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TERMS AND CONDITIONS OF PURCHASE  
(For CPFF Subcontracts under Prime Contracts with the Air Force)

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AGREEMENT AS TO TERMS AND CONDITIONS  
APPLICABLE TO CPFF PURCHASE ORDERS  
ISSUED UNDER AIR FORCE PRIME CONTRACTS

THIS AGREEMENT is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 195\_\_, between LOCKHEED AIRCRAFT CORPORATION, a corporation organized and existing under the laws of the State of California (herein called "Lockheed") and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_ (herein called "Contractor").

Lockheed and Contractor agree as follows:

Lockheed and Contractor have agreed upon the contract clauses contained in the attached "Terms and Conditions of Purchase" for use in negotiated cost type subcontracts or Purchase Orders between Lockheed and Contractor in connection with Lockheed's performance of cost-plus-fixed-fee Prime Contracts with the Department of the Air Force. Unless otherwise agreed to in writing at the time of execution, all such subcontracts or Purchase Orders entered into after the date of this Agreement and prior to its termination shall, if reference is made to this Agreement, incorporate by reference all of said "Terms and Conditions of Purchase". However, a copy of this Agreement or of said "Terms and Conditions of Purchase" need not be, and will not be, attached to any such subcontracts or Purchase Orders.

Any clause set forth in the attached "Terms and Conditions of Purchase" may be deleted, or modified, or additional clauses may be added thereto. This Agreement may be terminated in its entirety by either party upon thirty (30) days notice in writing to the other party. No deletion, modification, addition or termination shall affect any subcontract or Purchase Order theretofore entered into between the parties in which this Agreement has been incorporated by reference. No unilateral action by either party shall alter this Agreement or alter its application to any contract wherein this Agreement has been incorporated.

Notwithstanding any other provisions of this Agreement, the attached "Terms and Conditions of Purchase" shall be applicable only to subcontracts and Purchase Orders executed or issued by the Missile Systems Division of Lockheed.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above set forth.

LOCKHEED AIRCRAFT CORPORATION

By \_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_

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TERMS AND CONDITIONS OF PURCHASE  
(For CPFF Subcontracts under Prime Contracts with the Air Force)

DEFINITIONS:

As used throughout these terms and conditions of purchase, the following terms shall have the meanings set forth below:

- a. The terms "the Department" means the Department of the Air Force.
- b. The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer), authorized to act for the Secretary.
- c. The term "said purchase order" means the purchase order or purchase orders by Lockheed and accepted by Contractor which incorporates these terms and conditions of purchase by reference.
- d. The term "this subcontract" means said purchase order and these terms and conditions of purchase which are included therein by reference.
- e. The term "Lockheed" means Lockheed Aircraft Corporation, acting on behalf of its Missile Systems Division.
- f. The term "Contractor" means the party who accepts said purchase order.
- g. The term "prime contract" means the contract between Lockheed and the United States of America under which this subcontract is issued, the number of which is specified on the face of said purchase order.
- h. The term "Contracting Officer" means the person executing the prime contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer, and the term includes, except as otherwise provided in this subcontract, the authorized representative of a Contracting Officer acting within the limits of his authority.
- i. The terms "work" or "services" mean all work to be performed under this subcontract including any studies covering fundamental, theoretical, or experimental investigations; any 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; and any reports, data, computations, plans, drawings and specifications with respect to any of the foregoing.

Lockheed and Contractor agree as follows:

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TERMS AND CONDITIONS:ARTICLE 1 - PROVISIONS APPLICABLE TO SERVICES AND SUPPLIES TO BE FURNISHED

a. Contractor agrees to perform the services and furnish and deliver the supplies specified in said purchase order in accordance with, (i) the terms and conditions contained herein, (ii) the specifications and requirements, delivery schedules, printed "Instruction", and typed provisions all as specifically set forth in said purchase order; and (iii) in accordance with each written changed purchase order and purchase order change notice relating to said purchase order issued pursuant to the provisions of Article 3 (Changes) hereof or entered into by mutual agreement between the parties hereto. Acceptance of such changed purchase orders and purchase order change notices shall be by signing and returning the acknowledgment copy thereof to Lockheed within fifteen (15) days after receipt of same.

b. Said purchase order and all changed purchase orders and purchase order change notices relating thereto which are accepted by Contractor are by this reference made a part of this subcontract. The terms of this subcontract shall supersede the terms set forth on the back of said purchase order. Any typewritten provisions appearing on the face of said purchase order or on the face of any such changed purchase orders or purchase order change notices shall supersede these terms and conditions to the extent in conflict therewith.

c. Said purchase order includes an amount covering estimated cost and fixed-fee, if any monetary consideration is to be paid by Lockheed.

ARTICLE 2 - PACKING AND CRATING

All supplies shall be packed in suitable containers for protection in shipment and storage except as otherwise specified in this subcontract. Packing must conform to requirements of carriers' tariffs. Contractor shall be responsible for damage in transit as a result of insufficient or improper packaging and for repair or replacement required as a result of non-conformance by Contractor with the terms of this article.

ARTICLE 3 - CHANGES

Lockheed may at any time, by a written order, and without notice to sureties, if any, require additional work within the general scope of said purchase order or make changes, within the general scope of said purchase order, in any one or more of the following:

- (i) drawings, designs, or specifications;
- (ii) method of shipment or packing;
- (iii) place of delivery; and
- (iv) the amount of Government-furnished or Lockheed-furnished property.

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If any such change or addition causes an increase or decrease in the estimated cost of, or the time required for performance of said purchase order, or otherwise affects any other provision of said purchase order, an equitable adjustment shall be made (i) in the estimated cost or delivery schedule, or both, (ii) in the amount of any fixed fee to be paid to Contractor, and (iii) in such other provisions of said purchase order as may be so affected, and said purchase order shall be modified in writing accordingly. Any claim by Contractor for adjustment under this article must be asserted within thirty (30) days from the date of receipt by Contractor of the notification of change or addition; provided, however, that Lockheed, if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this subcontract. Nothing in this article, however, shall excuse Contractor from proceeding with this subcontract as changed.

#### ARTICLE 4 - LIMITATION OF ALLOWABLE COSTS

a. It is estimated that the total cost to Lockheed, exclusive of any fixed fee, for the performance of this subcontract will not exceed the estimated cost set forth in said purchase order. Contractor agrees to use its best efforts to perform the work specified in said purchase order and all obligations under this subcontract within such estimated cost. If at any time Contractor has reason to believe that the costs which it expects to incur in the performance of said purchase order in the next succeeding thirty (30) days, when added to all costs previously incurred, will exceed eighty-five percent (85%) of the estimated cost then set forth in said purchase order or if at any time Contractor has reason to believe that the total cost to Lockheed, exclusive of any fixed fee, for the performance of said purchase order will be substantially greater or less than the then estimated cost thereof, Contractor shall notify Lockheed in writing to that effect, giving its revised estimate of such total cost for the performance of said purchase order, together with an appropriate breakdown of such estimate and a statement setting forth a reason for such anticipated increase or decrease in cost so that at the discretion of Lockheed and with the approval of the Contracting Officer, an appropriate increase or decrease may be made in the estimated cost without a corresponding change in fixed fee except as to adjustment in the fixed fee as provided for in Article 3 (Changes).

b. Lockheed shall not be obligated to reimburse Contractor for costs incurred in excess of the estimated cost set forth in said purchase order and Contractor shall not be obligated to continue performance under this subcontract or to incur costs in excess of the estimated cost set forth in said purchase order, unless and until Lockheed shall have notified Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this subcontract. When and to the extent that the estimated cost set forth in said purchase order has been increased, any costs incurred by Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost, if so stated in writing at the time such increase is authorized.

