52.212-4 Contract Terms and Conditions—Commercial Products and Commercial Services.

As prescribed in 12.301(b)(3), insert the following clause:

Contract Terms and Conditions—*Commercial Products* and *Commercial Services* (Nov 2023)

(a) *Inspection/Acceptance*. The Contractor *shall* only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any *supplies* or services that have been tendered for acceptance. The Government *may* require repair or replacement of nonconforming *supplies* or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government *may* seek an equitable price reduction or adequate consideration for acceptance of nonconforming *supplies* or services. The Government *must* exercise its post-acceptance rights-

(1) Within a reasonable time after the defect was discovered or *should* have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment*. The Contractor or its assignee *may* assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the *Assignment of Claims* Act (31 U.S.C. 3727). However, when a third party makes payment (*e.g.,* use of the Governmentwide commercial purchase card), the Contractor *may* not assign its rights to receive payment under this contract.

(c) *Changes*. Changes in the terms and conditions of this contract *may* be made only by written agreement of the parties.

(d) *Disputes*. This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, *claim*, appeal or action arising under or relating to this contract *shall* be a dispute to be resolved in accordance with the clause at Federal *Acquisition* Regulation (FAR) 52.233-1, Disputes, which is incorporated herein by reference. The Contractor *shall* proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions*. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) *Excusable delays*. The Contractor *shall* be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor *shall* notify the *Contracting Officer in writing* as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, *shall* remedy such occurrence with all reasonable

dispatch, and *shall* promptly give written notice to the *Contracting Officer* of the cessation of such occurrence.

(g) *Invoice*.

(1) The Contractor *shall* submit an original *invoice* and three copies (or electronic *invoice*, if authorized) to the address designated in the contract to receive *invoices*. An *invoice must* include-

(i) Name and address of the Contractor;

(ii) *Invoice* date and number;

(iii) Contract number, *line item number* and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of *shipment*, including the bill of lading number and weight of *shipment* if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective *invoice*; and

(ix) *Taxpayer Identification Number (TIN*). The Contractor *shall* include its TIN on the *invoice* only if required elsewhere in this contract.

(x) *Electronic funds transfer (EFT*) banking information.

(A) The Contractor *shall* include EFT banking information on the *invoice* only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the *invoice*, in order for the *invoice* to be a *proper invoice*, the Contractor *shall* have submitted correct EFT banking information in accordance with the applicable *solicitation* provision, *contract clause* (*e.g.,* 52.232-33, Payment by *Electronic Funds Transfer-System for Award Management*, or 52.232-34, Payment by *Electronic Funds Transfer*-Other Than *System for Award Management*), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) *Invoices* will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(h) *Patent indemnity*. The Contractor *shall* indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any *United States* or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such *claims* and proceedings.

(i) Payment.-

(1) *Items accepted*. Payment *shall* be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment*. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR Part 1315.

(3) *Electronic Funds Transfer (EFT)*. If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) *Discount*. In connection with any discount offered for early payment, time *shall* be computed from the date of the *invoice*. For the purpose of computing the discount earned, payment *shall* be considered to have been made on the date which appears on the payment check or the specified payment date if an *electronic funds transfer* payment is made.

(5) *Overpayments*. If the Contractor becomes aware of a duplicate contract financing or *invoice* payment or that the Government has otherwise overpaid on a contract financing or *invoice* payment, the Contractor *shall*-

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the-

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and *delivery order* number, if applicable;

(C) Affected *line item* or *subline item*, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the *Contracting Officer*.

(6) *Interest*.

(i) All amounts that become payable by the Contractor to the Government under this contract *shall* bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate *shall* be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government *may* issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions*. The *Contracting Officer* will issue a final decision as required by 33.211 if–

(A) The *Contracting Officer* and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the *Contracting Officer* within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the *Contracting Officer* (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision *shall* identify the same due date as the original demand for payment.

