



Standard Subcontract Terms and Conditions

SECTION 1 – ARTICLE INDEX

1. Subcontract Definitions	18. Disputes
2. Validity of Individual Provisions	19. Waiver of Breach
3. Electronic Commerce	20. Termination for Default
4. Prices/Rates	21. Termination for Convenience
5. Warranties	22. Indemnification
6. Records and Audits	23. Subcontracting
7. Independent Contractor	24. Subcontractor's Liability to Third Parties
8. Insurance	25. Requirements for Certified Cost or Pricing Data and Data Other than Certified Cost or Pricing Data
9. Disclosure of Information	26. Price Reduction for Defective Cost or Pricing Data/Noncompliance with Cost Accounting Standards
10. Confidentiality of Magellan Federal Data	27. Incremental Funding (Fixed Price)
11. Magellan Federal's Use of Subcontractor Data	28. Limitation of Magellan Federal's Obligations (Cost Reimbursement)
12. Government & Magellan Federal Property Furnished to Subcontractor	29. Taxes
13. Changes	30. Set Off
14. Modification Required by Magellan Federal's Customer	31. Assignment
15. Organizational Conflict of Interest	32. Governing Law
16. Compliance with Laws	33. Entire Agreement
17. Procurement Integrity	

Article 1 – Subcontract Definitions

As used throughout all articles of this document, the following terms shall have the meanings set forth below, except where otherwise a purposeful distinction has been made:

- a. "Prime Contract" means a mutually binding relationship between Magellan Federal and the United States of America (hereinafter "Government") or its higher tier Contractor under which this Subcontract is issued.
- b. "Subcontract" means a mutually binding written agreement between Magellan Federal and Subcontractor obligating the Subcontractor to furnish the supplies or services identified and Magellan Federal to pay for them. In addition to bilateral written agreements, subcontracts include (but are not limited to) awards and notices of award; purchase orders, task orders, letter contracts.
- c. "Subcontractor" means the party obligated by a Subcontract to furnish the supplies or services in accordance with the terms hereof including any modification or amendments.
- d. The terms "this subcontract" and "this contract" are interchangeable and wherever appearing herein shall be deemed to mean this Subcontract.



Article 2 – Validity of Individual Provisions

The invalidity, in whole or in part, of any provision of this Subcontract shall not void or otherwise affect the validity of any other provision.

Article 3 – Electronic Commerce

The parties agree not to contest the validity or enforceability of electronically transmitted documents containing an electronic signature or other identifying symbol under the provisions of any applicable law relating to whether certain agreements are to be in writing or signed by the party to be bound thereby. Such documents, if introduced as evidence in any judicial, arbitration, mediation or administrative proceedings, shall be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of printed versions of such documents under the business records exception to the hearsay rule or the best evidence rule on the basis that such documents were not originated or maintained in documentary form.

Article 4 – Prices/Rates

The prices or rates set forth within the Subcontract are not subject to escalation unless an escalation formula is expressly provided for within the Subcontract. Travel where expressly authorized in this Subcontract shall be reimbursed in accordance with the Federal Travel Regulations, 41 Code of Federal Regulations (CFR) and FAR 31.205.46. Subcontractor shall also provide such evidence as Magellan Federal may reasonably require in support of the invoice.

Article 5 – Warranties

- a. General: Notwithstanding any prior inspection and/or acceptance and the conclusiveness thereof, Subcontractor expressly warrants that all products and services delivered hereunder shall be free from defects, shall be of good materials and workmanship, and shall conform to applicable specification, drawings, samples, and performance specifications, whether set forth in this Subcontract or in Subcontractor's sales literature. In the event of a conflict between the terms of this Subcontract and such sales literature, the terms of this Subcontract shall prevail.
- b. Warranty of Authenticity: Subcontractor warrants that all products delivered under this order are new and in their original packaging. No substitutions are to be supplied without Magellan Federal's prior written consent. Subcontractor certifies that the products are genuine products authorized by the manufacturer and are entitled to the full manufacturer's warranty and service including any related software. Subcontractor shall include the substance of this Article in all applicable purchase orders or subcontracts issued in the performance of this order.
- c. Subcontractor agrees to indemnify, defend, protect, and hold harmless Magellan Federal for all liabilities, loss, costs, damages, expenses (including reasonable attorney's fees) resulting from any breach of warranty.

