

TERMS AND CONDITIONS

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FOR USE WITH
COMMERCIAL PROGRAMS

APRIL 1998

LOCKHEED MARTIN CORPORATION

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SECTION 1

GENERAL TERMS & CONDITIONS

Section "1" clauses are applicable to all subcontracts except for clauses that are specifically deleted in the subcontract which incorporates these terms and conditions.

1-1 ACCESS BY BUYER'S CUSTOMER

For the purpose of observing the status and quality of Subcontractor's performance of work, Subcontractor shall afford a limited number of Buyer's Customers' employees, and their designees, as approved by Subcontractor, access to all Subcontract activities including design reviews, systems and subsystems testing, program management reviews, test reviews and failure reviews at the Subcontractor's facilities on a non-interference basis. Subcontractor's approval of designees, requested by Buyer or Buyer's Customer, shall not be unreasonably withheld; provided, however, that such approval may be withheld if Subcontractor has reasonable concerns as to the protection of its proprietary information or potential injury to its competitive market position(s). Such access shall be coordinated by Buyer with Buyer's Customer, and Subcontractor and Buyer, at its discretion, shall be in attendance at all such sessions.

1-2 APPROVALS BY BUYER

Unless expressly stipulated elsewhere in this subcontract as being excepted from this provision, wherever this subcontract provides for submittal of designs, components, materials, processes, or other items for approval of Buyer or other authorized Buyer representative, such approvals shall not be construed as a complete check as to the adequacy of said design, materials, processes, components or items, nor as an agreement that the design, materials, processes, components or items will meet the requirements of this subcontract. Such approvals are for the purpose of insuring Buyer knowledge of Subcontractor's plans and progress and will indicate only that Subcontractor's general approach toward meeting contractual requirements is satisfactory. Such approvals shall in no way relieve Subcontractor of the responsibility for any error or deficiency which may exist in the submitted design, component materials, processes, or other item, and Subcontractor shall be responsible for meeting all the requirements of this subcontract.

1-3 ASSIGNMENT

Subcontractor shall not assign or delegate this Subcontract or any of its rights, duties or obligations hereunder to any third party without the prior express written approval of Buyer, except that claims for moneys due or to become due Subcontractor from Lockheed Martin under this subcontract may be assigned to a bank, trust company or other financial institution, including any federal lending agency. Nothing in this Section shall restrict Subcontractor from subcontracting with or procuring parts, materials or services in the ordinary course of performance of this Subcontract.

1-4 BUYER OWNED/PROVIDED PROPERTY

Subcontractor shall be responsible for loss of or damage to property of Buyer caused by the negligence or wrongful act or omission of Subcontractor, its representatives, agents or employees.

1-5 CHANGES

(a) Lockheed Martin may at any time by written notice, and without notice to sureties or assignees, make changes within the general scope of this order in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery; and (iv) delivery schedule. Should any such change increase or decrease the cost of, or the time required for, performance of this order, an equitable adjustment may be requested by

Subcontractor or Lockheed Martin in the price, or delivery schedule, or both. No request by Subcontractor for adjustment will be valid unless submitted to Lockheed Martin in a form acceptable to Lockheed Martin within twenty-five (25) days from the date of notice of such change, and accompanied by an estimate of charges for redundant material or work in process, if any. Where the cost of property made redundant as a result of a change is included in Subcontractor's claim for adjustment, Lockheed Martin shall have the right to prescribe the manner of disposition of such property.

(b) Subcontractor agrees that its failure to submit such claim or claims within the applicable time period shall constitute a waiver thereof unless for good cause, Subcontractor requests in writing prior to expiration of the applicable time period that a time extension for filing its claim or claims be granted by Lockheed Martin and Lockheed Martin grants such extension. Any such extensions, if approved, shall be effective only if authorized in writing by Lockheed Martin's authorized procurement representative. Prior to final settlement of any timely filed claim or claims, Subcontractor may submit revisions to such claim or claims provided that such revisions do not introduce different areas of costs or claim elements.

(c) Any clarification, direction, approval, or assistance as may be provided by Lockheed Martin concerning the work to be performed or the supplies to be furnished pursuant to this order shall not constitute or be construed as a change to this order and no change order, express or implied, will be binding unless it is issued by written notice by Lockheed Martin's authorized Procurement Representative in accordance with paragraph (a) of this clause.

(d) Nothing contained in this clause shall relieve Subcontractor from proceeding without delay in the performance of this order as changed.

1-6 COMPLIANCE WITH LAWS

(a) Subcontractor agrees to comply with all applicable local, state and federal laws, executive orders and regulations issued pursuant thereto and agrees to defend, indemnify, and hold Lockheed Martin harmless from any claim, suit, loss, cost, damage, expense (including reasonable attorneys' fees) or liability by reason of Subcontractor's violation hereof. Nothing in this Subcontract or in any requirement under this Subcontract shall be construed to mean that Subcontractor should perform such work in violation of any law, statute, code or ordinance.

(b) If Buyer is fined or penalized as a result of any violation of any law or regulation by Subcontractor or Subcontractor's lower-tier suppliers, or, where this subcontract is pursuant to a Buyer prime contract, if Buyer's customer reduces Buyer's prime contract as a result of actions by Subcontractor or Subcontractor's lower-tier suppliers, Buyer shall reduce the amount of this subcontract by the same amount. If Buyer has already paid Subcontractor, Subcontractor shall, upon demand from Buyer, promptly repay to Buyer the amount of the offset. Exercise of Buyer's right under this clause shall not be a waiver of any rights Buyer has under any other clause or provision in this subcontract.

