



**TERMS AND CONDITIONS – GOVERNMENT
SPECIAL TERMS AND CONDITIONS – COST REIMBURSEMENT (CR)
ATTACHMENT FOR COST REIMBURSEMENT SUBCONTRACTS**

ALLOWABLE DIRECT COSTS

Buyer shall reimburse Seller its allowable direct costs consistent with the terms of the cost-reimbursement Subcontract. Allowable direct costs shall be limited to the following:

- (a) Those recorded costs that, at the time of the request for reimbursement, Seller has paid by cash, check, electronic funds transfer, or other form of actual payment for items or services purchased directly for this Subcontract.
- (b) When Seller is not delinquent in paying costs of its performance under this Subcontract in the ordinary course of business, those recorded costs incurred, but not necessarily paid, for the following:
 - (1) Materials issued from Seller's inventory and placed in the production process for use on this Subcontract;
 - (2) Direct labor;
 - (3) Direct travel (subject to the limits set forth in this Subcontract);
 - (4) Other direct in-house costs; and
 - (5) Properly allocable and allowable indirect costs, as shown in the records maintained by Seller for purposes of obtaining reimbursement under government contracts.
- (c) The amounts determined to be allowable by Buyer or Buyer's Customer in accordance with Federal Acquisition Regulation (FAR) subpart 31.2, in effect on the date of this Subcontract, and the other terms of this Subcontract.
- (d) The amount of progress or finance payments that have been paid to Seller's subcontractors under similar cost standards.

The costs of Seller procured counterfeit electronic parts, suspect counterfeit electronic parts and the costs of rework or corrective action that may be required to remedy the use or inclusion of such parts are unallowable.

ALLOWABLE INDIRECT COSTS

- (a) Final Indirect Cost Rates. Buyer shall reimburse Seller on the basis of final annual indirect cost rates and the appropriate bases established by Seller and the Government in effect for the period covered by the indirect cost rate proposal. Such rates and bases shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this Subcontract. The rates and bases shall be deemed incorporated into this Subcontract upon execution.
- (b) Billing Rates. Pending establishment of final indirect rates for any period, Seller shall be reimbursed at billing rates approved by the cognizant government agency, which shall be Seller's anticipated final rates. Billing rates may be prospectively or retroactively revised from time to time subject to such approval and subject to appropriate adjustment when the final rates for that period are established.
- (c) Contributions. Seller's contributions to any pension, 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 Seller pays the contribution to the fund within 30 calendar 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 Seller 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 Seller actually makes the payment.

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AUDIT

In addition to any audit rights set forth in the General Terms of this Agreement, Buyer, Buyer’s Customer, and/or the Government may audit Seller’s invoices and statements of cost at any time. Any payment may be reduced by amounts found not to constitute allowable costs or adjusted for prior overpayments or underpayments. Additionally, in the event that Seller is audited by Buyer’s Customer or the Government, Buyer shall have the right to review the audit results as they pertain to this Subcontract.

CLOSEOUT ACTIONS AND REPORTS

(a) Quick Closeout. Seller agrees that, if requested by Buyer, the Quick Closeout procedure authorized by FAR 42.708, modified as appropriate for any deadline stated in the Prime Contract, shall be the basis for closing this Subcontract. Seller shall return the Quick Closeout Questionnaire, as provided to Seller by Buyer, within thirty (30) days after the date of Buyer’s request.

(b) Unilateral Closeout. Pursuant to and consistent with the provisions of FAR Clauses 42.705 and 52.216-7, unilateral closeout will occur in the event Seller fails to submit the closeout information required by Buyer within sixty (60) days of the expiration date of this Subcontract unless such failure is due to:

- (1) the Government’s pending settlement of Seller’s final indirect rates and Buyer has not requested Quick Closeout as per paragraph (a) above; or
- (2) an extenuating circumstance as agreed upon in writing by Buyer and Seller. Such failure shall constitute Seller’s express agreement that: (i) the amounts paid pursuant to this Subcontract, as applicable up to the date Seller’s submissions are due as set forth herein and as determined by Buyer, constitute the full, complete, and final extent of Buyer’s financial obligation to Seller; and (ii) Seller does forever fully and finally remise, release, and discharge Buyer, its officers, agents, and employees, of and from any and all liabilities, obligations, claims, and demands whatsoever arising under or relating to this Subcontract, and Seller expressly authorizes Buyer to rely on the foregoing representations and release in connection with Buyer’s closeout of or other actions taken with respect to the Buyer’s Prime Contract.

(c) Refunds, Rebates, and Credits. Seller shall pay to Buyer any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by Seller or any assignee under this Subcontract to the extent that those amounts are properly allocable to costs for which Seller has been reimbursed by Buyer. Reasonable expenses incurred by Seller for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by Buyer.

FEE

Buyer shall pay Seller the fee as specified in the Subcontract, if any fee is included. No fee shall be paid if not specified in the Subcontract.

