

## **TERMINATION OF CONTRACTS**

### **CONVENIENCE OF viNGN**

- (a) The performance of work under this contract may be terminated by viNGN in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the corporation. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.
- (b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall, subject to the requirements imposed under applicable federal or local law relating to procurements made with federal grants or local public funds:
- (i) stop work under the contract on the date and to the extent specified in the Notice of Termination;
  - (ii) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;
  - (iii) terminate all orders and subcontracts to the extent they relate to the performance of work terminated by the Notice of Termination;
  - (iv) assign to viNGN, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case viNGN shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
  - (v) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;
  - (vi) transfer title and deliver to viNGN in the manner, at the times, and to the extent, if any, directed by the Contracting Officer (A) the fabricated or unfabricated parts, work in progress, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to viNGN.

## Addendum II

- (vii) use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, and property of the types referred to in (vi) above; provided, however, that the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at the price or prices approved by the Contracting Officer and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by viNGN to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract of paid in such other manner as the Contracting Officer may direct;
  - (viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
  - (ix) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the federal or local Government or viNGN has or may acquire an interest.
- (c) After receipt of the Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim. Such claim shall be submitted promptly but in no event later than thirty (30) days from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such thirty (30) day period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he or she may receive and act upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him or her, the amount, if any, due to the Contractor by any reason of the termination and shall thereupon pay to the Contractor the amount so determined, subject to the approval of the Chief Financial Officer of viNGN.
- (d) Subject to the provisions of paragraph (c) the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed to be paid to the Contractor pursuant to this paragraph (d).

## Addendum II

- (e) In the event of a failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall pay to the Contractor the amounts determined by him or her as follows, but without duplication of amounts agreed upon in accordance with paragraph (d):
- (i) for completed supplies, materials and equipment or services accepted by viNGN (or sold or acquired as provided in paragraph (b)(vii) above) and not theretofore paid for, a sum equivalent to the aggregate price for such supplies or services computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving for freight or other charges;
  - (ii) the total of --
    - (A) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under paragraph (e)(i) hereof;
    - (B) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(v) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (A) above; and
    - (C) a sum, as profit on (A) above, determined by the Contracting Officer to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
  - (iii) the reasonable costs of settlement, including accounting, legal, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of any subcontract thereunder, together with reasonable storage, transportation and other costs incurred in connection with protection or disposition of property allocable to this contract.