(v) Amounts *shall* be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge *shall* be computed for the actual number of calendar days involved beginning on the due date and ending on-

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause *may* be reduced under the procedures prescribed in FAR 32.608-2 in effect on the date of this contract.

(j) *Risk of loss*. Unless the contract specifically provides otherwise, risk of loss or damage to the *supplies* provided under this contract *shall* remain with the Contractor until, and *shall* pass to the Government upon:

(1) Delivery of the *supplies* to a carrier, if transportation is *f.o.b. origin*; or

(2) Delivery of the *supplies* to the Government at the destination specified in the contract, if transportation is *f.o.b. destination*.

(k) *Taxes*. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience*. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor *shall* immediately stop all work hereunder and *shall* immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor *shall* be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor *shall* not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor *shall* not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause*. The Government *may* terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate

assurances of future performance. In the event of termination for cause, the Government *shall* not be liable to the Contractor for any amount for *supplies* or services not accepted, and the Contractor *shall* be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination *shall* be deemed a *termination for convenience*.

(n) *Title*. Unless specified elsewhere in this contract, title to items furnished under this contract *shall* pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty*. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability*. Except as otherwise provided by an express *warranty*, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances*. The Contractor *shall* comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts*. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to *procurement* integrity.

(s) *Order of precedence*. Any inconsistencies in this *solicitation* or contract *shall* be resolved by giving precedence in the following order:

(1) The schedule of *supplies*/services.

(2) The Assignments, Disputes, Payments, *Invoice*, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause;

(3) The clause at 52.212-5.

(4) Addenda to this *solicitation* or contract, including any license agreements for *computer software*.

(5) *Solicitation* provisions if this is a *solicitation*.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) [Reserved]

(u) Unauthorized Obligations.

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under

this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following *shall* govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user *shall* be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) Incorporation by reference. The Contractor’s representations and certifications, including those completed electronically via the *System for Award Management (SAM*), are incorporated by reference into the contract.

(End of clause)

Alternate I (Nov 2021). When a time-and-materials or labor-hour contract is contemplated, substitute the following paragraphs (a), (e), (i), (l), and (m) for those in the basic clause.

(a) *Inspection/Acceptance.* (1) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government *may* also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government will perform *inspections* and tests in a manner that will not unduly delay the work.

(2) If the Government performs *inspection* or tests on the premises of the Contractor or a subcontractor, the Contractor *shall* furnish and *shall* require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(3) Unless otherwise specified in the contract, the Government will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(4) At any time during contract performance, but not later than 6 months (or such other time as *may* be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government *may* require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (a)(6) of this clause, the cost of replacement or correction *shall* be determined under paragraph (i) of this clause, but the "hourly rate" for labor hours incurred in the replacement or correction *shall* be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below,

the portion of the "hourly rate" attributable to profit *shall* be 10 percent. The Contractor *shall* not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, *shall* disclose the corrective action taken. [*Insert portion of labor rate attributable to profit.*]

(5)(i) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government *may*-

(A) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(B) Terminate this contract for cause.

(ii) Failure to agree to the amount of increased cost to be charged to the Contractor *shall* be a dispute under the Disputes clause of the contract.

(6) Notwithstanding paragraphs (a)(4) and (5) above, the Government *may* at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to-

(i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or

(ii) The conduct of one or more of the Contractor’s employees selected or retained by the Contractor after any of the Contractor’s managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(7) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(8) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as *may* be otherwise specified in the contract.

(9) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property *shall* be governed by the clause pertaining to Government property.

(e) *Definitions.* (1) The clause at FAR 52.202-1, Definitions, is incorporated herein by reference. As used in this clause-

(i) "Direct materials" means those materials that enter directly into the *end product*, or that are used or consumed directly in connection with the furnishing of the *end product* or service.

(ii) "Hourly rate" means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are-

(A) Performed by the contractor;

(B) Performed by the subcontractors; or

(C) Transferred between divisions, subsidiaries, or *affiliates* of the contractor under a common control.