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ARTICLE 5 - ALLOWABLE COSTS AND FIXED FEE

a. Lockheed shall pay to Contractor, at the time and in the manner hereinafter set forth, for all services and supplies to be furnished hereunder the allowable costs therefor determined as hereinafter set forth in paragraph (b) of this article, plus a fee based on a percentage of the total estimated cost as specified in said purchase order. If Lockheed, because of the requirement of the Government, or for any other reasons, accepts services or supplies under this subcontract which do not conform to the guarantees set forth in Article 8 (Inspection and Correction of Defects) hereof, Lockheed shall pay the allowable costs as hereinafter defined of furnishing and delivering such services and supplies, subject to the provisions of said Article 8. The total estimated cost and fixed fee shall be subject to increases and decreases resulting from changes or additions as provided in Article 3 (Changes) hereof, or from changes in the scope or nature of the work to be performed under this subcontract which are agreed to by Contractor and Lockheed.

b. The allowable costs of performing this subcontract shall be those incurred by Contractor and properly chargeable to the subcontract which are claimed by Contractor and accepted as such by the Contracting Officer. The following criteria shall apply to the determination of allowable costs:

1. Allowable costs of performance shall be determined in accordance with Part 2 of Section XV of the Armed Services Procurement Regulations as in effect on the date of the prime contract.
2. Costs incurred for the performance of overtime work shall be allowable items of cost hereunder only if and to the extent that the overtime work for which such payments are made shall be authorized by Lockheed in writing prior to the performance of such overtime work. Each request for such authorization shall be submitted to Lockheed via the cognizant Government Representative at Contractor's plant.
3. Costs incurred by Contractor by reason of its use and occupancy of facilities furnished pursuant to facilities contracts authorized for use in connection with this subcontract insofar as they are allocable to the performance of this subcontract shall be allowable costs except to the extent that Contractor is reimbursed for such costs under other contracts or to the extent that provision is made apart from this subcontract or other contracts for the payment of such costs by the Government or otherwise than by Contractor, and except to the extent that such costs are included in Contractor's overhead.



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4. Appropriate credit shall be given to Lockheed for disposal of scrap and salvage and any surplus parts or material. Lockheed shall not be charged for excessive procurement of material and parts.
5. Costs incurred by Contractor in connection with third party claims based on bodily injury or death or property damage shall not be considered as allowable costs under this subcontract.
6. There shall be included as allowable indirect costs such overhead rates as may be established by Contractor and the Contracting Officer or his authorized representative in accordance with the principles of Armed Services Procurement Regulations. Pending establishment of final overhead rates for any period, Contractor shall be reimbursed at billing rates acceptable to the Contracting Officer or his authorized representative, which billing rates may be revised from time to time with the approval of the Contracting Officer or his authorized representative, subject to appropriate adjustment when the final rates for that period are established.

#### ARTICLE 6 - PAYMENT AND REIMBURSEMENT

a. Payment of the fixed fee provided for herein and reimbursement of allowable costs shall be made upon the basis of invoices submitted to the Contracting Officer which shall be in such form and detail as the Contracting Officer may require and shall be supported by statements of costs incurred by Contractor in the performance of this subcontract and claimed to constitute allowable costs.

b. The originals and two copies of such invoices covering allowable costs and fixed fee, certified by an Officer or other responsible Official of the Contractor Authorized by it to certify such statements shall be submitted to the Contracting Officer for approval and three additional copies shall be submitted to the cognizant Government audit agency. Such invoices may be provisionally approved by the Contracting Officer subject to final audit by the cognizant United States Government audit agency for Contractor's plant. The original and two copies of such invoices bearing the certification of such approval of the Contracting Officer shall be forwarded to Lockheed but not more frequently than once every thirty (30) days (or at more frequent intervals if approved by Lockheed). Within thirty (30) days after receipt and acceptance of such invoices, Lockheed shall make payment of such allowable costs approved by the Contracting Officer plus eighty-five per cent (85%) of the accrued fixed fee, as such fixed fee may be adjusted from time to time pursuant to Article (Changes). Accrual of such fixed fee shall be based upon the percentage of the performance of the work

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actually done hereunder as determined from estimates made by Contractor and approved by Lockheed. Upon completion of this subcontract, including execution of the release called for in Article 7 (Release Provisions) hereof, and the furnishing of the documents, data and reports called for in Article 29 (Patent Rights) hereof, the unpaid balance of the fixed fee, as the same may have been adjusted from time to time shall be paid to Contractor. All payments of allowable costs made pursuant hereto shall be subject to adjustment from time to time as a result of audit by the cognizant United States Government auditing agency, which adjustments shall be recognized and accepted by Contractor to the extent that such adjustments are approved by Lockheed and the Contracting Officer.

c. At any time or times prior to the final payment on account of allowable costs, the Contracting Officer or Lockheed may cause to be made such audit of invoices and statements of cost as shall be deemed proper. Payments made by Lockheed shall be subject to reduction to the extent of amounts included in any invoices which are found by the Contracting Officer not to constitute allowable costs and shall also be subject to reduction for overpayments or to increase for under-payments made on preceding invoices.

d. If any amount actually paid by Lockheed to Contractor is disallowed to Lockheed by Lockheed's local Government Auditors, by the Contracting Officer at Lockheed's plant or by the General Accounting Office, as an item of cost under its Government prime contract, or if Lockheed is required, because of any action of the Government to refund or credit to the Government any amount with respect to an item of cost for which it has reimbursed Contractor, Contractor shall, on demand made by Lockheed after such disallowance or after Lockheed shall have made such refund or given such credit, promptly repay to Lockheed the amount which Lockheed has paid to Contractor with respect to any such item or items; provided, however, that to the extent such disallowance or such refund or credit is the result of the performance by Contractor of work authorized by Lockheed but not authorized by the prime contract, Contractor shall not be required to repay to Lockheed the amount which Lockheed has paid to Contractor with respect to the performance of such work. In the event Lockheed shall recover any amount so disallowed or so refunded or credited by it to the Government with respect to any such item or items, Lockheed shall pay the amount of such recovery to Contractor if the same shall not theretofore have been repaid to Contractor.

e. In the event that any department, agency or representative of the Government disallows any cost granted under this subcontract and in Lockheed's opinion it appears that such disallowance is inequitable and that such cost should be considered allowable, then Lockheed agrees to negotiate with such department, agency or representative of the Government to obtain the reinstatement of such costs as allowable under the terms of this subcontract.

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ARTICLE 7 -- RELEASE PROVISIONS

a. Contractor and each assignee under an assignment entered into under this subcontract and in effect at the time of final payment under this subcontract shall execute and deliver at the time of and as a condition precedent to final payment under this subcontract, a release discharging Lockheed and the Government, and their respective officers, agents and employees, of and from all liabilities, obligations, and claims arising out of or under this subcontract subject only to the following exceptions:

1. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by Contractor.
2. Claims, together with reasonable expenses incidental thereto, based upon the liabilities of Contractor to third parties arising out of the performance of this subcontract (but not including claims based on bodily injury or death or property damage) which are not known to Contractor on the date of the execution of the release, and of which Contractor gives notice in writing to Lockheed not more than five (5) years after the date of the release or the date of any notice to Contractor that Lockheed is prepared to make final payment, whichever is earlier.
3. Claims for reimbursement of costs (other than expenses of Contractor by reason of its indemnification of Lockheed and the Government against patent liability), including reasonable expenses incidental thereto, incurred by Contractor under the provisions of this subcontract relating to patents.

b. Contractor agrees that any refunds, rebates or credits (including any interest thereon) accruing to or received by Contractor or any assignee which arise out of the performance of this subcontract and on account of which Contractor has received reimbursement shall be paid by Contractor to Lockheed. Contractor and each assignee under an assignment entered into under this subcontract and in effect at the time of final payment under this subcontract shall execute and deliver at the time of and as a condition precedent to final payment under this subcontract, an assignment to Lockheed of refunds, rebates or credits (including any interest thereon) arising out of the performance of this subcontract, in form and substance satisfactory to Lockheed. Reasonable expenses incurred by Contractor for the purpose of securing any such refunds, rebates or credits shall constitute allowable costs when approved by the Contracting Officer.

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c. In addition to the release required by paragraph (a) above, Contractor shall, prior to final payment, comply with the provisions of paragraph (i) of Article 26 hereof and with paragraph (i) of Article 22 hereof.

