

SECTION 6C

ALTERNATE CLAUSES  
(For Use with Corpdocs)

The following clauses are applicable when called out in the subcontract that incorporates these terms and conditions.

6-1 USE OF GOVERNMENT OWNED FACILITIES, SPECIAL TOOLING, AND SPECIAL TEST EQUIPMENT

(a) The price, or target cost and profit, and delivery schedule of this subcontract are based on the rent-free usage of Government-owned facilities, special tooling or special test equipment provided under contracts and subcontracts specified in this subcontract and Subcontractor and its lower-tier subcontractors may use, rent-free, in the performance of this subcontract, such Government-owned facilities, special tooling and special test equipment, provided that such use is authorized by and in accordance with the conditions imposed by the Government activity cognizant of the facilities, special tooling and special test equipment.

(b) The above authorization to use Government-owned facilities, special tooling, and special test equipment is limited to those items available on the effective date of this subcontract and to those items which the Government contemplated making available to the Subcontractor and its lower-tier subcontractors for use under this subcontract, including, but not limited to, those items specified in proposals for the acquisition of facilities, submitted by the Subcontractor and its lower-tier subcontractors prior to the effective date of this subcontract or such lower-tier subcontracts and related to the performance of this subcontract.

(c) Upon receipt by Lockheed Martin from the Administrative Contracting Officer of his approval to use and his agreement as to the amount of the adjustment hereinafter described, Subcontractor is authorized to use other (after-acquired) Government-owned facilities, special tooling and special test equipment; provided, however, that (i) under a firm fixed price subcontract, Lockheed Martin on behalf of the Government shall receive the benefit of any reduction in the cost of performing this subcontract; or (ii) under a fixed price incentive subcontract, there shall be deducted from the target cost of this subcontract, for purposes of computing the incentive profit, an amount equal to the estimated cost savings resulting from the use of the other (after-acquired) facilities, tooling and test equipment. The resultant adjustment specified in this paragraph with respect to the authorization to use after-acquired facilities, special tooling and special test equipment, shall not apply to replacement of Government-owned facilities, special tooling and special test equipment when required (i) by normal replacement or repair practices, or (ii) by any generally applied facilities modernization program; the use of such facilities and equipment shall be on a rent-free basis. The foregoing principles shall be utilized in the adjustment of the price of those lower-tier subcontracts the performance of which involves the use of other (after-acquired) Government-owned facilities, special tooling and special test equipment.

(d) In the event that during the performance of this subcontract the authority to use facilities, special tooling or special test equipment (use of which is authorized in accordance with this provision) is limited or terminated by the Government and such facilities, special tooling or special test equipment at or after the time of such limitation or termination are or will be required to perform this subcontract in accordance with the delivery schedule set forth herein, an equitable adjustment in the subcontract price or delivery schedule, or both, shall be made in accordance with the provisions of the Changes clause.

6-2 LIMITATION OF FUNDS

(a) Lockheed Martin shall not be obligated to reimburse Subcontractor for costs incurred (including amounts payable with respect to lower-tier subcontracts and termination settlement costs) nor to pay any profit to which Subcontractor may be entitled in excess of the total funds from time to time allotted to this subcontract. However, when, and to the extent that, the total funds allotted to this subcontract have been increased, any costs incurred by Subcontractor and any profit to which Subcontractor may be entitled prior to the increase which were in

excess of the funds previously allotted, shall be allowable to the same extent as if such costs had been incurred and profit earned after such increase in funds allotted.

(b) Subcontractor agrees to perform or have performed work on this subcontract up to the point at which, in the event of termination of this subcontract in accordance with the Termination Clause, the total amount paid and payable by Lockheed Martin pursuant to any settlement including cost and profit under such Termination Clause would, in the exercise of reasonable judgment by Subcontractor, approximate the total funds at the time allotted to this subcontract. Subcontractor shall not be obligated to continue performance of work beyond such point.

(c) Subcontractor shall notify Lockheed Martin in writing when within the next thirty (30) days the work will reach a point at which, in the event of termination of this subcontract pursuant to the provisions of the Termination Clause, the total amount paid and payable by Lockheed Martin pursuant to a settlement, including cost and profit under such Termination Clause, will approximate eighty-five percent (85%) of the total funds then allotted to this subcontract. The notice shall state the estimated date when such point will be reached, the estimated date the funds then allotted to this subcontract will be totally exhausted, and the estimated amount of additional funds (in monthly increments) which will be required to continue the performance of the work under this subcontract for such further period as may be specified in the Completion and Delivery Clause of this subcontract, or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the date estimated for the exhaustion of funds in such notification, Lockheed Martin will, upon written request of Subcontractor and pursuant to the Termination Clause, terminate this subcontract on such date, or on a date to be specified in such request, on which Subcontractor, in the exercise of its reasonable judgment, estimates that it will have discharged its obligation to perform hereunder in accordance with paragraph (b) hereof.

(d) Lockheed Martin may, at any time prior to termination, allot additional funds to this subcontract, and, with the consent of Subcontractor, after notice of termination, may rescind such termination in whole or in part and allot additional funds to this subcontract. For the purposes of this Limitation of Funds Clause, the allotment or allotments specified in the Funding and Limitation of Obligation Clause of this subcontract shall not be decreased without the consent of Subcontractor.

(e) Subcontract Change Notices issued pursuant to the Changes Clause, or by mutual agreement of the parties, and revisions to the effort required to be performed under this subcontract shall not be considered authorization to Subcontractor to exceed the funds allotted to this subcontract in the absence of a statement in the Subcontract Change Notice, or other contractual modification, increasing the amount of funds allotted.

(f) Nothing in this Limitation of Funds Clause shall affect the right of Lockheed Martin to terminate this subcontract pursuant to the Termination Clause.

(g) At the time that the total funds allotted under this subcontract equal the Total Fixed Price or Total Target Price, this clause shall have no force or effect and shall cease to apply.

6-3 INSURANCE

Supplier shall maintain the following types of insurance in not less than the following minimum amounts and shall require its subcontractors to maintain similar kinds and levels of insurance for any subtier subcontracted activity related to this Agreement:

Commercial General Liability Insurance including Contractual Liability Coverage and Products-Completed Operations Liability Coverage:  
Combined Single Limit of \$1,000,000 per occurrence:

Automobile Liability Insurance:  
Combined Single Limit of \$1,000,000 per occurrence:

Worker's Compensation: Statutory Limits in the State(s) of Work Performance.  
to include Employer's Liability limit of: \$1,000,000

Special Conditions Applicable to All the Above Insurance Policies:

(a) Lockheed Martin shall be named an additional insured on the Commercial General Liability Insurance Policy(ies) and Automobile Liability Insurance Policy(ies) maintained to comply with the foregoing, but solely with respect to liabilities arising out of the acts or omissions of the Supplier, its officers employees or agents in performance of this Agreement.