Article 6 – Records and Audits

For a period no less than three (3) years after final payment under each and every Subcontract or Task Order, Subcontractor shall maintain complete and accurate books, records, documents, and other evidence of the time worked, costs, expenses and allowances pertaining to this



Subcontract (hereinafter collectively called "records") to the extent and in such detail as will properly reflect all net costs (indirect and direct) of labor, materials, equipment, supplies and services and other costs and expenses of whatever nature. Magellan Federal shall have the right to examine, reproduce and audit all records.

Article 7 – Independent Contractor

It is understood and agreed that the Subcontractor shall be deemed to be an independent contractor in all its operations and activities hereunder; that the employees furnished by Subcontractor to perform work hereunder shall be deemed to be Subcontractor's employees exclusively, without any relation whatsoever to Magellan Federal; that as employees of an independent contractor, said employees shall be paid by Subcontractor for all services in this connection; and that Subcontractor shall be responsible for all obligations and reports covering social security, unemployment insurance, workers' compensation, income tax, and other reports and deductions required by state or federal law.

Article 8 – Insurance

(Article is applicable only if, and then only to the extent, work under this Subcontract is to be performed by Subcontractor on property under ownership, possession, or control of Magellan Federal or Magellan Federal's customer)

a. Subcontractor shall maintain the following insurances:

(1) Commercial General Liability Insurance including Contractual Coverage. The limits of this insurance for bodily injury and property damage combined shall be at least:

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products-Completed Operations Limit	\$2,000,000
Personal and Advertising Injury Limit	\$1,000,000
Medical Expense (any one person)	\$5,000
Damage to Rented Premises (Each Occurrence)	\$50,000

(2) Business Automobile Liability Insurance. Should the performance of this Agreement involve the use of automobiles, Subcontractor shall provide comprehensive automobile insurance covering the ownership, operation, and maintenance of all owned, non-owned, and hired motor vehicles. Subcontractor shall maintain limits of at least \$1,000,000 per occurrence for bodily injury and property damage combined.

(3) Workers' Compensation Insurance. Such insurance shall provide coverage in amounts not less than the statutorily set amounts in the state where the work is performed, even if such coverages are elective in that state.

(4) Employers Liability Insurance. Such insurance shall provide limits of:

Employers Liability (Each Accident)	\$1,000,000
Employers Liability Disease (Each Employee)	\$1,000,000
Employers Liability Disease (Policy Limit)	\$1,000,000

(5) Excess/Umbrella Liability Insurance. Such insurance shall provide additional limits of not less than \$5,000,000 per occurrence or \$5,000,000 in the aggregate.

(6) Professional Liability. Such insurance shall be provided at \$3,000,000 per each occurrence or \$3,000,000 in the aggregate.



(7) Software and/or Hardware Errors and Omissions Liability Insurance and/or Professional Liability Insurance. Such insurance shall, (a) cover the liability of Subcontractor by reason of any actual or alleged error, omission, negligent act or wrongful act of the Subcontractor committed in rendering or failing to render any products or services in accordance with this Agreement; the liability shall include damage to and loss of intangible property, including data lost or incorrectly transmitted or recorded; (b) provide limits of not less than \$5,000,000 per occurrence; and (c) be maintained for a period of not less than two (2) years after the expiration of this Agreement.

(8) Cyber / Privacy Liability. Such insurance shall be carried if handling protected health information (PHI) or personal identification information (PII) at limits of \$10,000,000 per occurrence and \$10,000,000 in the aggregate.

