

The provisions of these Supplemental Cost Reimbursement Terms and Conditions are in addition to the General Provisions incorporated by reference elsewhere into the Contract (or such other terms as may be agreed upon by the parties in lieu of the General Provisions). In the event of a conflict between these provisions and the General Provisions, these provisions shall control.

1. ALLOWABLE COST, FEE AND PAYMENT

- A. For all Work performed under this Contract, Company shall pay Seller, subject to limitations elsewhere provided:
- (1.) Seller's Allowable Costs incurred in performing such Work, to the extent such costs are accepted by Company and, if this Contract is issued under a prime contract or subcontract of the United States Government, by an authorized official of the U.S.; and
 - (2.) the fee, if any, provided for this Contract.
- B. Once each month (or more frequently, if approved in writing by Company), Seller may submit to Company an invoice covering:
- (1.) Allowable Costs incurred by Seller in the performance of this Contract and claimed to constitute Allowable Costs, and
 - (2.) any fee Seller is authorized by this Contract to include in such invoice.
- Each invoice shall contain such information and be supported by such details and documents as Company may reasonably prescribe and shall be subject to the requirements of the Seller's Invoices and Claims clause, below.
- C. For all purposes of this Contract, the allowability of Seller costs shall be determined pursuant to the terms of this Contract and Part 31 of the Federal Acquisition Regulations (Title 48 of the Code of Federal Regulations or "FAR") as in effect on the date this Contract was issued by Company. The costs determined in accordance with the preceding sentence are referred to herein as "Allowable Costs".
- (1.) For the purpose of determining costs that may be allowable, except as provided in subparagraph C.(2.) below with respect to pension, deferred profit sharing, and employee stock ownership plan contributions, the term "Costs" includes only:
 - a. Those recorded costs, at the time of the request for reimbursement, Seller has paid by cash, check, or other form of actual payment for Goods or services purchased directly for this Contract.
 - b. The amount of financing progress payments that have been paid by cash, check or other forms of payment the Seller has paid its subcontractors under standards conforming to this Contract.
 - c. When Seller is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:
 - (i.) Work purchased directly for the Contract and associated financing payments to subcontractors, provided payments determined due will be made—
 - (1) In accordance with the terms and conditions of a subcontract or invoice; and
 - (2) Ordinarily within 30 days or prior to the submission of Seller's payment request to the Government;
 - (ii.) Materials issued from Seller's inventory and placed in the production process for use on this Contract;
 - (iii.) Direct labor;
 - (iv.) Direct travel;
 - (v.) Other direct in-house costs; and
 - (vi.) Properly allocable and allowable indirect costs, as shown in the records maintained by the Seller for purposes of obtaining reimbursement under Government contracts in accordance with this Contract.
 - (2.) Accrued costs of Seller contributions to any pension, profit-sharing, or employee stock ownership plan funds shall be excluded until actually paid unless:
 - a. Seller's practice is to make contributions to such funds quarterly or more frequently; and
 - b. The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from Seller's indirect costs for payment purposes).
- D. Company may withhold from any payment to Seller any amounts that are determined by Company (or an authorized representative of the United States Government if this Contract is issued under a prime contract or subcontract of the U.S.) to be for costs or fee not allowable under this Contract. Upon request by Company, Seller shall repay to Company any amounts so determined not to be allowable. However, to the extent to which the amount so disallowed is the result of Work authorized by Company, but not by the Government, Seller shall not be required to repay to Company the costs that are otherwise reimbursable under this Contract, but were disallowed by the Government.
- E. Seller shall maintain an accounting system adequate to provide full and detailed books and records sufficient to support all amounts claimed as Allowable Costs under this Contract and to prove compliance with all cost

accounting requirements of this Contract. Seller shall maintain those records for the longer of (a) four (4) years after final payment by Company under this Contract or (b) the retention period established by any applicable statute or regulation. At any time, including after final payment, Company (or an authorized representative of the U.S. Government if this Contract is issued under a prime contract or subcontract of the U.S.) may audit any invoice submitted by Seller and may review all books and records that this Clause requires or that bear on the costs covered by such invoice.

