

GENERAL DYNAMICS

SCM-FRM-1.5.0.4

GENERAL TERMS AND CONDITIONS OF PURCHASE/SOLICITATION APPLICABLE TO SERVICE PURCHASES NOT UNDER A GOVERNMENT CONTRACT (04/2013)

1. ACCEPTANCE AND TERMS AND CONDITIONS

- (a.1) If Seller receives these General Terms as a result of Seller's participation in a GDATP solicitation (RFI/RFQ/RFP), then Seller agrees to be bound to these General Terms by submitting Seller's response or offer to GDATP, except to the extent that Seller has objected in writing to specific provisions. For all valid written objections from Seller, GDATP's Buyer has complete and unilateral discretion to reject as nonresponsive, or accept and negotiate Special Terms in response to, Seller's written objections.
- (a.2) If Seller's Purchase Order from GDATP (including all subcontract instruments deemed to constitute a Purchase Order, as set forth in Section 1.d below) makes reference to these General Terms, Seller shall accept this Purchase Order ("PO") and any Amendments thereto by either: 1) affixing the signature of Seller's representative on the Face of the PO, alongside the signature of GDATP's representative, or 2) commencement of performance.
- (b) By acceptance of this PO, Seller agrees to comply with all of its terms and conditions and specifications, including those contained in all documents incorporated into this PO by reference. These General Terms and Conditions of Purchase are hereby incorporated to this PO. GDATP objects to any terms and conditions contained in any acknowledgment of this PO which are different from or in addition to those recited in this PO.
- (c) Failure by GDATP either to enforce at any time any of the provisions hereof or to protest at any time any breach or default thereof shall not be construed as evidence to interpret the terms and conditions of this PO, nor as a waiver of the terms and conditions of such provisions, nor of the right of GDATP thereafter to enforce each and every such provision. GDATP's approval of documents shall not relieve Seller from compliance with the terms and conditions and specifications governing this PO.
- (d) Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) Face of the PO (which term shall include PO continuation sheets, Master Agreements, other subcontract instruments, and the Amendments to any of these), (2) Special Terms and Conditions (meaning any applicable supplementary provisions and/or negotiated exceptions to these General Terms and Conditions documented as an incorporated attachment to this PO), (3) Statement of Work, (4) General Terms and Conditions,.
- (e) Until final resolution of any dispute hereunder, Seller shall proceed diligently with the performance of this PO in accordance with GDATP's direction.
- (f) Seller acknowledges that it has available to it all data, and other documents referenced in this PO and that they are adequate to enable Seller to perform the work called for herein in accordance with the delivery schedule.
- (g) The interpretation and enforcement of this PO shall be in accordance with the laws of the state where the GDATP facility for which the services are to be performed is located, excluding its choice-of-law rules
- (h) GDATP's rights under this PO are cumulative and in addition to any other rights available at law and equity.
- (i) The line item price for each line in this PO is deemed a Firm Fixed Price, unless indicated to the contrary elsewhere in this PO.
- (j) The GDATP PO number and line item number must appear on all correspondence, invoices, packages, and shipping documents.
- (k) GDATP Accounts Payable Customer Service number is 419-221-7080.

2. INSPECTION

- (a) GDATP may at any time inspect Seller's and Seller's suppliers' facilities which will or may be used in the performance of this PO. No such inspection shall in any way relieve Seller of its obligations to furnish all required services in strict accordance with the terms and conditions of this PO. If inspection is made on the premises of Seller or any of its suppliers, Seller shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance for safety and convenience of the inspectors in the performance of their duties. All inspections shall be performed in such a manner as not to delay the work unduly.
- (b) Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the PO.

3. DELIVERY

- Delivery shall be at the location described elsewhere in this PO.
- (a) If delivery is delayed or threatened to be delayed by any event, Seller shall immediately notify GDATP's Buyer of the estimated delay involved and the reasons therefore. Seller shall include the substance of this clause in all purchase orders and subcontracts issued hereunder.

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4. WARRANTY OF SELLER'S SERVICES.