1-7 CROSS WAIVER OF LIABILITY (Applicable if this subcontract is in support of spacecraft, launch or spacecraft or related launch support services)

(a) In the event the U. S. Commercial Space Launch Act of 1984, as amended, is applicable to the launch of the spacecraft, to the extent required thereunder and by any launch service provider licensed thereunder, the parties hereto agree to make no claims against the other, the customers, the contractors and Subcontractors of the other at any tier (including Subcontractors of any kind), the officers, directors, agents, servants, and employees of the other, or any of them, with respect to injury to or death of either party's employees involved in, or damage to either party's property used in connection with all launches of space vehicles, except as provided by Section 1-16, INDEMNIFICATION. Both parties further agree to cause all of their respective contractors or Subcontractors at any tier (including Subcontractors of any kind) to make no such claims.

(b) Both parties hereby waive and shall cause their contractors and Subcontractors at any tier (including Subcontractors of any kind) to waive any cause of action in tort against the U. S. Government, its agents, employees, contractors and Subcontractors to the extent required by the U. S. Government, and agree to furnish appropriate waivers and releases as may be required to implement this Section in connection with the use of U. S. Government launch facilities, equipment or required launch support services.

(c) In the event that any launch of space vehicle is not subject to the U. S. Commercial Space Launch Act, both parties agree to accede to any waiver of claims, as may be required, pursuant to applicable law or as required by any launch service provider.

1-8 DEFAULT

(a) Buyer may, by written notice of Default, issued by Buyer's authorized representative, terminate the whole or any part of this Subcontract (i) if Subcontractor fails to make delivery of goods or documentation or to perform services within the time specified herein or any extension thereof; (ii) Subcontractor fails to perform any of the other provisions of this Subcontract; or (iii) fails to make adequate progress so as to endanger performance of this Subcontract in accordance with its terms. In either of these two latter circumstances, Subcontractor shall have ten (10) days (or such longer period as Buyer may authorize in writing) to correct such failure after receipt of notice from Buyer specifying such failure.

(b) In the event Buyer terminates this Subcontract in whole or in part as provided in paragraph (a) above, Buyer may procure, in such manner as Buyer may deem appropriate and within a reasonable period of time and with terms similar to this Subcontract, goods, documentation and services similar to those so terminated, and the Subcontractor shall be liable to Buyer for any excess costs for such similar goods, documentation and services. The Subcontractor shall continue the performance of this Subcontract to the extent not terminated by this Section.

(c) Except with respect to default of its Subcontractors, Subcontractor shall not be liable for any excess costs or other damages if any failure to perform arises out of causes beyond the control and without the fault or negligence of Subcontractor, and as defined under the provision of this Subcontract entitled "DELAYS." Subcontractor shall not be liable for any excess costs or other damages for failure to perform, due to such causes, unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time and at reasonable prices to permit Subcontractor to meet the required delivery schedule. The term "Subcontractor" as it is used in this clause means a Subcontractor at any tier.

(d) If this Subcontract is terminated, as provided in paragraph (a) of this Section, Buyer, in addition to any other rights provided in this Section, may require Subcontractor to transfer title and deliver to Buyer in the manner and to the extent directed by Buyer, free and clear of all liens and claims, (i) any completed supplies and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and subcontract rights as Subcontractor has specifically produced or specifically acquired for the performance of any part of this Subcontract which has been terminated. Subcontractor shall protect and preserve property in possession of Subcontractor in which Buyer has an interest.

(e) If after termination under the provisions of this paragraph (a) of this Section, it is determined that failure to perform is due to causes beyond the control and without fault or negligence of Subcontractor or its Subcontractor, such Notice of Default shall be deemed to have been issued pursuant to the Section of this Subcontract entitled "Termination" and the rights and obligations of the parties hereof shall, in such event, be governed by that Section, as if the termination had been effected under Section 1-20, TERMINATION.

(f) If this Subcontract is terminated as provided in Paragraph (a) of this Section, Buyer, in addition to any other rights provided, shall be granted a perpetual, irrevocable, worldwide, non-exclusive, non-transferable right royalty free right and license to make, have made, use and sell products and services utilizing such Background Intellectual Property rights. Such license is limited in scope to the Lockheed Martin prime contract and its successors. Licensing of the Background Intellectual Property to Buyer for use in derivatives and the conditions therefore shall be subject to the mutual agreement of the Parties. This License shall not include Subcontractor trademarks except as may be separately licensed between the Parties.

(g) If this Subcontract is terminated as provided in Paragraph (a) of this Section, Subcontractor shall not be relieved of those obligations contained in this Agreement for the following provisions: Section 1-32, Warranty; Section 1-20, Patent Indemnity; Section 1-16, Indemnification; Section 1-21, Public Release of Information.

(h) Lockheed Martin's remedy for exercising the provisions included in this clause shall include the right to recprocurement costs. This remedy shall be in addition to, and not in lieu of, any remedies identified elsewhere in this subcontract or at law.

1-9 DEFINITIONS

As used herein, "Buyer", "LMMS" or "Lockheed Martin" means Lockheed Martin Corporation acting by and through Missiles & Space with offices at 1111 Lockheed Way, Sunnyvale, Ca 94088-3504; "Subcontractor" means the party identified in the subcontract document; "Subcontract" means either purchase order or subcontract, and "supplies" means all articles, materials, work or services to be furnished by Subcontractor under this subcontract. "Buyer's Authorized Procurement Representative" means the person or persons authorized by Buyer to alter, modify, or change the provisions of this subcontract.

