Where necessary, to identify the applicable parties under the following clauses, “Contractor” shall mean “Seller,” “Contracting Officer” shall mean “Lockheed Martin Procurement Representative,” “Contract” means this subcontract and “Government” means “Lockheed Martin.” However, the words “Government” and “Contracting Officer” do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the Prime Contract Contracting Officer or duly authorized representative, including but not limited to (i) audit rights to Seller’s proprietary business records or (ii) any indemnification or limitation of liability obligation, which obligation shall remain with the Government; (2) when title to property is to be transferred directly to the Government, and (3) when the Government is granted ownership or other rights to Seller’s intellectual property or technical data.

**Full Text Clauses**

**Section H – Special Contract Requirements**

**1. COMPLIANCE WITH APPLICABLE CENTER POLICIES AND PROCEDURES** (Applicable if Seller will be performing work at a NASA Center under this purchase order/subcontract.)

Contractor and subcontractor personnel (regardless of tier) working on-site at NASA Centers shall comply with all applicable center policies and procedures. The Contractor shall keep itself and pertinent subcontractors up-to-date with the latest revisions of these policies and procedures. The Contractor shall promptly take corrective action upon receipt of notice from the Contracting Officer of noncompliance with any applicable center policy or procedure.

(End of clause)

**2. DATA DELIVERABLE MARKING REQUIREMENTS FOR EXPORT CONTROL** (Applicable if Seller will be delivering any data under this purchase order/subcontract.)

(a) The Contractor shall perform an export control assessment for all data deliverable items shown in Attachment J-2, Data Requirements Descriptions.

(b) If a product is determined to contain information controlled by the International Traffic in Arms Regulations, the following statement shall be included on the product cover page.

**International Traffic in Arms Regulations (ITAR) Notice**

This document contains information which falls under the purview of the International Traffic in Arms Regulations (ITAR), 22 CFR 120-130, and is export controlled. It shall not be transferred to foreign nationals in the U.S. or abroad, without specific approval of a knowledgeable NASA export control official, and/or unless an export license/license exemption is obtained/available from the United States Department of State. Violations of these regulations are punishable by fine, imprisonment, or both.

(c) If a product is determined to contain information controlled by the Export Administration Regulations, the following statement shall be included on the product cover page:

**Export Administration Regulations (EAR) Notice**

This document contains information within the purview of the Export Administration Regulations (EAR), 15 CFR 730-744, and is export controlled. It may not be transferred to foreign nationals in the U.S. or abroad, without specific approval of a knowledgeable NASA export control official, and/or unless an export license/license exception is obtained/available from the Bureau of Industry and Security (BIS), United States Department of Commerce. Violations of these regulations are punishable by fine, imprisonment, or both.

If a product is determined to contain information controlled by both the International Traffic in Arms Regulations and Export Administration Regulations, the following statement shall be included on the product cover page.

**Subject to U.S. Export Control Regulations**:

This document contains information within the purview of the International Traffic in Arms Regulations (ITAR), 22 CFR §120-130 and the Export Administration Regulations (EAR), 15 CFR §730-774, and is export-controlled.  It may not be transferred to foreign nationals in the U.S. or abroad without specific approval of a knowledgeable export control official, and/or unless an export license, license exemption, or license exception is obtained/available from the Directorate of Defense Trade Controls, United States Department of State or Bureau of Industry and Security, United States Department of Commerce.  Violations of these regulations are punishable by fine, imprisonment, or both.

(d) If a product has been determined to be suitable for public release, it shall be so labeled.

(End of clause)

**3. DISCLOSURE OF ORGANIZATIONAL CONFLICT OF INTEREST AFTER CONTRACT AWARD** (Applicable for all purchase orders/subcontracts.)

If, at any time during the performance of this contract, the Contractor or Government identifies an actual or potential organizational conflict of interest that was not adequately disclosed and resolved prior to award, the disclosing party shall make a prompt and full disclosure in writing to the other party. This disclosure shall include a description of the action that needs to be or has been taken in order or resolve the conflict. This requirement also includes subcontractors’ actual or potential organizational conflicts of interest not adequately disclosed and resolved prior to award.

**4.** **INDEMNIFICATION FOR UNUSUALLY HAZARDOUS OR NUCLEAR RISKS** (Requests for indemnification under this clause shall be through Lockheed Martin for submittal to the Government.)

(a) The Government recognizes that the Contractor’s approach to fulfill the requirements of this contract for all Exploration Missions using the Orion Spacecraft may involve conditions considered to constitute unusually hazardous risks that could result in potential third party liability that is uninsured (e.g., launch services activity)or could exceed insurance coverage the Contractor could reasonably be expected to purchase and maintain, considering the availability, cost, and terms and conditions of such insurance.

(b) The Government will consider any indemnification request submitted by the Contractor in accordance with Public Law 85-804, Part 50 of the Federal Acquisition Regulation (FAR), Part 1850 of the NASA FAR Supplement, and applicable Agency policy. The Contractor shall provide a sufficient legal and factual basis for its request in accordance with FAR Part 50.104-3, Special Procedures for Unusually Hazardous or Nuclear Risks, and NASA FAR Supplement Part 1850.104-3(a), Special Procedures for Unusually Hazardous or Nuclear Risks. Neither this clause nor the references to P.L. 85-804 or these FAR and NASA FAR Supplement sections shall be construed to mean that NASA has approved any Contractor request for indemnification or determined indemnification to be applicable to any particular work under this contract.

