Subpart 49.6 - Contract Termination Forms and Formats

Parent topic: Part 49 - Termination of Contracts

49.601 Notice of termination for convenience.

(See 49.402-3(g) for notice of *termination for default*.)

49.601-1 Electronic notice.

The *contracting officer may* provide expedited notice of termination by electronic means that includes a requirement for the contractor to confirm receipt. If the contractor does not confirm receipt promptly, the *contracting officer shall* resend the notice electronically, and expedite the letter notice described in 49.601-2. If confirmation of the electronic notice is received, and the electronic notice includes all content in 49.601-2, the *contracting officer* need not send the letter notice described in 49.601-2.

(a) *Complete termination:* The following electronic notice is suggested for use if a supply contract is being completely terminated for convenience. If appropriately modified, the notice *may* be used for other than supply contracts.

Date _____

XYZ Corporation New York, NY 12345

Contract No. _____ is completely terminated under clause _____, effective _____ [*insert* "immediately, (*today's date*)" *or* "on _____, 20_____," *or* "as soon as you have delivered, including prior deliveries, the following items:" (*list*)]. Immediately stop all work, terminate subcontracts, and place no further orders except to the extent [*insert if applicable* "necessary to complete items not terminated or"] that you or a subcontractor wish to retain and continue for your own account any work-in-process or other materials. Provide by electronic means similar instructions to all subcontractors and suppliers. Detailed instructions follow.

_____

(*Contracting Officer*)

(b) *Partial termination:*The following electronic notice is suggested for use if a supply contract is being partially terminated for convenience. If appropriately modified, the notice *may* be used for other than supply contracts.

Date _____

XYZ Corporation New York, NY 12345

Contract No._____ is partially terminated under clause _____, effective _____ [*insert* "immediately, (*today's date*)" *or* "on _____, 20____"]. Reduce items to be delivered as

follows: [*insert instructions*]. Immediately stop all work, terminate subcontracts, and place no further orders except as necessary to perform the portion not terminated or that you or a subcontractor wish to retain and continue for your account any work-in-process or other materials. Provide by electronic means similar instructions to all subcontractors and suppliers. Detailed instructions follow.

_____

(*Contracting Officer*)

49.601-2 Letter notice.

The following letter notice of termination is suggested for use if a contract for *supplies* is being terminated for convenience. With appropriate modifications, it *may* be used in terminating contracts for other than *supplies* and in terminating subcontracts. This notice *shall* be sent by certified mail, return receipt requested, or electronically, provided evidence of receipt is received by the *contracting officer*. If no prior electronic notice was issued, or if no confirmation of an electronic notice was received, use the *alternate* notice that follows this notice.

Notice of Termination to Prime Contractors

[*At the top of the notice, set out all special details relating to the particular termination; e.g.,name and address of company, contract number of terminated contract, line items, etc.]*

(a) *Effective date of termination.* This confirms the Government's electronic notice to you dated _____, 20_____, terminating _____ [*insert* "completely" *or* "in part"] Contract No._____ (referred to as "the contract") for the Government's convenience under the clause entitled _____ [*insert title of appropriate termination clause*]. The termination is effective on the date and in the manner stated in the electronic notice.

(b) *Cessation of work and notification to immediate subcontractors.* You *shall* take the following steps:

(1) Stop all work, make no further *shipments*, and place no further orders relating to the contract, except for-

(i) The *continued portion of the contract*, if any;

(ii) Work-in-process or other materials that you *may* wish to retain for your own account; or

(iii) Work-in-process that the *Contracting Officer* authorizes you to continue (A) for safety precautions, (B)to clear or avoid damage to equipment, (C)to avoid immediate complete spoilage of work-in-process having a definite commercial value, or (D)to prevent any other undue loss to the Government. (If you believe this authorization is necessary or advisable, immediately notify the *Contracting Officer* by telephone or personal conference and obtain instructions.)

(2) Keep adequate records of your compliance with paragraph (b)(1) of this section showing the-

(i) Date you received the Notice of Termination;

(ii) Effective date of the termination; and

(iii) Extent of completion of performance on the effective date.

(3) Furnish notice of termination to each immediate subcontractor and supplier that will be affected by this termination. In the notice-

(i) Specify your Government contract number;

(ii) State whether the contract has been terminated completely or partially;

(iii) Provide instructions to stop all work, make no further *shipments*, place no further orders, and terminate all subcontracts under the contract, subject to the exceptions in paragraph (b)(1) of this section;

(iv) Provide instructions to submit any *settlement proposal* promptly; and

(v) Request that similar notices and instructions be given to its immediate subcontractors.

(4) Notify the *Contracting Officer* of all pending legal proceedings that are based on subcontracts or *purchase orders* under the contract, or in which a lien has been or *may* be placed against *termination inventory* to be reported to the Government. Also, promptly notify the *Contracting Officer* of any such proceedings that are filed after receipt of this Notice.

(5) Take any other action required by the *Contracting Officer* or under the Termination clause in the contract.

