, STOP WORK ORDER (AUG 1989)- ALTERNATE I (APR 1984)

- A. The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor 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 Contractor, 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 Contractor 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 is delivered to the



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Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer 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 contract.
- B. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer 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 contract that may be affected, and the contract shall be modified, in writing, accordingly, if—
1. The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 2. The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- C. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer 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, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

FAR 52.243-2, CHANGES—COST-REIMBURSEMENT (AUG 1987) ALTERNATE II (APR 1984)

- A. The Buyer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Contract 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.



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4. Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Buyer in accordance with the drawings, designs, or specifications.
 5. Method of shipment or packing of supplies.
 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 Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Buyer 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 Contract accordingly.
- C. The Contractor must assert its right to an adjustment under this Clause within 30 days from the date of receipt of the written order. However, if the Buyer decides that the facts justify it, the Buyer may receive and act upon a proposal submitted before final payment of the Contract.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes Clause. However, nothing in this Clause shall excuse the Contractor from proceeding with the Contract as changed.
- E. Notwithstanding the terms and conditions of paragraphs A. and B. above, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new Contract estimated cost and, if this Contract is incrementally funded, the new amount allotted to the Contract. Until this modification is made, the Contractor 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 Contract.

NOTE: Alternate II (APR 1984). If the requirement is for services and supplies are to be furnished, substitute the following paragraph (A) for paragraph (A) of the basic clause:

- A. The Buyer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Contract 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 Buyer or the Buyer in accordance with the drawings, designs, or specifications.



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5. Method of shipment or packing of supplies.
6. Place of delivery.

FAR 52.244-2 SUBCONTRACTS (OCT 2010) ALT I (JUN 2007)

- A. *Definitions.* As used in this clause—
1. “Approved purchasing system” means a Contractor’s purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).
 2. “Consent to subcontract” means the Contracting Officer’s written consent for the Contractor to enter into a particular subcontract.
 3. “Subcontract” means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.
- B. When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.
- C. If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that—
1. Is of the cost-reimbursement, time-and-materials, or labor-hour type; or
 2. Is fixed-price and exceeds—
 - a. For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or
 - b. For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.
- D. If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer’s written consent before placing the following subcontracts:
1. _____
 2. _____



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3. _____
- E. (1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:
 1. A description of the supplies or services to be subcontracted.
 2. Identification of the type of subcontract to be used.
 3. Identification of the proposed subcontractor.
 4. The proposed subcontract price.
 5. The subcontractor's current, complete, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
 6. The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
 7. A negotiation memorandum reflecting—
 - a. The principal elements of the subcontract price negotiations;
 - b. The most significant considerations controlling establishment of initial or revised prices;
 - c. The reason certified cost or pricing data were or were not required;
 - d. The extent, if any, to which the Contractor did not rely on the subcontractor's certified cost or pricing data in determining the price objective and in negotiating the final price;
 - e. The extent to which it was recognized in the negotiation that the subcontractor's certified cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
 - f. The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
 - g. A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.



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(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (b), (c), or (d) of this clause.

- F. Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination—
 - 1. Of the acceptability of any subcontract terms or conditions;
 - 2. Of the allowability of any cost under this contract; or
 - 3. To relieve the Contractor of any responsibility for performing this contract.
- G. No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).
- H. The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.
- I. The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.
- J. Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:
 - 1. _____
 - 2. _____
 - 3. _____

FAR 52.246-3, INSPECTION OF SUPPLIES – COST-REIMBURSEMENT (MAY 2001)

- A. *Definitions.* As used in this clause--

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

- 1. All or substantially all of the Contractor's business;



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2. All or substantially all of the Contractor's operation at a plant or separate location where the contract is being performed; or
3. A separate and complete major industrial operation connected with performing this Contract.

"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 Contractor shall provide and maintain an inspection system acceptable to the Buyer covering the supplies, fabricating methods, and special tooling under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Buyer during contract performance and for as long afterwards as the contract requires.
- C. The Buyer has the right to inspect and test the contract supplies, to the extent practicable at all places and times, including the period of manufacture, and in any event before acceptance. The Buyer may also inspect the plant or plants of the Contractor or any subcontractor engaged in the contract performance. The Buyer shall perform inspections and tests in a manner that will not unduly delay the work.
- D. If the Buyer performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- E. Unless otherwise specified in the contract, the Buyer 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 Contract performance, but no later than 6 months (or such other time as may be specified in the contract) after acceptance of the supplies to be delivered under the contract, the Buyer may require the Contractor 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) below, 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 Contractor 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. If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the Buyer may --
 1. By contract or otherwise, perform the replacement or correction and charge to the Contractor any increased cost or make an equitable reduction in any fixed fee paid or payable under the contract;



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2. Require delivery of undelivered supplies at an equitable reduction in any fixed fee paid or payable under the contract; or
3. Terminate the contract for default.