1-10 DELAYS

(a) Without limiting any other provision specifying what constitutes an excusable delay under this Subcontract, acts of Nature, acts of a public enemy, acts of a government acting in its sovereign capacity, including government priorities, allocations, regulations or orders affecting materials, facilities or deliverable items fires, floods, ice storms, snowstorms, earthquakes, epidemics, quarantine restrictions, strikes, wars, freight embargoes, or any other events which cause failure or delay to perform hereunder, and in every case are beyond the reasonable control and without the fault of Subcontractor hereunder shall constitute an excusable delay, if notice thereof is given by Subcontractor to Buyer within thirty (30) calendar days after such event began and occasioned the delay.

(b) In the event of an excusable delay, resulting from any of the above causes, the performance schedule of this Subcontract shall be extended equitably. Subcontractor has the burden to prove that an event constitutes an excusable delay. Subcontractor shall provide Buyer with evidence supporting Subcontractor's claim of excusable delay and shall exert its best efforts to mitigate such schedule impact to the extent reasonable, including providing a work around schedule.

1-11 DELIVERY - ADVANCE MANUFACTURING OR PROCUREMENT

Delivery according to schedule is a major condition of this subcontract. Subcontractor shall not, without Lockheed Martin's prior written consent, manufacture or procure materials in advance of Subcontractor's normal flow time or deliver in advance of schedule. In the event of termination or change, no claim will be allowed for any such manufacture or procurement in advance of subcontractor's normal flow time unless there has been prior written consent of Lockheed Martin. Unless advance shipment has been authorized in writing by Lockheed Martin, Lockheed Martin may return, shipping charges collect, all articles received in advance of schedule.

1-12 DISPUTES

Except as otherwise specifically provided in this Subcontract, all disputes, under this Subcontract, which are not disposed of by mutual agreement, may be decided by recourse to legal action subject to controlling law as indicated in the clause entitled "Governing Law". Pending decision of any disputes hereunder, Subcontractor shall diligently proceed with the performance of this Subcontract as directed by Buyer in accordance with the provisions of this Subcontract.

1-13 ENTIRE AGREEMENT

This Subcontract constitutes the entire agreement between the parties and supersedes all prior understanding, commitments, and representations with respect to the subject matter, including the following:

(a) This Subcontract may not be amended, modified or terminated other than as specifically provided in the Sections hereof, and none of its provisions may be waived, except in writing signed by an authorized representative of the party against which the waiver is sought to be enforced.

(b) The paragraph headings herein shall not be considered in interpreting the text of this Subcontract. In the event any part of this Agreement is declared legally invalid or unenforceable by an authorized judicial body, such part of this Agreement shall be ineffective to the extent of such invalidity or unenforceability and shall not affect the remaining provisions of this Subcontract.

(c) Subcontractor agrees not to disclose the terms and conditions of this Subcontract to any third party, except as required by law or U. S. Governmental regulations, without the prior written consent of Buyer.

(d) This Subcontract shall not constitute, give effect to, nor otherwise imply a joint venture, partnership or formal business organization of any kind, and the rights and obligations of both parties shall be only those expressly set forth herein.

(e) Nothing contained in this Subcontract shall be construed as conferring any license or right with respect to any trademark, trade or brand name, a corporate name of either Party or of any of their respective subsidiaries, or any name or mark, or contraction, abbreviation or simulation thereof.

(f) In performing any obligation, created under this Subcontract, the Parties agree that each Party is acting as independent contractor and not as an agent of the other Party. Neither Party has any authority hereunder to assume or create any obligation or responsibility, expressed or implied, on behalf or in the name of the other Party or to bind the other Party in any way whatsoever.

(g) This Subcontract becomes the exclusive agreement between the parties subject to the terms and conditions herein. Any of the following shall constitute Subcontractor's unqualified acceptance of this Subcontract, (i) signing the subcontract, (ii) furnishing of any supplies under this Subcontract, (iii) acceptance of any payment under this Subcontract, or (iv) commencement of performance under this Subcontract. Additional or different terms or conditions proposed by Subcontractor, or included in Subcontractor's acknowledgment hereof, shall be void and of no effect unless accepted in writing by Buyer. No change in, modification of, or revision to, this Subcontract shall be valid unless in writing and signed by Buyer's Authorized Procurement Representative.

1-14 GOVERNING LAW

This Subcontract and any dispute arising under or in connection with this Subcontract shall be construed in accordance with and governed by the substantive laws of the State of California, excluding its conflict of law rules.

1-15 GRATUITIES

Subcontractor, or any agent or representative of Subcontractor, shall not offer, provide, or cause to be offered or provided, directly or indirectly, gratuities (in the form of entertainment, gifts, or otherwise) to any officer or employee of Lockheed Martin with a view toward securing this subcontract or securing favorable treatment with respect to the award or amendment of this subcontract or the making of any determination with respect to the performance of this subcontract.

1-16 INDEMNIFICATION

In the event Subcontractor, its employees, agents, subcontractors and/or lower-tier subcontractors enter premises occupied by or under the control of Lockheed Martin, its Customer, or third parties in the performance of this subcontract, Subcontractor shall defend, indemnify, and hold harmless Lockheed Martin, its officers and employees and agents from any claim, suit, loss, cost, damage, expense (including attorneys' fees) or liability by reason of property damage or personal injury (including death) to any person (including Subcontractor's employees), of whatsoever nature or kind arising out of, as a result of, or in connection with such performance occasioned in whole or in part by the actions or omissions of Subcontractor, its employees, agents, subcontractors and/or lower-tier subcontractors. Subcontractor shall take all precautions necessary, special or otherwise and shall be responsible for compliance with all Federal, state, and local safety and environmental laws in performance of work hereunder. Without in any way limiting the foregoing undertakings, Subcontractor and its subcontractors and lower-tier subcontractors shall maintain commercial general liability and automobile liability insurance in prudent and reasonable limits covering the obligations set forth above, naming Buyer as an insured, and shall maintain, to the statutory limits required by law, proper worker's compensation insurance or state approved Worker's Compensation self insurance program, and employer's liability insurance covering all its employees performing this subcontract. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of Buyer and is not contributory with any insurance which Buyer may carry. The requirement to provide insurance under this clause shall not in any manner limit or qualify the liabilities and obligations assumed by Subcontractor under this order.