(c) *Termination inventory.*(1)As instructed by the *Contracting Officer*, transfer title and deliver to the Government all *termination inventory* of the following types or classes, including subcontractor *termination inventory* that you have the right to take: [*Contracting Officer insert proper identification or* "None"].

(2) To settle your proposal, it will be necessary to establish that all prime and subcontractor *termination inventory* has been properly accounted for. For detailed information, see part 45.

(d) *Settlements with subcontractors.* You remain liable to your subcontractors and suppliers for proposals arising because of the termination of their subcontracts or orders. You are requested to settle these *settlement proposals* as promptly as possible. For purposes of reimbursement by the Government, settlements will be governed by the provisions of part 49.

(e) *Completed end items.*(1) Notify the *Contracting Officer* of the number of items completed under the contract and still on hand and arrange for their delivery or other disposal (see 49.205).

(2) *Invoice* acceptable completed end items under the contract in the usual way and do not include them in the *settlement proposal*.

(f) *Patents.* If required by the contract, promptly forward the following to the *Contracting Officer*:

(1) Disclosure of all inventions, discoveries, and patent applications made in the performance of the contract.

(2) Instruments of license or assignment on all inventions, discoveries, and patent applications made in the performance of the contract.

(g) *Employees affected.*(1)If this termination, together with other outstanding terminations, will necessitate a significant reduction in your work force, you are urged to-

(i) Promptly inform the local State Employment Service of your reduction-in-force schedule in numbers and occupations, so that the Service can take timely action in assisting displaced workers;

(ii) Give affected employees maximum practical advance notice of the employment reduction and inform them of the facilities and services available to them through the local State Employment Service offices;

(iii) Advise affected employees to file applications with the State Employment Service to qualify for unemployment *insurance*, if necessary;

(iv) Inform officials of local unions having agreements with you of the impending reduction-in-force; and

(v) Inform the local Chamber of Commerce and other appropriate organizations which are prepared to *offer* practical assistance in finding employment for displaced workers of the impending reduction-in-force.

(2) If practicable, urge subcontractors to take similar actions to those described in paragraph (1) of this section.

(h) *Administrative.* The *contract administration office* named in the contract will identify the *Contracting Officer* who will be in charge of the settlement of this termination and who will, upon request, provide the necessary settlement forms. Matters not covered by this notice *should* be brought to the attention of the undersigned.

(i) Please acknowledge receipt of this notice as provided below.

_____ (*Contracting Officer*)

_____ _____
(Name of Office)

_____ (Address)

Acknowledgment of Notice

The undersigned acknowledges receipt of a signed copy of this notice on _____, 20____. Two signed copies of this notice are returned.

_____ (Name of Contractor)

By _____ (Name)

_____ (Title)

(End of notice)

Alternate notice. Substitute the following paragraph (a) for paragraph (a) of 49.601-2, Notice of Termination to Prime Contractors, if no prior electronic notice was issued, or if no confirmation of an electronic notice was received:

(a) *Effective date of termination*. You are notified that Contract No. _____ (referred to as "the contract") is terminated _____ [*insert* "completely" *or* "in part"] for the Government's convenience under the clause entitled _____[*insert title of appropriate termination clause*].

The termination is effective _____ [*insert either* "immediately upon receipt of this Notice" *or* "on _____, 20____," *or* "as soon as you have delivered, including prior deliveries, the following items:" (*list*)]. Reduce items to be delivered as follows: [*insert instructions*].

49.602 Forms for settlement of terminated contracts.

The standard forms listed below *shall* be used for settling terminated prime contracts. The forms at 49.602-1 and 49.601-2 *may* also be used for settling terminated subcontracts. A listing of the Standard forms is located in subpart 53.3.

49.602-1 Termination settlement proposal forms.

(a) Standard Form 1435, *Settlement Proposal* (Inventory Basis), *shall* be used to submit *settlement proposals* resulting from the termination of fixed-price contracts if the proposals are computed on an inventory basis (see 49.206-2(a)).

(b) Standard Form 1436, *Settlement Proposal* (Total Cost Basis), *shall* be used to submit *settlement proposals* resulting from the termination of fixed-price contracts if the proposals are computed on a total cost basis (see 49.206-2(b)).

(c) Standard Form 1437, *Settlement Proposal* for Cost- Reimbursement Type Contracts, *shall* be used to submit *settlement proposals* resulting from the termination of cost-reimbursement contracts (see 49.302).

(d) Standard Form 1438, *Settlement Proposal* (Short Form), *shall* be used to submit *settlement proposals* resulting from the termination of fixed-price contracts if the total proposal is less than $10,000 (see 49.206-1(d)).

49.602-2 Inventory forms.

Standard Form (SF) 1428, Inventory Disposal Schedule, and SF 1429, Inventory Disposal Schedule-Continuation Sheet, *shall* be used to support *settlement proposals* submitted on the forms specified in 49.602-1(b) and (d).

49.602-3 Schedule of accounting information.

Standard Form 1439, Schedule of Accounting Information, *shall* be filed in support of a *settlement proposal* unless the proposal is filed on Standard Form 1438, *Settlement Proposal* (Short Form) (see 49.206-1(e)).

49.602-4 Partial payments.