(b) Policies shall provide that insurance is primary with respect to the interests of Lockheed Martin and are not contributory with any insurance Lockheed Martin may carry.

(c) All deductible amounts applicable to Supplier's insurance policies shall be borne by the Supplier, or its subcontractors, at any tier.

(d) Prior to the commencement of any activity under this Agreement, Supplier shall furnish to Lockheed Martin Certificates of insurance evidencing the existence of the above insurance with companies approved to do business in the state(s) where work will be performed and satisfactory to Lockheed Martin. All Certificates of Insurance shall provide that the Certificate Holder will be notified of any cancellation or material change in coverage 30 days prior to such cancellation or change in the policy(ies).

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Supplier are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Supplier under this Agreement, or limit or alter other contract terms and conditions herein.

6-4 UNIT SERIALIZATION - CONTROLLED CONFIGURATION ARTICLES

Units delivered under this subcontract shall be serialized with numbers as shown on the Delivery Schedule, and referenced as CCA serial numbers, or otherwise provided by Lockheed Martin. Controls shall be provided to assure that no serial number is used on more than one unit and that no unit has more than one serial number applied. In the event that a unit with a serial number applied is scrapped, and is to be replaced by a new unit, Subcontractor shall contact Lockheed Martin for an additional serial number assignment. Serial numbers shall be applied to each unit prior to shipment in accordance with the Design Control Drawing. Such unit serial numbers shall appear on all copies of covering shipping documents and invoices.

6-5 SUBCONTRACTOR'S EMPLOYEES AT UK INSTALLATIONS

(a) The Subcontractor shall be responsible for assuring that its employees and the employees of any of its lower-tier subcontractors shall learn and comply with the rules, regulations, and requirements in force at those establishments in the United Kingdom where the work is performed. In addition, with respect to work performed within the United Kingdom, the Subcontractor and any of its lower-tier subcontractors shall comply with the security regulations and requirements of the Ministry of Defense of the United Kingdom.

(b) If any of the employees of Subcontractor or its lower-tier subcontractors are found to be either not qualified to perform the work required or otherwise unsuitable, Lockheed Martin may direct that those employees be replaced with qualified and suitable employees. In the event that any such employees are replaced for the reason that they are unsuitable and such replacement results in an increase in the cost of performance of this subcontract, an equitable adjustment, if warranted, shall be made in the subcontract price.

6-6 CALIFORNIA WITHHOLDING TAX/OUT OF STATE SUBCONTRACTORS

(a) In the absence of one of the exemptions stated below or upon receipt of a Notice to Withhold, Lockheed Martin shall withhold and transmit to the California State Franchise Tax Board an amount equal to 7%, or

such other rate as may be authorized in writing by the Franchise Tax Board, of Subcontractor's submitted invoice for services provided in the State of California.

(b) Exempt from the withholding provisions of this clause are:

- (1) Individuals who are California residents and claim a waiver of the withholding requirement by submitting California State Franchise Tax Board Form 1405;
- (2) Corporations who are qualified to do business in California.

(c) If a Subcontractor claims to be a California resident the Subcontractor shall submit to Lockheed Martin, upon execution of this subcontract or no later than the first invoice, an executed California Franchise Tax Board Form 1405. Subcontractor shall continue to submit a new form 1405 for each calendar year, no later than October 31 of the preceding year, for the duration of this contract. Failure of the subcontractor to provide a current Form 1405 for any year will result in withholding as indicated in (a) above.

6-7 LIMITATION OF LIABILITY - HIGH VALUE AND OTHER END ITEMS

This clause is only applicable if the cognizant Contracting Officer has authorized its use and this subcontract specifically provides for inclusion of this clause.

This subcontract involves the procurement of both high value items (for which Clause 6-25, Limitation of Liability - High Value Items is appropriate), and other end items (for which FAR Clauses 52.246-23, Limitation of Liability and 52.246-25, Limitation of Liability-Services are appropriate) and all clauses, 6-25 and FAR 52.246-23 and 52.246-25 are applicable to this subcontract with the following preamble added to the beginning of Clause 6-25, Limitation of Liability - High Value items:

"(The provisions of this Clause, Limitation of Liability - High Value Items, shall apply only to those items identified in this subcontract as being subject to this clause.)"

6-8 PROGRESS PAYMENTS FOR SMALL BUSINESS CONCERNS

FAR 52.232-16 and Alternate I and, for undefinitized subcontracts, Alternate II, modified to identify the contracting parties as required by FAR. The applicable rates shall be included in the subcontract.

Progress payments shall be made to the Subcontractor when requested as work progresses, but not more frequently than monthly in amounts of \$2,5000 or more approved by Lockheed Martin, under the following conditions:

- (a) Computation of amounts.
  - (1) Unless the Subcontractor requests a smaller amount, each progress payment shall be computed as
    - (i) \_\_\_\_\_percent of the Subcontractor's total costs incurred under this subcontract whether or not actually paid, plus
    - (ii) financing payments to lower-tier subcontractors (see paragraph (j) below), less the sum of all previous progress payments made by Lockheed Martin under this subcontract. Cost of money that would be allowable under 31.205-10 of the Federal Acquisition Regulation shall be deemed an incurred cost for progress payment purposes.
  - (2) The amount of financing and other payments for supplies and services purchased directly for this subcontract are limited to the amounts that have been paid by cash, check, or other forms of payment, or that will be paid to lower-tier subcontractors--
    - (i) In accordance with the terms and conditions of this subcontract; and
    - (ii) Ordinarily prior to the submission of the Subcontractor's next payment request to Lockheed Martin
  - (3) Accrued costs of Subcontractor contributions under employee pension plans shall be excluded until actually paid unless:

- (i) The Subcontractor's practice is to make contributions to the retirement fund quarterly or more frequently; and
- (ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Subcontractor's total costs for progress payments until paid).
- (4) The Subcontractor shall not include the following in total costs for progress payment purposes in paragraph (a)(1) above:
  - (i) Costs that are not reasonable, allocable to this subcontract, and consistent with sound and generally accepted accounting principles and practices.
  - (ii) Costs incurred by lower-tier subcontractors or suppliers.
  - (iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.
  - (iv) Payments made or amounts payable to lower-tier subcontractors or suppliers, except for:
    - (A) Completed work, including partial deliveries, to which the Subcontractor has acquired title; and
    - (B) Work under cost-reimbursement or time and material lower-tier subcontracts to which the Subcontractor has acquired title.
- (5) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to lower-tier subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this subcontract, for which delivery and invoicing by the Subcontractor and acceptance by Lockheed Martin are incomplete.
- (6) The total amount of progress payments shall not exceed \_\_\_\_percent of the total subcontract price.
- (7) If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs (a)(4) or (a)(5) above, the Subcontractor shall repay the amount of such excess to Lockheed Martin on demand.
- (b) Liquidation. Except as provided in the Termination Clause herein, all progress payments shall be liquidated by deducting from any payment under this subcontract, other than advance or progress payments, the unliquidated progress payments or \_\_\_\_percent of the amount invoiced, whichever is less. The Subcontractor shall repay to Lockheed Martin any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. Lockheed Martin reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper subcontract financing.
- (c) Reduction or suspension. Lockheed Martin may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:
  - (1) The Subcontractor failed to comply with any material requirement of this subcontract (which includes paragraphs (f) and (g) below).
  - (2) Performance of this subcontract is endangered by the Subcontractor's (i) failure to make progress or (ii) unsatisfactory financial condition.
  - (3) Inventory allocated to this subcontract substantially exceeds reasonable requirements.
  - (4) The Subcontractor is delinquent in payment of the costs of performing this subcontract in the ordinary course of business.
  - (5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this subcontract.
  - (6) The subcontractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) above, and that rate is less than the progress payment rate stated in paragraph (a)(1) above.
- (d) Title.
  - (1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this subcontract, for property acquired or produced

- before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this subcontract.
- (2) "Property," as used in this clause includes all of the below-described items acquired or produced by the Subcontractor that are or should be allocable or properly chargeable to this subcontract under sound and generally accepted accounting principles and practices.
    - (i) Parts, Materials, inventories, and work in process.
    - (ii) Special tooling and special test equipment to which the Government is to acquire title- under any other clause of this subcontract;
    - (iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (d)(2)(ii) above; and
    - (iv) Drawings and technical data, to the extent the Subcontractor or lower-tier subcontractors are required to deliver them to Lockheed Martin or the Government by other clauses of this subcontract.
  - (3) Although title to property is in the Government under this clause, other applicable clauses of this subcontract. e. g., the termination or special tooling clauses, shall determine the handling and disposition of the property.
  - (4) The Subcontractor may sell any scrap resulting from production under this subcontract without requesting Lockheed Martin's approval, but the proceeds shall be credited against the costs of performance.
  - (5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Subcontractor must obtain Lockheed Martin's advance approval of the action and the terms. The Subcontractor shall (i) exclude the allocable costs of the property from the costs of contract performance and (ii) repay to Lockheed Martin any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.
  - (6) When the Subcontractor completes all of the obligations under this subcontract, including liquidation of all progress payments, title shall vest in the Subcontractor for all property (or the proceeds thereof) not:
    - (i) Delivered to, and accepted by, Lockheed Martin under this subcontract; or
    - (ii) Incorporated in supplies delivered to, and accepted by, Lockheed Martin under this subcontract and to which title is vested in the Government under this clause.
  - (7) The terms of this subcontract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.
  - (e) Risk of loss. Before delivery to and acceptance by Lockheed Martin, the Subcontractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government or Lockheed Martin expressly assumes the risk. The Subcontractor shall repay Lockheed Martin an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.
  - (f) Control of costs and property. The Subcontractor shall maintain an accounting system and controls adequate for the proper administration of this clause.
  - (g) Reports and access to records. The Subcontractor shall promptly furnish reports, certificates, financial statements and other pertinent information reasonably requested by the Contracting Officer or Lockheed Martin for the administration of this clause. Also, the Subcontractor shall give the Government or Lockheed Martin reasonable opportunity to examine and verify the Subcontractor's books, records, and accounts.
  - (h) Special terms regarding default. If this subcontract is terminated under the Default Clause, (i) the Subcontractor shall, on demand, repay to Lockheed Martin the amount of unliquidated progress payments and (ii) title shall vest in the Subcontractor, on full liquidation of progress payments for all property for which Lockheed Martin elects not to require delivery under the Default Clause. Lockheed Martin shall be liable for no payment except as provided by the Default Clause.
  - (i) Reservations of rights.

- (1) No payment or vesting of title under this clause shall (i) excuse the Subcontractor from performance of obligations under this subcontract or (ii) constitute a waiver of any of the rights or remedies of the parties under the subcontract.
  - (2) Lockheed Martin rights and remedies under this clause (i) shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this subcontract and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government or Lockheed Martin.
- (j) Financing payments to lower-tier subcontractors. The financing payments to lower-tier subcontractors mentioned in (a)(1) and (a)(2) of this clause shall be all financing payments to lower-tier subcontractors or divisions, if the following conditions are met:
- (1) The amounts included are limited to (i) the unliquidated remainder of financing payments made plus (ii) any unpaid lower-tier subcontractor requests for financing payments.
  - (2) The lower-tier subcontract or interdivisional order is expected to involve a minimum of approximately 6 months between the beginning of work and the first delivery, or, if the lower-tier subcontractor is a small business concern, 4 months.
  - (3) If the financing payments are in the form of progress payments, the terms of the lower-tier subcontract or interdivisional order concerning progress payments:
    - (i) Are substantially similar to the terms of the clause at DFARS 252.232-7004, or FAR 52.232-16, and Alt I, as appropriate, Progress Payments, for any subcontractor that is a small business concern;
    - (ii) Are at least as favorable to Lockheed Martin as the terms of this clause;
    - (iii) Are not more favorable to the lower-tier Subcontractor or division than the terms of this clause are to the Subcontractor;
    - (iv) Are in conformance with the requirements of paragraph 32.504(e) of the Federal Acquisition Regulation; and
    - (v) Subordinate all lower-tier subcontractor rights concerning property to which the Government has title under the subcontract to the Government's or Lockheed Martin's right to require delivery of the property to the Government or Lockheed Martin if (A) the Subcontractor defaults or (B) the lower-tier subcontractor becomes bankrupt or insolvent.
  - (4) If the financing payments are in the form of performance-based payments, the terms of the lower-tier subcontract or interdivisional order concerning payments:
    - (i) Are substantially similar to the Performance-Based Payments clause at FAR 52.232-32, and meet the criteria for, and definition of, performance-based payments in FAR Part 32;
    - (ii) Are in conformance with the requirements of FAR 32.504(f); and
    - (iii) Subordinate all lower-tier subcontractor rights concerning property to which the Government has title under the lower-tier subcontract to the Government's or Lockheed Martin's right to require delivery of the property to the Government or Lockheed Martin if:
      - (A) the Subcontractor defaults or
      - (B) the lower-tier subcontractor becomes bankrupt or insolvent.
  - (5) If the financing payments are in the form of commercial item financing payments, the terms of the lower-tier subcontract or interdivisional order concerning payments:
    - (i) Are constructed in accordance with FAR 32.206(c) and included in a lower-tier subcontract for a commercial item purchase that meets the definition and standards for acquisition of commercial items in FAR Parts 2 and 12;
    - (ii) Are in conformance with the requirements of FAR 32.504(g); and
    - (iii) Subordinate all lower-tier subcontractor rights concerning property to which the Government has title under the lower-tier subcontract to the Government's or Lockheed Martin's right to require delivery of the property to the Government or Lockheed Martin if:
      - (A) the Subcontractor defaults or
      - (B) the lower-tier subcontractor becomes bankrupt or insolvent.