1-17 INSOLVENCY OR BANKRUPTCY

In the event Subcontractor makes an assignment for the benefit of creditors, undergoes receivership, or enters or is placed in bankruptcy, Subcontractor shall notify Lockheed Martin of the same in writing within thirty (30) days.

1-18 NOTICE REGARDING LATE DELIVERY

In the event Subcontractor encounters difficulty in meeting performance requirements, or when Subcontractor anticipates difficulty in complying with the subcontract delivery schedule or date, Subcontractor shall immediately notify Lockheed Martin, in writing, giving pertinent details; provided, however, that this data shall be informational only in character and that this provision shall not be construed as a waiver by Lockheed Martin of any delivery schedule or of any rights or remedies provided by law or by this subcontract.

1-19 PACKING AND SHIPMENT

(a) Unless otherwise specified, all packing and packaging shall comply with good commercial practice and applicable carrier's tariffs. Supplies shall be prepared for shipment and packed to prevent damage or deterioration and to give optimum protection of the supplies during shipment and in plant handling and storage. The packaging, preparation, labeling and shipping of all HAZARDOUS SUBSTANCES, including DANGEROUS MATERIALS, RADIOACTIVE MATERIALS, and EXPLOSIVES must conform with all applicable international, federal, and state laws and regulations. For EXPLOSIVES, each part must be identified with the "Part Number" and "Loading Date" at a minimum. Shorting devices must be supplied on appropriate items. The price includes all charges for packing and packaging and for transportation to the F.O.B. point.

(b) If the terms of Subcontract require delivery F.O.B. place of shipment, the Subcontractor must at that place bear the expense and risk of putting them into the possession of the carrier and at its risk and expense load the supplies on board.

(c) If the terms of this Subcontract are based on F.O.B. place of destination, the Subcontractor must at his own expense and risk transport the supplies to that place and tender delivery of them to Buyer.

(d) Failure to comply with Buyer's requirements or other shipping instructions will result in a debit to Subcontractor for the excess costs and may result in the imposition of an administrative charge not to exceed \$25.

1-20 PATENT INDEMNITY, TRADEMARKS, AND COPYRIGHTS

To the extent that the supplies are produced to detailed designs not originated and furnished by Buyer or by a process or method, the use of which is not specifically directed by Buyer, Buyer shall have no responsibility to Subcontractor for infringement or misappropriation of patent, trademark, copyright, or trade secret rights of third parties and Subcontractor guarantees that the sale or use of such supplies or the use of such process or method hereunder will not infringe or be a misappropriation of any United States or foreign patents, trademarks, copyrights, or trade secrets. Subcontractor shall defend, indemnify, and hold Buyer and its customers harmless from any loss, cost, damage, expense (including attorney's fees), or liability which may be incurred on account of infringement or misappropriation, (actual or alleged), of patent rights, trademarks, copyrights, or trade secrets with respect to such supplies, and defend, at its own expense, any action or claim in which such infringement or misappropriation is alleged by third parties, provided Subcontractor is notified in a timely manner, in writing of such actions or claims against Buyer.

1-21 PUBLIC RELEASE OF INFORMATION

(a) During the term of this Subcontract, Subcontractor shall seek the approval of Buyer at least 30 days prior to the release of items of publicity of any kind, including, without limitation, news releases, articles, brochures, advertisements, prepared speeches, external company reports and other information releases concerning the work performed or to be performed hereunder by Subcontractor or any lower-tier Subcontractor. Subcontractor shall seek the approval of Buyer concerning the content and timing of such release. Such approval shall not be unreasonably withheld.

(b) Subcontractor shall obtain Buyer approval, through the authorized representative, prior to visits or interaction with government, industrial or research organizations (other than lower-tier Subcontractors), when information pertaining to this Subcontract is to be discussed with other than Buyer personnel. Subcontractor shall also document to Buyer, within one week of any program information exchange with one of the above identified entities, the nature of the information exchanged, including the personnel involved, purpose of the exchange, subjects discussed and conclusions or decisions reached.

(c) The restrictions contained in paragraph (b) above shall not be construed to limit Subcontractor's disclosure of such information as required by Federal, State, or local laws and regulations or courts of competent jurisdiction, or as required to meet credit and financing arrangements or as required or appropriate in Subcontractor's judgment to satisfy the disclosure requirement of any Federal or State securities Laws or regulations. Subcontractor shall not be precluded from revealing to the Government the existence and contents of this Subcontract, nor from revealing performance information as it relates solely to Subcontractor's actual program experience under this Subcontract.

1-22 QUALITY CONTROL SYSTEM

Subcontractor shall provide and maintain a quality control system certified to an industry recognized Quality Standard for the supplies covered by this subcontract. Subcontractor shall similarly require its subcontractors to provide and maintain a certified quality control system where applicable.

1-23 REMEDIES

The rights and remedies provided herein shall be cumulative and in addition to any other rights and remedies provided by law or equity.

