

SECTION 1

GENERAL TERMS & CONDITIONS

(Section "1" clauses are applicable to all subcontracts, except for clauses which are self-deleting or which are specifically deleted in this subcontract).

1-1 DEFINITIONS

(a) As used throughout this subcontract, the following terms shall have the meanings set forth below:

- (1) "Lockheed Martin" means Lockheed Martin, Missiles & Space.
- (2) "Prime Contract" means the contract between Lockheed Martin and the United States of America under which this subcontract is issued, the number of which is specified in this subcontract.
- (3) "Contracting officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer. "Administrative contracting officer (ACO)" refers to a contracting officer who is administering contracts. "Termination contracting officer (TCO)" refers to a contracting officer who is settling terminated contracts. A single contracting officer may be responsible for duties in any or all of these areas. Reference in this subcontract to administrative contracting officer or termination contracting officer does not (a) require that a duty be performed at a particular office or activity or (b) restrict in any way a contracting officer in the performance of any duty properly assigned.
- (4) "Subcontract" means the contractual instrument in which these "Terms and Conditions" are incorporated.
- (5) "Work" or "services" mean all work to be performed under this subcontract including any studies covering fundamental, theoretical, or experimental investigations; and extension of the investigative findings and theories of a scientific or technical nature into practical application; any tangible items (hereinafter referred to as "supplies") furnished to Lockheed Martin; and any reports, data, computations, plans, drawings and specifications with respect to any of the foregoing.
- (6) "Lower-tier subcontracts," except as otherwise provided in this subcontract, means purchase orders and other subcontracts (including changes and modifications to these purchase orders and subcontracts) issued under this subcontract and includes lower-tier subcontracts and purchase orders under such lower-tier subcontract or purchase order.
- (7) "FAR" means Federal Acquisition Regulation. The term "DFARS" means Department of Defense Federal Acquisition Regulation Supplement. The terms "FAR" and "DFARS" refer to the version that is in effect on the date of the subcontract. The term "DEAR" means the Department of Energy Acquisition Regulations, issued as Chapter 9 of Title 48, Code of Federal Regulations.
- (8) The terms "NASA FAR Supplement" or "NFS" mean the National Aeronautics and Space Administration Federal Acquisition Regulation Supplement as in effect on the date of this subcontract.
- (9) "NASA FAR Supplement Directives" or "NFSD's" mean the National Aeronautics and Space Administration Federal Acquisition Regulation Supplement Directives as in effect on the date of this subcontract.
- (10) "PN" means Procurement Notice as in effect on the date of this subcontract.

(11) "CFR" means "Code of Federal Regulations" and all references to provisions thereof shall be to those provisions as in effect on the date of this subcontract.

(12) "Administrator" means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Administrator.

(13) "Head of the Agency" (also called "agency head") means the Secretary; the Under Secretary; any Assistant Secretary of the Departments of Defense, Army, Navy, Air Force or Energy; or Director or Deputy Director of Defense agencies, or the Administrator or Deputy Administrator of NASA. The term "authorized representative" means any person, persons, or board (other than the contracting officer) authorized to act for the Head of the Agency.

(b) As used in all FAR, DEAR, DFARS, NASA FAR supplement, NFSD, PN or CFR clauses or provisions subsequently incorporated in this document by reference, except as may be otherwise provided with the reference, the following terms as they appear in said clauses or provisions shall have the following meanings:

(1) "Government" or "Contracting Officer" means "Lockheed Martin".

(2) "Contractor" means "Subcontractor".

(3) "Contract" means "Subcontract".

(4) "Subcontractor" means "Lower-Tier Subcontractor".

(5) "Subcontract" means "Lower-Tier Subcontract or Purchase Order placed under this Subcontract".

(6) "Prime Contract" means "The Government Prime Contract with Lockheed Martin under which this subcontract is issued".

(7) The provisions of said FAR, DEAR, DFARS, NASA FAR Supplement, NFSD, PN, or CFR clauses incorporated herein by reference which provide that failure to agree shall be a dispute within the meaning of the Government contract clause entitled "Disputes" shall have no force or effect.

1-2 INDEPENDENT CONTRACTOR

It is understood and agreed that Subcontractor shall be an independent contractor in all its operations and activities hereunder; and that the employees furnished by Subcontractor to perform work under this order shall be Subcontractor's employees exclusively without any relation whatever to Lockheed Martin as employees, agents, or as independent contractors; that such employees shall be paid by Subcontractor for all services in this connection; that Subcontractor shall carry worker's compensation insurance and that Subcontractor shall be responsible for all obligations and reports covering social security, unemployment insurance, worker's compensation, income tax, and other reports and deductions required by Local, State and/or Federal law.