- (6) If financing is in the form of progress payments, the progress payment rate in the lower-tier subcontract is the customary rate used by the Contracting Agency, depending on whether the lower-tier subcontractor is or is not a small business concern.
- (7) The parties agree concerning any proceeds received by Lockheed Martin for property to which title has vested in the Government under the subcontract terms, that the proceeds shall be applied to reducing any unliquidated financing payments by Lockheed Martin to the Subcontractor under this subcontract.
- (8) If no unliquidated financing payments to the Subcontractor remain, but there are unliquidated financing payments that the subcontractor has made to any lower-tier subcontractor, the Subcontractor shall be subrogated to all the rights the Government and Lockheed Martin obtained through the terms required by this clause to be in any lower-tier subcontract, as if all such rights had been assigned and transferred to the Subcontractor.
- (9) To facilitate small business participation in lower-tier subcontracting under this subcontract, the Subcontractor shall provide financing payments to small business concerns, in conformity with the standards for customary contract financing payments stated in FAR 32.113. The Subcontractor shall not consider the need for such financing payments as a handicap or adverse factor in the award of lower-tier subcontracts.
- (k) Limitations on Unfinalized Subcontract Actions. Notwithstanding any other progress payment provision in this subcontract, progress payments may not exceed \_\_\_\_\_ percent (\_\_\_\_%) of costs incurred on work accomplished under unfinalized subcontract actions. A "subcontract action" is any action resulting in a contract as defined in FAR Subpart 2.1, including subcontract modifications for additional supplies or services, but not including subcontract modifications that are within the scope and under the terms of the subcontract, such as subcontract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a), and shall remain in effect until the subcontract action is finalized. Costs incurred which are subject to this limitation shall be segregated on subcontractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b), progress payments for unfinalized subcontract actions shall be liquidated at \_\_\_\_\_ percent (\_\_\_\_%) of the amount invoiced for work performed under the unfinalized subcontract action as long as the subcontract action remains unfinalized. The amount of unliquidated progress payments for unfinalized subcontract actions shall not exceed \_\_\_\_\_ percent (\_\_\_\_%) of the maximum liability of Lockheed Martin under the unfinalized subcontract action or such lower limit specified elsewhere in the subcontract. Separate limits may be specified for separate actions.

(If this subcontract is a letter subcontract, paragraphs (1) and (m) below apply.)

- (l) Progress payments made under this letter subcontract shall, unless previously liquidated under paragraph (b), be liquidated under the following procedures:
  - (1) If this letter subcontract is superseded by a definitive subcontract, unliquidated progress payments made under this letter subcontract shall be liquidated by deducting the amount from the first progress or other payment(s) made under the definitive subcontract.
  - (2) If this letter subcontract is not superseded by a definitive subcontract calling for the furnishing of all or part of the articles or services covered under the letter subcontract, unliquidated progress payments made under the letter subcontract shall be liquidated by deduction from the amount payable under the Termination clause.
  - (3) If this letter subcontract is partly terminated and partly superseded by a subcontract, Lockheed Martin shall allocate the unliquidated progress payments to the terminated and unliquidated portions as Lockheed Martin deems equitable, and shall liquidate each portion under the relevant procedure in (1)(1) and (1)(2) above.
  - (4) If the method of liquidating progress payments provided above does not result in full liquidation, the Subcontractor shall immediately pay the unliquidated-balance to Lockheed Martin on demand.

- (m) The amount of unliquidated progress payments shall not exceed \_\_\_\_\_ percent (\_\_\_\_%), applied to the maximum liability of Lockheed Martin under this Letter subcontract.

6-9 PROGRESS PAYMENTS FOR OTHER THAN SMALL BUSINESS CONCERNS

FAR 52.232-16 and, for undefinitized subcontracts, Alternate II, modified to identify the contracting parties as required by FAR. The applicable rates shall be included in the subcontract.

Progress payments shall be made to the Subcontractor when requested as work progresses, but not more frequently than monthly in amounts of \$2,500 or more approved by Lockheed Martin, under the following conditions:

- (a) Computation of amounts.
- (1) Unless the Subcontractor requests a smaller amount, each progress payment shall be computed as
    - (i) \_\_\_\_\_percent of the Subcontractor's total costs incurred under this subcontract whether or not actually paid, plus
    - (ii) financing payments to lower-tier subcontractors (see paragraph (j) below), less the sum of all previous progress payments made by Lockheed Martin under this subcontract. Cost of money that would be allowable under 31.205-10 of the Federal Acquisition Regulation shall be deemed an incurred cost for progress payment purposes.
  - (2) The amount of financing and other payments for supplies and services purchased directly for this subcontract are limited to the amounts that have been paid by cash, check, or other forms of payment, or that will be paid to lower-tier subcontractors--
    - (i) In accordance with the terms and conditions of this subcontract; and
    - (ii) Ordinarily prior to the submission of the Subcontractor's next payment request to Lockheed Martin
  - (3) Accrued costs of Subcontractor contributions under employee pension plans shall be excluded until actually paid unless:
    - (i) The Subcontractor's practice is to make contributions to the retirement fund quarterly or more frequently; and
    - (ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Subcontractor's total costs for progress payments until paid).
  - (4) The Subcontractor shall not include the following in total costs for progress payment purposes in paragraph (a)(1) above:
    - (i) Costs that are not reasonable, allocable to this subcontract, and consistent with sound and generally accepted accounting principles and practices.
    - (ii) Costs incurred by lower-tier subcontractors or suppliers.
    - (iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.
    - (iv) Payments made or amounts payable to lower-tier subcontractors or suppliers, except for:
      - (A) Completed work, including partial deliveries, to which the Subcontractor has acquired title; and
      - (B) Work under cost-reimbursement or time and material lower-tier subcontracts to which the Subcontractor has acquired title.
  - (5) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to lower-tier subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this subcontract, for which delivery and invoicing by the Subcontractor and acceptance by Lockheed Martin are incomplete.
  - (6) The total amount of progress payments shall not exceed \_\_\_\_\_percent of the total subcontract price.