Such insurance coverage as is required under this Subcontract shall be in a form and with insurance carriers satisfactory to Magellan Federal and without additional cost to Magellan Federal as a price adjustment, unless otherwise expressly provided for elsewhere within this Subcontract. Such insurance shall protect: (i) Subcontractor, (ii) Magellan Federal, (iii) any other party expressly designated by Magellan Federal elsewhere within this Subcontract, from claims that arise out of or result from operations by Subcontractor under this Subcontract, any lower-tier Subcontractor(s) of Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

Subcontractor shall have all liability insurance required under this Subcontract amended or endorsed to name Magellan Federal as an additional insured and to indicate that, with respect to the additional insured, there shall be severability of interest. As evidence of said coverage, Subcontractor shall forward certificates of insurance, or copies of insurance policies, to Magellan Federal, which instruments shall contain a provision requiring notification of Magellan Federal in writing of any cancellation or nonrenewal of said coverage not less than thirty days before its effectivity.

If Subcontractor fails to purchase or maintain liability insurance required under this Subcontract, Magellan Federal may, but is not obligated to, purchase such insurance on Subcontractor's behalf and shall be entitled to be repaid for any premiums paid therefor by Magellan Federal as a setoff on Subcontractor's invoice(s).

Article 9 – Disclosure of Information

Subcontractor shall not, in any manner, advertise or publish the fact that it has furnished or contracted to furnish Magellan Federal the goods or services herein mentioned without prior written consent of Magellan Federal. Subcontractor shall not disclose any details in connection with this Subcontract to any party except as may be otherwise provided.

Article 10 – Confidentiality of Magellan Federal's Data

Subcontractor shall keep confidential all information or data and return, upon request, all documents furnished by Magellan Federal and marked proprietary to Magellan Federal and shall not divulge or use such information or data for the benefit of any other party. Except as required for the efficient performance of this Subcontract, Subcontractor shall not make copies or permit copies to be made without the prior written consent of Magellan Federal. Such obligations of confidentiality shall not apply to data or information that (i) was in the rightful possession of Subcontractor without restriction, prior to the first receipt from Magellan Federal; or (ii) now or



hereafter, through no act or failure to act on the part of Subcontractor, becomes generally known and available to the public without restriction; or (iii) is hereafter disclosed and made available to Subcontractor without restriction by others having the right to make such disclosure.

Article 11 – Magellan Federal’s use of Subcontractor Data

Subcontractor agrees that all information heretofore or hereafter furnished or disclosed to Magellan Federal by Subcontractor in connection with the placing or performance of this Subcontract is furnished or disclosed as a part of the consideration for this Subcontract; that such information is not, unless otherwise agreed to by Magellan Federal in writing, to be treated as confidential or proprietary; and that Subcontractor shall assert no claims by reason of the use or disclosure of such information by Magellan Federal, its assigns, or customers. No employee of Magellan Federal has the authority to make an agreement providing for the confidential treatment of, or limiting the use of or disclosure of, information so furnished or disclosed, unless such agreement is made in writing and signed by Magellan Federal’s cognizant Subcontract Administrator. However, notwithstanding any provision in this Subcontract or in a separate agreement, Subcontractor agrees that the items delivered under this Subcontract will not be treated as confidential or proprietary by Magellan Federal, and Subcontractor agrees not to affix any restrictive markings to the deliverables. If any deliverable contains a restrictive marking, Subcontractor hereby authorizes Magellan Federal to remove such restrictive markings. In the event this Subcontract is issued under a U.S. Government prime contract and any regulatory rights in technical data have precedence over any conflicting term in this clause; however, Magellan Federal shall have the right to copy, modify, disclose and use Subcontractor’s data in the performance of the prime contract.