Seller warrants that it will perform all Services in a professional and workmanlike manner and provide Work Products that conform in all material respects to the specifications set forth in the SOW. Seller further warrants that all goods that may be supplied hereunder shall conform to GDATP's drawings, specification, or other description and will be of good material and workmanship and free of defects. Seller further warrants that the supplies/services will meet Seller's published specifications and standards, will be new (not used or reconditioned), merchantable and suitable for the purpose intended. To receive warranty remedies, GDATP must report any deficiencies in Services to Seller in writing within ninety (90) days from the date of GDATP's acceptance of the services or Work Products, and within twelve (12) months after acceptance of any goods delivered hereunder. If Seller does not promptly correct or replace same, GDATP may correct or replace the nonconforming supplies/services at Seller's expense. The foregoing warranties are in addition to all other warranties expressed or implied by law, and in no way exclude any remedies otherwise available to GDATP, including but not limited to incidental or consequential damages.

5. TERMINATION FOR DEFAULT

(a) GDATP may, by written notice of default to Seller, terminate this PO in whole or in part if the Seller fails to: (1) to perform the services within the time specified in this PO or any extension, or (2) make progress, so as to endanger performance of this PO; or (3) perform any of the other provisions of this contract; and in either of these latter two circumstances does not cure such failure within ten (10) days (or such longer period as GDATP may authorize in writing) after receipt of the notice from GDATP specifying the failure.

(b) If this PO is terminated for default, GDATP may require Seller to deliver to GDATP any usable supplies and materials, that Seller has specifically produced or acquired for the terminated portion of the PO. GDATP and Seller shall agree on the amount of payment for such deliverables; GDATP will not require delivery of, accept, nor retain unusable materials and documentation/drawings and therefore does not agree to payment for these. GDATP shall pay the PO price for completed material that was delivered and accepted.

(c) Seller shall not be liable to GDATP for delays in performance occasioned by causes beyond Seller's reasonable control and without its fault or negligence, including but not limited to acts of God or of the public enemy, acts of the government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of Seller's suppliers at any tier provided, however, that the delays of Seller's suppliers at any tier are beyond the control of both Seller and its suppliers and without fault, or negligence of either.

(d) Seller shall promptly notify GDATP's Buyer, if Seller is the subject of any petition in bankruptcy.

(e) The rights and remedies of GDATP in this provision are in addition to any other rights and remedies provided by law or under this PO.

6. TERMINATION FOR CONVENIENCE

GDATP may, by written notice, terminate this PO, in whole or in part, when it is in GDATP's interest. If this PO is so terminated, the rights, duties, and obligations of the parties, shall be determined in accordance with Part 49 of the Federal Acquisition Regulations in effect on the latter of the date of issuance this PO or the date of its most recent Amendment. (wherein "Government," and "Contracting Office" shall be deemed to mean GDATP). Seller must submit a termination claim within six (6) months of receipt of initial written notice that this PO has been terminated for convenience.

7. STOP WORK ORDER

GDATP may, at any time, by written order to the Supplier, require the Supplier to stop all, or any part, of the work called for by this purchase order for a period of 100 days after the order is delivered to the Supplier, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order. Upon receipt of the order, the Supplier shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order, including costs incurred by subcontractors, during the period of work stoppage.

8. CHANGES

(a) GDATP may, at any time by a written notification, make changes within the general scope of this PO in any one or more of the following:

(1) The description of services to be performed;

(2) The place of delivery, inspection and acceptance.

(3) The amount of property or services furnished or to be furnished to Seller.

If any such change to the general scope causes a change in the cost of, or the time required for, performance of this PO, an equitable adjustment shall be made in the price and/or delivery schedule, and in other provisions of this PO that are affected. Any claim by Seller for such an adjustment must be made within twenty (20) days from the date of receipt of the change notification. Failure to agree to any adjustment shall constitute a claim that is subject to the terms and conditions of this PO; however, Seller is obligated to proceed with this PO as changed regardless of the status of disputes. Any agreed adjustment shall be documented in a written Amendment to this PO signed by both parties. GDATP, at its unilateral discretion, may approve payment for the adjustment amount in the Amendment before final payment is otherwise due on this PO.