- (7) If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs (a)(4) or (a)(5) above, the Subcontractor shall repay the amount of such excess to Lockheed Martin on demand.
- (b) Liquidation. Except as provided in the Termination Clause herein, all progress payments shall be liquidated by deducting from any payment under this subcontract, other than advance or progress payments, the unliquidated progress payments or \_\_\_\_percent of the amount invoiced, whichever is less. The Subcontractor shall repay to Lockheed Martin any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. Lockheed Martin reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper subcontract financing.
- (c) Reduction or suspension. Lockheed Martin may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:
- (1) The Subcontractor failed to comply with any material requirement of this subcontract (which includes paragraphs (f) and (g) below).
  - (2) Performance of this subcontract is endangered by the Subcontractor's (i) failure to make progress or (ii) unsatisfactory financial condition.
  - (3) Inventory allocated to this subcontract substantially exceeds reasonable requirements.
  - (4) The Subcontractor is delinquent in payment of the costs of performing this subcontract in the ordinary course of business.
  - (5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this subcontract.
  - (6) The subcontractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) above, and that rate is less than the progress payment rate stated in paragraph (a)(1) above.
- (d) Title.
- (1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this subcontract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this subcontract.
  - (2) "Property," as used in this clause includes all of the below-described items acquired or produced by the Subcontractor that are or should be allocable or properly chargeable to this subcontract under sound and generally accepted accounting principles and practices.
    - (i) Parts, Materials, inventories, and work in process.
    - (ii) Special tooling and special test equipment to which the Government is to acquire title- under any other clause of this subcontract;
    - (iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (d)(2)(ii) above; and
    - (iv) Drawings and technical data, to the extent the Subcontractor or lower-tier subcontractors are required to deliver them to Lockheed Martin or the Government by other clauses of this subcontract.
  - (3) Although title to property is in the Government under this clause, other applicable clauses of this subcontract. e. g., the termination or special tooling clauses, shall determine the handling and disposition of the property.
  - (4) The Subcontractor may sell any scrap resulting from production under this subcontract without requesting Lockheed Martin's approval, but the proceeds shall be credited against the costs of performance.
  - (5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Subcontractor must obtain Lockheed Martin's advance approval of the action and the terms. The Subcontractor shall (i) exclude the allocable costs of the property from the costs of contract performance and (ii) repay to Lockheed Martin any amount of

- unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.
- (6) When the Subcontractor completes all of the obligations under this subcontract, including liquidation of all progress payments, title shall vest in the Subcontractor for all property (or the proceeds thereof) not:
    - (i) Delivered to, and accepted by, Lockheed Martin under this subcontract; or
    - (ii) Incorporated in supplies delivered to, and accepted by, Lockheed Martin under this subcontract and to which title is vested in the Government under this clause.
  - (7) The terms of this subcontract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.
  - (e) Risk of loss. Before delivery to and acceptance by Lockheed Martin, the Subcontractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government or Lockheed Martin expressly assumes the risk. The Subcontractor shall repay Lockheed Martin an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.
  - (f) Control of costs and property. The Subcontractor shall maintain an accounting system and controls adequate for the proper administration of this clause.
  - (g) Reports and access to records. The Subcontractor shall promptly furnish reports, certificates, financial statements and other pertinent information reasonably requested by the Contracting Officer or Lockheed Martin for the administration of this clause. Also, the Subcontractor shall give the Government or Lockheed Martin reasonable opportunity to examine and verify the Subcontractor's books, records, and accounts.
  - (h) Special terms regarding default. If this subcontract is terminated under the Default Clause, (i) the Subcontractor shall, on demand, repay to Lockheed Martin the amount of unliquidated progress payments and (ii) title shall vest in the Subcontractor, on full liquidation of progress payments for all property for which Lockheed Martin elects not to require delivery under the Default Clause. Lockheed Martin shall be liable for no payment except as provided by the Default Clause.
  - (i) Reservations of rights.
    - (1) No payment or vesting of title under this clause shall (i) excuse the Subcontractor from performance of obligations under this subcontract or (ii) constitute a waiver of any of the rights or remedies of the parties under the subcontract.
    - (2) Lockheed Martin rights and remedies under this clause (i) shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this subcontract and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government or Lockheed Martin.
  - (j) Financing payments to lower-tier subcontractors. The financing payments to lower-tier subcontractors mentioned in (a)(1) and (a)(2) of this clause shall be all financing payments to lower-tier subcontractors or divisions, if the following conditions are met:
    - (1) The amounts included are limited to (i) the unliquidated remainder of financing payments made plus (ii) any unpaid lower-tier subcontractor requests for financing payments.
    - (2) The lower-tier subcontract or interdivisional order is expected to involve a minimum of approximately 6 months between the beginning of work and the first delivery, or, if the lower-tier subcontractor is a small business concern, 4 months.
    - (3) If the financing payments are in the form of progress payments, the terms of the lower-tier subcontract or interdivisional order concerning progress payments:
      - (i) Are substantially similar to the terms of the clause at DFARS 252.232-7004, or FAR 52.232-16, as appropriate;
      - (ii) Are at least as favorable to Lockheed Martin as the terms of this clause;
      - (iii) Are not more favorable to the lower-tier Subcontractor or division than the terms of this clause are to the Subcontractor;
      - (iv) Are in conformance with the requirements of paragraph 32.504(e) of the Federal Acquisition Regulation; and

