

INCENTIVE FEE (Jan 2006)

(a) General. The Company shall pay the Seller for performing this Agreement a fee determined as provided in this Agreement.

(b) Target Cost and Target Fee. The target cost and target fee specified in this Agreement are subject to adjustment if the Agreement is modified in accordance with paragraph (d) below.

(1) "Target cost," as used in this Agreement, means the estimated cost of this Agreement as initially negotiated, adjusted in accordance with paragraph (d) below.

(2) "Target fee," as used in this Agreement, means the fee initially negotiated on the assumption that this Agreement would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) below.

(c) Withholding of Payment. Normally, the Company shall pay the fee to the Seller as specified in this Agreement. However, when the Company considers that performance or cost indicates that the Seller will not achieve target, the Company shall pay on the basis of an appropriate lesser fee. When the Seller demonstrates that performance or cost clearly indicates that the Seller will earn a fee significantly above the target fee, the Company may, at the sole discretion of the Company, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the Company may withhold further payment of fee until a reserve is set aside in an amount that the Company considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the applicable fee or \$100,000, whichever is less.

(d) Equitable Adjustments. When the work under this Agreement is increased or decreased by a modification to this Agreement or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to this Agreement.

(e) Fee Payable. (1) The fee payable under this Agreement shall be the target fee increased by _____ cents for every dollar that the total allowable cost is less than the target cost or decreased by _____ cents for every dollar that the total allowable cost exceeds the target cost. In no event shall the fee be greater than _____ percent or less than _____ percent of the target cost.

(2) The fee shall be subject to adjustment, to the extent provided in paragraph (d) above, and within the minimum and maximum fee limitations in subparagraph (1) above, when the total allowable cost is increased or decreased as a consequence of (i) payments made under assignments or (ii) claims excepted from the release as required by the Allowable Cost and Payment clause.

(3) If this Agreement is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of this Agreement.

(4) For the purpose of fee adjustment, "total allowable cost" shall not include allowable costs arising out of:

(i) Any of the causes covered by excusable delays to the extent that they are beyond the control and without the fault or negligence of the Seller or any subcontractor;

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

(iii) Any direct cost attributed to the Seller's involvement in litigation as required by the Company pursuant to a clause of this Agreement, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;

(iv) The purchase and maintenance of additional insurance not in the target cost and required by the Company, or claims for reimbursement for liabilities to third persons;

(v) Any claim, loss, or damage resulting from a risk for which the Seller has been relieved of liability by the Government Property clause; or

(vi) Any claim, loss, or damage resulting from a risk defined in the Agreement as unusually hazardous or as a nuclear risk and against which the Government has expressly agreed to indemnify the Seller.

(5) All other allowable costs are included in "total allowable cost" for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided in this Agreement.

(f) Agreement Modification. The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to this Agreement signed by the Seller and the Company.

(g) Inconsistencies. In the event of any language inconsistencies between this clause and provisioning documents or Company options under this Agreement, compensation for spare parts or other supplies and services ordered under such documents shall be determined in accordance with this clause.