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

- H. Notwithstanding paragraphs (F) and (G) above, the Buyer may at any time require the Contractor to correct or replace, without cost to the Buyer, nonconforming supplies, if the nonconformance are due to --
1. Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or
 2. The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor'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 Contractor shall have no obligation or liability under this contract 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 contract.
- K. Except as otherwise specified in the contract, the Contractor's obligation to correct or replace Buyer-furnished property shall be governed by the clause pertaining to Buyer property.

FAR 52.246-5, INSPECTION OF SERVICES – COST –REIMBURSEMENT (APR 1984)

- A. *Definition.* "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.
- B. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- C. The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.



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- D. If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may—
 - 1. Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
 - 2. Reduce any fee payable under the contract to reflect the reduced value of the services performed.
- i. If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government 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 contract for default.

FAR 52.249-6 TERMINATION (COST-REIMBURSEMENT) (MAY 2004)

- A. The Buyer may terminate performance of work under this contract in whole or, from time to time, in part, if --
 - 1. The Contracting Officer determines that a termination is in the Buyer's interest; or
 - 2. The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- B. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Buyer, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor'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 Contractor 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 the Buyer.
- C. After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor 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.



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2. Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
3. Terminate all subcontracts to the extent they relate to the work terminated.
4. Assign to the Buyer, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Buyer 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 the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
6. Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Buyer --
 - a. The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
 - b. The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Buyer; and
 - c. The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
7. Complete performance of the work not terminated.
8. Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Buyer has or may acquire an interest.
9. Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c)(6) of this clause; provided, however, that the Contractor
 - a. Is not required to extend credit to any purchaser and
 - b. May acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer.



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The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Buyer under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

- D. The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor 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 Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Buyer to remove those items or enter into an agreement for their storage. Within 15 days, the Buyer will accept the items and remove them or enter into a storage agreement. The Contracting Officer 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 Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- G. Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.
- H. If the Contractor and the Contracting Officer 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, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:
 - 1. All costs reimbursable under this contract, not previously paid, for the performance of this contract 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 the Contracting Officer; however, the Contractor 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 contract if not included in subparagraph (h)(1) of this clause.



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3. The reasonable costs of settlement of the work terminated, including --
 - a. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - b. The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - c. 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 Contractor's termination settlement proposal may be included.
4. A portion of the fee payable under the contract, determined as follows:
 - a. If the contract is terminated for the convenience of the Buyer, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.
 - b. If the contract 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 the Buyer is to the total number of articles (or amount of services) of a like kind required by the contract.
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, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause. The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor 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 the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Buyer shall pay the Contractor --
 1. The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or
 2. The amount finally determined on an appeal.
- J. In arriving at the amount due the Contractor under this clause, there shall be deducted -



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1. All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;
 2. Any claim which the Buyer has against the Contractor under this contract; and
 3. The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Buyer.
- K. The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.
- L. The Buyer may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Buyer 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 Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor'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 the Contracting Officer because of the circumstances.

- M. The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

FAR 52.249-14, EXCUSABLE DELAYS (APR 1984)

- A. Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. 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 Contractor. "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 Contractor



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and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless—

1. The subcontracted supplies or services were obtainable from other sources;
 2. The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and
 3. The Contractor failed to comply reasonably with this order.
- C. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer 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 the Government under the termination clause of this contract.

952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (AUG 2009)

- A. The Contractor shall take advantage of travel discounts offered to Federal Contractor employee travelers by AMTRAK, hotels, motels, or car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available. Vendors providing these services may require the Contractor employee to furnish them a letter of identification signed by the authorized Contracting Officer.
- B. Contracted airlines. Contractors are not eligible for GSA contract city pair fares.
- C. Discount rail service. AMTRAK voluntarily offers discounts to Federal travelers on official business and sometimes extends those discounts to Federal contractor employees.
- D. Hotels/motels. Many lodging providers extend their discount rates for Federal employees to Federal contractor employees.
- E. Car rentals. Surface Deployment and Distribution Command (SDDC) of the Department of Defense negotiates rate agreements with car rental companies that are available to Federal travelers on official business. Some car rental companies extend those discounts to Federal contractor employees.
- F. Obtaining travel discounts.
 - (1) To determine which vendors offer discounts to Government contractors, the Contractor may review commercial publications such as the Official Airline guides Official Traveler, Innovata, or National Telecommunications. The Contractor may



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also obtain this information from GSA contract Travel Management Centers or the Department of Defense's Commercial Travel Offices.

- (2) The vendor providing the service may require the Government contractor to furnish a letter signed by the Contracting Officer. The following illustrates a standard letter of identification:

OFFICIAL AGENCY LETTERHEAD

TO: Participating Vendor

SUBJECT: OFFICIAL TRAVEL OF GOVERNMENT CONTRACTOR

(FULL NAME OF TRAVELER), the bearer of this letter is an employee of (COMPANY NAME) which has a contract with this agency under Government contract (CONTRACT NUMBER). During the period of the contract (GIVE DATES), AND WITH THE APPROVAL OF THE CONTRACT VENDOR, the employee is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors.

SIGNATURE, Title and telephone number of Contracting Officer