(c) The Government will consider a request for indemnification for unusually hazardous risk in accordance with the foregoing paragraphs. In the event the Government denies the Contractor’s request for indemnification, the parties will enter into good faith negotiations to determine the appropriate course of action concerning potential third party liability.

(End of clause)

**5. 52.204-92, NASA SECURITY PROGRAM AND IDENTIFICATION OF EMPLOYEES (AUG 2018) (JSC PROCUREMENT INSTRUCTIONS)** (Applicable if Seller will be performing work at JSC.)

(a) The contractor shall adhere to Center and Agency-wide program policy and guidance for security operations and the Contractor shall comply with the following:

• NPR 1600.1, NASA Security Program Procedural Requirements

• NPD 1600.9, NASA Insider Threat Program

• NPD 1600.3, Policy on Prevention of and Response to Workplace Violence

• NPR 1600.3, Personnel Security

• NPR 1600.4, Identity and Credential Management.

(b) For any contract requiring a Facility Clearance Level (FCL) for access to Classified National Security Information (CNSI), the contractor shall adhere to the Agency-wide program policy and guidance related to the protection of CNSI by complying with the following:

• NPR 1600.2, NASA Classified National Security Information

(c) For any contract requiring an FCL for access to CNSI and requiring access to Communications Security (COMSEC) equipment, the contractor shall adhere to the Agency-wide program policy and guidance related to the protection of COMSEC equipment by complying with the following:

• NPR 1600.6, Communications Security (COMSEC) (NPR 1600.6 is a protected document that can be obtained by contractors that have a need-to-know. The JSC point of contact is the JSC COMSEC Account Manager (CAM)).

(d) At all times while on NASA property, the contractor, subcontractors, their employees, and agents shall wear NASA issued credentials. NASA credentials will be issued in accordance with NPR 1600.4, Identity and Credential Management. The employee’s Facility Security Officer (FSO) and/or Designated Official (DO) will submit an identity request for temporary (between 29 and 179 days) or permanent (greater than 180 days) credentials within the NASA Identity and Access Management (IdMAX) system.

(e) Credentials will be issued at the following locations:

• NASA Badging & Visitor Control Office, located in Building 110 at the Johnson Space Center (JSC) 6:00 a.m. to 5:30 p.m. Monday through Friday excluding holidays

• Sonny Carter Training Facility (SCTF) 7:00 a.m. to 3:30 p.m. Monday through Friday excluding holidays

• Ellington Field (EFD), Building 265, 7:00 a.m. to 11:00 a.m. Monday through Friday excluding holidays

• White Sands Test Facility (WSTF), Protective Services Office Building (PSOB), Building 108, Monday through Friday from 7:00 a.m. to 4:00 p.m. excluding holidays and off every other Friday due to 9/80 hour scheduling. WSTF visitor credentials will be issued on a 7-day-a-week, 24-hour-a-day basis.

(f) FSO or DO needing identity requester rights, must complete the following training in SATERN: Personal Identity Verification (PIV) – ICAM Overview and PIV – Requester Module. After completion of the training, the FSO/DO will request the following rights in NAMS: Agency ICAM Infrastructure; with the Identity Requestor role. Last, submit a JSC Form (JF) 200, NASA JSC Agreement Maintenance Card to be added as a Requester for the contract/agreement of responsibility. This will allow the contractor to have identity requestor privileges within IdMAX.

(g) For temporary credential requests, the FSO/DO will submit the credential request within IdMAX and instruct the employee to visit a JSC Badging Office to complete the enrollment process for the temporary credential. The employee will need to present two forms of matching I-9 identification documents to process a temporary credential. The list of acceptable I-9 documents can be found on the U.S. Citizenship and Immigration Services (USCIS) website located at www.uscis.gov.

(h) For permanent credential requests, the FSO/DO will submit a JF 1805, Non-NASA Employee Security Information, no later than noon on the Wednesday prior to the employee’s start date. The FSO/DO will notify the employee of the date/time for the background investigation processing, in accordance with NPR 1600.3, at the JSC Security Office eQIP lab, if required. The FSO/DO will provide the employee with the necessary forms to complete prior to the eQIP lab appointment. Employees will present two forms of matching I-9 identification documents to process a permanent credential. Employees will receive a temporary 30-day credential or Interim Agency Smart Badge until the PIV credential arrives at the JSC Badging Office. When the PIV credential arrives, the employee or FSO/DO will receive an email notification for credential pickup at the JSC Badging Office.

(i) The contractor shall be held accountable for issued credentials, keys, and other items. The contractor must assure credentials (returned to JSC Badging Office) and keys (returned to JSC Locksmith Office) are returned upon completion of work under the contract in accordance with the procedures listed on JF 760, JSC Contractor Termination and Return for Future Use Checklist.