(iii) "Materials" means-

(A) Direct materials, including *supplies* transferred between divisions, subsidiaries, or *affiliates* of the contractor under a common control;

(B) Subcontracts for *supplies* and incidental services for which there is not a labor category specified in the contract;

(C) Other *direct costs* (*e.g.*, incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.);

(D) The following subcontracts for services which are specifically excluded from the hourly rate: [*Insert any subcontracts for services to be excluded from the hourly rates prescribed in the schedule.*]; and

(E) *Indirect costs* specifically provided for in this clause.

(iv) "Subcontract" means any contract, as defined in FAR subpart 2.1, entered into with a subcontractor to furnish *supplies* or services for performance of the prime contract or a subcontract including transfers between divisions, subsidiaries, or *affiliates* of a contractor or subcontractor. It includes, but is not limited to, *purchase orders*, and changes and modifications to *purchase orders*.

(i) *Payments.* (1) *Work performed.* The Government will pay the Contractor as follows upon the submission of commercial *invoices* approved by the *Contracting Officer*:

(i) *Hourly rate*.

(A) The amounts *shall* be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour *shall* be payable on a prorated basis.

(B) The rates *shall* be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the *Contracting Officer*.

(C) *Invoices may* be submitted once each month (or at more frequent intervals, if approved by the *Contracting Officer*) to the *Contracting Officer* or the authorized representative.

(D) When requested by the *Contracting Officer* or the authorized representative, the Contractor *shall* substantiate *invoices* (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.

(E) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule *shall* not be varied by virtue of the Contractor having performed work on an *overtime* basis.

(*1)* If no *overtime* rates are provided in the Schedule and the *Contracting Officer* approves *overtime* work in advance, *overtime* rates *shall* be negotiated.

(*2*) Failure to agree upon these *overtime* rates *shall* be treated as a dispute under the Disputes

clause of this contract.

(*3*) If the Schedule provides rates for *overtime*, the premium portion of those rates will be reimbursable only to the extent the *overtime* is approved by the *Contracting Officer*.

(ii) *Materials*.

(A) If the Contractor furnishes materials that meet the definition of a *commercial product* at FAR 2.101, the price to be paid for such materials *shall* not exceed the Contractor's established catalog or market price, adjusted to reflect the-

(*1*) Quantities being acquired; and

(*2*) Any modifications necessary because of contract requirements.

(B) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, the Government will reimburse the Contractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the Contractor-

(1) Has made payments for materials in accordance with the terms and conditions of the agreement or *invoice*; or

(2) Makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or *invoice*.

(C) To the extent able, the Contractor *shall*-

(1) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(2) Give credit to the Government for cash and trade discounts, rebates, *scrap*, commissions, and other amounts that are identifiable to the contract.

(D) *Other Costs*. Unless listed below, other direct and *indirect costs* will not be reimbursed.

(1) *Other Direct Costs*. The Government will reimburse the Contractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(1)(ii)(B) of this clause:*[Insert each element of other direct costs (e.g., travel, computer usage charges, etc. Insert "None" if no reimbursement for other direct costs will be provided. If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the elements of other direct charge(s) for that order or, if no reimbursement for other direct costs will be provided, insert 'None'."]*

*(*2) *Indirect Costs (Material Handling, Subcontract Administration, etc.)*. The Government will reimburse the Contractor for *indirect costs* on a pro-rata basis over the period of contract performance at the following fixed price:*[Insert a fixed amount for the indirect costs and payment schedule. Insert "$0" if no fixed price reimbursement for indirect costs will be provided. (If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the fixed amount for the indirect costs and payment schedule or, if no reimbursement for indirect costs, insert 'None')."]*