Article 12 – Government and Magellan Federal Property Furnished to Subcontractor

- a. Magellan Federal or Government shall retain title to all Magellan Federal or Government furnished property, as applicable. Title to all property purchased by Subcontractor for which Subcontractor is entitled to be reimbursed as a direct item of cost under this Subcontract shall pass to and vest in the Government/ Magellan Federal upon the Subcontractor’s delivery of such property. Title to all other property, the cost of which is reimbursable to Subcontractor, shall pass to and vest in the Government/ Magellan Federal upon (i) issuance of the property for use in Subcontract performance; (ii) commencement of processing of the property or use in the Subcontractor’s performance; or (iii) reimbursement of the cost of the property by Magellan Federal, whichever occurs first. All Government furnished property, all property acquired by Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as “Government property”), and all Magellan Federal furnished property is subject to the provision of this article. Title to Magellan Federal furnished property or Government property shall not be affected by its incorporation into or attachment to any property not owned by Buyer or the Government, nor shall Government or Magellan Federal furnished property become a fixture or lose its identity as personal property by being attached to any real property.
- b. If, in connection with the performance of this subcontract, any property is furnished to Subcontractor by Magellan Federal or by the Government, Subcontractor shall assume the risk of, and be responsible for, any loss, theft, destruction of or damage to the property while in Subcontractor’s possession or control except to the extent that this subcontract



provides for the relief of Subcontractor from such liability. In the absence of such approval, Subcontractor shall return all such property in as good a condition as when received except for reasonable wear and tear for the utilization of such property in accordance with the provision of the prime contract.

Article 13 – Changes

- a. No modification of this Subcontract shall be binding on Magellan Federal unless made by a formal written change order, executed by Magellan Federal. Magellan Federal may at any time, by written order, and without notice to sureties or assignees, if any, make changes within the general scope of this Subcontract.
- b. If any such changes cause an increase or decrease in the cost of, or time required for, performance of any part of the work under this Subcontract, whether or not changed by such change order, an equitable adjustment shall be made in the Subcontract price or schedule, or both, and the Subcontract shall be modified in writing accordingly.
- c. Subcontractor must assert its right to an adjustment in writing under this Article 13 within twenty (20) days from the date of notification of the change to Subcontractor. However, if Magellan Federal decides that the facts justify it, Magellan Federal may receive and act upon a proposal submitted before final payment under this subcontract.
- d. Nothing in this Article 13 shall excuse Subcontractor from immediately proceeding with the Subcontract as changed, including failure of the parties to agree upon any adjustment to be made under this Article 13.

Article 14 – Modification Required by Magellan Federal's Customer

Subcontractor agrees to incorporate into this Subcontract any revised clause or additional clause as Magellan Federal may reasonably deem necessary to enable Magellan Federal to comply with the provisions of the prime contract or higher-tier subcontract with its customer and any modifications thereto. If any such revised clause or additional clause causes any increase or decrease in the cost of or time required for performance of the Subcontract work, an equitable adjustment shall be made in accordance with the procedures of Article 13.

Article 15 – Organizational Conflict of Interest

It is understood and agreed that the Subcontractor, under the terms of this Subcontract, or through the performance of the Statement of Work made a part of this Subcontract, in neither obligated nor expected to deliver or provide material or perform work, which will place the Subcontractor in an Organizational Conflict of Interest, which could serve as a basis for excluding the Subcontractor from supplying products or services to the U.S. Government customer. Further, during the course of this Subcontract, Magellan Federal's cognizant Subcontracts Administrator will not knowingly unilaterally direct the Subcontractor to perform work, in contravention of the above understanding. It will be the Subcontractor's responsibility to identify any situation in which the potential for an Organizational Conflict of Interest exists.

Article 16 – Compliance with Laws

Subcontractor warrants that it shall comply with all applicable federal, state, or local laws, rules, and regulations in the performance of this Agreement. Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual



orientation, gender identity, national origin, disability, or status as a protected veteran. Subcontractor also warrants compliance with Section 508 of the Rehabilitation Act.

Article 17 – Procurement Integrity

Subcontractor shall fully comply with any and all applicable federal, state, or local laws, rules, regulations, and ordinances, including, but without limitation, section 27 of the Office of Federal Procurement Policy Act, 41 U.S.C. 423 and its implementing regulations. In addition, Subcontractor agrees promptly to provide Magellan Federal any and all information and certifications requested by Magellan Federal in this regard. Subcontractor agrees to defend, hold harmless, and indemnify Magellan Federal, its officers, employees, and agents from and against any and all liability, charges, damages, costs, expenses, investigations, suits, and attorneys' fees arising out of or in any way relating to Subcontractor's failure to comply fully with this provision.