(End of clause)

**6. Limitation of Future Contracting** (Applicable for all purchase orders/subcontracts.)

The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements or work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime of first-tier subcontractor under an ensuing NASA contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive advantage or potential bias (this time shall in no case be less than the duration of the initial production contract). NASA shall not unilaterally require the Contractor to prepare such specifications or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not to use them to complete with those other companies.

**7. MODIFIED DATA RIGHTS**

The following data items are authorized to use the following modified Limited Rights Notice and Restricted Rights Notice (FAR 52.227-14):

**See Attachment J-25, Limited Rights in Data (Appendix 1) and Restricted Computer Software (Appendix 2)**

**Limited Rights Notice (Dec 2007)**

(a) These data are submitted with limited rights under Government Contract No. \_\_\_\_\_ (and subcontract \_\_\_\_\_\_, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any; provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

1) Use (except for Manufacture) by Government personnel and Government Support Contractors supporting NASA Programs and Projects directly or indirectly on a need to know basis. Government Support Contractors will be identified by the Contracting Officer.

2) Emergency repair or overhaul work.

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

**Restricted Rights Notice (Dec 2007)**

(a) This computer software is submitted with restricted rights under Government Contract No. \_\_\_\_\_\_\_ (and subcontract \_\_\_\_\_\_\_\_, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use in or with the computer(s) for which it was acquired, including use at any Government installation to which such computer(s) may be transferred;

(2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Contractors or their subcontractors in accordance with paragraphs (b)(1) through (4) of this notice; and

(6) Used or copied for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is copyrighted computer software, it is licensed to the Government with the minimum rights set forth in paragraph (b) of this notice.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

**8. PATENT RIGHTS** (Applicable for all purchase orders/subcontracts.)

This contract includes the New Technology Clause 1852.227-70. It is anticipated that the Contractor may have Contractor background inventions that could be applied to Contract research and incorporated into deliverables under the Contract. The Government may need rights to use such Contractor background inventions in order to practice technologies produced under this Contract in other Government contracts. Thus, Contracting Officer permission is required before Contractor background inventions may be included in Contract deliverables. To the extent a Contractor background invention has been federally funded, the Government will receive its government-purpose license rights to practice the background invention. Where there is no Federal funding of the background invention, the Contractor will identify to the Contracting Officer the rights that it proposes to grant the Government to use such invention in other Government contracts. The Government shall receive a government-purpose license to practice any Contractor background invention where such Contracting Officer permission is not obtained prior to incorporating its background inventions into Contractor work. This clause or a clause substantially the same shall be included in all subcontracts at any tier.

(End of clause)

**9. SPACE FLIGHT AWARENESS MOTIVATION PROGRAM** (Applicable for all purchase orders/ subcontracts.)

The Contractor shall establish a program for Space Flight Awareness (SFA). The Program’s goals and objectives are to:

1. Ensure every employee involved in human space flight is aware of the importance of their role in promoting safety, quality and mission success.
2. Participation in NASA-Industry Space Flight Awareness Program.
3. Increase awareness of the Human Space Flight Program accomplishments, milestones and objectives with a focus on safety and mission success.
4. Conduct events and products that motivate and recognize the workforce, and enhance employee morale.
5. Function as an internal communications team to disseminate key educational, program/management safety, quality, and mission success messages and themes.

(End of clause)

**10. NFS 1852.225-70, EXPORT LICENSES (FEB 2000) and ALTERNATE I (FEB 2000)** (Alternate I will also apply.)

(a) The Contractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120-130, and the Export Administration Regulations (EAR), 15 CFR parts 730-799, in the performance of this contract. In the absence of available license exemptions/ exceptions, the Contractor shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Contractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this contract, including instances where the work is to be performed on-site at **NASA Facilities**, where the foreign person will have access to export-controlled technical data or software.

(c) The Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Contractor shall be responsible for ensuring that the provisions of this clause apply to its subcontractors.

(e) The Contractor may request, in writing, that the Contracting Officer authorizes it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). The Contracting Officer or designated representative may authorize or direct the use of the exemption where the data does not disclose details of the design, development, production, or manufacture of any defense article.

(End of clause)

**11. NFS 1852.247-73, BILLS OF LADING (JUN 2002)** (Applicable if Seller will be making any shipments.)

The purpose of this clause is to define when a commercial bill of lading or a government bill of lading is to be used when shipments of deliverable items under this contract are f.o.b. origin.

(a) *Commercial Bills of Lading.* All domestic shipments shall be made via commercial bills of lading (CBLs). The Contractor shall prepay domestic transportation charges. The Government shall reimburse the Contractor for these charges if they are added to the invoice as a separate line item supported by the paid freight receipts. If paid receipts in support of the invoice are not obtainable, a statement as described below must be completed, signed by an authorized company representative, and attached to the invoice.

“I certify that the shipments identified below have been made, transportation charges have been paid by (company name), and paid freight or comparable receipts are not obtainable.

Contract or Order Number:  **80JSC019C0012**

Destination: **TBD**.

(b) *Government Bills of Lading.*

(1) International (export) and domestic overseas shipments of items deliverable under this contract shall be made by Government bills of lading (GBLs). As used in this clause, “domestic overseas” means non-continental United States, i.e. Hawaii, Commonwealth of Puerto Rico, and possessions of the United States.