#### ARTICLE 8 - INSPECTION AND CORRECTION OF DEFECTS

a. All work under this subcontract shall be subject to inspection and test by the Government and/or Lockheed, to the extent practicable at all times and places, including the period of performance, and in any event prior to final acceptance. Contractor shall provide and maintain and shall require its subcontractors to provide and maintain an inspection system acceptable to the Government and Lockheed covering the work hereunder. The Government and/or Lockheed, through any authorized representative, may inspect the plant or plants of Contractor or any of its subcontractors engaged in the performance of this subcontract. If any inspection or test is made by the Government or Lockheed on the premises of Contractor or its subcontractor, Contractor shall provide and shall require its subcontractors to provide all reasonable facilities and assistance for the safety and convenience of Lockheed or the Government inspectors in the performance of their duties. All inspections and tests by the Government or Lockheed shall be performed in such a manner as will not unduly delay the work.

b. Contractor warrants that the services rendered in the performance of this subcontract will conform to the requirements of this subcontract and to high professional standards in the field, and that any supplies delivered to Lockheed and/or the Government under this subcontract will conform to the requirements of this subcontract and will not be defective in material or workmanship.

c. At any time during the performance of this subcontract, but not later than twelve (12) months after final acceptance by the Government of the services or supplies furnished hereunder, the Government or Lockheed may require Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any failure by Contractor to comply with its obligations under paragraph (b) hereof. Except as otherwise provided in paragraph (d) hereof, the cost of any such replacement or correction shall be included in allowable costs determined as provided in the article of this subcontract entitled "Allowable Costs and Fixed Fee", but no additional fee shall be payable with respect thereto. Corrected supplies shall not be tendered again for acceptance unless the former tender and the requirement of correction is disclosed. If Contractor fails to proceed with reasonable promptness to perform such replacement or correction, Lockheed (i) may by contract or otherwise perform such replacement or correction and charge to Contractor any increased cost occasioned Lockheed thereby or may reduce any fixed fee payable under this subcontract, (or require repayments of any fixed fee theretofore paid) in such amount as may be equitable under the

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circumstances, or (ii) in the case of supplies not delivered, may require the delivery of such supplies, and shall have the right to reduce any fixed fee payable under this subcontract (or to require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (iii) may terminate this subcontract for default as provided in the article of this subcontract entitled "Termination".

d. Notwithstanding the provisions of paragraph (c) hereof, Lockheed may at any time require correction or replacement of services or supplies by Contractor without cost to Lockheed, which are defective in material or workmanship, or otherwise not in conformity with the requirements of this subcontract if such failure is due to fraud, lack of good faith or willful misconduct on the part of any of Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of Contractor's business, or (ii) all or substantially all of Contractor's operations at any one plant or separate location in which this subcontract is being performed, or (iii) a separate and complete major industrial operation in connection with performance of this subcontract. Fraud, lack of good faith or willful misconduct on the part of any such supervisory personnel shall be deemed to include the selection of individual employees or the retention of employees after any of such supervisory personnel has reason to believe that such employees are habitually careless or otherwise unqualified.

e. Corrected services or supplies tendered as replacements, shall be subject to the provisions of this article in the same manner and to the same extent as supplies originally delivered under this subcontract.

f. Records of all inspection work shall be maintained by Contractor and shall be kept complete and available to the Government and Lockheed during the performance of this subcontract and for such longer period as may be specified in this subcontract.

g. Except as otherwise provided in this subcontract, Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to Contractor) shall be governed by the provisions of the article of this subcontract entitled "Government Property".

h. Preliminary inspection and acceptance, if any, shall be at Contractor's plant as set forth in said purchase order; but in any event final inspection and acceptance by Lockheed shall be at Lockheed's plant.

#### ARTICLE 9 - IDEMNIFICATION

In the event Contractor, its employees, agents, subcontractors and/or lower-tier subcontractors enter premises occupied by or under the control of Lockheed in the performance of this subcontract, Contractor agrees that it will

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indemnify and hold harmless Lockheed, its officers and employees from any loss, cost, damage, expense or liability by reason of property damage or personal injury 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 Contractor, its employees, agents, subcontractors and/or lower-tier subcontractors; and Contractor agrees that it and its subcontractors and lower-tier subcontractors will maintain public liability and property damage insurance in reasonable limits covering the obligations set forth above, and will maintain proper workmen's compensation insurance covering all employees rendering performance under this subcontract.

#### ARTICLE 10 - ASSIGNMENT OF CLAIMS

a. Neither this subcontract nor any interest hereunder nor any sums becoming due to Contractor hereunder shall be assigned by Contractor without the prior written consent of Lockheed, except that claims for monies due or to become due Contractor from Lockheed under this subcontract may be assigned to a bank, trust company or other financing institution, including any federal lending agency. Any such assignment of monies due or to become due shall cover all amounts payable under this subcontract and not already paid, and shall not be made to more than one party, except that any such assignment may be made to one party as agent or trustee for two (2) or more parties participating in such financing. Payment by Lockheed 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 may have against Contractor.

b. In the event of any such assignment the assignee shall file four (4) signed copies of a written notice of the assignment, together with one copy of the instrument of assignment, with Lockheed.

c. Any claim under this subcontract which has been assigned pursuant to the foregoing provisions of this article may be further assigned and reassigned only with the prior written consent of Lockheed 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 Contractor; and shall file four (4) signed copies of such written notice, together with four (4) copies of such instrument with Lockheed.

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 therein may be disclosed, to such assignee upon the prior written authorization of Lockheed 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 Contractor.

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ARTICLE 11 - RECORDS

a. Contractor agrees to maintain books and records, documents and other evidence pertaining to the costs and expenses of this subcontract (hereinafter collectively called the "records") to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this subcontract. Contractor's accounting procedures and practices shall be subject to the approval of the Contracting Officer; provided, however, that no material change will be required to be made in Contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the costs properly applicable to this subcontract are readily ascertainable therefrom.

b. Contractor agrees to make available at the office of Contractor at all reasonable times during the period set forth in paragraph (d) below any of the records for inspection, audit or reproduction by any authorized representative of the Department or of the Comptroller General.

c. In the event the Comptroller General or any of his duly authorized representatives determine that his audit of the amounts reimbursed under this subcontract as transportation charges will be made at a place other than the office of Contractor, Contractor agrees to deliver, with the reimbursement voucher covering such charges, or as may be otherwise specified, within two (2) years after reimbursement of charges covered by any such voucher, to such representatives as may be designated for that purpose through the Contracting Officer, such documentary evidence in support of transportation costs as may be required by the Comptroller General or any of his duly authorized representatives.

d. Except for documentary evidence delivered to the Government pursuant to paragraph (c) above, Contractor shall preserve and make available its records for a period of six (6) years (unless a longer period of time is provided by applicable statute) from the date of the voucher or invoice submitted by Contractor after the completion of the work under this subcontract and designated by Contractor as the "completion voucher" or "completion invoice", or, in the event this subcontract has been completely terminated, from the date of the termination settlement agreement; provided, however, that records which relate to (i) appeals under the clause of the prime contract entitled "Disputes", (ii) litigation or the settlement of claims arising out of the performance of this subcontract, or (iii) costs or expenses of the subcontract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall be retained by Contractor until such appeals, litigation, claims or exceptions have been disposed of, but in no event for less than the six-year period mentioned above.

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e. Except for documentary evidence delivered pursuant to paragraph (c) above, and the records described in the proviso of paragraph (c) above, Contractor may in fulfillment of its obligation retain its records as required by this article substitute photographs, microphotographs or other authentic reproductions of such records, after the expiration of two (2) years following the last day of the month of reimbursement to Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Contracting Officer with the concurrence of the Comptroller General or his duly authorized representative.

f. The provisions of this article, including this paragraph (f) shall be applicable to and included in each subcontract hereunder which is on a cost, a cost-plus-fixed-fee, time-and-material or labor-hour basis.

g. Contractor shall include in each subcontract hereunder, other than those described in paragraph (f) above, a provision to the effect that the subcontractor agrees that the Comptroller General or the Department, or any of their duly authorized representatives, shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract. The term "subcontract", as used in this paragraph (g) only, excludes (i) purchase orders not exceeding \$1,000 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

#### ARTICLE 12 - SUBCONTRACTS

a. Contractor shall give advance notification to Lockheed and the Contracting Officer of any proposed subcontract or purchase order hereunder which (i) is on a cost or cost-plus-a-fixed-fee basis or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this subcontract.

b. Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract or purchase order which (i) is on a cost or a cost-plus-a-fixed-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this subcontract, or (iii) provides for the fabrication, purchase, rental, installation or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of \$1,000 or (iv) is on a time-and-material or labor-hour basis. Lockheed may, in its discretion, ratify in writing any such subcontract; such action shall constitute the consent of Lockheed as required by this paragraph (b).



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c. Contractor agrees that no subcontract or purchase order placed under this subcontract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

d. The Contracting Officer may, in its discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this subcontract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

e. Contractor shall give Lockheed and the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any subcontractor or vendor which, in the opinion of Contractor, may result in litigation, related in any way to this subcontract with respect to which Contractor may be entitled to reimbursement from Lockheed.

#### ARTICLE 13 - UTILIZATION OF SMALL BUSINESS CONCERNS

a. It is the policy of the Government as declared by the Congress to bring about the greatest utilization of small business concerns which is consistent with efficient production.

b. Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that Contractor finds to be consistent with the efficient performance of this subcontract.