1-3 INDEMNIFICATION

(a) In the event Subcontractor, its officers, employees, agents, subcontractors and/or lower-tier subcontractors enter premises occupied by or under the control of Lockheed Martin, the Government, 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 officers, 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 public liability and property damage insurance in reasonable limits covering the obligations set forth above, and shall maintain proper worker's compensation insurance or approved 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 interests of Lockheed Martin and is not contributory with any insurance which Lockheed Martin 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 subcontract.

(b) When requested to do so by Lockheed Martin, prior to or after the commencement of work hereunder, the Subcontractor shall furnish to Lockheed Martin a certificate or written statement evidencing issuance of the above required insurance. The policies of required insurance shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of Lockheed Martin in such insurance shall not be effective sooner than thirty (30) days after written notice thereof to Lockheed Martin. In the event the Subcontractor fails to furnish such certificates prior to the commencing of work or to continue to maintain such insurance during the performance of the subcontract, Lockheed Martin shall have the right to terminate this subcontract for default as provided herein, or to withhold any payments or partial payments required to be made under this subcontract.

1-4 AMENDMENTS REQUIRED BY PRIME CONTRACT

Subcontractor agrees that upon the request of Lockheed Martin it will negotiate in good faith with Lockheed Martin relative to amendments to this subcontract to incorporate additional provisions herein or to change provisions hereof, as Lockheed Martin may reasonably deem necessary in order to comply with the provisions of the prime contract or with the provisions of amendments to the prime contract. If any such amendment to this subcontract causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this subcontract, an equitable adjustment shall be made pursuant to the Changes Clause of this subcontract.

1-5 INSOLVENCY OR BANKRUPTCY

In the event Subcontractor makes an assignment for the benefit of creditors, undergoes receivership, institutes voluntary proceedings in bankruptcy, or is adjudged bankrupt, Lockheed Martin may terminate this subcontract for default in accordance with the Default Clause. Subcontractor shall notify Lockheed Martin in writing within 20 days of the initiation of any bankruptcy action by or against Subcontractor.

1-6 QUALITY CONTROL SYSTEM

(a) Subcontractor shall provide and maintain a quality control system acceptable to the Government and Lockheed Martin for the supplies covered by this subcontract. Subcontractor shall similarly require its subcontractors to provide and maintain a quality control system acceptable to Subcontractor where applicable.

(b) Subcontractor's quality control system will be subject to periodic audits by representatives of Lockheed Martin's Product Assurance organization.

1-7 SOURCE SURVEILLANCE

In addition to inspections as otherwise provided in this subcontract and at no increase in subcontract price, Lockheed Martin may assign product assurance representatives to Subcontractor's facilities to conduct and maintain surveillance as necessary to ensure quality and reliability. Subcontractor likewise shall reserve such right to Lockheed Martin with respect to Subcontractor's lower-tier subcontractors. If such examination is made, Subcontractor shall provide, and require its subcontractors to provide, such representatives with reasonable facilities, equipment 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.

1-8 ASSIGNMENT OF CLAIMS

(a) Neither this subcontract nor any interest nor any sums becoming due to Subcontractor hereunder shall be assigned by Subcontractor without the prior written consent of Lockheed Martin, except that claims for monies 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. Any such assignment of monies due or to come due shall cover all amounts payable under this subcontract and not already paid, and shall not be made to one party as agent or trustee for two (2) or more parties participating in such financing. Payment by Lockheed Martin to an assignee of any claim under this subcontract shall be subject to set-off or recoupment for any present or future claim or claims arising in connection with this subcontract which Lockheed Martin may have against Subcontractor. Lockheed Martin reserves the right to make direct settlements and/or adjustments in price with Subcontractor under the terms of this subcontract notwithstanding any assignment of claims for monies due or to become due hereunder and without notice to assignee(s).

(b) In the event of any such assignment of monies, the assignee shall forward to Lockheed Martin two copies of a written notice of assignment and two copies of the instrument of assignment, all copies signed by the assignor and assignee.

(c) Any claim under this subcontract which has been assigned pursuant to the foregoing provisions of this clause may be further assigned and reassigned only with the prior written consent of Lockheed Martin to a bank, trust company or other financing institution, including any federal lending agency. In the event of such further assignment or reassignment the assignee shall be required to file one signed copy of a written notice of the further assignment or reassignment, together with a true copy of the instrument of further assignment or reassignment with Subcontractor, and shall file two (2) signed copies of such written notice, together with two (2) copies of such instrument with Lockheed Martin.

(d) No assignee shall divulge any information concerning this subcontract except to those persons concerned with the transaction. In no event shall copies of this subcontract or of any plans, specifications, or other similar documents relating to work under this subcontract, if marked "Top Secret", "Secret", or "Confidential", be furnished to any assignee of any claim arising under this subcontract or to any other person not entitled to receive the same; provided, that a copy of any part or all of this subcontract so marked may be furnished, or any information contained herein may be disclosed, to such assignee upon the prior written authorization of Lockheed Martin or the Contracting Officer.