- (a) Fixed Fee:
 - (1) If applicable, Buyer shall pay Seller for performing this Subcontract the fixed fee specified in the Subcontract.
 - (2) Payment of the fixed fee shall be made as specified in the Subcontract; provided, that after payment of eighty-five percent (85%) of 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 fifteen percent (15%) of the total fixed fee or \$100,000, whichever is less.
- (b) Incentive Fee: If applicable, Buyer shall pay Seller for performing this Subcontract an incentive fee determined as follows:

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(1) Target Cost and Target Fee. The Target Cost and Target Fee specified in the Subcontract are subject to adjustment if the Subcontract is modified in accordance with subparagraph (b)(3) of this clause. “Target Cost,” as used in this Subcontract, means the estimated cost of this Subcontract as initially negotiated, adjusted in accordance with paragraph (b)(4) of this clause. “Target Fee,” as used in this Subcontract, means the fee initially negotiated on the assumption that this Subcontract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with subparagraph (b)(3) of this clause.

(2) Withholding of payment. Normally, Buyer shall pay the fee to Seller as specified in the Schedule. However, when Buyer considers that performance or cost indicates that Seller will not achieve target, Buyer may pay, at the sole discretion of Buyer, on the basis of an appropriate lesser fee. When Seller demonstrates that performance or cost clearly indicates that Seller 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 eighty-five percent (85%) 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 Buyer’s interest. This reserve shall not exceed fifteen percent (15%) of the applicable fee or \$100,000, whichever is less.

(3) Equitable adjustments. When the Work under this Subcontract is increased or decreased by a modification to this Subcontract 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 Subcontract.

(4) Fee payable.

(i) The fee shall be subject to adjustment, to the extent provided in subparagraph (b)(3) 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 FAR 52.216-7, Allowable Cost and Payment.

(ii) If this Order 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 Subcontract.

(iii) 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 “Force Majeure/Excusable Delay” section of the Subcontract to the extent that they are beyond the control and without the fault or negligence of Seller or any subcontractor of Seller;

(B) The taking effect, after negotiating the Target Cost, of a statute, court decision, written ruling, or regulation that results in Seller’s being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;

(C) Any claim, loss, or damage resulting from a risk for which the Seller has been relieved of liability by the “Furnished Property” section of the Subcontract.

(iv) All other allowable costs are included in “total allowable cost” for fee adjustment in accordance with this paragraph (4), unless otherwise specifically provided in this Subcontract or FAR 52.216-10.

(5) Subcontract modification. The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to this Subcontract signed by Seller and Buyer.

(c) Award Fee: The Award Fee criteria, if applicable, are contained in the face of the Subcontract.

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FINAL INVOICE

Within sixty (60) days of completion of all Work specified in the Subcontract, Seller shall submit a final invoice, designated as such. This is the FINAL invoice, which was prepared using final audited rates.

Before payment of a final invoice, Seller shall:

- (a) Assign to Buyer all refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which Seller has been reimbursed by Buyer under this Subcontract;
- (b) Release Buyer, its directors, officers, agents, and employees from all liabilities, obligations, and claims arising from or related to this Agreement, except for specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known.

Upon approval of Seller’s final invoice, and Seller’s compliance with all terms of this Subcontract, Buyer shall promptly pay the balance of allowable costs and that part of the fee (if any) not previously paid. In no event will payment be made until an acceptable final invoice and all required closeout information has been received.

ROUTINE INVOICES

Seller's invoices for cost reimbursement Subcontracts shall comply with the following rules in addition to the provisions of the General Terms and Conditions.

All invoices shall be accompanied by satisfactory supporting documentation, which may include, but is not necessarily limited to, detailed expense reports for travel, materials, and other direct costs, and receipts for expenses. Travel expenses incurred must be accompanied by receipts. Additionally, all lodging expenses must be accompanied by receipts and itemized by the date and destination of each trip. The invoice shall include only allowable costs consistent with these Terms and Conditions and FAR 52.216-17.

If the Subcontract requires labor-hour reporting, Seller’s invoice shall include, in addition to the foregoing documentation, a breakdown of labor provided during the invoice period. The labor breakdown shall include the number of hours worked by each labor category/personnel, the applicable hourly rate, and the total labor charge for each category/personnel. These invoices shall include the following signed certification:

By submission of this invoice, Seller certifies that all labor charges identified in this invoice were performed by named individual(s) or personnel that met all requirements, including but not limited to, the education and experience requirements of specified labor classifications applicable to the Subcontract.

Invoices that do not contain the requisite information, including, if applicable, the above certification, will be returned unpaid to Seller for revision.

SETOFF

Each payment made shall be subject to reduction to the extent of amounts which are found by Buyer or Buyer’s Customer not to be properly payable. Seller shall promptly notify Buyer of any overpayments and remit the overpayment amount to Buyer along with a description of the overpayment, including the circumstances of the overpayment and the affected Subcontract line item or subline item if applicable. Buyer may withhold, deduct, and/or setoff all money due, or which may become due, from Buyer arising out of Seller’s performance under this Subcontract or any other transaction between Buyer and Seller.