#### ARTICLE 14 - TERMINATION

a. The performance of work under this subcontract may be terminated by Lockheed in accordance with this article in whole, or from time to time in part, (i) whenever Contractor shall default in performance of this subcontract in accordance with its terms (including in the term "default" any such failure by Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer periods as Lockheed may allow) after receipt from Lockheed of a notice specifying the default, or (ii) in the event of the institution of any proceedings by or against Contractor in bankruptcy or insolvency or under any provisions of the Bankruptcy Act or for the appointment of a receiver or trustee or an assignment for the benefit of Contractor's creditors, or (iii) whenever for any reason Lockheed shall determine that such termination is necessary. Any such termination shall be effected by delivery to Contractor of a Notice of Termination specifying the reason for such termination, the extent to which performance of work under the subcontract is terminated, and the date upon which such termination becomes effective. If, after notice of termination

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of this subcontract for default under (i) above, it is determined that Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of Contractor pursuant to the provisions of the article of this subcontract entitled "Excusable Delays," the Notice of Termination shall be deemed to have been issued under (iii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

b. After receipt of a Notice of Termination and except as otherwise directed by Lockheed, Contractor shall (i) stop work under the subcontract on the date and to the extent specified in the Notice of Termination; (ii) place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the work under the subcontract as is not terminated; (iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (iv) assign to Lockheed, in the manner and to the extent directed by Lockheed, all of the right, title and interest of Contractor under the orders or subcontracts so terminated, in which case Lockheed shall have the right in its discretion to settle or pay any or all claims arising out of the termination of such orders and subcontracts; (v) with the approval or ratification of Lockheed, to the extent it may require, which approval or ratification shall be final and conclusive for all purposes of this article, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole or in part, in accordance with the provisions of this subcontract; (vi) transfer title (to the extent that title has not already been transferred) and, in the manner, to the extent and at the times directed by Lockheed, deliver to Lockheed (A) the fabricated parts or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of, and the performance of, the work terminated by the Notice of Termination, (B) the completed or partially completed plans, drawings, information and other property which, if the subcontract had been completed, would be required to be furnished to Lockheed, and (C) the jigs, dies and fixtures, and other special tools and tooling acquired or manufactured for the performance of this subcontract, for the cost of which Contractor has been or will be reimbursed under this subcontract; (vii) use its best efforts to sell in the manner, at the time, to the extent, and at the price or prices directed or authorized by Lockheed, any property of the types referred to in provision (vi) of this paragraph; provided, however, that Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by Lockheed; and provided, further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by Lockheed to Contractor under this subcontract or shall otherwise be

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credited to the price or cost of the work covered by this subcontract or paid in such other manner as Lockheed may direct, (viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (ix) take such action as may be necessary; or as Lockheed may direct, for the protection and preservation of the property related to this subcontract which is in the possession of Contractor and in which Lockheed or the Government have or may acquire an interest. Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fixed fee or any item or reimbursable cost, under this article.

c. After receipt of a Notice of Termination, Contractor shall submit to Lockheed its termination claim in the form and with the certification prescribed by Lockheed. Such claim shall be submitted promptly but in no event later than twelve (12) months from the effective date of termination, unless one or more extensions in writing are granted by Lockheed upon request of Contractor made in writing within such twelve (12) month period or authorized extension thereof. However, if Lockheed determines that the facts justify such action, it may receive and act upon any such termination claim at any time after such twelve (12) month period or any extension thereof. Upon failure of Contractor to submit its termination claim within the time allowed, Lockheed shall determine, with the approval of the Contracting Officer, on the basis of information available to it, the amount, if any, due to Contractor by reason of the termination and shall thereupon pay to Contractor the amount so determined.

d. Subject to the provisions of paragraph (c), Contractor and Lockheed may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fixed fee) to Contractor by reason of the total or partial termination of work pursuant to this article. Said purchase order shall be amended accordingly, and Contractor shall be paid the agreed amount.

e. In the event of the failure of Contractor and Lockheed to agree in whole or in part, as provided in paragraph (d) above, as to the amounts with respect to costs and fixed fee or as to the amount of the fixed fee, to be paid to Contractor in connection with the termination of work pursuant to this article, Lockheed shall determine, on the basis of information available to it, the amount, if any, due to Contractor by reason of the termination and shall pay to Contractor the amount determined as follows:

(i) If the settlement includes cost and fixed fee

(A) There shall be included therein all costs and expenses reimbursable in accordance with this subcontract, not previously paid to Contractor for the performance of this subcontract prior to the effective date of the

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Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by Lockheed; provided, however, that Contractor shall proceed as rapidly as practicable to discontinue such costs.

- (B) There shall be included therein, so far as not included under (A) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b) (v) above, which are properly chargeable to the terminated portion of this subcontract.
- (C) There shall be included therein the reasonable costs of settlement, including accounting, legal, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the subcontract and for the termination and settlement of purchase orders and subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory; provided, however, that if the termination is for a reason specified in paragraph (a) (i) or (a) (ii) of this Article 14 there shall not be included any amounts for the preparation of Contractor's settlement proposal.
- (D) There shall be included therein a portion of the fixed fee payable under the subcontract determined as follows:
- (1) In the event of the termination of this subcontract pursuant to paragraph (a) (iii) of this Article 14, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by this subcontract, less fixed fee payments previously made hereunder.
  - (2) In the event of the termination of this subcontract for the reasons specified in paragraph (a) (i) and (ii) of this Article 14, the total fixed fee payable shall be such proportionate part of the fee (or, if this subcontract calls for supplies of different types, of such part of the fee as is reasonably allocable to the type of supplies under consideration) as the total number of supplies delivered to and accepted by Lockheed bears to the total number of supplies of a like kind called for by this subcontract. If the amount

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determined under this paragraph is less than the total payment of fixed fee theretofore made to Contractor, Contractor shall repay to Lockheed the excess amount.

- (ii) If the settlement includes only the fixed fee, the amount thereof will be determined in accordance with subparagraph (e) (i) (D) above.

f. In arriving at the amount due Contractor under this article there shall be deducted (i) all unliquidated advance or other unliquidated payments, theretofore made to Contractor, (ii) any claim which Lockheed may have against Contractor in connection with this subcontract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired by Contractor or sold pursuant to the provisions of this article and not otherwise recovered by or credited to Lockheed.

g. In the event of a partial termination, the portion of the fixed fee which is payable with respect to the work under the continued portion of the subcontract shall be equitably adjusted by agreement between Contractor and Lockheed, and such adjustment shall be evidenced by an amendment to said purchase order.

h. Lockheed may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by Contractor in connection with the terminated portion of the subcontract whenever in the opinion of Lockheed the aggregate of such payments shall be within the amount to which Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this article, such excess shall be payable by Contractor to Lockheed upon demand, together with interest computed at the rate of six per cent (6%) per annum, for the period from the date such excess payment is received by Contractor to the date on which such excess is repaid to Lockheed; provided, however, that no interest shall be charged with respect to any such excess payment, attributable to a reduction in Contractor's claim by reason of retention or other disposition or termination inventory until ten (10) days after the date of such retention or disposition.

i. The provisions of this article relating to the fixed fee shall be inapplicable if this contract does not provide for payment of a fixed fee.

#### ARTICLE 15 - EXCUSABLE DELAYS

a. Contractor shall not be in default by reason of any failure in performance of this subcontract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of Contractor. Such causes include, but are not restricted to: acts of God or of the public enemy; acts

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of the Government; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; unusually severe weather; and failure of lower-tier subcontractors to perform or make progress due to such causes, unless Lockheed shall have determined that the supplies or services to be furnished under the lower-tier subcontract were obtainable from other sources and shall have ordered Contractor in writing to procure such services or supplies from such other sources, and Contractor shall have failed reasonably to comply with such order, Contractor shall promptly notify Lockheed of any anticipated failure of performance by reason of such causes. Upon request of Contractor, Lockheed shall ascertain the facts and extent of such failure and if it shall determine that such failure was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of Lockheed and the Government under the Article hereof entitled "Termination".

b. If Contractor, by reason of a cause, or causes, other than those specified in (a) above, will be unable to complete the contract work and make delivery at the time specified in said purchase orders, it may give Lockheed written notice of the anticipated default with the reasons therefor, provided such notice is given not less than forty-five (45) days before the delivery dates specified in said purchase order or within such time as Lockheed deems sufficient. If such notice is duly given, then, to the extent the interest of Lockheed makes an extension desirable, Lockheed may, in its discretion, extend the period of time specified in said purchase order for such period as it deems advisable, and the said purchase order shall then be modified in writing accordingly.