Article 18 – Disputes

- a. Any claim, controversy, or dispute (hereinafter collectively referred to as "Dispute"), that may arise under or in connection with this Subcontract with respect to the rights, duties, or obligations of the Parties shall be reduced to writing and submitted for resolution to ascending levels of management of the respective Parties up to the Chief Executive Officers. Any dispute that cannot be resolved to both Parties' mutual satisfaction, after good faith negotiations, within ninety (90) calendar days from the date the written claim was received by the other Party, or such additional time as the Parties agree upon, in writing, may be settled by appropriate legal proceedings including, without limitation, arbitration or litigation. Any litigation shall be brought, and jurisdiction and venue shall be proper only in a state or federal district court in the Commonwealth of Virginia. Subcontractor shall proceed diligently with performance pending resolution of any such Dispute by settlement or final judgment. By accepting this Subcontract, Subcontractor consents to this Condition in its entirety.
- b. Notwithstanding any provision of this Subcontract to the contrary, if a decision on any question under, out of, or relating to the prime contract is made by the Government, and such question also arises under, out of, or relates to this Subcontract, said decision if binding upon Magellan Federal, shall in turn be binding upon Magellan Federal and Subcontractor with respect to such question under this Subcontract; provided, however, that if Subcontractor disagrees with any such decision made by the Government, and if Magellan Federal elects not to invoke such remedies under Public Law 95-563 (as amended), the Contract Disputes Act of 1978, to the extent Magellan Federal has the right to invoke such remedies, Subcontractor shall have the right to invoke the said remedies in the name of Magellan Federal; provided further, that notice of Subcontractor's intention to do so is furnished to Magellan Federal in writing within thirty (30) days from the date on which Subcontractor receives notice of such decision and Magellan Federal's election not to pursue its available remedies. If Magellan Federal elects not to contest any such decision where it is Magellan Federal's right to do so, Magellan Federal agrees to notify Subcontractor within ten (10) days after receipt of such decision and to provide reasonable assistance to Subcontractor in its prosecution of any resulting litigation. If Magellan Federal elects to contest any such decision of the Government, Magellan Federal agrees to promptly furnish Subcontractor with a copy of the appeal or initial pleadings. Any decision or judgment rendered pursuant to the Contract Dispute Act of 1978 (as



amended), if binding upon Magellan Federal, shall in turn, be binding upon Subcontractor. All costs of pursuing remedies invoked by Subcontractor shall be paid by Subcontractor, without prejudice to any right Subcontractor may have to recovery or allowance thereof.

- c. If Subcontractor is otherwise adversely affected by any decision made by any representative of the Government on any question of fact or law arising under the prime contract, which is also related to this Subcontract, from which an appeal under the Disputes clause in the prime contract is not available, said decision if binding upon Magellan Federal shall, in turn be binding upon Magellan Federal and Subcontractor with respect to such question as it relates to this Subcontract; provided, however, if Subcontractor is adversely affected by any such decision and, in good faith, disagrees with such decision, and if Magellan Federal elects not to bring suit against the Government with respect to such decision, Magellan Federal shall promptly notify Subcontractor, and Subcontractor shall have the right to bring suit against the United States in the name of Magellan Federal. A final judgment or ruling in any such action, if binding upon Magellan Federal shall, in turn, be binding upon Subcontractor and Magellan Federal under this Subcontract, with respect to the question decided as it relates to this Subcontract. Buyer agrees to provide reasonable assistance in the prosecution of any such action. All costs of any such suit, or any appeal prosecuted by Subcontractor, shall be paid by Subcontractor, without prejudice to any right Subcontractor may otherwise have to recovery or allowance thereof.
- d. A claim (as defined in the clause of FAR 52.233-1) or amendment thereof shall be made in writing, signed by a senior official in charge and submitted to Magellan Federal Subcontracts Administrator. Subcontractor shall certify any such claim or amendment thereof that exceeds \$100,000 as follows:
- "I certify that this claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, and that the amounts requested accurately reflect the subcontract adjustment for which the Subcontractor believes Magellan Federal is liable."