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Seller shall pay to Buyer any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by Seller, to the extent that those amounts are properly allocable to costs for which Seller has been reimbursed by Buyer. Reasonable expenses incurred by Seller for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by Buyer.

TERMINATION FOR CONVENIENCE

(a) Termination for Convenience of the Buyer. Buyer may terminate this Subcontract, or any part hereof, for its convenience at any time and without cause. Upon notice from Buyer of such termination, Seller shall immediately stop all work terminated hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease such work. Seller shall be reimbursed its actual incurred and allowable cost not previously paid and incurred prior to the effective date of termination in accordance with the Payment terms of this Subcontract. The Seller will also be reimbursed those allowable costs that may continue for a reasonable period of time after the termination that result from the termination, provided Seller received approval to incur the cost from the Buyer. Seller shall endeavor to mitigate these continuing costs and ensure incurrence is discontinued as rapidly as practicable. Seller shall be paid a percentage of the fee payable under the Subcontract equal to the percentage of completion of work contemplated under the Subcontract, but excluding and lower tier subcontract effort included in such lower tier subcontractor termination proposals, less previous payments for fee. Any amount found to be due to Seller under this clause is subject to adjustment by the Buyer for any claims, offsets, unliquidated advance or other payments, or any other basis for adjustment relating to Seller's performance of work under this Subcontract or any other contract between Buyer and Seller.

(b) Termination for Convenience of Buyer's Customer. Buyer may terminate this Subcontract upon written notice to the Seller in the event Buyer's Prime Contract is terminated for convenience, in whole or in part, by Buyer's Customer. In the event Buyer's Customer terminates for convenience the Prime Contract, or a portion of the Prime Contract relating to the work of the Seller, Buyer will issue a termination notice to Seller and Seller shall comply with the following requirements:

- (1) Stop work as specified in the termination notice;
- (2) Place no further lower-tier subcontracts or orders, except as necessary to complete the continued portion of the Subcontract;
- (3) Terminate all subcontracts to the extent that they relate to the work terminated;
- (4) Assign to Buyer, as directed by the Subcontract Manager, all right, title, and interest of the Seller under the lower-tier 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 Buyer, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts, the cost of which would be reimbursable in whole or in part, under this Subcontract (approval or ratification will be final for purposes of this clause);
- (6) As direct by Buyer, transfer title and deliver to Buyer:
 - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated,
 - (ii) The completed or partially completed plans, drawings, information, and other property that, if the Subcontract had been completed, would be required to be furnished to the Buyer, and

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(iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this Subcontract, the cost of which the Seller has been or will be reimbursed under this Subcontract.

(7) Complete performance of the work not terminated;

(8) Take any action that may be necessary or that Buyer may direct, for the protection and preservation of the property related to this Subcontract that is in the possession of Seller and in which Buyer has or may acquire an interest;

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

(10) Submit complete termination inventory schedules no later than 30 days from the effective date of termination and a termination settlement proposal within 90 days from the effective date of the termination. The Buyer and Seller may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The Subcontract shall be modified in a supplemental agreement and the Seller will be paid the agreed upon amount. If the Buyer and Seller 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 Buyer may determine, on the basis of the information available, the amount, if any, due to the Seller, and shall pay that amount which will include those costs and fee, if applicable, as specified in FAR 52.249-6(h)(1)-(5), (k), and (l). Should the parties fail to reach agreement on the amount payable under this clause, the disagreement will be a dispute and the parties will proceed in accordance with the Disputes clause in this Subcontract. As a condition precedent to Seller's recovery of payment, Buyer must first obtain payment from Buyer's Customer (i.e., Seller may recover against Buyer only to the extent that Buyer is paid by Buyer's Customer for Seller's termination settlement proposal) and Seller bears the risk of Buyer's Customer's nonpayment.

TRAVEL EXPENSES

If travel is authorized as a part of this Subcontract, reimbursement of travel-related costs shall be subject to U.S. General Service Administration ("GSA") Federal Travel Regulation ("FTR") chapter 301 for any authorized travel relating to the business purposes of this Subcontract.

All claims for travel expenses must be accompanied by a detailed summary report indicating the purpose for which the expense was incurred, where it was incurred, and when it was incurred. Meals and Incidental Expenses ("M&IE") and Lodging Per Diem Expenses, if approved, shall be reimbursed in accordance with FAR 31.205-46 at the applicable United States government rate found at www.gsa.gov/portal/content/104877 in effect at the time the expenses were incurred. Meals that are provided by Buyer must be deducted at the appropriate GSA amount for that meal. Amounts incurred for lodging and meals that exceed the applicable federal per diem will not be reimbursed.

Only coach-class air travel will be allowable and reimbursable, unless another category of air travel has been approved in writing in accordance with this section. Travel expenses related to personal use, entertainment, or that ultimately benefit the individual are not reimbursed. Seller shall not be reimbursed for normal commuting time to and from work locations.

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