Standard Form 1440, Application for Partial Payment, *shall* be used to apply for partial payments (see 49.112-1).

49.602-5 Settlement agreement.

Standard Form30 (SF 30), Amendment of *Solicitation*/Modification of Contract, *shall* be used to execute a *settlement agreement* (see 49.109-1).

49.603 Formats for termination for convenience settlement agreements.

The formats to be used for *termination for convenience settlement agreements should* be substantially as shown in this section (see 49.109). Termination *contracting officers* (TCO's) *may*, however, modify the contents of these agreements to conform with special termination clauses prescribed or authorized by their agencies (*e.g.,* see 49.501 and 49.505(c)).

49.603-1 Fixed price contracts-complete termination.

[*Insert the following in Block 14 of SF 30 for settlements of fixed-price contracts completely terminated*.]

(a) This *supplemental agreement* settles the *settlement proposal* resulting from the Notice of Termination dated _____.

(b) The parties agree to the following:

(1) The Contractor certifies that all contract *termination inventory* (including *scrap*) has been retained or acquired by the contractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits have been used in arriving at this agreement.

(2) The Contractor certifies that each immediate subcontractor, whose *settlement proposal* is included in the proposal settled by this agreement, has furnished the contractor a certificate stating-

(i) That all subcontract *termination inventory* (including *scrap*) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the government, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract, and

(ii) That the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.

(3) The contractor certifies that all items of *termination inventory*, the costs of which were used in arriving at the amount of this settlement or the settlement of any subcontract *settlement proposal* included in this settlement, (i) are properly allocable to the *terminated portion of the contract*, (ii)do not exceed the reasonable quantitative requirements of the *terminated portion of the contract*, and (iii)do not include any items reasonably usable without loss to the Contractor on its *other work*. The Contractor further certifies that the *Contracting Officer* has been informed of any substantial change in the status of the items between the dates of the *termination inventory* schedules and the date of this agreement.

(4) The Contractor transfers, conveys, and assigns to the Government all the right, title, and interest, if any, that the Contractor has received, or is entitled to receive, in and to subcontract *termination inventory* not otherwise properly accounted for.

(5) The Contractor *shall*, within 10 days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and, if the Contractor so elects, any amounts due and payable to the Contractor by those subcontractors.

(6)(i) The Contractor has received $_____ for work and services performed, or items delivered, under the completed portion of the contract. The Government confirms the right of the Contractor, subject to paragraph (7) of this section, to retain this sum and agrees that it constitutes a portion of the total amount to which the Contractor is entitled in complete and final settlement of the contract.

(ii) Further, the Government agrees to pay to the Contractor or its assignee, upon presentation of a *proper invoice* or voucher, the sum of $_____ [*insert net amount of settlement*], arrived at by deducting from the sum of $_____ [*for proposals on an inventory basis insert gross amount of settlement; for proposals on a total cost basis, insert gross amount of settlement less amount shown in subdivision(6)(i) of this sub-section*]-

(A) The amount of $_____ for all unliquidated partial or progress payments previously made to the Contractor or its assignee and all unliquidated advance payments (with any interest),

(B) The amount of $_____ for all applicable property disposal credits [*insert if appropriate,* "and (C) the amount of $____ for all other amounts due the Government under this contract, except as provided in paragraph (7) of this section."]

(iii) The net settlement of $____ in subdivision(ii)of this section, together with sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor for the complete termination of the contract and all other demands and liabilities of the Contractor and the Government under the contract, except as provided in paragraph (b)(7) of this section.

(7) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: [*The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated (see 49.109-2). The suggested language of the excepted items on the list may be varied at the discretion of the contracting officer. If accuracy or completeness can be achieved by referencing the number of a contract clause or provision covering the matter in question, then follow that method of enumerating reserved rights and liabilities. Omit any of the following that are not applicable and add any additional exceptions or reservations required*.]

(i) All rights and liabilities, if any, of the parties, as to matters covered by any renegotiation authority.

(ii) All rights of the Government to take the benefit of agreements or judgments affecting royalties paid or payable in connection with the performance of the contract.

(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, and employment of aliens. [*If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive orders, the suggested language should be*

appropriately modified.]

(iv) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.

(v) All rights and liabilities of the parties, arising under the contract or otherwise, and concerning defects, guarantees, or *warranties* relating to any articles or *component* parts furnished to the Government by the Contractor under the contract or this agreement.

(vi) All rights and liabilities of the parties under the contract relating to any contract *termination inventory* stored for the Government.

(vii) All rights and liabilities of the parties under agreements relating to the future care and disposition by the Contractor of Government-owned property remaining in the Contractor's custody.

(viii) All rights and liabilities of the parties relating to Government property furnished to the Contractor for the performance of this contract.

(ix) All rights and liabilities of the parties under the contract relating to *options* (except *options* to continue or increase the work under the contract), covenants not to compete, and covenants of indemnity.

(x) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective *certified cost or pricing data*.

(End of agreement)

49.603-2 Fixed-price contracts-partial termination.

[*Insert the following in Block14 of SF 30 for settlements of fixed-price contracts partially terminated*.]