(2) At least 15 days before shipment, the Contractor shall request in writing GBLs from: **Transportation Officer, Mailcode JB, 2101 NASA Parkway, Houston, TX 77058**. If time is limited, requests may be by telephone: **281-483-6535.** Requests for GBLs shall include the following information.

(i) Item identification/ description.

(ii) Origin and destination.

(iii) Individual and total weights.

(iv) Dimensional Weight.

(v) Dimensions and total cubic footage.

(vi) Total number of pieces.

(vii) Total dollar value.

(viii) Other pertinent data.

(End of clause)

**12. JSC 52.219-90, SMALL BUSINESS SUBCONTRACTING GOALS (OCT 2006)** (Applicable if Seller is a large business.)

For purposes of this clause, the terms, “HUBZone Small Business Concern,” “Small Disadvantaged Business Concern,” “Service-Disabled, Veteran-Owned Small Business Concern, “Veteran-Owned Small Business Concern,” “Women-Owned Small Business Concern,” and “Historically Black College or University (HBCU)” are defined in paragraph 2.101 of the Federal Acquisition Regulation.

The total small business goal, expressed as a percent of total contract value including options, is 11.0 percent. The small business percentage goal, includes the following goals expressed as a percent of total contract value:

Small Disadvantaged Business Concerns 5.0 percent

Woman-Owned Small Business Concerns 2.8 percent

HUBZone Small Business Concerns 0.5 percent

Veteran-Owned Small Business Concern 2.0 percent

Service-Disabled, Veteran-Owned Small Business Concern 1.5 percent

HBCU’s (includes other minority institutions) 0.1 percent

(End of clause)

**13. JSC 52.242-94, ADMINISTRATIVE LEAVE (SEP 2008)** (Applicable if this purchase order/subcontract is for services that include personnel in the categories described in Paragraph (a).)

(a) When the NASA installation grants administrative leave to its Government employees (e.g., as a result of inclement weather, potentially hazardous conditions, or other special circumstances), the following personnel should also be dismissed upon notification of a center closure provided by the Contracting Officer:

1. Contractor personnel working on-site; and

2. Contractor personnel dedicated to the contract effort who are

a) working off-site within 10 miles of any NASA Center; and

b) unable to perform their NASA contract duties at their off-site location because their normal place of business has been or is expected to be negatively impacted by an emergency situation (e.g. has sustained damage, has been evacuated, etc.).

However, the contractor shall provide sufficient on-site personnel to perform round-the-clock requirements of critical work already in process, unless otherwise instructed by the Contracting Officer or authorized representative.

(b) Administrative leave granted under this clause shall be subject to modification or termination by the Contracting Officer and in all instances shall be subject to the availability of funds. The cost of salaries and wages to the Contractor for the period of any such excused absence shall be a reimbursable item of cost under this contract for effected employees in accordance with the Contractor’s established accounting policy.

1. If a labor hour-based contract, administrative leave granted under this clause shall be accounted for consistent with productive hours under this contract for employees in accordance with the Contractor’s established accounting policy.

2. For fixed price contracts based on other than labor hours for deliverables, the Contracting Officer and Contractor shall as a precondition to any reimbursement negotiate an advanced agreement to determine the appropriate method in which to grant administrative leave under this clause.

3. All invoices requesting payment under this clause shall be marked as “Administrative Leave in accordance with 52.242-94, Administrative Leave.” All such invoices paid will be subject to review, audit, and revision when routine operations re-commence.

(c) The Contractor shall include this clause in all services subcontracts that include personnel in the categories described in (a) above.

(End of clause)

**14. JSC 52.247-95, FLIGHT ITEM (AUG 2005)**

Block 16 of each Department of Defense Form 250 prepared for flight hardware or related equipment to be shipped under this contract must be annotated as follows in 1/4-inch letters or larger by hand printing or rubber stamp:

THIS IS A FLIGHT ITEM: OR “THIS IS MISSION ESSENTIAL GROUND SUPPORT EQUIPMENT,” as applicable.

(End of clause)

**15. MISSION SUCCESS DETERMINATION**

(a) *Mission Objectives and Associated Success Criteria*

(1) Mission objectives and associated success criteria will be defined on a per mission basis and agreed to by NASA and Lockheed Martin. The overall goal of NASA is to develop mission objectives and success criteria that appropriately and fairly define Lockheed Martin’s performance.

(2) Mission Objectives will be established per the following guidelines:

 (i) Objectives will consider the spacecraft’s capabilities.

 (ii) Objectives will consider Lockheed Martin’s performance, independent of NASA’s or other prime contractor performance (i.e. European Space Agency (ESA), Space Launch System (SLS) or Ground System Development and Operations (GSDO) performance).

 (iii) Objectives will consider launch abort, end-of-mission timeframe, contingencies, mission-unique objectives, and the safe return of the crew and vehicle.

(3) Mission Objectives will be designated as Critical, Primary, or Secondary per the following guidelines:

 (i) Critical Mission Objectives will represent the safe return of the crew and vehicle, including prevention of Loss of Crew (as defined in MPCV 70017, Orion MPCV Probabilistic Risk Assessment Requirements Document), and prevention of serious injury to the crew (as defined in U.S. Code of Federal Regulations Title 49, Part 830.2, Definitions).

