

Appendix PTP – Performance Type Payments dtd 8/25/10

**General:** Performance Type Payments will be available to the Seller upon Seller's request and on the condition that the Seller submits and has approved by the Buyer a Performance Type Payment Plan (Exhibit A) prior to or within 30 days of contract award. Performance payments will be paid to the Seller at invoice and upon the completion of the performance milestone and submission of evidence of completion as defined in the approved plan. Payment will be made at ninety (90%) of the assigned value of the milestone(s) achieved. Performance Type Payments will be made monthly unless otherwise agreed upon by Buyer and Seller.

**Performance Type Payment Invoice Request Format:** Each invoice must be accompanied by Exhibit A, B and C (C must be duly executed by a Company Officer of the Seller), updated to the current billing.

**Performance Payment Suspension:** The Buyer may reduce or suspend payments at any time if there is substantial evidence that the Seller has failed to comply with any material provision of the contract.

**Liquidation:** The Seller shall be entitled to invoice the difference between the contract amount and the cumulative total payments made, less any amount set aside for any provision of the contract providing for monetary retentions by the Buyer, at Delivery of the product(s).

**Title:** Title for Contract Products is vested in the Buyer as payment is made. Disposition of property shall be determined by other applicable clauses of the contract (e.g. Termination). The Seller must obtain approval of the Buyer before acquiring for its own use or disposing of any property for which the title is vested in the Buyer under this clause.

**Risk of Loss and Insurance:** The Seller shall bear the risk of loss or damage to any property of the Buyer in Seller's possession or care, and shall maintain adequate insurance so as to cover any such loss or damage, and shall name the buyer as the beneficiary of any such payments.

**Property Identification:** The Seller shall clearly identify, by marking and segregating, all property subject to any liens or title in favor of the Buyer, and shall maintain reasonable control over such property.

**Reservation of Rights:** The rights and remedies of Buyer provided in this Clause shall not be exclusive, and are in addition to any other rights and remedies provided under this contract or at law.

**Preparation Instructions for Performance Type Payment Milestone Plan & Progress Report (Exhibit A)**

Performance Type Milestones consistent with the contract schedule will be identified by the Seller with the proposal or within thirty days after award of the contract as mutually agreed to by Seller and Buyer. The milestones will represent events which are measurable and completion of which is verifiable. A percentage will be assigned to each milestone based on the labor, material and other resources required to achieve the milestone. If provided before contract award, these percentages may be revised to reflect the effects of scope changes in the contract.

The Performance Type Milestone Plan & Progress Report (Exhibit A) is to be submitted either with the Seller's proposal or within thirty days after award of the contract, as well must be update with any changes, missed milestones, and added milestones prior to any request for payment.

**Instructions for filling out Exhibit A.**

**Product:** provide brief description of item being procured

**Specification:** Include purchase specification number (if applicable).

**Item 3. Contract:** Enter the delivery order number

**Item 4 Seller:** Enter the company name of Seller

**Item 4a Ship/Hull:** Enter the ship or hull number pertaining to this delivery order performance type payment milestone plan

**Item 4b Current Value:** Enter the current value of the delivery order

**Item 5 Milestone Description:** Enter short description of the milestone

**Item 6 Milestone Percentage of Contract:** Identify the performance percentage that each milestone represents. The sum of all milestones should equal 100% and the last milestone should always be liquidation from 90% to a value less warranty retention. See the warranty retention clause of the contract (if applicable).

**Item 7 Cumulative Milestone Percentage:** This is the cumulative total of the individual milestone percentages listed in item 6.

**Item 8 Planned Milestone Completion Date:** Enter the date the milestone is scheduled to complete

**Item 9 Actual Milestone Completion Date:** Enter the date the milestone was actually completed

**Item 10 Planned Milestone Invoice Date:** Enter the date the invoice is scheduled to be submitted to Buyer

**Item 11 Actual Milestone Invoice Date:** Enter the date the invoice was actually submitted to Buyer

**Item 12 Dollar Value of Milestone:** Identify the dollar value of the milestone. This is computed by multiplying the milestone percentage value in item 6 by the “Current value of this shipset”.