(a) This *supplemental agreement* settles the *settlement proposal* resulting from the Notice of Termination dated _____.

(b) The parties agree to the following:

(1) The *terminated portion of the contract* is as follows: [*specify the terminated portion clearly as to-*

(i) *Line item numbers*,

(ii) Descriptions,

(iii) Quantity terminated,

(iv) Unit price of items,

(v) Total price of terminated items, and

(vi) *Any other explanation necessary to avoid uncertainty or misunderstanding*].

(2) The Contractor certifies that all contract *termination inventory* (including *scrap*) has been retained or acquired by the Contractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits have been used in arriving at this agreement.

(3) The Contractor certifies that each immediate subcontractor, whose *settlement proposal* is included in the proposal settled by this agreement, has furnished the Contractor a certificate stating-

(i) That all subcontract *termination inventory* (including *scrap*) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract, and

(ii) That the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.

(4) The Contractor certifies that all items of *termination inventory*, the costs of which were used in arriving at the amount of this settlement or the settlement of any subcontract *settlement proposal* included in this settlement, (i) are properly allocable to the *terminated portion of the contract*, (ii)do not exceed the reasonable quantitative requirements of the *terminated portion of the contract*, and (iii)do not include any items reasonably usable without loss to the Contractor on its *other work*. The Contractor further certifies that the *Contracting Officer* has been informed of any substantial change in the status of the items between the dates of the *termination inventory* schedules and the date of this agreement.

(5) The Contractor transfers, conveys, and assigns to the Government all the right, title, and interest, if any, that the Contractor has received, or is entitled to receive, in and to subcontract *termination inventory* not otherwise properly accounted for.

(6) The Contractor *shall*, within 10 days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and, if the Contractor so elects, any amounts due and payable to the Contractor by those subcontractors.

(7)(i) The Government agrees to pay to the Contractor or its assignee, upon presentation of a *proper invoice* or voucher, the sum of $_____ [*insert net amount of settlement*], arrived at by deducting from $_____ [*insert gross amount of settlement*],

(A) the amount of $____ for all unliquidated partial or progress payments previously made to the Contractor or its assignee and all unliquidated advance payments (with any interest) applicable to the *terminated portion of the contract* and

(B) the amount of $_____ for all applicable property disposal credits.

(ii) The net settlement of $_____ in subdivision (b)(7)(i) of this section, together with sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor for the *terminated portion of the contract*, except as provided in paragraph (b)(8) of this section.

(iii) Upon payment of the net settlement of $_____, all obligations of the Contractor to perform further work or services or to make further deliveries under the *terminated portion of the contract* and all obligations of the Government to take further payments or carry out other undertakings concerning the *terminated portion of the contract shall* cease; provided, that nothing in this

agreement *shall* impair or affect any covenants, terms, or conditions of the contract relating to the completed or continued portion of this contract.

(8) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: [*The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated (see 49.109-2). The suggested language of the excepted items in the list may be varied at the discretion of the contracting officer. If accuracy or completeness can be achieved by referencing the number of a contract clause or provision covering the matter in question, then follow that method of enumerating reserved rights and liabilities. Omit any of the following that are not applicable and add any additional exceptions or reservations required*.]

(i) All rights and liabilities, if any, of the parties, as to matters covered by any renegotiation authority.

(ii) All rights of the Government to take the benefit of agreements or judgments affecting royalties paid or payable in connection with the performance of the contract.

(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, and employment of aliens. [*If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive orders, the suggested language should be appropriately modified*.]

(iv) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.

(v) All rights and liabilities of the parties, arising under the contract or otherwise, and concerning defects, guarantees, or *warranties* relating to any articles or *component* parts furnished to the government by the Contractor under the contract or this agreement.

(vi) All rights and liabilities of the parties under the contract relating to any contract *termination inventory* stored for the Government.

(vii) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective *certified cost or pricing data*.

(End of agreement)

49.603-3 Cost reimbursement contracts-complete termination, if settlement includes cost.

[*Insert the following in Block 14 of SF 30 for settlement of cost-reimbursement contracts that are completely terminated, if settlement includes costs.*]

(a) This *supplemental agreement* settles the *settlement proposal* resulting from the Notice of Termination dated _____.

(b) The parties agree to the following:

(1) The Contractor certifies that all contract *termination inventory* (including *scrap*) has been retained or acquired by the Contractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits have been used in arriving at this agreement.

(2) The Contractor certifies that each immediate subcontractor, whose *settlement proposal* is included in the proposal settled by this agreement, has furnished the Contractor a certificate stating-

(i) That all subcontract *termination inventory* (including *scrap*) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract; and

(ii) That the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.

(3) The Contractor certifies that all items of *termination inventory*, the costs of which were used in arriving at the amount of this settlement or he settlement of any subcontract *settlement proposal* included in this settlement, (i) are properly allocable to the *terminated portion of the contract*, (ii) do not exceed the reasonable quantitative requirements of the *terminated portion of the contract*, and (iii) do not include any items reasonably usable without loss to the Contractor on its *other work*. The Contractor further certifies that the *Contracting Officer* has been informed of any substantial change in the status of the items between the dates of the *termination inventory* schedules and the date of this agreement.