Subcontractor's Name _____ By (Signature) _____
Date _____ Title _____

- e. If, as a result of any decision or judgment that is binding upon Subcontractor and Magellan Federal, Magellan Federal is unable to obtain reimbursement from the Government under the prime contract for, or is required to refund or credit to the Government, any amount with respect to any item of cost or fee for which Magellan Federal has reimbursed Subcontractor, Subcontractor shall, on demand, promptly repay such amount to Magellan Federal.
- f. The rights and obligations herein shall survive completion of and final payment under this Subcontract.

Article 19 – Waiver of Breach

No waiver of a breach of any provision of this Subcontract shall constitute a waiver of any other breach or of such provision. Failure of either party to enforce at any time, or from time to time,



any provision of this Subcontract shall not be construed as a waiver thereof. The remedies herein reserved shall be cumulative and additional to any other remedies in law or equity.

Article 20 – Termination for Default

Magellan Federal may forthwith terminate this subcontract in whole or in part for default in the event of the occurrence of any of the following:

1. Insolvency of the Subcontractor. Subcontractor shall be deemed insolvent if: (i) it has ceased to pay its debts in the ordinary course of business or cannot pay its debt as they become due, whether it has committed an act bankruptcy or not and whether insolvent within the meaning of the Federal Bankruptcy Act or not; (ii) the filing of a voluntary petition to have Subcontractor declared bankrupt; (iii) the appointment of a receiver or trustee for Subcontractor, or (iv) the execution by Subcontractor of an assignment for the benefit of creditors.
2. Failure of Subcontractor per the terms of this Subcontract to: (i) deliver the supplies or perform the services within the time specified in this subcontract or any authorized extension, (ii) make progress so as to endanger the performance of this subcontract, or (iii) perform to any other substantive provision of this subcontract. The Subcontractor shall diligently proceed with performance of any subcontract work not terminated.

Article 21 – Termination for Convenience

Magellan Federal may at any time terminate this Subcontract in whole or in part for its convenience upon written notice to Subcontractor, in which event Subcontractor shall be entitled to reasonable termination charges consisting of: (1) if Fixed Price, the percentage of the Subcontract value reflecting the percentage of the work performed prior to termination, plus any reasonably incurred settlement expenses, or (2) if Cost Type, the portion of the actual incurred cost reflecting actual work performed prior to termination, plus any performance, incentive or award fee(s) earned prior to termination and any reasonably incurred settlement expenses.

Article 22 – Indemnification

Subcontractor shall indemnify, defend, protect, and hold harmless Magellan Federal, its officers, employees, and agents from and against all cost, losses, expense, damages, claims, suits, or any liability whatsoever (including attorney's fees), arising out of or in connection with the work performed hereunder, or any act or omission of Subcontractor, its agents, employees, or subcontractors; except to any extent otherwise expressly provide elsewhere within this Subcontract.

Article 23 – Subcontracting

Subcontractor shall obtain Magellan Federal's prior written consent before issuing any lower-tiered subcontract under this subcontract (i) if such lower-tiered subcontract will exceed (\$00000), or (ii) if such prior written consent is otherwise required by any other express provision of this Subcontract.



Article 24 – Subcontractor’s Liability to Third Parties

Subcontractor shall be solely responsible for any and all third party liability, other than arising from or due to the negligence of Magellan Federal, its agents, or employees acting within the scope of their employment, incurred by Subcontractor in connection with the performance of this Subcontract; and shall in no way be reimbursed any direct cost pertaining thereto under this Subcontract unless expressly provided for elsewhere within this Subcontract.