 (ii) Primary Mission Objectives will be defined by the objectives listed as Primary Mission Objectives and Flight Test Objectives (FTOs) in the Orion Flight Requirements Document, MPCV 72627. In addition, Primary Mission Objectives will include sustaining a safe, habitable environment for the crew as defined by NPR 8705.2, Human-Rating Requirements for Space Systems.

 (iii) Secondary Mission Objectives will represent other mission objectives, such as Payload and Detailed Test Objectives (DTOs), as defined in the Orion Flight Requirements Document.

(4) NASA will provide to Lockheed Martin the initial mission objectives and the specific breakdown of payment percentages to be associated with the final determination of Performance Incentive Fee (for CPIF orders) or the final payment earned (for FFP orders) no later than 60 days prior to the Mission Integration Review (MIR), which is expected to occur at approximately launch minus 18 months.

(b) *Procedures*

(1) In the prime contract, the final milestone for CPIF and FFP orders will be billed upon completion as defined in Lockheed Martin’s prime contract. In the event of Partial Mission Success or Mission Failure determinations per section a, Mission Objectives and Associated Success Criteria, any reduction in incentive fee on CPIF orders or final milestone payment on FFP orders, in whole or in part, will be credited to Lockheed Martin under Lockheed Martin’s prime contract.

 (i) For Partial Mission Success determinations under the Lockheed Martin prime contract, the percentage of the final Incentive Fee Determination for CPIF orders, or final payment earned for FFP orders, is based on the payment percentages defined in section (a)(4) of this clause and as specified in the order.

 (ii) For Mission Failure determinations, the Government will perform an assessment to identify the cause of the failure. In the event the Mission Failure is determined to be solely caused by the acts or omissions of Lockheed Martin or Seller in performance of effort under the prime contract or this Contract, respectively, Lockheed Martin shall forfeit incentive fee (Performance Incentive and Cost Incentive) for the associated CPIF order or the final milestone payment for the associated FFP order, but only to the extent that the Mission Failure is determined to be caused by the acts or omission of Lockheed Martin or Seller. For example, if Lockheed Martin or Seller caused 25% of the Mission Failure, then only 25% of Lockheed Martin’s incentive fee or final milestone payment shall be forfeited under the prime contract. If such forfeiture results from a Government determination that the Mission Failure was caused in whole or in part by Seller, then Seller shall reimburse Lockheed Martin and hold it harmless for such forfeiture to the extent that Seller’s acts or omissions contributed to the Mission Failure. For example, if it is determined that Seller and Lockheed Martin were equally at fault in causing 25% of the Mission Failure, then Seller shall reimburse Lockheed Martin for 50% of such forfeiture. In the event the cause of a Mission Failure is not determined to solely be a result of the acts or omissions of Lockheed Martin and Seller in performance of effort under prime contract or this Contract, there shall be no reduction in incentive fee for CPIF orders or forfeiture of final payment for FFP orders under the prime contract, and consequently Seller shall have no reimbursement of obligation to Lockheed Martin under this Contract clause.

 (iii) Under the terms of Lockheed Martin’s prime contract, incentive fee reductions resulting from a Partial Mission Success or Mission Failure determination under a CPIF order shall be executed first through reimbursement to the Government incentive fee that has already been provisionally paid (Performance Incentive and Cost Incentive) for that order. Under the terms of Lockheed Martin’s prime contract, the reimbursement of the provisionally paid incentive fee shall be made as directed by the Contracting Officer through either a credit applied to the cost voucher(s) of another CPIF order, a credit toward the FFP of another order, other in-kind consideration as agreed to by the parties, or returned to the Government. Any such incentive fee reduction shall not be recoupable by Lockheed Martin under the prime contract or by Seller under this Contract.

 (iv) Under the terms of Lockheed Martin’s prime contract, Partial Mission Success or Mission Failure determinations made applicable to FFP orders shall be executed as reimbursement, in whole or in part, of the final milestone payment. Any such reimbursement shall not be recoupable by Lockheed Martin under the prime contract or by Seller under this Contract.

 (v) In the event the Government determines that Partial Mission Success (i) is caused by the acts or omissions of Lockheed Martin or Seller in performance of effort under the prime contract or this Contract, respectively, and as a result, (ii) under Lockheed Martin’s prime contract, Lockheed Martin’s incentive fee is reduced for the associated CPIF order or the final milestone payment for the associated FFP order is reduced, then Seller shall reimburse Lockheed Martin for such reductions to the extent that Seller’s acts or omissions contributed to the Partial Mission Success. For example, if it is determined that Seller and Lockheed Martin were equally at fault in causing 25% of the Partial Mission Success, then Seller shall reimburse Lockheed Martin for 50% of such reductions.