(4) The Contractor transfers, conveys, and assigns to the Government all the right, title and interest, if any, that the Contractor has received, or is entitled to receive, in and to subcontract *termination inventory* not otherwise properly accounted for.

(5) The Contractor *shall*, within 10 days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and, if the Contractor so elects, any amounts due and payable to the Contractor by those subcontractors.

(6)(i) The Contractor has received $_____ for work and services performed, or articles delivered, under the contract before the *effective date of termination*. The Government confirms the right of the Contractor, subject to paragraph (b)(7) of this section, to retain this sum and agrees that it constitutes a portion of the total amount to which the Contractor is entitled in complete and final settlement of the contract.

(ii) Further, the Government agrees to pay to the Contractor or its assignee, upon presentation of a *proper invoice* or voucher, the sum of $_____ [*insert net amount of settlement*], arrived at by deducting from the sum of $___ [*insert gross amount of settlement less amount shown in subdivision(6)(i) a of this section*]-

(A) The amount of $___ for all unliquidated partial or progress payments previously made to the Contractor or its assignee and all unliquidated advance payments (with any interest),

(B) The amount of $___ for all applicable property disposal credits [*insert if appropriate,* "and (C) the amount of $___ for all other amounts due the Government under this contract, except as provided in paragraph (b)(7) of this section."]

(iii) The net settlement of $_____ in subdivision (b)(6)(ii) of this section, together with sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor for the complete termination of the contract and of all other demands and liabilities of the Contractor and the Government under the contract, except as provided in paragraph (b)(7) in this section.

(7) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: [*The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated (see 49.109-2). The suggested language of the excepted items on the list may be varied at the discretion of the contracting officer. If accuracy or completeness can be achieved by referencing the number of a contract clause or provision covering the matter in question, then follow that method of enumerating reserved rights and liabilities. Omit any of the following that are not applicable and add any additional exceptions or reservations required*.]

(i) All rights and liabilities, if any, of the parties, as to matters covered by any renegotiation authority.

(ii) All rights of the Government to take the benefit of agreements or judgments affecting royalties paid or payable in connection with the performance of the contract.

(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, and employment of aliens. [*If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive orders, the suggested language should be appropriately modified*.]

(iv) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.

(v) All rights and liabilities of the parties, arising under the contract or otherwise, and concerning defects, guarantees, or *warranties* relating to any articles or *component* parts furnished to the Government by the Contractor under the contract or this agreement.

(vi) All rights and liabilities of the parties under the contract relating to any contract *termination inventory* stored for the Government.

(vii) All rights and liabilities of the parties under agreements relating to the future care and disposition by the Contractor of Government-owned property remaining in the Contractor’s custody.

(viii) All rights and liabilities of the parties relating to Government property furnished to the Contractor for the performance of this contract.

(ix) All rights and liabilities of the parties under the contract relating to *options* (except *options* to continue or increase the work under the contract), covenants not to compete, and covenants of indemnity.

(x) Unresolved demands or assertions by the Contractor against the Government for costs under Government Accountability Office exceptions or other costs of the same nature that are excluded

from the settlement without prejudice to the rights of either party, as follows: [*Insert amount and describe charges not waived*.]

(xi) *Claims* by the Contractor against the Government, when the Contractor's rights of reimbursement are disputed, that are excluded without prejudice to the rights of either party are as follows: [*Insert the amounts and describe the claims on which the Contracting Officer has made findings and has disallowed and on which the Contractor has taken, or intends to take, timely appeal*.]

(xii) Unresolved demands or assertions by the Contractor against the Government that are unknown in amount and involve costs alleged to be reimbursable under the contract are as follows: [*Insert the estimated amounts and describe the charges*.]

(xiii) Unknown amounts alleged by the Contractor against the Government, based upon responsibility of the Contractor to third parties that involve costs reimbursable under the contract.

(xiv) Debts due the Government by the Contractor that are based on refunds, rebates, credits, or other amounts not now known to the Government, with interest, now due or that *may* become due the Contractor from third parties, if the amounts arise out of transactions for which reimbursement has been made to the Contractor under the contract. The Contractor *shall* pay to the Government, within 30 days after receipt, any of these amounts that become due from any third party or any other source. Interest at the rate established by the Secretary of the Treasury under 50 U.S.C. (App.) 1215(b)(2) *shall* accrue and *shall* be paid to the Government on any amounts that remain unpaid after the 30-*day* period.

(xv) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective *certified cost or pricing data*.

(End of agreement)

49.603-4 Cost-reimbursement contracts-complete termination, with settlement limited to fee.

[*Insert the following in Block 14 of SF 30 for settlement of cost-reimbursement contracts that are completely terminated, if settlement is limited to fee*.]

(a) This *supplemental agreement* settles the amount of fee due under the contract, terminated in its entirety by Notice of Termination dated _____.

(b) The parties agree to the following:

(1) The Contractor has received $_____ on account of its fee under the contract before the *effective date of termination*.