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- (b) Only GDATP's Buyer is authorized on behalf of GDATP to issue a notification of change within the general scope or to communicate and negotiate a necessary change outside of the general scope. If any direction or instruction by GDATP personnel is deemed by Seller to constitute such a change, Seller shall not rely upon such instruction or direction without the written confirmation of GDATP's Buyer.
9. **INFORMATION DISCLOSED TO GDATP**
Except for information of Seller's expressly marked as confidential/proprietary and which GDATP had agreed (prior to the issuance of this PO), or agrees hereafter, in advance of its disclosure to receive pursuant to a mutually executed Proprietary Information Exchange Agreement (PIEA), any knowledge or information which Seller has disclosed or may hereafter disclose to GDATP in connection with the purchase of the goods and services covered by this PO shall not be deemed to be confidential or proprietary information, and it shall be acquired by GDATP free from any restrictions regarding its use or disclosure. GDATP will reject or destroy any documents, files, or verbal exchanges indicated by Seller to be confidential/proprietary where a valid PIEA is not in place.
10. **INFORMATION DISCLOSED TO SELLER**
Seller shall keep confidential all information, drawings, specifications, or data either:
(a) Furnished by GDATP and marked as confidential or proprietary; or
(b) Prepared by Seller specifically in connection with the performance of this PO.
Seller shall not disclose such information, drawings, specifications or data except to those of its officers, employees (including independent contractors, contract labor employees and leased employees), third party vendors or subsidiaries who have a "need-to-know" the information, drawings, specifications or data for the purposes of performance under this PO, and Seller certifies that such officers, employees, third party vendors, or subsidiaries, as the case may be, have previously agreed, either as a condition to employment or in order to obtain the confidential/proprietary information, to be bound by terms and conditions at least as restrictive as the terms and conditions of this provision. Any electronic transmission of Confidential Information by Recipient shall be transmitted using encryption protection or other reasonable precautions, such as password protection. Seller will immediately give notice to GDATP of any unauthorized use or disclosure of the confidential/proprietary information. Seller agrees to assist GDATP in remedying any such unauthorized use or disclosure of the confidential/proprietary information. Except as required for the efficient performance of this PO, Seller shall not make copies or permit copies to be made without the prior written consent of GDATP. Seller shall thereafter make no further use, either directly or indirectly, of any such information, drawings, specifications, data, or of any derivation there from without obtaining GDATP's written consent. This provision shall not apply to information after its entry into the public domain by means other than as a result of a breach of this provision, nor shall it limit any rights the Government may have in such information. At the conclusion of this PO, seller shall, at the option of GDATP, either return to GDATP or destroy all confidential/ proprietary information. This provision survives termination of this PO.
11. **RIGHTS IN INVENTIONS**
(a) Seller hereby assigns to GDATP any inventions or developments that Seller may conceive, make, invent, or suggest in connection with its work under this PO, or which are conceived as a consequence of opportunity or knowledge afforded by such work. Seller shall promptly disclose to GDATP all such inventions and developments. The Seller shall, at any time during the life of this PO and thereafter, at the request of GDATP, execute any patent papers covering such inventions or developments as well as any papers that GDATP may consider necessary or helpful in the prosecution of applications for patent thereon or in connection with any litigation or controversy relating thereto; provided, however, that all expenses incident to the filing of such applications and the prosecution thereof and the conduct of such litigation shall be borne by GDATP.
(b) Seller hereby assigns all copyright interests in any original works of authorship that are created by Seller or any of its employees or subcontractors in connection with Seller's efforts under this PO to GDATP; accordingly, copyright ownership in any original works produced under this PO shall be vested solely in GDATP. Seller shall ensure that its agreements with its subcontractors contain provisions that similarly assign copyright ownership in any original works produced by Seller's subcontractors to Seller to enable Seller to comply with its obligations as set forth in this paragraph. Seller shall, at any time during the life of this PO and thereafter, at GDATP's expense, execute any papers that GDATP may consider necessary to perfect, register or enforce any copyright in any such original works and GDATP's title thereto.
12. **INDEMNITY BY SELLER**
Seller shall indemnify, defend and hold GDATP, and its agents, directors, officers, employees, and affiliates ("Indemnified Parties") harmless from and against any and all losses, injuries (including death), damages, liabilities, costs and expenses of any kind whatsoever (including reasonable attorneys' fees and other costs of defending any action) which such parties may sustain or resulting or arising from any third-party claims, actions, proceedings, investigations or litigation relating to or arising from or in connection with this Agreement based upon contract, negligence, breach of warranty, strict liability, or any proprietary or intellectual property right, except to the extent caused by the sole gross negligence or willful misconduct of the Indemnified Parties.
13. **THIRD PARTY INFRINGEMENT**
Seller warrants that GDATP's use of any Licensed Software or other Product provided in connection with this Agreement will not infringe any patent, trademark, copyright, or other proprietary right of any third party. Seller