(e) Indication of the assignment of claim and of any further assignment thereof and the name of the assignee shall be made on all vouchers or invoices certified by Subcontractor.

1-9 APPROVALS BY LOCKHEED MARTIN

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 Lockheed Martin or other authorized Lockheed Martin 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 Lockheed Martin 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.

1-10 NOTICE REGARDING LATE DELIVERY - TIME OF THE ESSENCE

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. Time is of the essence in Subcontractor's performance of this subcontract.

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 without further authorization of Subcontractor, shipping charges collect, or store at Subcontractor's expense, items delivered in excess of the number ordered or items delivered without authorization in advance of the delivery date as specified for such items. Invoices submitted for unauthorized early shipments will not be processed until the original specified delivery date.

1-12 LOCKHEED MARTIN-OWNED PROPERTY

Lockheed Martin, for its sole benefit, insures materials, tooling, models, patterns, drawings and other personal property belonging to it against loss or damage resulting from fire, lightning, cyclone, tornado, windstorm and hail, explosion, earthquake, aircraft or vehicles, smoke, sprinkler leakage, flood, strike, riot, and civil commotion, and vandalism and malicious mischief, subrogating or assigning to its insurance carriers all of its rights of recovery against others who may be legally liable for loss of or damage to its property resulting from negligence or wrongful acts or omissions. Lockheed Martin does not require Subcontractor to purchase insurance covering property of Lockheed Martin but if Subcontractor shall nevertheless carry any insurance against direct loss or damage the cost thereof shall not be a direct charge to this subcontract. Subcontractor shall be responsible to the extent of its legal liability for loss of or damage to property of Lockheed Martin caused by the negligence or wrongful act or omission of Subcontractor, its representatives, agents or employees.

1-13 RETENTION OF RIGHTS AND INTEREST

Lockheed Martin hereby retains all of its rights, title and interest in and to all information, data, designs and inventions furnished by Lockheed Martin to Subcontractor for the purpose of assisting Subcontractor (i) in the performance of the subcontract or (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 written consent of Lockheed Martin. Upon completion of performance hereunder, all such information, data, designs and inventions shall be promptly returned by Subcontractor to Lockheed Martin.

1-14 IDENTIFICATION OF TECHNICAL DATA

Technical Data (as defined in the "Rights in Technical Data" clause of this subcontract) delivered under this subcontract shall be marked with the number of the prime contract under which this subcontract has been issued, the name of the prime contractor, the number of this subcontract, the name of Subcontractor (i.e. your name) and the name of any lower-tier subcontractors who generated the data.

1-15 ACCIDENT REPORTING AND INVESTIGATION INVOLVING PRODUCTS AND SERVICES

(a) Subcontractor shall report promptly to Lockheed Martin all pertinent facts relating to each accident involving products being developed, manufactured, modified, repaired, tested or overhauled under or in connection with this subcontract, or involving services being performed hereunder. Subcontractor shall also report promptly to Lockheed Martin all significant occurrences or incidents which could affect the safety or performance of the product or service.

(b) Notification of such accidents and occurrences will be made to the Lockheed Martin resident representative (when assigned to Subcontractor's facility) or to the authorized representative designated in the subcontract. Such notice shall be given by telephone or fax followed by a written report giving pertinent details of the accident or occurrence and the effect or potential effect on subcontract performance and product safety.

(c) If Lockheed Martin or the cognizant Government Contracting Officer elects to conduct an investigation of the accident or occurrence, Subcontractor will cooperate fully and assist Lockheed Martin or Government personnel until the investigation is complete.

(d) Subcontractor shall include the substance of this clause in each lower-tier subcontract which could have a significant effect on performance, quality, reliability or safety of the products or services being provided under this subcontract.

1-16 SAFETY AND ACCIDENT PREVENTION

(a) In performing any work under this subcontract on premises which are under the direct control of the Government, Subcontractor shall, and shall require its lower-tier subcontractors to (i) conform to all safety rules and requirements prescribed by the cognizant Government Agency, as in effect on the date of this subcontract and (ii) take such additional precautions as Lockheed Martin or the Government 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.

(b) In performing work under this subcontract on Lockheed Martin-owned or Lockheed Martin-controlled premises, Subcontractor shall, and shall require its lower-tier subcontractors to conform to the

safety and health regulations of applicable Federal, State and local Occupational Safety and Health Agencies as well as those of Lockheed Martin.

(c) Any violation of safety rules and regulations affecting work described in (a) and (b) above which results in injury or death or which endangers life or health of personnel shall be grounds for termination for default of this subcontract.

(d) This subcontract will be equitably adjusted under the Changes Clause if changes in safety regulations or requirements affecting work described in (a) and (b) above occurring after the date of this subcontract affect costs, delivery or other provisions of this subcontract.