1-24 SAFETY AND ACCIDENT PREVENTION

In performing any work under this subcontract on premises which are under the direct control of Buyer or its Customer, Subcontractor shall, and shall require its lower-tier subcontractors to (i) conform to all safety rules and requirements and (ii) take such additional precautions as Buyer or its Customer may reasonably require for safety and accident prevention purposes. Subcontractor agrees to take all reasonable steps and precautions to prevent accidents and preserve the life and health of personnel performing or in any way coming in contact with the performance of this subcontract on such premises.

1-25 STOP WORK ORDER

(a) Buyer may, at any time, by written order to Subcontractor, require the Subcontractor to stop all, or any part of the work called for by this Subcontract for a period of 180 days after the order is issued to the Subcontractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this Section. Upon receipt of such an order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize additional costs allocable to the work covered by the Stop Work Order.

(b) If a Stop Work Order, issued under this Section, is canceled or the period of the Order expires the Subcontractor shall resume work. An equitable adjustment shall be made in the affected delivery schedule(s) or Subcontract Line Item price(s), or both, as well as in other affected provisions, and the Subcontract shall be modified in writing accordingly, if:

1. The Stop Work Order results in an increase in the time required for, or in the Subcontractor's cost required to provide or perform the affected goods, documentation or services; and

2. The Subcontractor asserts a claim in writing, supported by a detailed cost and schedule proposal as defined in Section 1-5, (Changes) within thirty (30) days following the cancellation or expiration of the Stop Work Order or such extension of time as agreed to by the Parties.

1-26 TAXES AND DUTIES

(a) The prices, herein, include all transportation and related charges and all applicable taxes, duties, tariffs and similar liabilities whatsoever for delivery of all goods, documentation and services to

Buyer at a destination in the continental United States, including all sales and use taxes and duty drawback claims.

(b) Subcontractor shall be responsible for and pay all its appropriate and customary license fees, sales, use, service occupation, retailer's occupation, personal property and excise taxes, royalty fees, and any other fees, assessments or taxes which may be assessed or levied by any U. S. federal, state, local or foreign government and any departments and subdivisions thereof upon the products and services which Subcontractor provides. Buyer will cooperate and assist Subcontractor by taking reasonable action to reduce or eliminate any tariffs, duties, or other taxes or charges that may be assessed, including, but not limited to, the provision of any appropriate resale certificate.

1-27 TERMINATION

The performance of work under this order may be terminated in whole or in part, by Lockheed Martin for Lockheed Martin's convenience at any time and for any reason on Lockheed Martin giving written termination notice to Subcontractor and shall pay to Subcontractor termination charges computed in the following manner: (1) a sum computed and substantiated in accordance with standard accounting practices for those reasonable costs incurred by Subcontractor prior to the date of termination for completed work, work in process, materials directly related to the order, for orderly phase out of performance as requested by Lockheed Martin in order to minimize the costs of the termination and for preparation and settlement of Subcontractor's termination claim and (2) a reasonable profit on such work performed; provided, however, that Lockheed Martin shall not be liable to Subcontractor for any costs which would not have been charged had the order not been terminated nor for any sum in excess of the total price stated in the order for terminated goods.

1-28 TITLE TRANSFER AND RISK OF LOSS

(a) Risk of loss or damage to items delivered under this Subcontract shall pass to Buyer upon delivery to the point specified herein.

(b) All deliverable equipment, software or data items delivered hereunder shall be accepted or rejected in accordance with Section 1-30 below, within 30 days after Buyer receipt at the delivery points identified herein. Title to delivered equipment shall pass to Buyer upon acceptance.

1-29 USE OF LOCKHEED MARTIN'S DATA

Subcontractor shall not reproduce, use, or disclose any data, designs, or other information belonging to or supplied by or on behalf of Lockheed Martin, except as necessary in the performance of orders for Lockheed Martin. Upon Lockheed Martin's request, such data, designs, or other information, and any copies thereof, shall be returned to Lockheed Martin. Lockheed Martin shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work created by Subcontractor under this order. Where Lockheed Martin's data, designs, or other information are furnished to the Subcontractor's suppliers for procurement of supplies by the Subcontractor for use in the performance of Lockheed Martin's orders, Subcontractor shall insert the substance of this provision in its orders. Except as specifically provided otherwise in this Subcontract, Proprietary Information of Buyer disclosed hereunder to Subcontractor may only be used by Subcontractor in performance of the work specified in this Subcontract.

1-30 VERIFICATION AND ACCEPTANCE

(a) Unless otherwise specifically identified herein, acceptance shall occur upon receipt of the deliverable item at Buyer's facilities. Buyer will accept deliverable items in writing or shall notify the Subcontractor in writing of those particulars in which the items delivered do not meet the requirements of

this Agreement within thirty (30) calendar days after delivery. In the event that any deliverable item or service is defective in material or workmanship, or otherwise not in conformity with the requirements of this Subcontract, Buyer shall have the right to reject them (with or without instructions as to their disposition) or to require their correction. Such items which have been rejected or required to be corrected shall be removed, or, if permitted or required by Buyer, corrected in place if this can be reasonably accomplished, by and at the expense of the Subcontractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former reason for rejection, repair or replacement is rectified. Buyer may notify Subcontractor, in writing, of those particulars in which the items delivered do not meet the requirements of the Subcontract. The period of the warranty, Section 1-32 herein, shall not be deemed to have started until such time as delivery of conforming items has occurred.

(b) Buyer may assign Engineering, Program Management and/or Quality Engineering representatives to Subcontractor's facilities to conduct and maintain surveillance, as necessary, on an itinerant or resident basis to coordinate and ensure product quality, reliability and compliance with the requirements. Subcontractor shall provide such representatives with reasonable access to facilities, equipment, personnel, documentation and unescorted access (except in areas where proprietary processes or data are located in which case access shall be on an escorted basis) to all areas essential to the proper conduct of the above described activity. Subcontractor shall also provide such representatives with reasonable services and facilities to conduct such above described activities.