#### ARTICLE 16 - BUY AMERICAN ACT

Contractor agrees that there will be delivered under this subcontract only such unmanufactured articles, materials, and supplies (which term "articles, materials, and supplies" is hereinafter referred to in this article as "supplies") as have been mined or produced in the United States, and only such manufactured supplies as have been manufactured in the United States substantially all from supplies mined, produced, or manufactured, as the case may be, in the United States. Pursuant to the Buy American Act (41 U.S. Code 10a-d), the foregoing provision shall not apply (i) with respect to supplies excepted by the Secretary from the application of that Act, (ii) with respect to supplies for use outside the United States, or (iii) with respect to the supplies to be delivered under this subcontract which are of a class or kind determined by the Secretary or his duly authorized representative not to be mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (iv) with respect to such supplies, from which the supplies to be delivered under this subcontract are manufactured, as are of a class or kind determined by the Secretary or his duly authorized representative not to be mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, provided, that this exception (iv) shall not permit delivery of supplies manufactured outside the United States if such supplies are manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality

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ARTICLE 17 - EIGHT-HOUR LAW OF 1912

This subcontract, to the extent that it is of a character specified in the Eight-Hour Law of 1912 as amended (40 U.S. Code 324-326) and is not covered by the Walsh-Healey Public Contracts Act (41 U.S. Code 35-45), is subject to the following provisions and exceptions of said Eight-Hour Law of 1912 as amended, and to all other provisions and exceptions of said Law:

No laborer or mechanic doing any part of the work contemplated by this subcontract, in the employ of Contractor or any subcontractor contracting for any part of the said work, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this article. The wages of every such laborer and mechanic employed by Contractor or any subcontractor engaged in the performance shall be computed on a basic day rate of eight hours per day; and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this article a penalty of five dollars shall be imposed upon Contractor for each such laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this article; and all penalties thus imposed shall be withheld for the use and benefit of the Government.

ARTICLE 18 - WALSH-HEALEY PUBLIC CONTRACTS ACT

If this subcontract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act as amended (41 U.S. Code 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

ARTICLE 19 - NONDISCRIMINATION IN EMPLOYMENT

a. In connection with the performance of work under this subcontract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices which Contractor shall obtain from the Government setting forth the provisions of the nondiscrimination clause.

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b. Contractor further agrees to insert the foregoing provision in all subcontracts hereunder except subcontracts for standard commercial supplies or raw materials.

ARTICLE 20 - NOTICE TO LOCKHEED AND TO THE GOVERNMENT OF LABOR DISPUTES

Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this subcontract, Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to Lockheed and to the Contracting Officer.

ARTICLE 21 - CONVICT LABOR

In connection with the performance of work under this subcontract, Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

ARTICLE 22 - GOVERNMENT PROPERTY

a. Title to all property purchased by Contractor, for the cost of which Contractor is entitled to be reimbursed as a direct item of cost under this subcontract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to Contractor under this subcontract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this subcontract, or (ii) commencement of processing or use of such property in the performance of this subcontract, or (iii) reimbursement of the cost thereof by Lockheed, whichever first occurs.

b. All property owned by the Government which is furnished by Lockheed or the Government to Contractor in connection with the performance of this subcontract, together with all property acquired by Contractor title to which vests in the Government pursuant to paragraph (a) of this article, are collectively referred to in this article as "Government Property". If the delivery or performance dates for the supplies or services to be furnished by Contractor under this subcontract are based upon the expectation that Government-Furnished Property suitable for use will be delivered to Contractor at the times stated in said purchase order or, if not so stated, in sufficient time to enable Contractor to meet such delivery or performance dates; then upon timely written request made by Contractor, Lockheed will make a determination of the delay occasioned Contractor and shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates or all of them, and any other contractual provisions affected by such delay in accordance with the procedures provided for in the clause of this subcontract entitled "Changes" (Article 3). In the event that Government-Furnished Property is received by Contractor in a condition not suitable for the intended use, Contractor shall upon receipt thereof notify Lockheed of such fact and as directed by the Contracting Officer either (i) return such property at Government expense or otherwise dispose of the



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property, or (ii) effect repairs or modification. Upon completion of (i) or (ii) above and upon written request of Contractor, Lockheed shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provision affected by the return, disposition, repair or modification, in accordance with the procedures provided for in Article 3 of this subcontract. The foregoing provisions for adjustment are exclusive and Lockheed shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-Furnished Property or delivery of such property in a condition not suitable for its intended use.

c. Title to Government Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government Property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty. Contractor shall establish and operate a system acceptable to Lockheed for maintenance of property control records and identification of the Government Property in accordance with the requirements of the "Manual for the Control of Government Property in Possession of Contractors" (Appendix B, Armed Services Procurement Regulation), as in effect on the date of the prime contract, which manual is hereby incorporated by reference and made a part of this subcontract.

d. The Government Property provided or furnished pursuant to the term of this subcontract shall, unless otherwise provided herein, be used only for the performance of this subcontract.

e. Contractor shall maintain and administer in accordance with sound industrial practice, a program for the maintenance, repair, protection and preservation of Government Property so as to assure its full availability and usefulness for the performance of this subcontract. Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which Lockheed or the Contracting Officer may prescribe as reasonably necessary for the protection of Government Property.

f. (i) Contractor shall not be liable for any loss of or damage to the Government Property, or for expenses incidental to such loss or damage, except that Contractor shall be responsible for any such loss or damage (including expenses incidental thereto) (A) which results from wilful misconduct or lack of good faith on the part of any of Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of (I) all or substantially all of Contractor's business, or (II) all or substantially all of Contractor's operations at any one plant or separate location in which this subcontract is being performed, or (III) a separate and complete major industrial operation in connection with the performance of this subcontract; or (B) which results from a failure on the part of Contractor due to the wilful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in subparagraph (A) above, (I) to maintain and administer, in accordance with sound industrial practice, the program for maintenance, repair protection and

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and preservation of Government Property as required by paragraph (d) hereof, or (II) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (d) hereof, or (C) for which Contractor is otherwise responsible under the express terms of this subcontract; or (D) which results from a risk expressly required to be insured under this subcontract, but only to the extent of the insurance so required to be procured and maintained, whichever is greater; or (E) which results from a risk which is in fact covered by insurance or for which Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement; provided that, if more than one of the above exceptions shall be applicable in any case, Contractor's liability under any one exception shall not be limited by any other exception. This Article shall not be construed as relieving a lower-tier subcontractor from liability for loss or destruction of or damage to Government Property in its possession or control, except to the extent that the lower-tier subcontract, with the prior approval of Lockheed or the Government, may provide for the relief of 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 the utilization of the property in accordance with the provisions of the prime contract.

(ii) Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government Property, except to the extent that Lockheed may have required Contractor to carry such insurance under any other provision of this subcontract.

(iii) Upon the happening of loss or destruction of or damage to the Government Property, Contractor shall notify Lockheed and the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government Property from further damage, separate the damaged and undamaged Government Property, put all the Government Property in the best possible order, and furnish to Lockheed and the Contracting Officer a statement of (A) the lost, destroyed and damaged Government Property, (B) the time and origin of the loss, destruction or damage, (C) all known interest in the commingled property of which the Government Property is a part, and (D) the insurance, if any, covering any part of or interest in such commingled property. Contractor shall make repairs and renovations of the damaged Government Property or take such other action as Lockheed directs.

(iv) In the event Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government Property, it shall use the proceeds to repair, renovate or replace the Government Property

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involved, or shall credit such proceeds against the cost of the work covered by the subcontract, or shall otherwise reimburse Lockheed or the Government, as directed by Lockheed. Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction or damage and, upon the request of Lockheed or the Contracting Officer, shall, at Lockheed's or the Government's expense, furnish to the Government and Lockheed all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) 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, Contractor shall enforce liability of the lower-tier subcontractor for such loss or destruction of or damage to the Government Property for the benefit of the Government.

g. Lockheed and the Government shall at all reasonable times have access to the premises where any of the Government Property is located.

h. The Government Property shall remain in the possession of Contractor for such period of time as is required for the performance of this subcontract unless Lockheed or the Contracting Officer determines that the interests of the Government require removal of such property. In such case Contractor shall promptly take such action as Lockheed or the Contracting Officer may direct with respect to the removal and shipping of Government Property. In any such instance, the subcontract may be amended to accomplish an equitable adjustment in the terms and provisions thereof.

i. Upon the completion of this subcontract, or at such earlier date as may be fixed by Lockheed or the Contracting Officer, Contractor shall submit to Lockheed, in acceptable form, inventory schedules covering all items of the Government Property not consumed in the performance of this subcontract (including any resulting scrap), or not theretofore delivered to Lockheed or the Government, and shall deliver or make such other disposal of the Government Property as may be directed by Lockheed or the Contracting Officer. Recoverable scrap shall be reported in accordance with a procedure and in such form as Lockheed or the Contracting Officer may direct. The net proceeds of any such disposal approved by Lockheed or the Contracting Officer shall be credited to the cost of the work covered by the subcontract or shall be paid in such manner as Lockheed or the Contracting Officer may direct.

j. Unless otherwise provided herein, Lockheed or the Government shall not be under any duty or obligation to restore or rehabilitate or to pay the costs of the restoration or rehabilitation of Contractor's plant or any portion thereof which is affected by the removal of any Government Property.

k. Directions of Lockheed and the Contracting Officer and communications of Contractor issued pursuant to this article shall be in writing.