(2) This clause will take precedence over the specified paragraphs in the following clauses, in that NASA or Lockheed Martin will not require correction of non-conforming supplies or re-performance of services following a Mission Failure or Partial Mission Success:

 (i) 52.246-2 Inspection of Supplies – Fixed Price, paragraph (f)

 (ii) 52.246-3 Inspection of Supplies – Cost-Reimbursement, paragraph (f)

 (iii) 52.246-4 Inspection of Services – Fixed Price, paragraph (e)

 (iv) 52.246-5 Inspection of Services – Cost-Reimbursement, paragraph (d)

In the event of a Partial Mission Success or a Mission Failure determination, the rights and remedies contained in this Clause are in lieu of any rights and remedies in case of default applicable to the associated order only, including the rights and remedies in clause 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE)

(3) In the event of a launch or mission abort, at no fault to Lockheed Martin and Seller, the mission shall be determined a Mission Success.

c. *Acceptance*

Final acceptance for any unsuccessful mission objectives of the Orion spacecraft will be accomplished following the Contracting Officer’s mission success determination. The Contracting Officer will notify Lockheed Martin in writing of both Mission Success Determination and Acceptance, and Lockheed Martin will provide a copy of such notification to the Subcontractor, as permitted by the Contracting Officer.

(End of clause)

**16. ESTABLISHMENT OF LAUNCH WINDOWS**

(a) This clause covers launch delays at the convenience of NASA and the Contractor.

(b) The Orion spacecraft is an element of the overall Exploration Systems Development (ESD) architecture that includes launch vehicles, spacecraft, and mission systems and ground systems to support NASA exploration missions. Orders issued under OPOC will require delivery of the Orion spacecraft to support integration and launch of the entire system with limited flexibility to adjust launch dates.

(c) To provide flexibility to both the Contractor and NASA, a standard launch window will be established for each mission ordered under this contract. These launch windows allow for delay in launch dates, by either party, with no entitlement to equitable adjustment, as long as the actual launch occurs within the established launch window. The standard launch window will cover a total span of no longer than 12 months after the planned launch date.

(d) The targeted, notional launch date and window will be provided in conjunction with specific deliverable item due dates at the issuance of the mission-specific order. The formal launch date and associated launch window for the specific mission will be adjusted and formally established at the Mission Integration Review, at approximately launch minus 2 years.

(e) In the event of a NASA-requested delay beyond the launch window, the Government will allow the Contractor to submit a proposal for the impact of the extended delay. Any equitable adjustment will be calculated from the end of the window noted above and the newly established launch date window.

 (1) There will be no basis for NASA requesting an equitable adjustment when the delay arises from a failure investigation of a previous mission, provided that all data related to the failure investigation is made available to NASA in a timely fashion.

(2) There will be no basis for the Contractor requesting an equitable adjustment when the delay arises from a failure investigation of a previous mission if it is determined that the failure was caused primarily by the acts or omissions of the Contractor in performance of effort under this contract.

(3) Upon failure to agree to an adjustment, the Contracting Officer shall have the right to unilaterally adjust the order, or decline to adjust the order. Any such unilateral decision shall be subject to the disputes clause. Nothing in this clause shall excuse the Contractor from proceeding with performance of the contract and order.

(f) In the event of a Contractor-requested delay beyond the launch window, NASA reserves the right to seek an equitable adjustment or other consideration.

(End of clause)

17. 52.215-12, SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (DEVIATION) (MAY 2018) (The version of the clause in Class Deviation [2018-O0015](https://www.acq.osd.mil/dpap/policy/policyvault/USA001197-18-DPAP.pdf) applies in lieu of the standard FAR version of the clause.)

(a) Unless an exception under FAR 15.403-1 applies, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor’s estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price) –

(1) Before awarding any subcontract expected to exceed $750,000 prior to July 1, 2018, or modifying any subcontract that was awarded prior to July 1, 2018, involving a pricing adjustment expected to exceed $750,000, or

(2) Before awarding any subcontract expected to exceed $2 million on or after July 1, 2018, or modifying any subcontract that was awarded on or after July 1, 2018, involving a pricing adjustment expected to exceed $2 million.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of certified cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Certified Cost or Pricing Data–Modifications (DEVIATION 2018-O0015).

(End of clause)

**18.** **52.215-13, SUBCONTRACTOR CERTIFIED COST OR PRICING DATA—MODIFICATIONS (DEVIATION) (MAY 2018)** (The version of the clause in Class Deviation [2018-O0015](https://www.acq.osd.mil/dpap/policy/policyvault/USA001197-18-DPAP.pdf) applies in lieu of the standard FAR version of the clause.)

(a) The requirements of paragraphs (b) and (c) of this clause shall—

(1) Become operative only for any modification of a subcontract that was awarded prior to July 1, 2018, involving a pricing adjustment expected to exceed $750,000, or any modification of a subcontract that awarded on or after July 1, 2018, involving a pricing adjustment expected to exceed $2 million; and

(2) Be limited to such modifications.

(b) Unless an exception under FAR 15.403-1 applies, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor’s estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price)—

(1) Before modifying any subcontract that was awarded prior to July 1, 2018, involving a pricing adjustment expected to exceed $750,000, or

(2) Before modifying any subcontract that was awarded on or after July 1, 2018, involving a pricing adjustment expected to exceed $2 million.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds $2 million.

(End of clause)

**FAR Clauses**

**52.203-7, Anti-Kickback Procedures (May 2014)**

**52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017)** (Applicable for all purchase orders/subcontracts, including purchase orders/subcontracts for commercial items.)