1-31 WAIVER

The failure of Buyer in any one or more instances to insist on performance of any of the provisions of this Subcontract shall in no way be construed to be a waiver of such provision(s).

1-32 WARRANTY

(a) Subcontractor warrants that, notwithstanding prior inspection and acceptance by Buyer, equipment sold hereunder will be free from defects in workmanship and materials, and will meet and comply with all requirements of samples, drawings and specifications referred to or incorporated by reference herein, at the time of delivery specified in this Subcontract and continuing thereafter for one year.

(b) Upon the discovery of any defect in equipment supplied by Subcontractor under this Subcontract, Buyer will notify Subcontractor, identifying the defective item and providing information on the nature of the defect. Subcontractor shall promptly repair, or, if permitted by Buyer, replace or cause to be replaced defective units at the location specified by Buyer (but which represents no more than reasonable shipping expense to Subcontractor), or allow Buyer to retain the defective unit(s) at a reduction in price which is equitable under the circumstances.

(c) Buyer agrees that it will provide access to Subcontractor, if required, to delivered equipment at Buyer's facility in order to effect necessary repair or replacement.

(d) All warranties shall run to Buyer and its customers.

(e) This warranty is in lieu of all other warranties, whether statutory, express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose, all of which are expressly excluded.

1-33 YEAR 2000 COMPLIANCE WARRANTY

(a) Subcontractor warrants that any products provided hereunder will accurately process or perform, prior to, during and after the year 2000, all: (i) date-related data and (ii) dates before, on or after January 1, 2000, including but not limited to accurately inputting, storing, manipulating, comparing, calculating, updating, recording, displaying, outputting and transferring such dates and data.

(b) This warranty provision takes precedence over all other provisions of this agreement with respect to year 2000 compliance. Within thirty (30) calendar days of discovery of any non-compliance, the

discovering party shall notify the other party and, at LMMS' option, Subcontractor shall, within ten (10) calendar days of notice, repair or replace the noncompliant product at no cost to LMMS, or refund LMMS' purchase price. Nothing in this warranty provision shall be construed to limit any other rights at law or in equity that LMMS may have with respect to year 2000 compliance.

SECTION 2

OPTIONAL CLAUSES

Section "2" clauses are applicable only when specifically incorporated into the subcontract.

2-1 ASSOCIATE SUBCONTRACTOR REQUIREMENTS

In the performance of this Subcontract, Subcontractor shall work cooperatively with third parties designated by Buyer in writing as Associate Subcontractors in the effort under LMMS' prime contract. Subcontractor agrees that it shall provide all required support, technical assistance, communication, and all other cooperative activities reasonably required by Buyer or a designated Associate Subcontractor. Subcontractor expressly agrees that its "Proprietary Information", including all schedule and technical design information but excluding financial or other proprietary business information, may be made available by Buyer to such Associate Subcontractors. Subcontractor is hereby identified as an Associate Subcontractor and agrees that it will use and protect the Proprietary Information of other Associate Subcontractors of Buyer on the same basis it is permitted to use and is obligated to protect Buyer's Proprietary Information in any non-disclosure agreement made a part of this subcontract.

2-2 DISCOVERY OF CONFLICTS, DISCREPANCIES, ERRORS OR OMISSIONS

Conflicts, discrepancies, errors or omissions among the various subcontract documents, shall be submitted by Subcontractor to Lockheed Martin for decision and such decision shall be final. Any work affected by such conflicts, discrepancies, errors or omissions which is performed prior to Lockheed Martin's determination shall be at Subcontractor's risk.

2-3 FEDERAL ACQUISITION STREAMLINING ACT (FASA) FLOWDOWN PROVISIONS

If this procurement is in support of a Government Prime Contract and is for commercial items as defined below, then the following clauses are also applicable.

(a) The Federal Acquisition Regulation (FAR) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, during the performance of this Subcontract. If the date or substance of any of the clauses listed below is different than the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead.

(b) Additional Flowdowns. In the event that any clause required by law, regulation, policy, or the Prime Contract to be included in this Subcontract is not already incorporated in this Subcontract, or in the event that the Prime Contract is modified subsequent to the effective date of this Subcontract so as to modify or add any additional such clause, the Subcontractor agrees to enter into a modification of this Subcontract to insert the substance of any such clause. If any such additional clause causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this Subcontract, an equitable adjustment will be made in the Subcontract price or delivery schedule, or both, pursuant to the "Changes" clause of this Subcontract.

(c) This subcontract is entered into by the Parties in support of a contract between the US Government and Lockheed Martin Corporation.

(d) As used in the FAR clauses referenced below:

1. "Commercial item" means any item as defined in FAR 2.101.

2. "Contractor" means the individual, partnership, corporation, or business association acting as the immediate (first tier) subcontractor to LOCKHEED MARTIN for the goods and services provided under this Subcontract.

3. "Contract" means this Subcontract.

4. "Subcontract" means any subcontract placed by the Subcontractor or lower tier subcontractors for the specific purpose of performing any portion of the work under this Subcontract, and includes, but is not limited to, purchase orders, and changes or modifications thereto. It also includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Subcontractor or subcontractor at any tier.

(e) To the maximum extent practicable, the Subcontractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this Subcontract.

(f) Notwithstanding any other clause of this Subcontract, the Subcontractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components.