1-17 HAZARDOUS MATERIALS

Subcontractor shall conform with all applicable international, federal and state laws and regulations in the packaging, labeling and shipping of all **HAZARDOUS SUBSTANCES**, including **DANGEROUS MATERIALS, RADIOACTIVE MATERIALS, and EXPLOSIVES**. For **EXPLOSIVES**, each part must be identified with the "Part Number" and "Loading Date" at a minimum. In addition to the application of proper shipping labels on the outside container, Subcontractor shall mark each container of a hazardous substance with the appropriate precautionary label in accordance with Article 112, General Industry Safety Orders, California Administrative Code or the Manufacturing Chemists Association Manual L-1, "Guide to Precautionary Labeling of Hazardous Chemicals."

1-18 LASER PRODUCTS

In accordance with Title 21, Code of Federal Regulations (CFR), Chapter 1, Subchapter J, Parts 1010.2 and 1010.3, all manufacturers of laser products are required to certify that such products conform to all applicable radiation safety performance standards of 21 CFR 1040.10 and 1040.11. Unless Subcontractor obtains an exemption therefrom and furnishes a written confirmation of such exemption to Lockheed Martin, Subcontractor agrees to comply with such applicable certification requirements and standards on all laser products (as defined in the referenced regulations) furnished to Lockheed Martin under this subcontract and require similar certification and standards compliance from any of its suppliers of laser products where such products will be delivered to Lockheed Martin or its customers as an end item or component thereof under this subcontract. Subcontractor further agrees to indemnify and hold Lockheed Martin and its customers harmless from any claim, suit, loss, cost, damage, expense (including attorneys' fees) or liability arising out of, as a result of, or in connection with Subcontractor's (or its suppliers') failure to so certify or comply with the applicable standards as specified above.

1-19 RELEASE OF INFORMATION

Subcontractor shall not, without the prior written consent of Lockheed Martin, disclose any information of any nature whatsoever relative to this subcontract except as may be required to ensure performance or is required by law.

1-20 COMPLIANCE WITH LAWS

Subcontractor agrees to comply with all applicable local, state and federal laws and 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 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.

1-21 INTERPRETATION

(a) This subcontract shall be governed by and construed in accordance with the law of U.S. Government contracts as set forth by statute and applicable regulations, and decisions by the appropriate courts and Board of Contract Appeals. To the extent that the law referred to in the foregoing sentence is not determinative of an issue arising out of the clauses of this subcontract, recourse shall be to the law of the State of California, excluding its provisions relating to conflict of laws.

(b) All provisions of this subcontract not governed or construed pursuant to the provisions of paragraph (a) of this clause shall be governed by and construed in their entirety in accordance with the law of the State of California, excluding its provisions relating to conflict of laws.

1-22 REMEDIES

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

1-23 WAIVER

Waiver, alteration, or modification of any of the provisions or specifications of this subcontract shall not be binding on Lockheed Martin unless evidenced in writing signed by the authorized Lockheed Martin Purchasing Representative. Lockheed Martin's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Lockheed Martin's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, privileges, or breaches, whether of the same or similar type.

1-24 GRATUITIES/KICKBACKS

(a) Lockheed Martin may at any time, by written notice to Subcontractor, terminate for default the right of Subcontractor to proceed under this subcontract if Lockheed Martin has reasonable cause to believe that gratuities (in the form of entertainment, gifts, or otherwise) or kickbacks were offered or given by Subcontractor, or any agent or representative of Subcontractor, 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. The rights and remedies of Lockheed Martin provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this subcontract.

(b) By accepting this subcontract, Subcontractor certifies that it has not and will not solicit or offer a kickback. If this subcontract is pursuant to a U.S. Government Prime Contract, Subcontractor certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference.

1-25 FOREIGN SALES

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.

1-26 COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)

If Subcontractor furnishes equipment, supplies, or materials pursuant to this subcontract, such equipment, supplies, or materials shall comply with the Occupational Safety and Health Act and regulations



issued pursuant thereto. Subcontractor agrees to repair, modify or replace any equipment, supplies, or materials not complying with OSHA at its sole cost and expense and to hold harmless and indemnify Lockheed Martin from any liability and expense (including attorneys' fees) by reason of property damage or personal injury (including death) occasioned in whole or in part from a violation of OSHA standards.

1-27            SECURITY REQUIREMENTS

(a)            The provisions of this clause shall apply to the extent that this subcontract involves access to information classified "Confidential," "Secret," or "Top Secret".

(b)            Lockheed Martin shall notify Subcontractor of the security classification of this subcontract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Contract Security Classification Specification (DD Form 254), or other written notification.