- (v) Subordinate all lower-tier subcontractor rights concerning property to which the Government has title under the subcontract to the Government's or Lockheed Martin's right to require delivery of the property to the Government or Lockheed Martin if (A) the Subcontractor defaults or (B) the lower-tier subcontractor becomes bankrupt or insolvent.
- (4) If the financing payments are in the form of performance-based payments, the terms of the lower-tier subcontract or interdivisional order concerning payments:
  - (i) Are substantially similar to the Performance-Based Payments clause at FAR 52.232-32, and meet the criteria for, and definition of, performance-based payments in FAR Part 32;
  - (ii) Are in conformance with the requirements of FAR 32.504(f); and
  - (iii) Subordinate all lower-tier subcontractor rights concerning property to which the Government has title under the lower-tier subcontract to the Government's or Lockheed Martin's right to require delivery of the property to the Government or Lockheed Martin if:
    - (A) the Subcontractor defaults or
    - (B) the lower-tier subcontractor becomes bankrupt or insolvent.
- (5) If the financing payments are in the form of commercial item financing payments, the terms of the lower-tier subcontract or interdivisional order concerning payments:
  - (i) Are constructed in accordance with FAR 32.206(c) and included in a lower-tier subcontract for a commercial item purchase that meets the definition and standards for acquisition of commercial items in FAR Parts 2 and 12;
  - (ii) Are in conformance with the requirements of FAR 32.504(g); and
  - (iii) Subordinate all lower-tier subcontractor rights concerning property to which the Government has title under the lower-tier subcontract to the Government's or Lockheed Martin's right to require delivery of the property to the Government or Lockheed Martin if:
    - (A) the Subcontractor defaults or
    - (B) the lower-tier subcontractor becomes bankrupt or insolvent.
- (6) If financing is in the form of progress payments, the progress payment rate in the lower-tier subcontract is the customary rate used by the Contracting Agency, depending on whether the lower-tier subcontractor is or is not a small business concern.
- (7) The parties agree concerning any proceeds received by Lockheed Martin for property to which title has vested in the Government under the subcontract terms, that the proceeds shall be applied to reducing any unliquidated financing payments by Lockheed Martin to the Subcontractor under this subcontract.
- (8) If no unliquidated financing payments to the Subcontractor remain, but there are unliquidated financing payments that the subcontractor has made to any lower-tier subcontractor, the Subcontractor shall be subrogated to all the rights the Government and Lockheed Martin obtained through the terms required by this clause to be in any lower-tier subcontract, as if all such rights had been assigned and transferred to the Subcontractor.
- (9) To facilitate small business participation in lower-tier subcontracting under this subcontract, the Subcontractor shall provide financing payments to small business concerns, in conformity with the standards for customary contract financing payments stated in FAR 32.113. The Subcontractor shall not consider the need for such financing payments as a handicap or adverse factor in the award of lower-tier subcontracts.
- (k) Limitations on Unfinalized Subcontract Actions. Notwithstanding any other progress payment provision in this subcontract, progress payments may not exceed \_\_\_\_\_ percent (\_\_\_\_%) of costs incurred on work accomplished under unfinalized subcontract actions. A "subcontract action" is any action resulting in a contract as defined in FAR Subpart 2.1, including subcontract modifications for additional supplies or services, but not including subcontract modifications that are within the scope and under the terms of the subcontract, such as subcontract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a), and shall remain in effect until the subcontract action is finalized. Costs incurred which are subject to this limitation shall be segregated on subcontractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b), progress payments for unfinalized subcontract actions

shall be liquidated at \_\_\_\_\_ percent (\_\_\_\_%) of the amount invoiced for work performed under the undefinitized subcontract action as long as the subcontract action remains undefinitized. The amount of unliquidated progress payments for undefinitized subcontract actions shall not exceed \_\_\_\_\_ percent (\_\_\_\_%) of the maximum liability of Lockheed Martin under the undefinitized subcontract action or such lower limit specified elsewhere in the subcontract. Separate limits may be specified for separate actions.

(If this subcontract is a letter subcontract, paragraphs (1) and (m) below apply.)

- (l) Progress payments made under this letter subcontract shall, unless previously liquidated under paragraph (b), be liquidated under the following procedures:
  - (1) If this letter subcontract is superseded by a definitive subcontract, unliquidated progress payments made under this letter subcontract shall be liquidated by deducting the amount from the first progress or other payment(s) made under the definitive subcontract.
  - (2) If this letter subcontract is not superseded by a definitive subcontract calling for the furnishing of all or part of the articles or services covered under the letter subcontract, unliquidated progress payments made under the letter subcontract shall be liquidated by deduction from the amount payable under the Termination clause.
  - (3) If this letter subcontract is partly terminated and partly superseded by a subcontract, Lockheed Martin shall allocate the unliquidated progress payments to the terminated and unexpired portions as Lockheed Martin deems equitable, and shall liquidate each portion under the relevant procedure in (1)(1) and (1)(2) above.
  - (4) If the method of liquidating progress payments provided above does not result in full liquidation, the Subcontractor shall immediately pay the unliquidated-balance to Lockheed Martin on demand.
- (m) The amount of unliquidated progress payments shall not exceed \_\_\_\_\_ percent (\_\_\_\_%), applied to the maximum liability of Lockheed Martin under this Letter subcontract.

6-10 INSPECTION (FPI)

Paragraph (g), (h) and (l) of the clause at FAR 52.246-2, (Corpdoc 3) are hereby deleted and paragraphs (g), (h) and (l) as set forth in FAR 52.246-2, Alternate I, are substituted in lieu thereof and are incorporated herein by reference with the same notes that were applicable to 52.246-2 in Corpdoc 3 are also applicable to 52.246-2 Alternate I.

Clause

Number	Citation	Title	Notes
6-11	FAR 52.216-16	Incentive Price Revision – Firm Target (FPI-Firm Target) (And Alternate I)	Subject to the alterations set out below and proper designation of the parties, “Contracting Officer”, “Contract Administrative Office” and “Government” mean “Lockheed Martin.” (1) In paragraph (a), the items and dollars are indicated in the subcontract. (2) In paragraph (b) the following is inserted between "(FAR)" and "in effect"...the DFARS or NASA FAR Supplement, as is applicable...(3) In paragraph (c) the number of days shall be "45". (4) In paragraph (d)(2)(ii) and (iii) the percent is indicated in the subcontract. (5) In paragraph (g)(2) delete the words "...by the amount of any applicable tax credits due the contractor under 26 USC 1481." (6) Delete paragraph (i) Disagreements.