(2) The Government agrees to pay to the Contractor or its assignee, upon presentation of a *proper invoice* or voucher, $_____ [*insert net amount to be paid on account of fee*]. This sum, with sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor on account of its fee under the contract.

(3) The Contractor's allowable costs under the contract will be paid under the terms and conditions of the contract and parts 31 and 49 of the Federal *Acquisition* Regulation. [*Insert paragraph (a)(3)*

of this subsection only if there are costs to be vouchered out (see 49.302) or if there are costs to be covered later by a separate settlement agreement.]

(4) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: [*The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated (see 49.109-2). The suggested language of the excepted items on the list may be varied at the discretion of the contracting officer. If accuracy or completeness can be achieved by referencing the number of a contract clause or provision covering the matter in question, then follow that method of enumerating reserved rights and liabilities. Omit any of the following that are not applicable and add any additional exceptions or reservations required*.]

(i) All rights and liabilities, if any, of the parties, as to matters covered by any renegotiation authority.

(ii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, and employment of aliens. [*If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive orders, the suggested language should be appropriately modified*.]

(iii) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.

(iv) All rights and liabilities of the parties, arising under the contract or otherwise, and concerning defects, guarantees, or *warranties* relating to any articles or *component* parts furnished to the Government by the Contractor under the contract or this agreement.

(v) All rights and liabilities of the parties under agreements relating to the future care and disposition by the Contractor of Government-owned property remaining in the Contractor’s custody.

(vi) All rights and liabilities of the parties relating to Government property furnished to, or acquired by, the Contractor for the performance of the contract.

(vii) All rights and liabilities of the parties under the contract relating to *options* (except *options* to continue or increase the work under the contract), covenants not to compete, and covenants of indemnity.

(viii) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective *certified cost or pricing data*.

(End of agreement)

49.603-5 Cost-reimbursement contracts-partial termination.

[*Insert the following in Block 14 of SF 30, Amendment of Solicitation/Modification of Contract, for settlement agreements for cost-reimbursement contracts as a result of partial termination*.]

(a) This *supplemental agreement* settles the termination *settlement proposal* resulting from the Notice of Termination dated _____.

(b) The parties agree as follows:

(1) The contract is amended by deleting the terminated portion as follows: [*specify the terminated portion clearly as to-*

(i) *Line item numbers,*

(ii) Descriptions,

(iii) Quantity terminated,

(iv) Unit and total price of terminated items, and

(v) *Any other explanation necessary to avoid uncertainty or misunderstanding*].

(2) The fee stated in the contract is decreased by $____, from $____ to $____ [*Insert, if appropriate,*"(3) The estimated cost of the contract is decreased by $____, from $____ to $____"].

(c) The Contractor's allowable costs and earned fee, if any, for the *terminated portion of the contract* will continue to be reimbursed on SF 1034, Public Voucher for Purchase and Services Other Than Personal, under the applicable provisions of the contract and part 31 of the Federal *Acquisition* Regulation.

(End of agreement)

49.603-6 No-cost settlement agreement-complete termination.

[*Insert the following in Block 14 of SF 30 if a no-cost settlement agreement, under a complete termination, is to be executed.*]

(a) This *supplemental agreement* [*insert* "modifies the contract to reflect a no-cost *settlement agreement* with respect to the Notice of Termination dated ____" *or, if not previously terminated,* "terminates the contract in its entirety"].

(b) The parties agree as follows:

The Contractor unconditionally waives any charges against the Government because of the termination of the contract and, except as set forth below, releases it from all obligations under the contract or due to its termination. The Government agrees that all obligations under the contract are concluded, except as follows: [*List reserved or excepted rights and liabilities. See 49.109-2 and 49.603-1(b)(7).*]

(End of agreement)

49.603-7 No-cost settlement agreement-partial termination.

[*Insert the following in Block 14 of SF 30 if a no-cost settlement agreement, under partial*

termination, is to executed.]

(a) This *supplemental agreement* modifies the contract to reflect a no-cost *settlement agreement* with respect to the Notice of Termination dated ____.

(b) The parties agree as follows:

(1) The *terminated portion of the contract* is as follows: [*Specify*-

(i) *Line item numbers*,

(ii) descriptions,

(iii) quantity terminated,

(iv) unit and total price of terminated items, and

(v) *any other explanation necessary to avoid uncertainty or misunderstanding*.]

(2) The Contractor unconditionally waives any charges against the Government arising under the *terminated portion of the contract* or by reason of its termination, including, without limitation, all obligations of the Government to make further payments or to carry out any further undertakings under the *terminated portion of the contract*. The Government acknowledges that the Contractor has no obligation to perform further work or services or to make further deliveries under the *terminated portion of the contract*. Nothing in this paragraph affects any other covenants, terms, or conditions of the contract. Under the *terminated portion of the contract*, the following rights and liabilities of the parties are reserved: [*List reserved or excepted rights and liabilities. See 49.109-2 and 49.603-1(b)(7)*.]

(End of agreement)

49.603-8 Fixed-price contracts-settlements with subcontractors only.

[*Insert the following in Block 14 of SF 30 for settlements of fixed-price contracts covering only settlements with subcontractors*.]