(c)            To the extent Lockheed Martin has indicated as of the date of this subcontract, or thereafter indicates, security classification under this subcontract as provided in paragraph (b) above, Subcontractor shall safeguard all classified elements of this subcontract and shall provide and maintain a system of security controls within its own organization in accordance with the requirements of (1) the Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual For Safeguarding Classified Information (DoD 5220.22-M), as in effect on the date of this subcontract, and any modification to the Security Agreement for the purpose of adapting the Manual to Subcontractor's business; and (ii) any amendments to said Manual made after the date of this subcontract, notice of which has been furnished to Subcontractor by the Security Officer of the Military Department having security cognizance over the facility.

(d)            Representatives of the Military Department having security cognizance over the facility and representatives of the contracting Military Department shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by Subcontractor in complying with the security requirements under this subcontract. Should the Government, through these representatives determine the Subcontractor is not complying with the security requirements of this subcontract, Subcontractor shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

(e)            If, subsequent to the date of this subcontract, the security classifications or security requirements under this subcontract are changed by the Government through Lockheed Martin as provided in this clause, and if such change causes an increase or decrease in the estimated costs to comply with the changed security requirements or the time required for the performance of this subcontract, the subcontract price, delivery schedule, or both, as appropriate, and any other provisions of the subcontract that may be affected shall be subject to an equitable adjustment. Any such equitable adjustment shall be accomplished in the manner set forth in the Changes Clause of this subcontract.

(f)            Subcontractor agrees to insert, in all lower-tier subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause including this paragraph (f) but excluding paragraph (e) of this clause. Subcontractor may insert in any such lower-tier subcontract, and any such lower-tier subcontract entered into thereunder may contain, in lieu of paragraph (e) of this clause, provisions which permit equitable adjustments to be made in the subcontract price or in the estimated or target cost and fee of the lower-tier subcontract (as appropriate to the type of lower-tier subcontract involved) on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the lower-tier subcontract involved.

(g)            Subcontractor also agrees that it shall determine that any lower-tier subcontractor proposed by it for the furnishing of supplies and services which will involve access to classified information in Subcontractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified information.

(h) Promptly upon termination or completion of this subcontract, all classified documents furnished (including any reproduction thereof) must be destroyed, in accordance with the provisions of the Department of Defense Industrial Security Manual and a certificate of destruction furnished to Lockheed Martin unless Subcontractor is authorized in writing by Lockheed Martin to retain all or part of said classified material in response to a Subcontractor written request for such authority in accordance with the provisions of the Industrial Security Manual. The written request shall be submitted within thirty (30) days of completion of performance hereunder, and shall include:

(1) A list of the documents Subcontractor desires to retain. The list shall identify the document control number or numbers, quantity of documents, unclassified title, security level classification, the facility (Subcontractor or lower-tier subcontractor) at which the document is located, and the length of time following completion of performance the Subcontractor desires to retain each document; and

(2) A justification for the retention of each classified document listed. If one justification applies to several (or all) of the documents, they may be grouped for this purpose. Each justification must state whether retention of the document or documents involved (i) is necessary for the maintenance of the Subcontractor's essential records, (ii) is required because the classified information is also patentable or is proprietary data in which the Subcontractor has title; or (iii) will assist the Subcontractor and will benefit the Government in the performance of other User Agency contracts.

1-28 PAYMENT AND INVOICING

(a) Subcontractor shall be paid for performance hereunder, upon submission of proper invoices or vouchers, the price stipulated herein for supplies delivered and accepted or services rendered and accepted, less applicable deductions, if any. Unless otherwise specified, payment will be made upon delivery of any portion of the work delivered or rendered for which a price is separately stated in this subcontract.

(b) Each invoice submitted by Subcontractor hereunder shall bear the following certification signed by an officer or other authorized representative:

"I certify that the payment herein requested is just and correct, and that payment of the sum herein specified has not been received. This certification is made with the understanding that any sum paid hereunder will become the basis for reimbursement to Lockheed Martin by the United States Government. I further certify that any goods covered by this invoice were produced in compliance with all applicable requirements of the Fair Labor Standards Act (29 USC 206, 207, and 212), as amended, and of regulations and orders of the United States Department of Labor issued under such Act."

(c) Indication of any assignment of claim and of any further assignment thereof together with the name(s) of such assignee(s) shall be made on all vouchers or invoices submitted.

(d) The originals and two copies of all invoices, certified by an officer or other responsible official of Subcontractor authorized by it to certify such statements, shall be submitted for approval to the following:

Accounts Payable - LMMS  
P. O. Box 3645

Sunnyvale, CA 95086-3645

At the same time, an additional copy shall be submitted to the Lockheed Martin authorized representative designated in this subcontract.