**52.204-10, Reporting Executive Compensation and First Tier Subcontract Awards (Oct 2018)**

**52.215-21, Requirements for Certified Cost or Pricing Data or Information Other Than Certified Cost or Pricing Data -- Modifications (Oct 2010) and Alternate III (Oct 1997)** (Alternate III will also apply.)

**52.216-7, Allowable Cost and Payment (Aug 2018)**

**52.219-8, Utilization of Small Business Concerns (Oct 2018)**

**52.219-9, Small Business Subcontracting Plan (Jan 2017)**

**52.222-4, Contract Work Hours and Safety and Safety Standards--Overtime Compensation (May 2018)**

**52.222-6, Construction Wage Rate Requirements (Aug 2018)** (Applicable for all purchase orders/subcontracts where the scope of work includes construction, alterations and repairs within the United States.)

**52.222-7, Withholding of Funds (May 2014)** (Applicable for all purchase orders/subcontracts where the scope of work includes construction, alterations and repairs within the United States. "Contracting Officer" means "Lockheed Martin.")

**52.222-8, Payrolls and Basic Records (Aug 2018)** (Applicable for all purchase orders/subcontracts where the scope of work includes construction, alterations and repairs within the United States.)

**52.222-9, Apprentices and Trainees (Jul 2005)** (Applicable for all purchase orders/subcontracts where the scope of work includes construction, alterations and repairs within the United States.)

**52.222-10, Compliance with Copeland Act Requirements (Feb 1988)** (Applicable for all purchase orders/ subcontracts where the scope of work includes construction, alterations and repairs within the United States.)

**52.222-11, Subcontracts (Labor Standards) (May 2014)** (Applicable for all purchase orders/subcontracts for construction within the United States. The last sentence of paragraph (a) is revised to read as follows: "Seller is responsible for compliance by any lower tier subcontractor with all the contract clauses cited in this paragraph.")

**52.222-12, Contract Termination -- Debarment (May 2014)** (Applicable for all purchase orders/subcontracts where the scope of work includes construction, alterations and repairs within the United States.)

**52.222-13, Compliance with Construction Wage Rate Requirements and Related Act Regulations (May 2014)** (Applicable for all purchase orders/subcontracts where the scope of work includes construction, alterations and repairs within the United States.)

**52.222-14, Disputes Concerning Labor Standards (Feb 1988)** (Applicable for all purchase orders/subcontracts where the scope of work includes construction, alterations and repairs within the United States.)

**52.222-15, Certification of Eligibility (May 2014)** (Applicable for all purchase orders/subcontracts where the scope of work includes construction, alterations and repairs within the United States.)

**52.222-16, Approval of Wage Rates (May 2014)** (Applicable if Seller will be performing construction work. "Government" means "Lockheed Martin.")

**52.222-27, Affirmative Action Compliance Requirements for Construction (Apr 2015)** (Applicable for all purchase orders/subcontracts that exceed $10,000 and involve construction work.)

**52.222-30, Construction Wage Rate Requirements--Price Adjustment (None or Separately Specified Method) (Aug 2018)** (Applicable if this purchase order/subcontract is subject to the Construction Wage Rate Requirements statute and contains provision for Option(s) to extend the term of the purchase order/subcontract. "Contracting Officer" means "Lockheed Martin.")

**52.222-50, Combatting Trafficking in Persons (Jan 2019)**

**52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2017)** (Applicable if this purchase order/ subcontract is subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States. Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Seller officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.)

**52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007)** (Applicable if Seller will be providing energy consuming products which will be delivered to the Government, or the energy consuming products are acquired by Seller for use in performing services at a Federally-controlled facility; furnished under the prime contract for use by the Government; or specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.)

**52.224-2, Privacy Act (Apr 1984)** (Applicable if Seller will be required to design, develop, or operate such a system of records.)

**52.224-3, Privacy Training (Jan 2017)** (Applicable if Seller will (1) have access to a system of records; (2) create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or (3) design, develop, maintain, or operate a system of records. In paragraph (d), "contracting officer" means "Lockheed Martin and the contracting officer.")

**52.225-9, Buy American Act -- Construction Materials (May 2014)** (Applicable if the work contains other than domestic components as defined by this clause.)

**52.225-11, Buy American Act -- Construction Materials Under Trade Agreements (Oct 2016)** (Applicable for all purchase orders/subcontracts where the scope of work includes construction within the United States valued at $7,804,000 or more. Insert “none” in the blank in paragraph (b)(3).)

**52.227-14, Rights in Data - General (May 2014) and Alternate II (Dec 2007)** (Alternate II will also apply.)

**52.227-14, Rights in Data - General (May 2014) and Alternate III (Dec 2007)** (Alternate III will also apply.)

**52.227-14, Rights in Data - General (May 2014) and Alternate V (Dec 2007)** (Alternate V will also apply.)

**52.227-16, Additional Data Requirements (Jun 1987)** (Applicable if Seller will be delivering technical data. “Contracting Officer” means “Lockheed Martin and the Contracting Officer.”)