- F. Final annual indirect cost rates and the appropriate bases shall be determined in accordance with Subpart 42.7 of the FAR in effect at the start of the period covered by the indirect cost rate proposal of Seller. The rates and bases shall be deemed incorporated into this Contract upon execution, provided rates and bases shall not change any monetary ceiling, contract obligation, or specific costs allowance or disallowance provided for in this Contract. The final annual indirect cost rate approved for Seller by the cognizant official of the U.S. Government for billings to U.S. agencies shall be used for this Contract, with the following limitation. Until final annual indirect cost rates are established for any period, Company shall reimburse Seller at billing rates determined by Company; to assist Company in setting such rates, Seller shall furnish Company with full details about provisional and final billing rates that the cognizant official of the United States Government has authorized be paid by the U.S. Government to Seller. The billing rates shall be no higher than the anticipated final rates payable under this Contract, and may be prospectively or retroactively revised by mutual agreement, at either party's request, or unilaterally by Company, to prevent substantial underpayment or overpayment.
- G. Within a reasonable time, Company shall pay Seller on each invoice the Allowable Costs determined in accordance with this Contract. Payment of the fee, if any, shall be made to the Seller in the manner stated on the face of this Contract. If there is no such statement, Seller may include in each invoice a percentage of the total fee payable under this Contract equaling the percentage of the Work contemplated by this Contract that Seller has completed, adjusted to reflect prior fee payments. Notwithstanding the preceding sentence, after payment of eighty-five percent (85%) of the fee set forth in this Contract, Company may withhold further payment of fee until a reserve shall have been created in an amount that Company considers necessary to protect Company's interests, but such reserve may not exceed fifteen percent (15%) of the total fee (or, if the fee is not fixed, of Company's reasonable estimate thereof), or \$100,000, whichever is less. If this Contract does not provide for the payment of fee, then Company may, after payment of eighty percent (80%) of the Estimated Cost of this Contract, withhold payments to Seller until Company has created a reserve of the lesser of two percent (2%) of such Estimated Cost or \$100,000.
- H. After receiving and approving the invoice designated by Seller as the "completion invoice" for final payment and after full performance of this Contract (including, without limitation, the provisions related to patents), Company shall pay Seller any balance of Allowable Cost, and any part of the fee not earlier paid. Seller shall submit such "completion invoice" promptly following completion of the Work under this order and in any event not later than six months after such completion. The completion invoice must reflect settled final annual indirect cost rates for all years of a fully performed contract. Prior to or with submission of such "completion invoice", Seller shall furnish Company in writing:
- (1.) An assignment to Company or Company's customer, in form and substance satisfactory to Company, of refunds, rebates, credits, or other amounts (including interest, if any) that are allocable to costs for which Seller has been reimbursed by Company under this Contract.
 - (2.) A release discharging Company, its officers, agents and employees from all liabilities, obligations, and claims arising out of or under this Contract, subject only to the following exceptions.
 - a. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by Seller.
 - b. Claims, together with reasonable expenses incidental thereto, based upon liabilities of Seller to third parties arising out of the performance of this Contract, which claims are not known to Seller by the date of the execution of the release. Seller must give notice of such claims in writing to Company not more than four years after the release date or notice of final payment date, whichever is earlier.
 - c. Claims for reimbursement of costs (other than expenses of Seller by reason of any indemnification of Company or Company's customer against liability for patent, trademark, or copyright infringement), including reasonable expenses incidental thereto, incurred by Seller under the provisions of this Contract.
- I. Seller shall promptly pay to Company the amount of any refunds, rebates, credits or other amounts (including any interest received by Company thereon); accruing to or received by Seller to the extent they are properly allocable to costs for which Seller has been reimbursed by Company under this Contract. Reasonable expenses incurred by Seller for the purpose of securing such refunds, rebates, credits or other amounts shall be deemed to be Allowable Costs under this Contract when approved by Company.

J. Any statement about the performance or furnishing of materials at the Seller's expense or at no cost to Company shall not be read as meaning that the Seller is not entitled to reimbursement under this Clause, unless this Contract, in a provision expressly referring to this clause, states that Seller will not be reimbursed.

2. SELLER'S INVOICES AND CLAIMS

By virtue of its submission to Company, each invoice or claim from Seller shall be deemed to include a warranty by Seller that all amounts claimed by Seller are due and proper, and Company shall have, in addition to any other rights under this Contract, a right of action against Seller for any breach of that warranty. Upon request by Company, Seller shall certify any of Seller's invoices or claims in writing, in such terms, and with such signatures, as Company may prescribe, and Company may ignore any such invoice or claim not so certified.