1-29            RESPONSIBILITY FOR SUPPLIES

Except as otherwise provided in this subcontract, Subcontractor shall (i) be responsible for the supplies covered by this subcontract until they are delivered at the designated delivery point, regardless of the point of inspection; (ii) be responsible after delivery to Lockheed Martin at the designated point and prior to acceptance by Lockheed Martin, or rejection and giving notice thereof by Lockheed Martin, except that Lockheed Martin shall be responsible for the loss or destruction of, or damage to, the supplies only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of Lockheed Martin, acting within the scope of their employment; and (iii) bear all risks as to rejected supplies after notice of rejection, except that Lockheed Martin shall be responsible for the loss or destruction of, or damage to, the supplies only if such loss, destruction or damage results from the gross negligence of officers, agents, or employees of Lockheed Martin acting within the scope of their employment.

1-30            OFFSET IN PRIME CONTRACT

If the Contracting Officer who has cognizance over Lockheed Martin's prime contract reduces Lockheed Martin's prime contract, or if Lockheed Martin is fined or penalized by a Government Agency, as a result of any violation of any Public Law or Federal Regulation by Subcontractor or Subcontractor's lower-tier subcontractors, Lockheed Martin shall reduce the amount of this subcontract by the same amount. If Lockheed Martin has already paid subcontractor, subcontractor shall, upon demand from Lockheed Martin, promptly repay to Lockheed Martin the amount of the offset. Exercise of Lockheed Martin's right under this clause shall not be a waiver of any rights Lockheed Martin has under any other clause or provision in this subcontract.

1-31            GOVERNMENT PROPERTY (FAR 52.245-2 for Fixed Price Subcontracts altered to identify the parties. Applicable only to subcontracts issued pursuant to a Government prime contract) This clause is NOT applicable if Section 3 is incorporated in the subcontract.

(a) Government-furnished property. (1) If Government property is to be furnished for Subcontractor's use in performance under this subcontract, then by or on behalf of Lockheed Martin there shall be delivered to the Subcontractor, for use in connection with and under the terms of this subcontract, the Government-furnished property described in this subcontract or specifications together with any related data and information that the Subcontractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(2) The delivery or performance dates for this subcontract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as-is") will be delivered to the Subcontractor at the times stated in this subcontract or, if not so stated, in sufficient time to enable the Subcontractor to meet the subcontract's delivery or performance dates.

(3) If the Government-furnished property is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt of it, notify Lockheed Martin, detailing the facts, and, as directed by Lockheed Martin and at Lockheed Martin expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Subcontractor, Lockheed Martin shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Government-furnished property is not delivered to the Subcontractor by the required time, Lockheed Martin shall, upon the Subcontractor's timely written request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment, in accordance with paragraph (h) of this clause.

(b) Changes in Government-furnished property. (1) Lockheed Martin may, by written notice,

(i) decrease the Government-furnished property provided or to be provided under this subcontract, or (ii) substitute other Government-furnished property for the property to be provided by or on the behalf of Lockheed Martin, or to be acquired by the Subcontractor for Lockheed Martin or the Government, under this subcontract. The Subcontractor shall promptly take such action as Lockheed Martin may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Subcontractor's written request, Lockheed Martin shall make an equitable adjustment to the subcontract in accordance with paragraph (h) of this clause, if Lockheed Martin has agreed in this subcontract to make the property available for performing this subcontract and there is any

- (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
- (ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) Title in Government property.

(1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the Subcontractor for Lockheed Martin under this subcontract shall pass to and vest in the Government when its use in performing this subcontract commences or when Lockheed Martin has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4) If this subcontract contains a provision directing the Subcontractor to purchase material for which Lockheed Martin will reimburse the Subcontractor as a direct item of cost under this subcontract -

(i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(ii) Title to all other material shall pass to and vest in the Government upon -

- (A) Issuance of the material for use in subcontract performance;
- (B) Commencement of processing of the material or its use in subcontract performance; or
- (C) Reimbursement of the cost of the material by Lockheed Martin, whichever occurs first.

(d) Use of Government property. The Government property shall be used only for performing this subcontract, unless otherwise provided in this subcontract or approved by Lockheed Martin or the Government.

(e) Property administration.

(1) The Subcontractor shall be responsible and accountable for all Government property provided under this subcontract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, and DFARS Subpart 245.5 if this is a DoD Subcontract and NFS Subpart 18-45.5 if this is a NASA Subcontract, as in effect on the date of this subcontract.

(2) The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR and NFS 18-45.5.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government or Lockheed Martin under this subcontract, the Government or Lockheed Martin shall replace the items or the Subcontractor shall make such repairs as Lockheed Martin directs. However, if the Subcontractor cannot effect such repairs within the time required, the Subcontractor shall dispose of the property as directed by the Contracting Officer or Lockheed Martin. When any property for which the Government or Lockheed Martin is responsible is replaced or repaired, Lockheed Martin shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Subcontractor represents that the subcontract price does not include any amount for repairs or replacement for which the Government or Lockheed Martin is responsible. Repair or replacement of

property for which the Subcontractor is responsible shall be accomplished by the Subcontractor at its own expense.