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ARTICLE 23 - PRIORITIES, ALLOCATIONS AND ALLOTMENTS

Contractor agrees, in the procurement and use of materials required for the performance of this subcontract, to comply with the provisions of all applicable rules and regulations of the Business and Defense Services Administration, including Defense Materials System regulation.

ARTICLE 24 - OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this subcontract or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this subcontract if made with a corporation for its general benefit.

ARTICLE 25 - INDEPENDENT CONTRACTOR

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

ARTICLE 26 - PATENT RIGHTS

a. As used in this article, the following terms shall have the meanings set forth below:

- (1) The term "Subject Invention" means any invention, improvement or discovery (whether or not patentable) conceived or first actually reduced to practice either--
  - (A) in the performance of the experimental, developmental, or research work called for or required under this subcontract, or
  - (B) in the performance of any experimental, developmental, or research work relating to the subject matter of this subcontract which was done upon an understanding in writing that a subcontract would be awarded; provided that the term "Subject Invention" shall not include any invention which is specified in said purchase order as being excluded from the license granted by this article.

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- (ii) The term "Technical Personnel" means any person employed by or working under contract with Contractor (other than a subcontractor whose responsibilities with respect to rights accruing to the Government in inventions arising under subcontracts are set forth in paragraphs (g), (h), and (i) of this article) who, by reason of the nature of his duties in connection with the performance of this subcontract, would reasonably be expected to make inventions.
- (iii) The terms "subcontract" and "subcontractor" mean any subcontract or subcontractor of Contractor, and any lower-tier subcontract or subcontractor under this subcontract.

b. (1) Contractor agrees to and does hereby grant to Lockheed and the Government an irrevocable, nonexclusive, nontransferable, and royalty-free license to practice, and cause to be practiced by or for Lockheed and the United States Government, throughout the world, each Subject Invention in the manufacture, use and disposition according to law, of any article or material, and in the use of any method. No license granted herein shall convey any right to the Government to manufacture, have manufactured, or use any Subject Invention for the purpose of providing services or supplies to the general public in competition with Contractor or Contractor's commercial licensees in the licensed field.

(2) With respect to:

- (i) any Subject Invention made by other than Technical Personnel;
- (ii) any Subject Invention conceived prior to, but first actually reduced to practice in the course of, any of the experimental, developmental, or research work specified in (a) (i) above; and
- (iii) the practice of any Subject Invention in foreign countries; the obligation of Contractor to grant a license as provided in (b) (1) above, to convey title as provided in (d) (ii) (B) or (d) (iv) below, and to convey foreign rights as provided in (e) below, shall be limited to the extent of Contractor's right to grant the same without incurring any obligation to pay royalties or other compensation to others solely on account of said grant. Nothing contained in this Patent Rights article shall be deemed to grant any license under any invention other than a Subject Invention.

c. Contractor shall furnish to the Contracting Officer through Lockheed the following information and reports concerning Subject Inventions which reasonably appear to be patentable:

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- (i) a written disclosure promptly after conception or first actual reduction to practice of each such Invention together with a written statement specifying whether or not a United States patent application claiming the Invention has been or will be filed by or on behalf of Contractor;
- (ii) Interim reports, at least every twelve months, commencing with the date of this subcontract, each listing all such inventions conceived or first actually reduced to practice more than three months prior to the date of the report, and not listed on a prior interim report, or certifying that there are no such unreported inventions; and
- (iii) prior to final settlement of this subcontract, a final report listing all such inventions including all those previously listed in interim reports.

d. In connection with each Subject Invention referred to in (c) (i) above, Contractor shall do the following:

- (i) if Contractor specifies that a United States patent application claiming such invention will be filed, Contractor shall file or cause to be filed such application in due form and time; however, if Contractor, after having specified that such an application would be filed, decides not to file or cause to be filed said application, Contractor shall so notify the Contracting Officer through Lockheed at the earliest practicable date and in any event not later than eight months after first publication, public use or sale.
- (ii) if Contractor specifies that United States patent application claiming such invention has not been filed and will not be filed (or having specified that such an application will be filed thereafter notifies the Contracting Officer with copies to Lockheed to the contrary), Contractor shall:
  - (A) inform the Contracting Officer through Lockheed in writing at the earliest practicable date of any publication of such invention made by or know to Contractor or, where applicable, of any contemplated publication by Contractor, stating the date and identity of such publication or contemplated publication; and
  - (B) convey to the Government the Contractor's entire right, title, and interest in such invention by delivering to the Contracting Officer through Lockheed upon written request such duly executed instruments (prepared by the Government) or assignment and application, and such other papers as are deemed necessary to vest in the Government Contractor's right, title, and interest aforesaid, and the right to apply for and prosecute patent applications covering such invention throughout the world, subject, however, to the right of the Contractor specified

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in (e) below to file foreign applications, subject to the reservation of the license granted by Contractor to Lockheed pursuant to paragraph (b) of this article, and subject further to the reservation of a nonexclusive and royalty-free license to Contractor (and to its existing and future associated and affiliated companies, if any, within the corporate structure of which Contractor is a part) which license shall be assignable to the successor of that part of Contractor's business to which such Invention pertains;

- (iii) Contractor shall furnish promptly to Lockheed and the Contracting Officer on request an irrevocable power of attorney to inspect and make copies of each United States patent application filed by or on behalf of Contractor covering any such invention;
- (iv) in the event Contractor, or those other than the Government deriving rights from Contractor, elects not to continue prosecution of any such United States patent application filed by or on behalf of Contractor, Contractor shall so notify the Contracting Officer via Lockheed not less than sixty days before the expiration of the response period and, upon written request, deliver to the Contracting Officer through Lockheed such duly executed instruments (prepared by the Government) as are deemed necessary to vest in the Government Contractor's entire right, title, and interest in such invention and the applications, subject to the reservations as specified in (d) (ii) above; and
- (v) Contractor shall deliver to Lockheed and the Contracting Officer duly executed instruments fully confirmatory of any license rights herein agreed to be granted to Lockheed and the Government.

e. Contractor, or those other than the Government deriving rights from Contractor, shall have the exclusive rights to file applications on Subject Inventions in each foreign country within:

- (i) nine months from the date a corresponding United States application is filed;
- (ii) six months from the date permission is granted to file foreign applications where such filing had been prohibited for security reasons;
- (iii) such longer period as may be approved by the Contracting Officer. Contractor shall, upon written request of the Contracting Officer through Lockheed, convey to the Government

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Contractor's entire right, title and interest in each Subject Invention in each foreign country in which an application has not been filed within the time above specified, subject to the reservation of a nonexclusive and royalty-free license to Contractor and Lockheed together with the right of Contractor and Lockheed to grant sublicenses, which license and right shall be assignable to the successor to that part of Contractor's or Lockheed's business to which the Subject Invention pertains.

f. Contractor shall exert all reasonable effort in negotiating for the inclusion of this Patent Rights clause in any subcontract hereunder of three thousand dollars (\$3,000) or more having experimental, developmental, or research work as one of its purposes. In the event of refusal by a subcontractor to accept the Patent Rights clause, Contractor shall not proceed with the subcontract without written authorization of Lockheed, and upon obtaining such authorization, shall cooperate with Lockheed in the negotiation with such subcontractor of an acceptable patent rights clause; provided, however, that Contractor shall in any event require the subcontractor to grant the Government and Lockheed patent rights under Subject Inventions of no less scope and on no less favorable terms than those which Contractor has under such subcontracts, except that in no event shall the subcontractor be required to grant to Lockheed and the Government patent rights in excess of those herein agreed to be granted to Lockheed and the Government by Contractor.