6-12	FAR 52.227-13	Patent Rights - Acquisition By The Government	
6-13	FAR 52.227-14	Rights In Data - Limited Rights Data - Alternate I	
6-14	FAR 52.227-14	Rights In Data - Limited Rights Notice - Alternate II	
6-15	FAR 52.227-14	Rights In Data - Restricted Rights Notice - Alternate III	
6-16	FAR 52.227-14	Rights In Data - Copyright - Alternate IV	
6-17	FAR 52.227-14	Rights In Data - Inspection - Alternate V	
6-18	FAR 52.228-3	Worker's Compensation Insurance (Defense Base Act)	
6-19	FAR 52.228-5	Insurance - Work On A Government Installation	“Contracting Officer” means “Lockheed Martin”. The phrase "Government's interest" in paragraph (b) shall mean "Lockheed Martin's or the Government's interest".
6-20	FAR 52.229-3	Federal, State And Local Taxes	
6-21	FAR 52.229-10	State of New Mexico Gross Receipts and Compensating Tax	Applicable if (i) Contractor will acquire tangible personal property as a direct cost under this Contract and title to such passes directly to and vests in the United States upon delivery of the property by the vendor, and (ii) this Contract is for services to be performed in whole or in part within New Mexico. In paragraph (d) “Government” means “Lockheed Martin or Government,” and the blank in paragraph (g) is replaced with “the procuring agency under the prime contract.”
6-22	FAR 52.242-2	Production Progress Reports	“Contracting Officer” means “Lockheed Martin”.
6-23	FAR 52.243-7	Notification Of Changes	Notice required by paragraph (b) shall be given within 14 calendar days. Notice required by paragraph (d) shall be given within 35 calendar days. “Government”, “Administrative Contracting Officer”, “Contracting Officer” means “Lockheed Martin”.

6-24	FAR 52.246-8	Inspection of Research and Development-Cost Reimbursement	“Government” means “Lockheed Martin” except (1) in paragraphs (b), (c) and (d) where it means “Lockheed Martin and the Government” and in paragraph (k) where the term is unchanged.
6-25	FAR 52.246-24	Limitation Of Liability - High Value Items	This clause is only applicable if the cognizant Contracting Officer has authorized its use and this subcontract specifically provides for inclusion of this clause. Unless Clause 67 is specifically made applicable to this subcontract, FAR clauses 52.246-23 and 52.246-25 are hereby deleted. "Acceptance" shall mean "acceptance by the Government"; the meaning of the phrases "Government" and "Government property" shall not change. “The Contracting Officer” means “Lockheed Martin.”
6-26	DFARS 252.234-7001	Earned Value Management System	In paragraph (e) “Government” means “Lockheed Martin and Government”. In paragraph (f) the list of lower tier subcontractors to which EVMS requirements apply are “None”.
6-27	NFS 18-52.235-71	Key Personnel And Facilities	“Contracting Officer” means “Lockheed Martin”.
6-28	NFS 18-52.243-70	Engineering Change Proposals (And Alt II)	“Government” and “Contracting Officer” means “Lockheed Martin”.

6-29     EXPERIMENTAL, DEVELOPMENTAL OR RESEARCH WORK

For purposes of defining the nature of the work and the scope of rights in technical data granted to the Government pursuant to the "Rights in Technical Data and Computer Software" clause of this subcontract, it is understood and agreed that this subcontract requires the performance of experimental, developmental, or research work. This clause does not constitute a determination as to whether or not any data required to be delivered under this subcontract falls within the definition of limited rights data.

6-30     INSURANCE - LIABILITY TO THIRD PERSONS

The clause at FAR 52.228-7 is incorporated herein by reference except "The Government" shall mean "Lockheed Martin or the Government" and the term "Contracting Officer" shall mean "Lockheed Martin or the Contracting Officer". The obligation of Lockheed Martin to reimburse the subcontractor for liabilities to third persons as set forth in Paragraph (c)(2)(ii) of the clause entitled "Insurance - Liability to Third Persons" shall be limited to the amount made available by the Government to Lockheed Martin for the payment for the loss at the time of the loss. Nothing contained in this clause may be construed to imply that Congress will appropriate funds sufficient to cover the differences between available appropriations and the Subcontractor's liabilities.

6-31     COST ACCOUNTING STANDARDS

The Clause at FAR 52.230-2, is incorporated herein by reference as if fully set forth herein, except for paragraph (b). The definitions below shall apply as indicated.

The term "United States" shall mean "the United States or Lockheed Martin".

6-32 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES

The Clause at FAR 52.230-3 is incorporated herein by reference as if fully set forth herein, except for paragraph (b). The definitions below shall apply as indicated. This clause shall not be effective if incorporated into the subcontract with clauses 6-31.

The term "United States" shall mean "the United States or Lockheed Martin".

6-33 CONSISTENCY IN COST ACCOUNTING PRACTICES (UNITED KINGDOM)

The Clause at FAR 52.230-4 is incorporated herein by reference as if fully set forth herein. This clause is applicable only if this subcontract is with a United Kingdom subcontractor and will be substantially performed in the United Kingdom.

The term "U.S. Government" shall mean "Lockheed Martin or the United States Government".  
The last reference to "United States Government" shall not change.

6-34 ADMINISTRATION OF COST ACCOUNTING STANDARDS

The Clause at FAR 52.230-6 is incorporated herein by reference as if fully set forth herein.

This clause is applicable only when 6-31 (52.230-2) or 6-32 (52.230-3) is also incorporated.

6-35 EXPANDED WARRANTY

SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, and descriptions, and other requirements of this Contract and be free from defects in design, material and workmanship. The warranty shall begin upon final acceptance and extend for a period of (i) the manufacturer's warranty period or six (6) months, whichever is longer, if SELLER is not the manufacturer and has not modified the Work or, (ii) one (1) year or the manufacturer's warranty period, whichever is longer if the SELLER is the manufacturer of the Work or has modified it. If any non-conformity with Work appears within that time, SELLER, at LOCKHEED MARTIN's option, shall promptly repair, replace, or reperform the Work. Transportation of replacement Work and return of non-conforming Work and repeat performance of Work shall be at SELLER's expense as well as the actual costs for the removal and reinstallation of the work. If repair or replacement or reperformance of Work is not timely, LOCKHEED MARTIN may elect to return the non-conforming Work or repair or replace Work or reprocur the Work at SELLER's expense. All warranties shall run to LOCKHEED MARTIN and its customers. Any implied warranty of merchantability and fitness for a particular purpose is hereby disclaimed.

6-36 DIRECT DAMAGES

In the event that a defect or anomaly is discovered which is attributed to the Seller's products, parts or components (including the product, parts or components of the Seller's subcontractors at any tier), not deemed to be caused by LOCKHEED MARTIN misuse or mishandling, and in the event that this causes an impact to LOCKHEED MARTIN, then Seller agrees to pay to LOCKHEED MARTIN the actual costs incurred by LOCKHEED MARTIN (for anomaly investigation, product de-installation and reinstallation, spacecraft testing and LOCKHEED MARTIN customer related delay costs) in any amount up to 15% of the total Recurring Effort price of this Contract (fifteen percent, cumulative of all such defects/anomalies for the

Recurring Effort hardware). Seller's liability to pay LOCKHEED MARTIN costs as described herein shall be defined within the meaning of a direct damage and shall not be construed as a consequential, incidental, special or indirect damage under this Contract.