(g) The Subcontractor shall include the terms of this section, including this paragraph (g), in subcontracts awarded under this Subcontract.

(h) FAR AND DFARS FLOWDOWN CLAUSES

The following FAR and DFARS clauses apply to this Subcontract :

1. 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1995)

2. 52.222-26 EQUAL OPPORTUNITY (APR 1984)

3. 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998) (Applicable if this Contract equals or exceeds \$10,000.)

4. 52.222-36 AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (APR 1984) (Applicable if this Contract exceeds \$2,500.)

5. 252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (FEB 1997) (Applicable if the Prime Contract contains DFARS 252.225-7014 Alternate I)

6. 252.225-7014 PREFERENCE FOR DOMESTIC SPECIALTY METALS (NOV 1995), ALTERNATE I (FEB 1997) (Applicable if DFARS 252.244-7000 (above) is flowed and this Contract exceeds \$100,000 and the Articles furnished thereunder contain specialty metals.)

The supplies or services provided hereunder by Subcontractor may be offered for, or as a part of, a foreign sale. In the event Subcontractor receives notification that such articles or services are to be offered for, or as a part of, a foreign sale, Subcontractor agrees to comply with the requirements (including reporting requirements) of all laws and regulations (including the International Traffic in Arms Regulations) insofar as they apply to it relating to foreign sales by Lockheed Martin that include supplies or services provided pursuant to this subcontract. Subcontractor further agrees to make such reports or certifications to Lockheed Martin as may be necessary for compliance with any laws and regulations pertaining to foreign sales by Lockheed Martin that include supplies or services provided by Subcontractor under this subcontract.

2-5 RIGHTS IN DATA, INTELLECTUAL PROPERTY

(a) As used throughout this Clause, the following terms shall have the meanings specified below:

(1) Background Intellectual Property: Background Intellectual Property is all intellectual property worldwide including, but not limited to, patents, copyrights, trademarks, mask works, trade secrets, know-how (general and specific principles for the accomplishment of efforts) and all other forms of intellectual property, including proprietary information and inventions and compositions reduced to a tangible medium of expression, which are: i) owned or controlled by Subcontractor prior to the effectivity date of this subcontract; or ii) developed by Subcontractor on or after the effectivity date of this subcontract other than under this subcontract.

(2) Foreground Intellectual Property: Foreground Intellectual Property is all intellectual property worldwide that is not Background Intellectual Property as defined above, including, but not limited to: (i) patents, copyrights, trademarks, mask works, trade secrets, know-how (general and specific principles for the accomplishments of efforts) and all other forms of intellectual property, including any proprietary information and inventions and compositions reduced to a tangible medium of expression, conceived or made either in whole or in part by employees or agents of Subcontractor or jointly by employees or agents of Subcontractor and Buyer on or after the effectivity date of this subcontract; and (ii) all notes, drawings, designs, memoranda, computer programs, or data developed by Subcontractor or Subcontractor's agents under this subcontract for such Foreground Intellectual Property, whether deliverable or not; and which is incorporated into or used to produce the products to be delivered or services to be performed under the Statement of Work as specified in Article 2, Description of Work.

(b) Subcontractor and Buyer shall jointly own the entire right, title and interest in all Foreground Intellectual Property, developed in performance of this Subcontract, by Subcontractor whether patentable or unpatentable, and each may use such Foreground Intellectual Property for any purpose .

(c) Subcontractor shall, utilizing its existing procedures, make and maintain written records of all Foreground Intellectual Property and agrees to promptly submit such records and make supplemental disclosures to Buyer. Subcontractor will execute all papers and otherwise provide proper assistance at Buyer's request and expense, during and subsequent to Subcontractor's efforts hereunder, to enable Buyer or its nominees to obtain copyrights and other legal protection.

(d) Foreground Intellectual Property includes the development of patentable inventions by Subcontractor or jointly by Subcontractor and Buyer. The following procedures shall apply:

(i) The parties shall mutually determine whether an application(s) for patent(s) shall be filed on such joint invention, the Party who will prepare and file such application(s), and the countries in which such application(s) is to be filed.

(ii) The actual out-of-pocket expenses of patenting such joint invention shall be divided equally between the Parties.

(iii) Any such joint invention shall be jointly owned by the Parties and, may be freely used by either Party, without accounting to the other Party, except as otherwise limited by this provision.

(iv) Either Party may grant patent licenses under the patent(s) or application(s) on such joint invention(s) to others to make, have made, use or sell, except as otherwise limited by this provision or other agreement.

(v) Notwithstanding the other provisions of this Section on joint inventions, if either Party elects not to file an application on such joint invention or not to share the expenses thereof, the other Party may file at its own expense and shall have sole control of the prosecution of such application and enjoy exclusive ownership of the invention, application(s) and any patent(s) which may be granted on such application(s), provided that the Party electing to file notifies the Party electing not to file by registered mail, at least twenty (20) days in advance of such filing, and provided that the Party electing not to file shall retain a non-exclusive, non-transferable, royalty-free license to make and use under such invention(s), application(s) and patent(s). Such nonfiling Party may grant sub licenses after obtaining the consent of the filing Party, which consent shall not be unreasonably withheld.

(e) Background Intellectual Property. To the extent any Background Intellectual Property of Subcontractor is incorporated into the items developed under this subcontract Subcontractor shall retain ownership of all such Background Intellectual Property.

Subcontractor hereby grants to Buyer a perpetual, irrevocable, worldwide, non-exclusive, non-transferable right royalty free right and license to make, have made, use and sell products and services utilizing such Background Intellectual Property rights. Such license is limited in scope to the Lockheed Martin prime contract and its successors. Licensing of the Background Intellectual Property to Buyer for use in derivatives and the conditions therefore shall be subject to the mutual agreement of the Parties. This License shall not include Subcontractor trademarks except as may be separately licensed between the Parties.