g. Contractor shall, at the earliest practicable date, notify the Contracting Officer and Lockheed in writing of any subcontract, containing a patent rights clause, furnish the Contracting Officer and Lockheed a copy of such clause, and notify the Contracting Officer and Lockheed when such subcontract is completed. It is understood that with respect to such subcontract clause, Lockheed and the Government are third party beneficiaries; and Contractor hereby assigns to the Government and Lockheed all the rights that Contractor would have to enforce the subcontractor's obligations for the benefit of the Government and Lockheed with respect to Subject Inventions. Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to Subject Inventions.

h. When Contractor shows that it has been delayed in the performance of this subcontract by reason of its inability to obtain in accordance with (f) above a suitable patent rights clause from a qualified subcontractor for any item or service required under this subcontract for which Contractor itself does not have available facilities or qualified personnel Contractor's delivery dates shall be extended for a period of time equal to the duration of such delay; and, upon request of Contractor, Lockheed shall determine to what extent, if any, an additional extension of the delivery dates and an increase in contract prices based upon additional costs incurred by such delay are proper under the circumstances; and the subcontract shall be modified accordingly. If Contractor, after exerting all reasonable effort, is unable to obtain a qualified subcontractor as set forth above, Contractor may submit to Lockheed a written request for waiver or modification of the requirement that a suitable patent rights clause be



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included in the subcontract. Such request shall specifically state that Contractor has used all reasonable effort to obtain such qualified subcontractor, and shall cite the waiver or termination provision hereinafter set forth. If, within thirty-five (35) days after the date of receipt of such request for a waiver or modification of said requirement, Lockheed shall fail to deny in writing such request, the requirement shall be deemed to have been waived by Lockheed. If within such period "Contractor shall receive a written denial of such request by Lockheed," this subcontract shall thereupon automatically terminate and the rights and obligations of the parties shall be governed by the provisions of the article of this subcontract entitled "Termination".

i. Contractor shall, prior to final payment, furnish Lockheed with the following:

- (i) A list of all patents, if any, issued on Subject Inventions under this subcontract;
- (ii) A list of all Subject Inventions, if any, not yet reduced to a patent but which are or will be the subject of a patent application;
- (iii) A statement that there are no patented or patentable Subject Inventions if, in fact, there are none.

#### ARTICLE 27 - FILING OF PATENT APPLICATIONS

a. Before filing or causing to be filed a patent application disclosing any subject matter of this subcontract, which subject matter is classified "Secret" or higher, Contractor shall, citing the thirty (30) day provision below, transmit the proposed application through Lockheed to the Contracting Officer for determination whether; for reasons of national security, such application should be placed under an order of secrecy or sealed in accordance with the provisions of 35 U. S. Code 181-188 or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations; and Contractor shall observe any instructions of the Contracting Officer with respect to the manner of delivery of the patent application to the U. S. Patent Office for filing, but Contractor shall not be denied the right to file such patent application. If the Contracting Officer shall not have given any such instructions within thirty (30) days from the date of mailing or other transmittal of the proposed application, Contractor may file the application.

b. Contractor shall furnish to Lockheed and the Contracting Officer, at the time of or prior to the time when Contractor files or causes to be filed a patent application disclosing any subject matter of this subcontract, which subject matter is classified "Confidential", a copy of such application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations.

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c. In filing any patent application coming within the scope of this article, Contractor shall observe all applicable security regulations covering the transmission of classified subject matter.

#### ARTICLE 28 - NOTICE AND ASSISTANCE REGARDING PATENT INFRINGEMENT

a. Contractor shall report to Lockheed, promptly and in reasonable written detail, each notice or claim of patent infringement based on the performance of this subcontract, or any subcontract hereunder of which Contractor has knowledge.

b. In the event of litigation against the Government and/or Lockheed on account of any claim of infringement arising out of the performance of this subcontract or out of the use of any supplies furnished or services performed hereunder, Contractor agrees that it will furnish to the Government and/or Lockheed, upon request, all evidence and information in its possession pertaining to such litigation. Such evidence and information shall be furnished at the expense of the Government and/or Lockheed, except in those cases in which Contractor has agreed to indemnify the Government and/or Lockheed against the claim being asserted.

#### ARTICLE 29 - REPORTING OF ROYALTIES

If this contract is in an amount which exceeds \$10,000, the Contractor agrees to report in writing to Lockheed, during the performance of this contract and prior to its completion or final settlement, the amount of any royalties or royalty rates paid or to be paid by it directly to others in connection with the performance of this contract, together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which royalties are to be paid. If this contract is in an amount which exceeds \$10,000, and no royalties or royalty rates are paid or to be paid directly to others under the circumstances set forth above, the Contractor agrees so to report in writing to Lockheed prior to completion or final settlement of this contract.

#### ARTICLE 30 - PAYMENT OF ROYALTIES

Payments by Contractor of any sum for royalties or patent rights not included in the ordinary purchase price of standard commercial supplies shall not constitute items of allowable cost hereunder, unless and until approved by Lockheed and the Contracting Officer. Reimbursement to Contractor on account of any such payments shall not be construed as an admission by Lockheed and/or the Government of the enforceability, validity, or scope of, or title to any of the patents involved, nor shall any such reimbursement constitute a waiver of any rights or defenses respecting such patents.

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ARTICLE 31 - AUTHORIZATION AND CONSENT

The prime contract under which this is a subcontract contains a section in which the Government gives authorization and consent with respect to patented inventions, as follows:

"AUTHORIZATION AND CONSENT - - The Government hereby gives its authorization and consent for all use and manufacture of any patented invention in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract)."

ARTICLE 32 - EXCESS PROFIT

The Contractor agrees that, unless otherwise provided by law, this contract shall be subject to all the provisions of 10 U.S.C. 2382 and 7300 and shall be deemed to contain all the agreements required by those sections; provided, however, that this clause shall not be construed to enlarge or extend by contract the obligations imposed by those section. The Contractor agrees to insert in the subcontracts specified in those sections either the provisions of this clause or the provisions required by those sections.

ARTICLE 33 - RENEGOTIATION

a. To the extent required by law, this contract is subject to the Renegotiation Act of 1951 (P.L. 9, 82d Cong., 65 Stat 7) as amended (P.L. 764, 83d Cong., 68 Stat. 1116; P.L. 216, 84th Cong., 69 Stat 447), and to any subsequent act of Congress providing for the renegotiation of contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing this contract shall be deemed to contain all the provisions required by Section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

b. The Contractor agrees to insert the provisions of this clause, including this paragraph b, in all subcontracts, as that term is defined in section 103g of the Renegotiation Act of 1951 or in any subsequent act of Congress providing for the renegotiation of contracts.

ARTICLE 34 - MILITARY SECURITY REQUIREMENTS

a. The provisions of this article shall apply to the extent that this subcontract involves access to information classified "Confidential" including "Confidential--Modified Handling Authorized" or higher.

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b. Lockheed shall notify Contractor 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 Security Requirements Check List (DD Forms 254 and 254-1).

c. To the extent Lockheed has indicated as of the date of this subcontract, or thereafter indicates, security classification under this subcontract as provided in paragraph (b) above, Contractor 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:

- (i) the Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for Safeguarding Classified Information as in effect on the date of this subcontract, and any modification to the Security Agreement for the purpose of adapting the Manual to Contractor's business; and
- (ii) any amendments to said Manual made after the date of this subcontract, notice of which has been furnished to Contractor by the Security Office 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 Contractor in complying with the security requirements under this subcontract. Should the Government, through these representatives, determine that Contractor is not complying with the security requirements of this subcontract Contractor 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 as provided in this article and if such change causes an increase or decrease in the estimated cost of the performance of this subcontract, the estimated cost and fixed fee shall, to the extent appropriate, be subject to an equitable adjustment. Any such equitable adjustment shall be accomplished in the manner set forth in the changes article of this subcontract.

f. Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this article, including this paragraph.

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

#### ARTICLE 35 - NEWS FEATURES OF DESIGN

In the event Contractor, prior to completion of work hereunder, develops (i) any improvement in the design of the supplies called for by this subcontract, which is not incorporated in the supplies delivered hereunder, or (ii) any alternative or improved method of accomplishing the objectives of this subcontract, which is not employed in the performance hereof, Contractor shall promptly give full information with respect thereto to Lockheed.