(f) Access. The Government or Lockheed Martin and all their designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Risk of loss. Unless otherwise provided in this subcontract, the Subcontractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Subcontractor or upon passage of title to the Government under paragraph (c) of this clause. However, the Subcontractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this subcontract.

(h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected subcontract provision in accordance with the procedures of the Changes clause. When appropriate, Lockheed Martin may initiate an equitable adjustment in favor of Lockheed Martin. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy. Neither the Government nor Lockheed Martin shall be liable to suit for breach of contract for -

- (1) Any delay in delivery of Government-furnished property;
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Government-furnished property; or
- (4) Failure to repair or replace Government property for which the Government or Lockheed Martin is responsible.

(i) Final accounting and disposition of Government property. Upon completing this subcontract, or at such earlier dates as may be fixed by Lockheed Martin, the Subcontractor shall submit, in a form acceptable to Lockheed Martin, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this subcontract or delivered to Lockheed Martin or the Government. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by Lockheed Martin. The net proceeds of any such disposal shall be credited to the subcontract price or shall be paid to Lockheed Martin as Lockheed Martin directs.

(j) Abandonment and restoration of Subcontractor's premises. Unless otherwise provided herein, Lockheed Martin and the Government -

- (1) May abandon any Government property in place, at which time all obligations of the Government or Lockheed Martin regarding such abandoned property shall cease; and
- (2) Have no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon subcontract completion). However, if the Government-furnished property (listed in the schedule of this subcontract or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) Communications. All communications under this clause shall be in writing.

(l) Overseas contracts. If this subcontract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(If the cognizant Contracting Officer has authorized its use and this subcontract specifically provides for inclusion of alternate paragraph (g), Limited Risk of Loss, paragraph (g) above is hereby deleted and the alternate paragraph (g) below is incorporated in lieu thereof.)

(g) Limited risk of loss.

(1) The term "Subcontractor's managerial personnel," as used in this paragraph (g), means the Subcontractor's directors, officers, and any of the Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of -

- (i) All or substantially all of the Subcontractor's business;
- (ii) All or substantially all of the Subcontractor's operation at any one plant or separate location at which the subcontract is being performed; or
- (iii) A separate and complete major industrial operation connected with performing this subcontract.

(2) The Subcontractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this subcontract (or, if an educational or nonprofit organization, for expenses incidental to such loss, destruction, or damage), except as provided in subparagraphs (3) and (4) below.

(3) The Subcontractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this subcontract (including expenses incidental to such loss, destruction, or damage) -

but  
maintained, or to  
whichever is greater;

- (i) That results from a risk expressly required to be insured under this subcontract, only to the extent of the insurance required to be purchased and the extent of insurance actually purchased and maintained,
- (ii) That results from a risk that is in fact covered by insurance or for which the Subcontractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
- (iii) For which the Subcontractor is otherwise responsible under the express terms of this subcontract;
- (iv) That results from willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel; or
- (v) That results from a failure on the part of the Subcontractor, due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel, to establish and administer a program or system for the protection, preservation, maintenance, and repair of Government property required by paragraph (e) of this clause.

managerial  
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(4)(i) If the Subcontractor fails to act as provided in subdivision (g)(3)(v) above, after being notified (by certified mail addressed to one of the Subcontractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel.

managerial  
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- (ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Subcontractor can establish by clear and convincing evidence that such loss, destruction, or damage -
  - (A) Did not result from the Subcontractor's failure to maintain an approved program or system; or
  - (B) Occurred while an approved program or system was maintained by the Subcontractor.

(5) If the Subcontractor transfers Government property to the possession and control of a lower-tier subcontractor, the transfer shall not affect the liability of the Subcontractor for loss or destruction of, or damage to, the property as set forth above. However, the Subcontractor shall require lower-tier subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the lower-tier subcontractor's possession or control, except to the extent that the lower-tier subcontract, with the advance approval of the Contracting Officer and Lockheed Martin, relieves the lower-tier subcontractor from such liability. In the absence of such approval, the lower-tier subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of this subcontract.

(6) Upon loss or destruction of, or damage to, Government property provided under this subcontract, with the exception of low value property for which loss, damage or destruction is reported at subcontract termination, completion, or when needed for continued subcontract performance, the Subcontractor shall so notify Lockheed Martin and shall communicate with the loss and salvage organization, if any, designated by Lockheed Martin. With the assistance of any such organization, the Subcontractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to Lockheed Martin a statement of -

- (i) The lost, destroyed, or damaged Government property;
- (ii) The time and origin of the loss, destruction, or damage;
- (iii) All known interest in commingled property of which the Government property is a part; and
- (iv) The insurance, if any, covering any part of or interest in such commingled

property.