**Item 13 Cumulative Dollar Value of Milestones:** This is the cumulative total of the individual milestone dollar values listed in Item 10

**Item 14 Invoice Dollar Value of Milestones:** Identify the dollar value of the invoice to be submitted. (90% of value of milestones(s) achieved.

**Item 15 Cumulative Invoice Dollar Value:** This is the cumulative total of the individual dollar values listed in Item 14.

## **Preparation Instructions for Performance Type Payment Request (EXHIBIT B)**

### **Description/Purpose:**

Request performance type payment based upon performance made against milestones on the Performance Type Payment Milestone Plan

### **Instructions for Completing Exhibit B**

Item 1. Product – provide brief description of the items being procured

Item 2. Purchase Spec # -provide the purchase spec number

Item 3. Delivery Order Number –enter the delivery order number

Item 4. Seller Name –enter company name

Item 5. Request Date – enter date of this payment request

Item 6. Request Number – enter Seller number for this payment request

Item 7 Total value of Delivery Order – enter current delivery order value

Item 8 Value subject to performance type payments – enter only value subject to performance type payments

Item 9 Cumulative Percent Value earned – Enter Cumulative Milestone percent complete as shown on Exhibit A, Item 7 including this payment request.

Item 10 Cumulative Dollar Value of Milestone Earned – Enter the cumulative dollar value of completed milestones as shown on Exhibit A, Item 11 including this payment request.

Item 11 90% of earned value –Enter 90% of item 10 above

Item 12 Amount eligible for this billing – Enter value of 11 above

Item 13 Previous Performance Payments – Enter the cumulative dollar value of all previous payments applied for before (not including ) this request

Item 14 Value of Present Request – Subtract 13 from 12

PERFORMANCE TYPE PAYMENT REQUEST (EXHIBIT B)

- 1.Product \_\_\_\_\_
- 2.Purchase Spec # \_\_\_\_\_
- 3.Delivery Order Number: \_\_\_\_\_
- 4..Seller Name: \_\_\_\_\_
- 5.Request Date: \_\_\_\_\_
- 6.Request Number: \_\_\_\_\_

7. Total Value of Delivery Order (Ref 4b Exhibit A)	
8. Value subject to Performance Payments	
9.Cumulative Percent Value Earned (Ref 7 Exhibit A)	
10. Cumulative dollar value of milestones completed including this request (Ref 13 Exhibit A)	
11. 90% of earned value	
12. Amount eligible for this billing	
13. Previous performance payments	
14. Value of present request	

I certify that I am familiar with the construction of the contract products included within this request for performance type payments, and that the performance made thereon, and that I have examined the Performance Reports supporting this application, and that I find them to be true and correct.

Company Officer Name

\_\_\_\_\_

Company Officer Signature

\_\_\_\_\_

EXHIBIT C

**AFFIDAVIT OF NO LIEN**

\_\_\_\_\_, being duly sworn, deposes and says:  
That he/she is \_\_\_\_\_(position/title)of \_\_\_\_\_(Seller Name), contractor for furnishing of the aforesaid Supplies/Services. It is his/her duty to know, and he/she does know and is thoroughly familiar with (a) conduct of the business of said company, (b) its financial condition and the stature of its business transactions, and (c) provisions of the contract identified above.

That in connection with this request for payment made by the Seller for partial payment under said contract, he/she has made due and diligent personal inquiry and has ascertained that there are no liens or rights in rem of any kind whatsoever against said \_\_\_\_\_(work or equipment furnished), or material construction thereof, other than claims and liens of the\_\_\_\_\_.

That no laborer or mechanic in the employ of said contractor has been permitted or required to work upon any part of the \_\_\_\_\_(work or equipment furnished) in violation of the provisions of the contract identified above.

That title to all material and equipment included as part of the value of work done and delivered to the Seller on which payments are made shall immediately be vested in BIW and all other conditions of said contract are being observed by the Seller in the prosecution of said contract.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Company Officer