3. COMPANY'S SECURITY INTEREST

Subject to any paramount interest that a Company Customer may have, Seller grants to Company a security interest in all material, tooling, equipment, supplies, parts, fittings, accessories, renewals, and replacements the costs of which are in whole or part included on invoices submitted to Company under this Contract. Seller may not permit any other security interest inconsistent with the foregoing. Company may file such documents as Company deems necessary to protect its security interest. Seller hereby grants Company an irrevocable power of attorney to execute any such documents on behalf of Seller.

4. OVERTIME PREMIUMS

A. Allowable Costs under the Allowable Cost, Fee, and Payment clause, shall not include any amount for overtime premiums except as specified on the face of this Contract or for Work—

- (1.) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or unavoidable 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 cost to Company.

B. Before performing any Work involving overtime premiums, except as specified in paragraph A., Seller shall request Company's written permission. Seller's request shall be in writing 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 Company to evaluate the necessity for the overtime;
- (2.) Demonstrate the effect that denial of the request will have on the delivery or performance schedule of this Contract;
- (3.) Identify the extent to which approval of overtime would affect the performance or payments in connection with other orders of Company or Company's customer, together with identification of each affected order; and
- (4.) Provide reasons why the required Work cannot be performed by multishift operations or by additional personnel.

5. LIMITATION OF COST OR FUNDS

A. If this Contract is fully funded, paragraphs A.(1.) through A.(7.) of this Clause apply:

- (1.) The parties estimate that performance of this Contract, exclusive of any fee, will not cost Company more than the Estimated Cost set out in this Contract. Seller shall use its best efforts to perform the Work and all of its obligations under this Contract within the Estimated Cost.
- (2.) Seller shall promptly notify the Company Buyer in writing whenever it has reason to believe that (a) the costs that Seller expects to incur performing this Contract in the next sixty (60) days, when added to all cost previously incurred, will exceed 75% of the Estimated Cost, or (b) the total cost for performing this Contract, exclusive of any fee, will be either greater or substantially less than the Estimated Cost. As part of such notification, Seller shall provide a revised estimate of the total costs of performing this Contract.
- (3.) Except as required by some other provision of this Contract, specifically citing and stated to be an exception to this Clause, (i) Company shall not be obligated to reimburse Seller for costs exceeding the Estimated Cost of this Contract, and (ii) Seller shall have no obligation to continue performance or incur costs under this Contract (including actions under a termination clause) in excess of the Estimated Cost unless Company notifies Seller in writing that the Estimated Cost has been increased and provides a revised Estimated Cost.