Article 25 – Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data

Cost proposals are to be submitted in accordance with the applicable requirements of FAR 52.215-12, 52.215-13, 52.215-20, and 52.215-21

Article 26 – Price Reduction for Defective Cost or Pricing Data/Non-Compliance with Cost Accounting Standards

- a. Magellan Federal’s prime contract or subcontract with its customer under which this Subcontract is issued may contain a clause that entitles the customer, the U.S. Government (“the Government”) or a Government prime contractor or subcontractor, to reduce Magellan Federal’s contract price, or any costs reimbursable thereunder, where the Government determines that such price or cost was increased by any significant sum, because Subcontractor or any of its subcontractors or prospective subcontractors failed to furnish, in connection with the award or modification of this Subcontract, cost or pricing data that was current, complete, and accurate. Subcontractor hereby agrees to indemnify and hold Magellan Federal harmless from any costs Magellan Federal may incur resulting from such a failure to provide current, complete, and accurate cost or pricing data; provided, however, that Subcontractor’s liability to Magellan Federal hereunder shall not include any profit, costs, or charges added to Subcontractor’s price or costs by Magellan Federal and included in Magellan Federal’s price or costs to its customer.
- b. As Subcontractor’s exclusive remedy for relief from such a determination by the Government, to the extent Magellan Federal has the right to invoke remedies under the Disputes Act, Subcontractor shall have the right to assert, in Magellan Federal’s name and at Subcontractor’s expense, any right available to Magellan Federal to appeal from such determination; and the resolution of such an appeal, through judgment, settlement, or otherwise, shall be final and conclusive as to Subcontractor’s indemnification and hold harmless obligations Magellan Federal under this Subcontract.
- c. The rights and obligations of Magellan Federal and Subcontractor under this Article shall survive completion of and purported final payment under, or termination of, this Subcontract.

Article 27 – Incremental Funding (Fixed Price)

If this Subcontract is to be incrementally funded (as opposed to fully funded), such shall be governed by one of the following appropriate clauses as appropriate: (i) DFARS 252.232-7007, Limitation of Government’s Obligation; or (ii) an alternate clause incorporated into the Subcontract by mutual agreement.



Article 28 – Limitation of Magellan Federal’s Obligation (Cost-Reimbursement)

(Article is applicable only if this Subcontract is identified as to be incrementally funded [as opposed to fully funded]. Article is Magellan Federal’s substitution for Limitation of Funds clause of FAR 52.232-22.)

- a. It is estimated that the cost to Magellan Federal for the performance of this Subcontract will not exceed the estimated cost set forth in the Subcontract, and the Subcontractor agrees to use its best efforts to perform the work specified in the Statement of Work and all obligations under this Subcontract with such estimated cost.
- b. The amount presently available for payment and allotted to this Subcontract, the items covered thereby, and the period of performance which it is estimated the allotted amount will cover are specified in the Schedule. It is contemplated that from time-to-time additional funds will be allotted to this Subcontract up to the full estimated cost set forth in the Schedule, exclusive of any fee. The Subcontractor agrees to perform work on this Subcontract up to the point at which the total amount paid and payable by Magellan Federal pursuant to the terms of this Subcontract equals, but does not exceed, the total actually allotted to the Subcontract.
- c. If at any time Subcontractor has reason to believe that the costs that it expects to incur in the performance of this Subcontract in the next succeeding thirty (30) days, when added to all cost previously incurred will exceed seventy-five percent (75%) of the total amount then allotted to the Subcontract, the Subcontractor shall notify Magellan Federal’s Subcontract Administrator in writing to that effect. The notice shall state the estimated amount of additional funds required to continue performance for the period set forth in the Schedule. Thirty (30) days prior to the end of the period specified in the Statement of Work, the Subcontractor will advise Magellan Federal’s subcontract manager in writing as to either (i) that the funds available will permit the Subcontractor to continue performance beyond the period specified in the Statement of Work, and specify the period for which performance may be continued, or (ii) the estimated amount of additional funds that will be required for the timely performance of the work under the Subcontract, or for such further periods as may be specified in the Statement of Work or otherwise established Magellan Federal.
- d. Except as required by other provisions of this Subcontract specifically citing and stating that they are an exception to this Article, Magellan Federal shall not be obligated to reimburse the Subcontractor for costs incurred in excess of the total amount from time to time allotted to the Subcontract by Magellan Federal, and the Subcontractor shall not be obligated to continue performance under the Subcontract or otherwise to incur costs in excess of the amount allotted to the Subcontract unless, and until Magellan Federal’s Subcontract Administrator has notified the Subcontractor in writing that such allotment amount has been increased and has specified in such notice an increased amount constituting the total amount then allotted to the Subcontract. To the extent the amount allotted exceeds the estimated cost set forth in the Subcontract, such estimated cost shall be correspondingly increased. No notice, communication, or representation in any other form, or from any person other Magellan Federal’s Subcontracts Administrator, shall affect the amount allotted to this Subcontract. In the absence of the specified notice, Magellan Federal shall not be obligated to reimburse the Subcontractor for any cost in excess of the total amount then allotted to the Subcontract, whether those excess costs were incurred during the course of the Subcontract or as a result of termination. Any costs incurred by the Subcontractor in excess of the amount allotted shall not be an allowable cost of the Subcontract if the allotment is subsequently increased, unless the specified notice by the