(2) *Total cost*. It is estimated that the total cost to the Government for the performance of this

contract *shall* not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor *shall* notify the *Contracting Officer* giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor *shall* so notify the *Contracting Officer*, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performance of this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the *Contracting Officer* will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(3) *Ceiling price*. The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor *shall* not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the *Contracting Officer* notifies the Contractor *in writing* that the ceiling price has been increased and specifies in the notice a revised ceiling that *shall* constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase *shall* be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(4) *Access to records*. At any time before final payment under this contract, the *Contracting Officer* (or authorized representative) will have access to the following (access *shall* be limited to the listing below unless otherwise agreed to by the Contractor and the *Contracting Officer*):

(i) Records that verify that the employees whose time has been included in any *invoice* meet the qualifications for the labor categories specified in the contract;

(ii) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment-

(A) The original timecards (paper-based or electronic);

(B) The Contractor’s timekeeping procedures;

(C) Contractor records that show the distribution of labor between jobs or contracts; and

(D) Employees whose time has been included in any *invoice* for the purpose of verifying that these employees have worked the hours shown on the *invoices*.

(iii) For material and subcontract costs that are reimbursed on the basis of actual cost-

(A) Any *invoices* or subcontract agreements substantiating material costs; and

(B) Any documents supporting payment of those *invoices*.

(5) *Overpayments/Underpayments.* Each payment previously made *shall* be subject to reduction to

the extent of amounts, on preceding *invoices*, that are found by the *Contracting Officer* not to have been properly payable and *shall* also be subject to reduction for overpayments or to increase for underpayments. The Contractor *shall* promptly pay any such reduction within 30 days unless the parties agree otherwise. The Government within 30 days will pay any such increases, unless the parties agree otherwise. The Contractor's payment will be made by check. If the Contractor becomes aware of a duplicate *invoice* payment or that the Government has otherwise overpaid on an *invoice* payment, the Contractor *shall*-

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the-

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and *delivery order* number, if applicable;

(C) Affected *line item* or *subline item*, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the *Contracting Officer*.

(6)(i) All amounts that become payable by the Contractor to the Government under this contract *shall* bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate *shall* be the interest rate established by the Secretary of the Treasury, as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six month period as established by the Secretary until the amount is paid.

(ii) The Government *may* issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final Decisions*. The *Contracting Officer* will issue a final decision as required by 33.211 if-

(A) The *Contracting Officer* and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(B) The Contractor fails to liquidate a debt previously demanded by the *Contracting Officer* within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the *Contracting Officer* (see FAR 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision *shall* identify the same due date as the original demand for payment.

(v) Amounts *shall* be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge *shall* be computed for the actual number of calendar days involved beginning on the due date and ending on-

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause *may* be reduced under the procedures prescribed in FAR 32.608-2 in effect on the date of this contract.

(viii) Upon receipt and approval of the *invoice* designated by the Contractor as the "completion *invoice*" and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion *invoice*, and supporting documentation, *shall* be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the *Contracting Officer may* approve *in writing*) from the date of completion.

(7) *Release of claims*. The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, *shall* execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and *claims* arising out of or under this contract, subject only to the following exceptions.

(i) Specified *claims* in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Contractor.

(ii) *Claims*, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice *in writing* to the *Contracting Officer* not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(iii) *Claims* for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(8) *Prompt payment*. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(9) *Electronic Funds Transfer (EFT)*. If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(10) *Discount*. In connection with any discount offered for early payment, time *shall* be computed from the date of the *invoice*. For the purpose of computing the discount earned, payment *shall* be considered to have been made on the date that appears on the payment check or the specified payment date if an *electronic funds transfer* payment is made.

(l) Termination for the Government’s convenience. The Government reserves the right to terminate

this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor *shall* immediately stop all work hereunder and *shall* immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor *shall* be paid an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the *effective date of termination* by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that have resulted from the termination. The Contractor *shall* not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor *shall* not be paid for any work performed or costs incurred that reasonably could have been avoided.

(m) Termination for cause. The Government *may* terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government *shall* not be liable to the Contractor for any amount for *supplies* or services not accepted, and the Contractor *shall* be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination *shall* be deemed a *termination for convenience*.

Parent topic: 52.212 [Reserved]