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further warrants that any information disclosed to GDATP will not contain any trade secrets of any third party, unless disclosure is permitted by such third party. Seller shall, at Seller's own expense, indemnify, defend and hold harmless the Indemnified Parties (as defined in Clause 15 above), against any action, claim or other proceeding brought against GDATP to the extent that it is based on a claim that the use of Goods or Work infringes any copyright, trademark, or patent or other intellectual property right, or that Goods or Work incorporate any misappropriated trade secret. Seller will pay all costs, damages, and expenses (including but not limited to reasonable attorneys' fees and other costs of defending any action) awarded against GDATP or paid in settlement by GDATP in any such action, claim or proceeding attributable to any such claim or otherwise incurred by GDATP. In addition, should GDATP be enjoined or directed to stop using the Goods or Work as a consequence of a claim of third party infringement, GDATP shall have the right to require that Seller either (i) procure the right to use the infringing element of the Goods or Work in accordance with this Contract; (ii) modify the affected Goods or Work or parts thereof without detracting from its overall performance in order to cease the infringement; or (iii) replace the affected Goods or Work or parts thereof with alternative good that performs the substantially the same functions of the affected Goods or Work.

14. **WORK ON GDATP'S PREMISES**

(a) If this PO involves work by Seller on GDATP's premises, Seller shall comply with all safety and security regulations and shall take all precautions required by GDATP or otherwise necessary to prevent the occurrence of any injury to person or property during the progress of such work. Seller shall promptly inform GDATP of any injury or damage that occurs.

(b) Seller shall provide timely notice to GDATP prior to the introduction to the premises of any hazardous material, as defined in any Federal, state, or local law or ordinance or in any lawful order, rule or regulation thereunder applicable to the premises. Seller shall equip its employees, agents and subcontractors for the use of such hazardous material, and for the use of such other hazardous materials, as identified by GDATP to Seller, used by GDATP on the premises.

(c) Whenever this PO involves work on GDATP's premises, Seller also shall implement and maintain a program for achieving the objective of a drug-free workforce. Seller's program shall be written and shall include as a minimum drug testing when: (i) employees are newly-hired or re-hired after a break in service, (ii) employees are involved in accidents or unsafe practices, and (iii) reasonable suspicion exists that an employee is using illegal drugs. Seller shall provide GDATP with a copy of its written program with its bid or proposal. Seller shall make available for GDATP's inspection at reasonable times and places all of Seller's records relating to its drug-free program. In addition to any other remedies that GDATP may have if Seller fails to comply with the provisions of this paragraph, GDATP may, without notice or an opportunity to cure: (1) terminate this PO for default, and (2) expel from GDATP's property any employee, agent, or subcontractor of Seller who is suspected of using, possessing, or selling alcohol or illegal drugs on GDATP's property.

(d) If any of seller's employees require unescorted access to operating areas of GDATP's facilities for more than 30 days in any 365 day period; access to one or more of GDATP's computer networks; or access to any other areas of information as designated by GDATP, a Background Investigation will be conducted by GDATP prior to the commencement of performance.

(e) Prior to the commencement of any work to be performed under this PO, Seller must complete a Certificate of Citizenship (SCM-FRM-201.0.3) with regard to all employees of Seller and Seller's subcontractors that will perform work at GDATP Facilities or will have access to technical data so that GDATP may determine what level of access to facilities and technical data is allowed in order to comply with United States law or certain government contract requirements. Seller must provide prompt notice in writing to GDATP of any change in the information provided in the certification for any reason, including the substitution or addition of employees performing work under this PO.