(f) Pursuant to the rights and licenses to the intellectual property required to be granted by this Section, Subcontractor either has the right to grant such rights and licenses or shall obtain such rights for Buyer. Subcontractor warrants that any and all costs to obtain such rights for Buyer are already included in Subcontractor's price.

(g) All data that are or may be delivered or disclosed by either party hereto are and shall be subject to the Provisions the DISCLOSURE AND USE OF INFORMATION BY PARTIES article.

(h) Buyer hereby retains all of its rights, title and interest in and to all information, data, designs and inventions furnished by Buyer to Subcontractor for the purpose of assisting Subcontractor (i) in the performance of this Subcontract (ii) in the submission of a bid by Subcontractor for such performance, whether furnished prior to, or after acceptance of this subcontract. None of such information, data, designs and inventions shall be reproduced or used by Subcontractor, except in the performance of this subcontract, or disclosed by Subcontractor to others without the prior written consent of Buyer. Upon completion of performance hereunder, all such information, data, designs and inventions shall be promptly returned by Subcontractor to Buyer.

2-6 VERIFICATION AND ACCEPTANCE - ACCEPTANCE TEST PLAN REQUIREMENT

(a) All deliverable goods will be subject to verification and acceptance testing in accordance with the Subcontractor generated and Buyer approved Acceptance Test Plan, generated in accordance with the requirement of the Statement of Work, Exhibit A hereto. Buyer shall have the right to witness all acceptance tests, and to examine test data resulting from such tests. Subcontractor shall give reasonable

advance notice, but not less than 10 days, to Buyer's Authorized Representative, as to the time such tests will be conducted.

(b) In the event that any deliverable item fails to pass its acceptance test, Subcontractor shall document the particulars of the failure and shall promptly remedy the failure and retest the equipment. If any failed equipment cannot be rectified to full product compliance, the equipment will be considered noncompliant and unacceptable. All failures shall be documented, which documentation shall be made available for Buyer review upon request.

2-7 CERTIFICATIONS AND REPRESENTATIONS (GOVERNMENT COMMERCIAL)

(a) This clause contains certifications and representations that are material representations of fact upon which Lockheed Martin will rely in making awards to Subcontractor. By submitting its written offer, or providing oral offers/quotations at the request of Lockheed Martin, or accepting any Purchase Order, Subcontractor certifies to the representations and certifications as set forth below in this clause. These certifications shall apply whenever they are incorporated by reference in any subcontract, purchase order, agreement, other contractual document or any quotation, request for quotation oral or written, request for proposal or solicitation (oral or written), issued by Lockheed Martin. Subcontractor shall immediately notify Lockheed Martin of any change of status with regard to these certifications and representations.

(b) The following clauses of the Federal Acquisition Regulation (FAR) are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable during the performance of any order, agreement, or subcontract.

(c) In each clause incorporated below, substitute "LOCKHEED MARTIN CORPORATION" for "Government" and "Contracting Agency" and "LOCKHEED MARTIN CORPORATION Procurement Representative" for "Contracting Officer" throughout.

1. FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.

(a) Seller certifies that, to the best of its knowledge and belief, that Seller and/or any of its Principals (as defined in FAR 52.209-5), are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.

(b) Seller shall provide immediate written notice to Lockheed Martin if, any time prior to award of any contract, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

2. FAR 52.222-21 Certification of Nonsegregated Facilities (Applicable to solicitations and Contracts exceeding \$10,000 which are not exempt from the requirements of the Equal Opportunity clause, FAR 52.222-26). Seller certifies that it does not and will not maintain any facilities that it provides for its employees in a segregated manner and will not permit any of its employees to perform their services at any location, under its control, where segregated facilities are maintained. Seller agrees that a breach of this Certification will be a violation of the Equal Opportunity clause in this purchase order. This Certification is in accordance with the requirements of Title 41 Code of Federal Regulation 60-1.8. Seller shall obtain identical certifications from proposed lower tier subcontractors/suppliers before the award of any lower tier subcontract in excess of \$10,000 that is not exempt from the provisions of the Equal Opportunity clause.

3. FAR 52.222-22 Previous Contracts and Compliance Reports.

(a) Seller represents that, if it has participated in a previous contract or subcontract subject to the Equal Opportunity clause (FAR 52.222-26), the clause originally contained in Section 310 of Executive Order No. 10925, the clause contained in Section 201 of Executive Order No. 11114, or the clause contained in Section 202 of Executive Order No. 11246, the Seller has filed all Compliance Reports, and will continue to file all Compliance Reports required by the clause.

(b) Seller hereby warrants that representations indicating submission of required compliance reports, signed by proposed lower-tier subcontractors/suppliers, have been obtained.

4. FAR 52.222-25 Affirmative Action Compliance. [Applicable if a) the Seller has 50 or more employees and is not exempt from the requirements of the Equal Opportunity clause (FAR 52.222-26) and b) the value of the subcontract exceeds \$50,000.]

(a) Seller represents: (i) that it has developed and has on file a written Affirmative Action Compliance Program at each of its establishments, or (ii) in the event such a program does not presently exist that it will develop and place in operation such a written Affirmative Action Compliance Program within 120 days from the award of this order.

(b) Seller shall include this clause in any lower tier subcontract/purchase order of \$50,000 or more if the lower-tier subcontractor/supplier has 50 or more employees and is not exempt from the requirements of the Equal Opportunity clause (FAR 52.222-26).