- (4.) No notice, communication or representation in any form other than that specified in paragraph A.(3.) above, or signed by anyone other than the Company Buyer responsible for administration of this Contract, shall alter this Contract's Estimated Cost. Absent such notice, Company is not obligated to reimburse Seller for any costs in excess of the Estimated Cost, whether such costs are incurred for performance of this Contract or as a result of termination.
 - (5.) If the Estimated Cost is increased, any costs Seller incurs before the increase that exceed the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless Company issues a notice directing that the increase is solely to cover termination or other specified expenses.
 - (6.) A change order (or any other action constituting a change under the Changes clause) shall not be considered an authorization to exceed the Estimated Cost, except to the extent that it explicitly states that the Estimated Cost increased.
 - (7.) Nothing in this Clause shall affect the right of Company to terminate this Contract. If this Contract is terminated or the Estimated Cost is not increased, Seller and Company shall negotiate an equitable distribution of all properly produced or purchased under the Contract, based upon the share of costs incurred by each. Absent agreement, Company may unilaterally determine such an equitable distribution. Seller shall have, as to such a determination, the rights set out in the Disputes clause.
- B. If this Contract is incrementally funded, paragraphs B.(1.) through B.(12.) of this Clause apply:
- (1.) The parties estimate that performance of this Contract will not cost Company more than the Estimated Cost set out in this Contract. Seller shall use its best efforts to perform the Work and all its obligations under this Contract within the Estimated Cost.
 - (2.) This Contract specifies the amount presently available for payment by Company funding for this Contract, the items covered, and the period of performance. The parties contemplate that Company will incrementally fund additional sums for this Contract up to the Estimated Cost, exclusive of any fee. Seller agrees to perform the Work on this Contract up to the point at which the total amount paid and payable by Company under this Contract approximates but does not exceed the total amount actually funded by Company for this Contract.
 - (3.) Seller shall promptly notify the Company Buyer in writing whenever it has reason to believe that the costs that Seller expects to incur performing this Contract in the next sixty (60) days, when added to all cost previously incurred, will exceed 75% of the total amount funded. As part of such notification, Seller shall state the estimated amount of additional funds required to continue performance for the period specified.
 - (4.) At least ninety (90) days before the end of the period specified, Seller shall notify the Company Buyer in writing of the estimated amount of additional funds, if any, required to continue timely performance, or for any further period specified in this Contract or otherwise agreed upon, and when the funds will be required.
 - (5.) If after notification by Seller, Company does not fund additional sums by the end of the period specified in the Contract, or another agreed-upon date, Company will upon Seller's written request, terminate this Contract as of that date in accordance with a termination clause. If Seller estimates that the funds available will allow it to continue to discharge its obligations beyond that date, Seller may specify a later date in its request, and Company may terminate this contract as of that later date.
 - (6.) Except as required by some other provision of this Contract, specifically citing and stated to be an exception to this Clause, (i) Company shall not be obligated to reimburse Seller for costs exceeding the total amount funded by Company for this Contract, and (ii) Seller shall have no obligation to continue performance or to incur costs under this Contract (including actions under a termination clause) in excess of the amount funded for this Contract by Company.
 - (7.) If Company funds an amount exceeding the Estimated Cost, the latter shall be increased to the total of the amount funded by Company.
 - (8.) No notice, communication or representation in any form other than that specified in paragraph B.(6.) above, or signed by anyone other than the Company Buyer responsible for administration of this Contract, shall alter the amount funded to this Contract. Absent such notice, Company is not obligated to reimburse Seller for any costs in excess of the amount funded to this Contract, whether such costs are incurred for performance of this Contract or as a result of termination.
 - (9.) When and to the extent that the amount funded by Company to this Contract is increased, any costs Seller incurs before the increase that exceed the amount previously funded by Company shall be allowable to the same extent as if incurred afterward, unless Company issues a notice directing that the increase is solely to cover termination or other specified expenses.
 - (10.) A change order (or any other action constituting a change under the Changes clause) shall not be considered an authorization to exceed the amount funded except to the extent that it explicitly states that the amount funded is increased.

(11.) Nothing in this Clause shall affect the right of Company to terminate this Contract. If this Contract is terminated, Seller and Company shall negotiate an equitable distribution of all property produced or purchased under the Contract, based upon the share of costs incurred by each. Absent agreement, Company may unilaterally determine such an equitable distribution. Seller shall have, as to such a determination, the rights set out in the Clause entitled Disputes.

(12.) If Company does not fund this Contract in an amount sufficient to allow completion of the Work, Seller is entitled to a percentage of the fee specified in this Contract equaling the percentage of the Work contemplated by this Contract the Seller has completed.

6. SUBCONTRACTS

- A. Seller shall not subcontract for all or substantially all of the Work ordered hereunder without Company's prior written consent. This limitation shall not apply to Seller's purchases of standard commercial supplies or raw material.
- B. No subcontract placed under this Contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

7. CHANGES – COST REIMBURSEMENT

- A. This clause supplements the Changes clause in the General Provisions. If inconsistent in part with this clause, this Clause shall govern.
- B. If any change under the Changes clause causes an increase or decrease in the Estimated Cost of the performance of any part of the Work under this Contract, Company shall make an Equitable Adjustment to the amount of any fee based on an increase or decrease in the Work required. Fee will not be adjusted for an increase or decrease in costs not associated with a corresponding increase or decrease in Work. A change under the Changes clause that causes an increase or decrease in the Work under this Contract, shall result in an Equitable Adjustment to the Target Cost of an incentive contract, thereby adjusting fee in accordance with the terms of the incentive.
- C. Seller shall use its best efforts to submit written suggestions for changes that might significantly decrease the cost or performance time of this Contract without impairing the suitability of the Goods or services for their intended purpose. Any such suggestion that Company, in its sole discretion, determines has merit may be made the subject of a change under this Clause.