(a) This agreement settles that portion of the *settlement proposal* of the contractor that is based upon termination of the following subcontracts entered into in performing this contract: [*Insert a list of the terminated subcontracts included in this settlement*.]

(b) The parties agree to the following:

(1) The Contractor certifies that each immediate subcontractor, whose *settlement proposal* is included in the proposal settled by the agreement, has furnished the Contractor a certificate stating-

(i) That all subcontract *termination inventory* (including *scrap*) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract, and

(ii) That the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.

(2) The Contractor certifies that all items of *termination inventory*, the costs of which were used in arriving at the amount of this settlement or the settlement of any subcontract *settlement proposal* included in this settlement,-

(i) Are properly allocable to the *terminated portion of the contract*,

(ii) Do not exceed the reasonable quantitative requirements of the *terminated portion of the contract*, and

(iii) Do not include any items reasonably usable without loss to the Contractor on its *other work*. The Contractor further certifies that the *Contracting Officer* has been informed of any substantial change in the status of the items between the dates of the *termination inventory* schedules and the date of this agreement.

(3) The Contractor transfers, conveys, and assigns to the Government all the right, title, and interest, if any, that the Contractor has received or is entitled to receive, in and to subcontract *termination inventory* not otherwise properly accounted for.

(4) The Contractor *shall*, within 10 days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and, if the Contractor so elects, any amounts due and payable to the Contractor by those subcontractors.

(5) The Government agrees to pay the Contractor or its assignee, upon presentation of a *proper invoice* or voucher, $____ [*insert net amount of settlement*], which, together with the amount of $____ previously paid the Contractor as partial, progress, or advance payments, constitutes payment in full and complete settlement, except as provided in paragraph (b)(6) of this section, of the amount due the Contractor for that portion of its *settlement proposal* that is based upon termination of the subcontracts listed above.

(6) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: [*List reserved or excepted rights and liabilities. See 49.109-2 and 49.603-1(b)(7).*]

(End of agreement)

49.603-9 Settlement of reservations.

[*Insert the following in Block14 of SF 30 for settlement of reservations.*]

(a) *Supplemental Agreement* No. ____, dated ____, was executed to reflect the settlement of the termination of this contract. The *supplemental agreement* excepted from the settlement certain items described in the agreement including the items described in paragraph (b) of this section. This *supplemental agreement* settles those items listed in paragraph (b) of this section.

(b) The parties agree to the following:

(1) The Government agrees to pay the contractor $_____ for the following reserved or excepted items:* [*List items.*]

(2) The Contractor releases and forever discharges the Government from all liability and from all existing and future *claims* and demands that it *may* have under this contract, insofar as it pertains to

the contract, for the items described in paragraph (1) of this section.*

**When payment is due the Government, reverse the words "Government" and "contractor" in paragraphs (b)(1) and (b)(2).*

(End of agreement)

49.604 Release of excess funds under terminated contracts.

The following format *shall* be used to recommend the release of excess funds under terminated contracts, except if the *contracting office* retains responsibility for settlement of the termination:

: Termination *Contracting Officer* _____ [address]

To: *Contracting office* _____[address]

Subj: Terminated Contract No _____ with _____ [Contractor]

Refs:

(a) [*Cite termination notice and effective date.*]

(b) [*Cite prior letters releasing excess funds, if any.*]

(1) Referenced termination notice, ____ [*insert* "completely" *or* "partially"] terminated contract _____.

(2) Based on the best information available, it is estimated that the gross settlement cost will be $_____ The amount available for release as excess to the contract is $___. Any payments previously made to the Contractor for terminated items have been considered in arriving at the above amounts.

[*If prior letters recommending release of excess funds are cited, use the following as paragraph 2:*

The estimated settlement costs previously reported by reference (b) in the amount of $____ are revised. On the best evidence now available, it is estimated that the settlement costs will be $___ The additional amount available for release is $_____.]

(3) The related appropriations and amounts involved are:

Appropriations	**Allocated Amounts**
_____	_____
_____	_____

Copies to: Paying Office Accounting and Finance Office Other

49.605 Request to settle subcontractor settlement proposals.

Contractors requesting authority to settle subcontractor *settlement proposals shall* furnish applicable information from the list below and any additional information required by the *contracting officer*:

(a) Name of contractor and address of principal office.

(b) Name and location of divisions of the applicant's plant for which authorization is requested.

(c) An explanation of the necessity and justification for the authorization requested.

(d) A full description of the applicant's organization for handling terminations, including the names of the officials in charge of processing and settling proposals.

(e) The number and dollar amount (estimated if necessary) of uncompleted contracts with Government agencies and the percentage applicable to each agency.

(f) The number and dollar amount (estimated if necessary) of uncompleted subcontracts under Government contracts and the percentage applicable to each agency.

(g) The extent of the applicant's experience in termination matters, including the handling of proposals of subcontractors.

(h) The approximate amount and general nature of terminations of the applicant currently in process.

(i) A statement that no other application has been made for any division of the applicant's plant covered by the application or, if one has been made, a full statement of the facts.