(f) Seller, and any subcontractors used by Seller in connection with this PO, shall carry the appropriate amount of State required Worker's Compensation and Employee Liability insurance to cover Seller's and such subcontractor's legal liability on account of accidents to their respective employees. Seller and its subcontractors shall carry a minimum of \$1,000,000 of Comprehensive General Liability insurance and a minimum of \$1,000,000 of Comprehensive Automobile Liability Insurance covering the legal liability of Seller and such subcontractors on account of accidents arising out to the operations of Seller or such subcontractors and resulting in bodily injury, including death, being sustained by any person or persons, or in any damage to property. Such Comprehensive General Liability and Comprehensive Automobile Liability Insurance policies shall include a clause or endorsement waiving the insurers' rights of subrogation against GDATP and recognizing GDATP as an additional insured. Seller shall furnish to GDATP certificates from Seller's insurers showing such coverage in effect prior to commencing work on GDATP's premises and Seller agrees to give GDATP ten days prior written notice of any material change or cancellation of such coverage.

(g) Seller shall defend, indemnify and hold harmless GDATP, its officers, employees and agents from any losses, costs, claims, causes of action, damages, liabilities and expenses, including reasonable attorneys fees, all expenses of litigation and/or settlement and court costs, by reason of property damage or loss or personal injury to any

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person caused in whole or in part by the actions or omissions of Seller, its officers, employees, agents, suppliers or subcontractors in performance of the work under this PO.

15. **INVOICES AND PAYMENTS**

Unless otherwise expressly provided for in the PO, the standard payment terms will be on average the second day of the second month following the formal receipt of goods as defined by:

(a) GDATP's verification of the accuracy and completeness of Seller's invoice and any required supporting documents, or

(b) Delivery and acceptance, through quality inspection and acceptance, to GDATP's stock at the "ship to" location specified on the Face of the PO.

Payment shall be deemed to have been made as of the date of mailing of GDATP's payment.

16. **NON-ASSIGNMENT**

Neither this PO nor any rights or obligations under it shall be assigned to third parties by Seller without the prior written consent of GDATP. However, claims for any payment due or to become due under this PO may be assigned by Seller without such consent, if GDATP is promptly furnished with written notice and a signed copy of any such assignment. Payment to an assignee of any such claim shall be subject to set off or recoupment of any present or future claim or claims which GDATP may have against Seller.

17. **COMPLIANCE WITH LAWS**

(a) Seller shall comply with the applicable provisions of all Federal, state, and local laws and ordinances of the United States, equivalent applicable legislation in the Seller's country of manufacture (if other than the United States), and all applicable, lawful orders, rules, and regulations ratified under such laws, and such compliance shall be a material requirement of this PO.

18. **PUBLIC RELEASE OF INFORMATION**

No public release of information, including, without limitation, photographs, films, announcements, denials or confirmations of any part of the subject matter of this PO shall be made without the prior written approval of GDATP.

19. **EXTRA CHARGES**

Unless this PO is issued as a Time and Materials subcontract, the prices indicated in this PO cover all work required by Seller to satisfy the requirements of this PO.

20. **SECURITY INTERESTS**

For all fixed price goods to be delivered under this PO, Seller shall cooperate with GDATP in executing such documents as GDATP deems appropriate to protect the security interest of GDATP in Seller's work-in-process.

21. **EXPORT OF TECHNICAL DATA**

Some of the information disclosed under this PO may contain technical data that is categorized on either (i) the United States Munitions List and, as such, is subject to the International Traffic in Arms Regulations (ITAR, 22 CFR 120-130), and/or (ii) the Commerce Control List and, as such, is subject to the Export Administration Regulations (EAR, 15 CFR 730-799). Technical data that is controlled by the ITAR or the EAR may not be given to foreign persons (including foreign corporations) by a U.S. person unless and until the U.S. person has obtained the appropriate export license and/or approvals from the U.S. Government.

(1) Accordingly, Seller certifies that: 1) Seller is a "U.S. Person" as defined in the ITAR to whom such technical data may be disclosed or that Seller possesses the appropriate licenses and/or approvals from the U.S. Government to receive the GDATP-furnished technical data under this PO, and further, 2) Seller shall not transfer such technical data directly or indirectly to any third person or firm, country or countries unless in compliance with all applicable laws and regulations and having obtained specific written authorization from GDATP in advance to effect such a transfer.