(7) The Subcontractor shall repair, renovate, and take such other action with respect to damaged Government property as Lockheed Martin directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Subcontractor's) that separation is impractical, the Subcontractor may, with the approval of and subject to any conditions imposed by Lockheed Martin, sell such property for the account of Lockheed Martin. Such sales may be made in order to minimize the loss to Lockheed Martin and the Government to permit the resumption of business, or to accomplish a similar purpose. The Subcontractor shall be entitled to an equitable adjustment in the subcontract price for the expenditures made in performing the obligations under this subparagraph (g)(7) in accordance with paragraph (h) of this clause. However, Lockheed Martin may directly reimburse the loss and salvage organization for any of their charges. Lockheed Martin shall give due regard to the Subcontractor's liability under this paragraph (g) when making any such equitable adjustment.

(8) The Subcontractor represents that it is not including in the price and agrees it will not hereafter include in any price to Lockheed Martin any charge or reserve for insurance (including any self-insurance fund or reserve) covering loss or destruction of, or damage to, Government property, except to the extent that Lockheed Martin may have expressly required the Subcontractor to carry such insurance under another provision of this subcontract.

(9) In the event the Subcontractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Subcontractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to or equitably reimburse Lockheed Martin, as directed by Lockheed Martin.

(10) The Subcontractor shall do nothing to prejudice the Government's or Lockheed Martin's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer or Lockheed Martin, the Subcontractor shall, at Lockheed Martin's or the Government's expense, furnish to the Government or Lockheed Martin all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government and Lockheed Martin) in obtaining recovery. In addition, where a lower-tier subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Subcontractor shall enforce for the benefit of the Government and Lockheed Martin the liability of the lower-tier subcontractor for such loss, destruction, or damage.

(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 Subcontract, Subcontractor certifies to the representations and certifications as set forth below in this clause. These certifications shall apply whenever these terms and conditions are incorporated by reference in any subcontract, 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 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Applicable to solicitations and Subcontracts exceeding \$100,000)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions are hereby incorporated by reference in paragraph (b) of this certification.

(b) Subcontractor certifies that to the best of its knowledge and belief that on and after December 23, 1989--

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with a solicitation or order, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, in accordance with its instructions, and

(c) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(d) Submission of this certification and disclosure is a prerequisite for making or entering into a contract as imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.



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

(a) Subcontractor certifies that, to the best of its knowledge and belief, that Subcontractor 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) Subcontractor shall provide immediate written notice to Lockheed Martin if, any time prior to award of any subcontract, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

3) FAR 52.222-21 Certification of Nonsegregated Facilities (Applicable to solicitations and Subcontracts exceeding \$10,000 which are not exempt from the requirements of the Equal Opportunity clause, FAR 52.222-26). Subcontractor 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. Subcontractor agrees that a breach of this Certification will be a violation of the Equal Opportunity clause in this subcontract. This Certification is in accordance with the requirements of Title 41 Code of Federal Regulation 60-1.8. Subcontractor 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.

4) FAR 52.222-22 Previous Contracts and Compliance Reports.

(a) Subcontractor 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 Subcontractor has filed all Compliance Reports, and will continue to file all Compliance Reports required by the clause.

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

5) FAR 52.222-25 Affirmative Action Compliance. [Applicable if a) the Subcontractor 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) Subcontractor 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) Subcontractor 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).

6) FAR 52.223-1 Clean Air and Water Certification (Applicable to solicitations and Subcontracts exceeding \$100,000).

(a) Subcontractor certifies that any facility to be used in the performance of a subcontract is not listed on the Environmental Protection Agency List of Violating Facilities.

(b) Subcontractor shall immediately notify the LOCKHEED MARTIN subcontract administrator, before any subcontract award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the Offeror proposes to use for the performance of any subcontract is under consideration to be listed on the EPA list of Violating Facilities.

a) The Subcontractor shall give Lockheed Martin immediate written notice of any action or suit filed and prompt notice of any claim made against the Subcontractor by any lower-tier subcontractor or vendor that, in the opinion of the Subcontractor, may result in litigation related in any way to this subcontract, with respect to which the Subcontractor may be entitled to reimbursement from Lockheed Martin.

b) No lower-tier subcontract placed under this subcontract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type lower-tier subcontracts shall not exceed the fee limitations in paragraph 15.404-4( c)(4) (formerly 15.903(d))of the Federal Acquisition Regulation (FAR).

c) 'Lower-tier Subcontract,' as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders.

1-34            YEAR 2000 COMPLIANCE WARRANTY

(a) Subcontractor warrants that all telecommunication, computer hardware, firmware and software 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 such 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, supplier shall, within five (5) calendar days of notice, repair or replace the non-compliant 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.