(j) The limit of authorization requested.

49.606 Granting subcontract settlement authorization.

Contracting officers shall use the following format when granting subcontract settlement authorization:

Letter of Authorization

(a) Your request of ____ (date) is approved, and you are authorized, subject to the limitations of subsection 49.108-4 and those stated below, to settle, without further approval of the Government, all subcontracts and *purchase orders* terminated by you as a result of a Government contract being terminated or modified-

(1) For the convenience of the Government or

(2) Under any other circumstances that *may* require the Government to bear the cost of their settlement.

(b) This authorization does not extend to the disposition of Government-furnished material or articles completed but undelivered under the subcontract or *purchase order*, as these require screening and approval of disposal actions by the Government, except that allocable completed articles *may* be disposed of without Government approval or screening if the total amount (at subcontract price) when added to the amount of settlement (as computed below) does not exceed $_____ [*insert limit of authorization being granted*].

(c) This authorization is subject to the following conditions and requirements:

(1) The amount of the subcontract termination settlement does not exceed $____ [*insert limit of authorization being granted*], computed as follows:

(i) Do not deduct advance or partial payments or credits for retention or other disposal of *termination inventory* allocated to the *settlement proposal*.

(ii) Deduct amounts payable for completed articles or work at the contract price or for the settlement of termination proposals of subcontractors (except those settlements that have not been approved by the Government).

(2) Any *termination inventory* involved has been disposed of under subsection 49.108-4, except that screening and Government approval of *scrap* and salvage determinations are not required.

(3) The *Contracting Officer may* incorporate into each Notice of Termination specific instructions about the disposition of specific items of *termination inventory*, or the *Contracting Officer may*, at any time before final settlement, issue specific instructions. These instructions will not affect any disposal action taken by you or your subcontractors before their receipt.

(4) The settlements made by you with your subcontractors and suppliers under this authorization, including sales, retention, or other dispositions of property involved in making these settlements, are reimbursable under part 49 and the Termination clause of the contract, and do not require approval of the *Contracting Officer*.

(5) Any number of separate settlements of $_____ [*insert limit of authorization granted*] or less *may* be made with a single subcontractor. *Settlement proposals* that would normally be included in a single proposal; *e.g.,* those based on a series of separate orders for the same item under one contract, *should* be consolidated whenever possible and *shall* not be divided to bring them within the authorization.

(6) This authorization does not apply if a subcontractor or supplier is affiliated with you. For this purpose, you *should* consider a contractor to be affiliated with you if you are under common control or if there is any common interest between you by reason of stock ownership, or otherwise, that is sufficient to create a reasonable doubt that the bargaining between you is completely at arm’s length.

(7) A representative of this office will, from time to time, review the methods used in negotiating settlements with your subcontractors and will make a selective examination of the settlements made by you. If the review indicates that you are not adequately protecting the Government’s interest, this delegation will be revoked.

(End of letter)

49.607 Delinquency notices.

The formats of the delinquency notices in this section *may* be used to satisfy the requirements of 49.402-3. All notices will be sent with proof of delivery requested. (See subpart 42.13 for stop-work orders.)

(a) *Cure notice.* If a contract is to be terminated for default before the delivery date, a "Cure Notice" is required by the Default clause. Before using this notice, it *must* be ascertained that an amount of time equal to or greater than the period of "cure" remains in the contract delivery schedule or any extension to it. If the time remaining in the contract delivery schedule is not sufficient to permit a realistic "cure" period of 10 days or more, the "Cure Notice" *should* not be issued. The "Cure Notice" *may* be in the following format:

Cure Notice

You are notified that the Government considers your ____ [*specify the contractor's failure or failures*] a condition that is endangering performance of the contract. Therefore, unless this condition is cured within 10 days after receipt of this notice [*or insert any longer time that the Contracting Officer may consider reasonably necessary*], the Government *may* terminate for default under the terms and conditions of the _____ [*insert clause title*] clause of this contract.

(End of notice)

(b) *Show cause notice*. If the time remaining in the contract delivery schedule is not sufficient to permit a realistic "cure" period of 10 days or more, the following "Show Cause Notice" *may* be used. It *should* be sent immediately upon expiration of the delivery period.

Show Cause Notice

Since you have failed to ____ [*insert* "perform Contract No. ___ within the time required by its terms," *or* "cure the conditions endangering performance under Contract No _____ as described to you in the Government's letter of _____ (date)"], the Government is considering terminating the contract under the provisions for default of this contract. Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose from causes beyond your control and without fault or negligence on your part. Accordingly, you are given the opportunity to present, *in writing*, any facts bearing on the question to ____ [*insert the name and complete address of the contracting officer*], within 10 days after receipt of this notice. Your failure to present any excuses within this time *may* be considered as an admission that none exist. Your attention is invited to the respective rights of the Contractor and the Government and the liabilities that *may* be invoked if a decision is made to terminate for default.

Any assistance given to you on this contract or any acceptance by the Government of delinquent goods or services will be solely for the purpose of mitigating damages, and it is not the intention of the Government to condone any delinquency or to waive any rights the Government has under the contract.

(End of notice)