(2) Seller agrees that it will not permit any employee access to furnished technical data nor permit any employee to perform services under this PO unless such employee qualifies as a "U.S. person," defined as: (i) a U.S. citizen or national; (ii) an alien lawfully admitted for permanent resident (those possessing a valid Form I-550 or "green card"); an alien admitted following a 1986 amnesty statute; (iv) an asylee or refugee as defined in 8 U.S.C. 1324b(a)(3); or (v) an alien lawfully admitted for temporary agricultural employment.

(3) The acquisition of any rights in any technical data by Seller or by a foreign person is prohibited.

(4) Upon completion of this PO all technical data exported pursuant to this PO, including that data provided to subcontractors at any tier, shall be returned to GDATP or destroyed with an appropriate certification of destruction forwarded to GDATP.

(5) Seller shall deliver any defense articles manufactured outside of the United States pursuant to this paragraph only to GDATP's United States business address.

(6) All of Seller's subcontracts involving GDATP-furnished technical data shall contain the substance of this Section, including this sentence.

22. **SURVIVABILITY**

This Section and the following Sections shall survive termination of this PO: Section 1.g (regarding venue and choice of law); Section 1.h (regarding GDATP's rights at law and in equity); Section 4 (Termination for Default); Section 5 (Termination for Convenience); Section 8 (Information Disclosed to GDATP); Section 10 (Rights in

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- Inventions); Section 15 (Public Release of Information); Section 23 (Disputes); Section 27(Terminations of Cost-type or Time & Materials-type POs).
23. **RECORDS RETENTION REQUIREMENTS.**
Seller shall retain all records, documents, and supporting information required for the performance of this PO for the periods set forth in FAR Subpart 4.7 unless an alternate requirement is specified elsewhere in this PO.
24. **APPROVAL OF INDIVIDUALS**
GDATP reserves the right to approve or reject the use of specific individual employees, either temporary or full time, of the Seller who will be working in the performance of this PO. Seller shall provide resumes of employees who Seller proposes to use while performing under this PO. If GDATP approves such individuals, Seller shall obtain GDATP's concurrence before using any individual not previously approved.
25. **LABOR DISPUTES**
If the seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the performance of this PO, the seller shall immediately notify GDATP.
26. **DISPUTES**
The parties will attempt to settle in good faith all disputes arising under this PO. Disputes upon which the parties cannot reach an amicable settlement will be resolved in the applicable state or federal court in Charlotte, North Carolina, and in accordance with the choice of law provisions of this PO. Seller shall bring any dispute arising under or related to this PO within two (2) years after the cause of action for such dispute accrues.

In addition to all of the other Sections in this document, the following Sections apply if this PO/solicitation utilizes a cost-reimbursable or time-and-materials pricing type for any line item:

27. **ALLOWABLE COST**
"Allowable Costs" shall mean such costs incurred by Seller to the extent that they:
(a) are reasonable; and
(b) are consistently applied, pursuant to Seller's accounting principles, and allocable to this PO; and
(c) fall into one of the following categories:
(1) costs that, at the time of the request for reimbursement, Seller has already paid by cash, check, or other form of actual payment and which were incurred for items or services purchased directly to execute or perform under this PO;
(2) costs incurred for: b) direct labor (see Section 29.1.a for components and calculation of hourly rates); c) direct travel and living expenses, incurred and submitted in conformance with the then current GDATP travel policy; d) other direct in-house costs; and e) indirect costs (that are not already required to be included in an hourly/daily/weekly rate, if any).
28. **PAYMENT**
1. Allowable Costs. GDATP shall pay Seller for the following Allowable Costs upon the submission of invoices or vouchers approved by GDATP's Buyer:
(a) Hourly rate.
(1) The amounts shall be computed by multiplying the appropriate hourly rates, as set forth in the text of this PO or in any documents referenced by the PO as part of the agreement between GDATP and Seller funded by this PO, by the number of direct labor hours performed. The rates must include the wages or hourly cost of service, all indirect costs, general and administrative expenses, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month to GDATP. Seller shall substantiate vouchers by evidence of actual payment and by individual daily job timecards, or other substantiation approved by GDATP's Buyer.
(2) GDATP may withhold five percent (5%) of the amounts due under this paragraph (a) until completion of work by Seller.
(3) Unless the PO terms or incorporated terms in referenced documents prescribe otherwise, the agreed hourly rates shall not be varied by virtue of the Seller or its personnel or subcontractors having performed work on an overtime basis. If this PO and/or its incorporated documents provide rates for overtime, the premium portion of those rates will be reimbursable only to the extent that the overtime is approved in advance by GDATP's Buyer.
(b) Daily or Weekly Rate.
GDATP reserves the right to negotiate service, consultancy, or labor rates denominated in daily or weekly amounts in lieu of hourly amounts, if the circumstances of the solicitation or purchase and applicable law and regulation would permit. The required constituent Allowable Cost elements of such a rate remain as set forth in (a)(1) above, and provisions of (a)(2) and (a)(3) regarding withholdable amounts and the requirement for express authorization of overtime rates also apply.
(c) Costs of Materials
(1) The Allowable Costs for direct materials and (to the extent that they are clearly excluded from the hourly rate) material handling costs comprising, where appropriate, general and administrative expenses allocated against direct materials in accordance with Seller's usual accounting practices;

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provided, however, that Seller invoices GDATP at either i) if a merchant of such materials, no higher than its established catalog price, less discounts to its most favored customer, or ii) if not a merchant of such materials, no greater than the price paid, or the proportionate price paid, for the materials expended or delivered.

(2) To the extent that Allowable Costs were incurred by Seller's further subcontractors in delivering services to Seller that Seller can appropriately allocate to this PO in fulfilling Seller's performance obligation, then such costs will be reimbursed to Seller pursuant to the terms of this PO.

(3) To the fullest extent possible, Seller shall:

- (i) obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials, and
- (ii) take all cash and trade discounts, rebates, allowances, credits, salvage, commission, and other benefits.

2. Total Price and PO Total Value.

- (a) If at any time Seller has reason to believe that the Allowable Costs that will accrue in performing under this PO pursuant to the agreed Statement of Work or similar workscope document, when added to all other payments and costs previously accrued and/or paid, will exceed 85 percent of PO Total (which is the amount indicated on the last page of the PO, representing the sum of all line item totals and constituting the maximum amount authorized by the PO), Seller shall notify GDATP's Buyer giving a revised estimate of Seller's Total Price for performing the agreed SOW and shall provide GDATP with supporting reasons and documentation for the anticipated overrun, which may or may not be authorized by GDATP, as set forth herein.
- (b) GDATP shall not be obligated to pay Seller any amount in excess of the original PO Total, and Seller shall not be obligated to continue performance, if to do so would exceed the PO Total, unless and until GDATP's Buyer shall have specified in writing a revised PO Total. Note that this Section 29 does not govern POs that Seller is performing under a Firm Fixed Price purchase.

3. Audit

At any time before final payment, GDATP's Buyer may conduct, either directly or through agents, audits of the invoices or vouchers and associated substantiating material.

29. **FIXED FEE**

If this PO utilizes a cost plus fixed fee pricing type, GDATP shall pay to Seller for performing this PO the fixed fee specified elsewhere in this PO. Payment of the fixed fee shall be made in installments based upon the percentage of the work as determined from estimates submitted to and approved by GDATP; provided, however, after payment of 85% of the fixed fee, GDATP may withhold further payment of fee until a reserve is set aside in an amount that GDATP considers necessary to protect GDATP's interest.

30. **TERMINATION**

GDATP may terminate performance of work under this PO in whole or in part, if:

- (a) GDATP determines that a termination is in GDATP's interest, or:
- (b) Seller defaults in performing under this PO and fails to cure the default within ten (10) days (or such longer period as may be specified by GDATP) after receiving a notice specifying the default. In this situation, Seller's rights and obligations shall be as set forth at FAR 52.249-6, "Termination-- Cost Reimbursement." The term "Government" and "Contracting Officer" shall mean GDATP and the term "Contractor" shall mean Seller.