Seller's liability as described herein only applies to situations where the hardware has not been launched to achieve orbit.

Seller's liability as described herein is applicable until the time of launch for the specific box or product, which has exhibited said defect or anomaly.

Per Warranty and other related clauses of this Contract the cost or re-design, repair or rework to correct said discovered defect, for all boxes under this Contract, shall be borne by the Seller.

Seller may choose to perform an investigation to re-examine a LOCKHEED MARTIN determination which states that said discovered defect is in the Seller's product and the cause of impact to LOCKHEED MARTIN. If Seller's investigation shows that the LOCKHEED MARTIN determination of defect/impact is inaccurate, LOCKHEED MARTIN agrees to pay Seller's expenses which were needed to perform said investigation, up to 15% of the total Recurring Effort price of this Contract (fifteen percent, cumulative of all such incidents for the Recurring Effort hardware). This difference shall be handled as a dispute under the Disputes provision of this Contract.

6-37 CHANGES – "NOT-TO-EXCEED" SUBMITTAL

Prior to the issuance of a change order under this Contract, LOCKHEED MARTIN may solicit from the SELLER written agreement as to the maximum (in the case of an increase) adjustments to be made in the price and/or in the delivery schedule (or time of performance), by reason of the change. LOCKHEED MARTIN may also solicit such agreement on limitations on the adjustments to any other provisions of the Contract which may be subject to equitable adjustment by reason of the change. The SELLER shall promptly submit a "not-to-exceed" amount or maximum schedule adjustment when so requested by LOCKHEED MARTIN. Any such written agreement shall then be cited in the change order and upon its issuance shall be deemed to become part of the Contract. In no event shall the definitive equitable adjustment exceed the maximum price and/or delivery schedule (or time of performance) adjustments so established, nor otherwise be inconsistent with other adjustment limitations so established. Except with respect to such limitations, nothing contained herein shall affect the right of the Parties to an equitable adjustment by reason of the change, pursuant to this clause.

6-38 COMMERCIAL SPACE LAUNCH ACT

(The following shall apply to articles and services to be utilized on launch vehicles launched pursuant to the Commercial Space Launch Act. Insurance requirements under the "Insurance/Entry on LOCKHEED MARTIN's Property," clause would not be applicable for third party liability incurred in connection with licensed launch activities, but would otherwise be applicable.)

As required by the Commercial Space Launch Act (CSLA), 49 U.S.C. §§ 70101 - 70119 as amended, the Parties agree as follows:

- (a) LOCKHEED MARTIN and the SELLER hereby agree to a reciprocal waiver of liability pursuant to which each Party agrees not to bring a claim in arbitration or otherwise or sue the other Party, the United States Government and its contractors and subcontractors at every tier or any Related Third Parties of the other Party, as defined in paragraph (f), for any property loss or damage it sustains and any property loss or personal injury, including death, sustained by any of its Related Third Parties, arising in any manner in connection with the performance of or activities carried out pursuant to a CSLA license.

- (b) LOCKHEED MARTIN and the SELLER shall each be responsible for property damage which they sustain and for bodily injury or property damage sustained by their employees arising in any manner in connection with the performance of or activities carried out pursuant to a CSLA license.
- (c) SELLER shall extend the waiver and release of claims and assumption of responsibility described in paragraphs (a) and (b) above to its Related Third Parties (other than employees, directors and officers) by requiring them (1) to waive and release all claims of liability they may have against LOCKHEED MARTIN, its Related Third Parties, and the United States Government and its contractors and subcontractors at every tier, and (2) to agree to be responsible for any property loss or damage or bodily injury, including death, sustained by any of them or their employees and arising in any manner in connection with the performance of or activities carried out pursuant to a CSLA license.
- (d) The waivers described in this paragraph shall extend to and bind the successors and assigns of each Party and its Related Third Parties, whether by subrogation or otherwise. Each Party shall obtain a waiver of subrogation and release of any right of recovery against the other Party and its Related Third Parties from any insurer providing coverage for the risks of loss for which the Party hereby waives claims under this paragraph.
- (e) SELLER shall defend, hold harmless and indemnify LOCKHEED MARTIN, its Related Third Parties and the United States Government and its contractors and subcontractors, from and against any and all liabilities, costs and expenses (including attorneys' fees) arising out of (1) any failure by SELLER to obtain the waivers and releases of claims of liability and the assumption of responsibility described in this paragraph, and (2) bodily injury or property damage sustained by SELLER's own employees in connection with the performance of or activities carried out pursuant to a CSLA license.
- (f) For purposes of this paragraph, Related Third Parties shall mean (1) directors, officers, employees and agents of either Party or of any customer to whom LOCKHEED MARTIN may provide launch services; (2) parties having any right, title or interest in any of the vehicles or equipment utilized by LOCKHEED MARTIN in providing launch services, including but not limited to satellites, transponders and launch vehicles; (3) contractors, subcontractors and suppliers at any tier, of either Party or of any customers of LOCKHEED MARTIN; and (4) additional parties involved in the launch services provided by LOCKHEED MARTIN or other activities governed by the CSLA.

6-39 FOREIGN SALES

The supplies or services provided hereunder by SELLER may be offered for, or as a part of a foreign sale. In the event contractor receives notification that such articles or services are to be offered for, or as a part of a, foreign sale, SELLER 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 the Contract. SELLER 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 SELLER under this Contract.

6-40 BARRED SOFTWARE (Use this clause when any deliverable may contain software)

Seller, unless it has obtained Buyer's prior written consent, which Buyer may withhold in Buyer's sole discretion, shall not provide Buyer with software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source, publicly available, or "free" software, library or documentation, (2) software licensed under the General Public License ("GPL") or

Lesser/Library GPL, the Artistic License (e.g., PERL), the Mozilla Public License, the Netscape Public License, the Sun Community Source License, the Sun Industry Standards License, or variations thereof, including without limitation licenses referred to as “GPL-Compatible, Free Software License” (hereinafter referred to as the “Barred Licenses”) or (3) software provided under a license that (a) subjects the provided software to any of the Barred Licenses, or (b) requires the provided software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates Buyer to sell, loan, distribute, disclose or otherwise make available or accessible to any third party(ies) (i) the provided software or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the provided software, or any portion thereof, in object code or source code formats.

Seller, at its own expense, shall defend Buyer, Buyer’s employees, and/or Buyer’s customers against any and all claims, suits and other actions relating to the use of provided software, however arising, including without limitation those arising from claims of violation of Barred License provisions or claims of infringement of any patent, trademark, copyright or trade secret right relating to the use of any Barred License in Items furnished by Seller.