Subcontracts Administrator specifically states that such costs are allowable. If Magellan Federal's Subcontracts Administrator issues a termination or other notice, the Subcontracts Administrator may allot additional funds and direct that the increase is solely for the purpose of covering termination or other specified expenses.

- e. Change orders issued pursuant to the Changes clause of this Subcontract shall not be considered an authorization to the Subcontractor to exceed the amount allotted in the Subcontract in the absence of a statement in the change order, or other contractual modification, increasing the amount allotted.
- f. Nothing in this Article shall affect the right of Magellan Federal to terminate this Subcontract. In the event this Subcontract is terminated, Magellan Federal and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the Subcontract based upon the share of costs incurred by each.
- g. In the event that sufficient funds are not allotted to this Subcontract to allow completion of the work contemplated by this Subcontract, the Subcontractor shall be entitled to that percentage of the fee set forth in the Subcontract equivalent to the percentage of completion of the work contemplated by the Subcontract.

Article 29 – Taxes

Subcontractor's prices shall be exclusive of any federal, state, or local sales, or excise taxes levied upon or measured by the sale, the sale's price, or the use of goods required in the performance of this Subcontract. Subcontractor shall list separately on its invoice any such tax lawfully applicable to any such goods, and payable by Magellan Federal, with respect to which Magellan Federal does not furnish to Subcontractor lawful evidence of exemption. Subcontractor's prices shall not include any taxes on property owned by the U.S. Government, unless authorized in writing by Magellan Federal. Subcontractor agrees to comply with any reasonable request by Magellan Federal regarding payments under protest, and regarding any refunds, claims, litigation, or proceedings with respect to any such taxes, and to make appropriate adjustments to afford Magellan Federal the benefit of any refund or reduction in such taxes.

Article 30 – Set Off

Magellan Federal shall be entitled at all times to set off any amount owing at any time from Subcontractor to Magellan Federal, or any of its affiliated companies, against any amount payable at any time by Magellan Federal or any of its affiliated companies to Subcontractor.

Article 31 – Assignment

Assignment of this Subcontract, or any interest therein or any payment due or to become due thereunder, without the prior written consent of Magellan Federal shall be void. Should Magellan Federal any assignment thereof, in no event shall any copy of any part or all of this Subcontract (including any plan, specification, or other document relating to work under this Subcontract) which is marked "Confidential" be furnished to any assignee of any claim arising under this Subcontract, or to any other person not entitled to receive the same, without the prior written consent of Magellan Federal.

Article 32 – Governing Law

This Agreement shall be construed in all respects in accordance with, and any dispute arising hereunder shall be governed by, the substantive and procedural laws of the Commonwealth of Virginia except, however, that choice of law provisions shall not apply. Any legal action shall be brought in a court of competent jurisdiction in Virginia. The Parties waive any right to jury trial.



Article 33 - Entire Agreement

This Subcontract is intended by the Parties as a final expression of their agreement and is the complete and exclusive statement of all terms and conditions of agreement. No course of prior dealing between the Parties, and no usage of trade, shall be relevant to supplement or explain any term used in this Subcontract.