**52.227-21, Technical Data Declaration, Revision, and Withholding of Payment—Major Systems (May 2014)** (Applicable if Seller will be delivering technical data. "Contracting Officer" means "Lockheed Martin." "Government" means "Lockheed Martin" in paragraph (b)(2) and "Lockheed Martin or Government" in paragraph (d).)

**52.229-8, Taxes—Foreign Cost-Reimbursement Contracts (Mar 1990)** (Applicable if this is a cost reimbursement purchase order/subcontract where the work will be performed wholly or partly in a foreign country. In paragraph (b), "Contracting Officer" and "Government of the United States" mean "Lockheed Martin."  The blanks in paragraph (a) are completed with "the foreign country in which this purchase order/subcontract is performed.")

**52.230-2, Cost Accounting Standards (DEVIATION) (May 2018)** (The version of the clause in Class Deviation [2018-O0015](https://www.acq.osd.mil/dpap/policy/policyvault/USA001197-18-DPAP.pdf) applies in lieu of the standard FAR version of the clause.)

**52.232-17, Interest (May 2014)** (Applicable if this purchase order/subcontract contains any clauses which refers to an Interest clause. “Government” means “Lockheed Martin”.)

**52.232-32, Performance-Based Payments (Apr 2012)** (Applicable to the Seller only if under this purchase order/subcontract Lockheed Martin will be making financing payments to the Seller in the form of performance based payments. "Contracting Officer" and "Government" means "Lockheed Martin" except with respect to title for property where the references to the Government shall be unchanged. Subparagraph (c)(2) is deleted.)

**52.232-39, Unenforceability of Unauthorized Obligations (Jun 2013)** (Applicable for all purchase orders/subcontracts where software or services will be retransferred to the Government.)

**52.236-5, Material and Workmanship (Apr 1984)** (Applicable for all purchase orders/subcontracts where the scope of work includes construction. "Contracting Officer" means "Lockheed Martin.")

**52.236-7, Permits and Responsibilities (Nov 1991)** (Applicable for all purchase orders/subcontracts where subcontractors will be required to obtain permits for construction work. "Government" means "Lockheed Martin.")

**52.236-13, Accident Prevention (Nov 1991)** (Applicable for all purchase orders/subcontracts where the scope of work includes construction. "Contracting Officer" means "Lockheed Martin or the Contracting Officer." "Government" means "Lockheed Martin or Government.")

**52.236-19, Organization and Direction of the Work (Apr 1984)** (Applicable for all purchase orders/ subcontracts where the scope of work includes construction. "Contracting Officer" means "Lockheed Martin.")

**52.239-1, Privacy or Security Safeguards (Aug 1996)** (Applicable if this purchase order/subcontract is for information technology, and/or for the design development, or operation of a system of records using commercial information technology services or support services.)

**52.242-14, Suspension of Work (Apr 1984)** (Applicable for all purchase orders/subcontracts where the scope of work includes construction work.)

**52.244-6, Subcontracts for Commercial Items (Jan 2019)**

**52.245-1, Government Property (Jan 2017)**

**52.245-9, Use and Charges (Apr 2012)** (Applicable for all purchase orders/subcontracts when the clause at 52.245-1, Government Property, applies. Communication with the government under this clause will be made through Lockheed Martin.)

**52.246-9, Inspection of Research and Development (Short Form) (Apr 1984)** (Applicable if Seller does not have a cost reimbursable purchase order/subcontract and will be performing research and development work. "Government" means "Lockheed Martin and the Government.")

**52.249-6, Termination (Cost-Reimbursement) (May 2004) and Alternate I (Sep 1996)** (Alternate I will also apply if this purchase order/subcontract is for construction.)

**52.250-2, SAFETY Act Coverage Not Applicable (Feb 2009)** (Applicable if Seller will be furnishing supplies which have been determined by the Government in connection with this acquisition not to constitute anti-terrorism technology.)

**NASA FARS Clauses**

**1852.225-71, Restriction on Funding Activity with China (DEVIATION) (Feb 2012)** (Applicable for all purchase orders/subcontracts.)

**1852.227-14, Rights in Data—General (May 2014) and Alternate II (Dec 2007) [Modified by NFS 1852.227-14 (Apr 2015)]** (Alternate II will also apply.)

**1852.234-2, Earned Value Management System (DEVIATION) (Nov 2015)** (Applicable if this purchase orders/subcontract is subject to earned value management system requirements. The terms "Contracting Officer" and "Government" include Lockheed Martin.)

(f) The Contractor shall be responsible for ensuring that its subcontractors, identified below, comply with the EVMS requirements of this clause as follows:

(1) For subcontracts with an estimated dollar value of $100 million or more, the following subcontractors shall comply with the requirements of this clause.

Collins Aerospace

Aerojet

**1852.245-70, Contractor Requests for Government-Furnished Property (Aug 2015) and Alternate I (Aug 2015)** (Alternate I will also apply if Seller is authorized to screen Government inventory for available property in lieu of Seller acquisition of new items.)

**1852.245-73, Financial Reporting of NASA Property in the Custody of Contractors (Jan 2017)**

**1852.245-76, List of Government-Furnished Property (Jan 2011)** (Applicable if Seller is being furnished Government property.)