#### ARTICLE 36 - REPORTS OF WORK

Contractor shall submit reports making full disclosure of all services done and the results hereof, in the manner, at the times and to the extent set forth in said purchase order; provided, however, that except as may be otherwise specified in said purchase order, Contractor shall submit such reports in triplicate from time to time as requested and upon completion (or earlier termination) of the services. Except as may be otherwise specified in said purchase order, or unless Contractor is otherwise instructed, Contractor shall, upon completion (or earlier termination) of the services, deliver any working drawings and specifications of such prototypes as may have been developed.

#### ARTICLE 37 - RIGHTS IN DATA - UNLIMITED

a. The term "Subject Data" as used herein includes writings, sound recordings, pictorial reproductions, drawings or other graphical representations, and works of any similar nature (whether or not copyrighted) which are specified to be delivered under this subcontract. The term does not include financial reports, cost analyses and other information incidental to contract administration.

b. Subject to the proviso of c. below, the Government and Lockheed may duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all Subject Data delivered under this subcontract; provided, however, that with respect to such Subject Data not originated in the performance of this subcontract but which is incorporated in the work furnished under this subcontract, Lockheed's rights shall be limited to duplication, use and disclosure of such Subject Data for governmental purposes.

c. Contractor agrees to and does hereby grant to the Government and to Lockheed and to their respective officers, agents, and employees acting within the scope of their official duties, a royalty-free, non-exclusive and irrevocable license throughout the world, to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all Subject Data now or hereafter covered by copyright; provided that with respect to such Subject Data not originated in the performance of this subcontract but which is incorporated in the work furnished under this subcontract such license shall be only to the extent that Contractor, its employees, or any individual or concern specifically employed or assigned by Contractor to originate and prepare such Data under this subcontract, now has, or prior to completion or final settlement of this subcontract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

d. Contractor shall exert all reasonable effort to advise Lockheed, at the time of delivery of the Subject Data furnished under this subcontract, of all invasions of the right of privacy contained therein and of all portions of such Data copied from work not composed or produced in the performance of this subcontract and not licensed under this clause.

e. Contractor shall report to Lockheed promptly and in reasonable written detail, each notice or claim of copyright infringement received by Contractor with respect to all Subject Data delivered under this subcontract.

f. Nothing contained in this clause shall imply a license to the Government or Lockheed under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government or Lockheed under any patent.

g. Contractor shall not affix any restrictive marking upon any Subject Data, and if such markings are affixed, the Government and Lockheed shall have the right at any time to modify, remove, obliterate or ignore any such markings.

#### ARTICLE 38 - REPRODUCTION RIGHTS

Lockheed does not grant or convey to Contractor by virtue of this subcontract (i) any reproduction rights in or to the articles called for hereunder, or (ii) any right to use designs, drawings or other information belonging to Lockheed or supplied by or on behalf of Lockheed for us in the performance of this subcontract, in the production, manufacture or design of any articles or materials for anyone other than Lockheed.

#### ARTICLE 39 - NON-DISCLOSURE OF INFORMATION

Contractor shall not, without the prior written consent of Lockheed, disclose information relative to this subcontract, except as may be required to insure performance.

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ARTICLE 40 - FEDERAL, STATE AND LOCAL TAXES

Except as otherwise provided in this subcontract, Federal, State, and Local taxes (other than (i) Federal taxes on income and excell profits, (ii) taxes in connection with financing, refinancing, or refunding operations, and (iii) Federal excise taxes from which exemption is obtainable under Sections 4220 or 4222 of the Internal Revenue Code or for which a credit is obtainable under Section 6416 (b) (3) (B) thereof) paid by Contractor, of any cost of cost-plus-a-fixed-fee subcontractor hereunder (provided that there was no fixed-price subcontractor intervening between such subcontractor and Contractor) and incident to the performance of this subcontract shall constitute items of allowable cost under this subcontract or such cost or cost-plus-a-fixed-fee subcontract if (i) Contractor has requested Lockheed to furnish tax exemption certificates or other similar evidence of exemption for use by Contractor and such cost or cost-plus-a-fixed-fee subcontractor in obtaining exemption from such Federal, State or Local Taxes and (ii) Lockheed has notified Contractor that it will not furnish such evidence of exemption. Payments of taxes for which evidence of exemption has been furnished hereunder shall constitute items of allowable cost under this subcontract (i) if the applicable Federal, State or Local taxing authorities have refused to accept such evidence of exemption and Contractor has notified Lockheed of such refusal, (ii) if Contractor has caused the tax in question to be paid in such manner as to preserve all rights to refund thereof, (iii) if Contractor causes to be assigned to the Government any and all rights to any refund of such taxes and (iv) if being so directed by the Contracting Officer, Contractor takes the necessary action in cooperation with and for the benefit of the Government, to secure a refund of such tax.

ARTICLE 41 - AMENDMENTS REQUIRED BY PRIME CONTRACT

Contractor agrees that upon the request of Lockheed it will from time to time enter into amendments to this subcontract to incorporate additional provisions herein or to change provisions hereof, as Lockheed 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 cost of, or the time required for, performance of this subcontract, an equitable adjustment shall be made in the estimated cost and fixed fee or delivery schedule, or both, pursuant to Article 3 (Changes) hereof.

ARTICLE 42 - COVENANT AGAINST CONTINGENT FEES

Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this subcontract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business.

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For breach or violation of this warranty Lockheed shall have the right to annul this subcontract without liability or, in its discretion, to deduct from the subcontract price of consideration the full amount of such commission, percentage, brokerage or contingent fee.

#### ARTICLE 43 - QUALITY CONTROL SPECIFICATION

Except as otherwise provided in this subcontract, Contractor's system of quality control during the performance of this subcontract shall be in accordance with the provisions of Military Specification MIL-Q-5923, as in effect on the date of this subcontract.

#### ARTICLE 44 - GRATUITIES

a. Lockheed may, by written notice to Contractor, terminate the right of Contractor to proceed under this contract if Lockheed has a reasonable cause to believe that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of Lockheed with a view toward securing a contract or securing favorable treatment with respect to the awarding or amendment, or the making of any determination with respect to the performing of such contract.

b. In the event this contract is terminated as provided in paragraph a. hereof, Lockheed shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of a breach of the contract by Contractor.

c. The rights and remedies of Lockheed provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

#### ARTICLE 45 - DELAY IN DELIVERY OF DATA

a. It is understood that the efficient use by Lockheed of the supplies called for hereunder requires that the data called for hereunder be delivered not later than the time or respective times herein specified. If such data are not delivered at said time or times, Lockheed may, at its election, so long as such data remain undelivered, unless the delay in delivery thereof arises out of causes beyond the control and without the fault or negligence of Contractor within the meaning of the clause hereof entitled "Excusable Delays", withhold payment to Contractor for any of the amounts then due, refuse approval of Contractor's vouchers and refuse to accept further deliveries hereunder from Contractor or take any other action authorized by law or regulation now or hereafter in effect, including termination of the contract for default to the extent and in the manner authorized by "Termination," and may take any or all of the foregoing actions separately or in combination.



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b. The provisions of this clause shall only be applicable to technical data, such as handbooks, service manuals, or other information necessary for the proper maintenance or servicing of the end items called for herein.

ARTICLE 46 - LIMITS OF CONTRACT

This contract supersedes all prior offers, negotiations or agreements concerning the subject matter hereof and constitutes the entire contract between the parties.

ARTICLE 47 - ADVANCE MANUFACTURE AND SHIPMENT

Contractor shall not, without Lockheed's prior written consent, manufacture in advance of Contractor's normal flow time or deliver in advance of schedule. Lockheed may return, shipping charges collect, all articles received in advance of schedule.

ARTICLE 48 - INTERPRETATION

This subcontract shall be construed and interpreted solely in accordance with the laws of the State of California.

ARTICLE 49 - APPROVAL

This subcontract shall not become effective until approved by the Contracting Officer at Lockheed's Plant.

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ARTICLE 50 - ALTERATIONS

TYPOGRAPHICAL ERRORS

1. Article 8 - Inspection And Correction Of Defects  
Page 9, Paragraph d, line 8, 3rd word, delete "has"  
and substitute "have".
2. Article 10 - Assignment Of Claims  
Page 10, Paragraph c, line 9, 1st word, delete  
"tpgetjer" and substitute "together".
3. Article 11 - Records  
Page 12, Paragraph e, line 3, add the word "to"  
after the word "obligation".
4. Article 26 - Patent Rights  
Page 26, Paragraph d (ii) (A), line 3, 5th word,  
delete "know" and substitute "known".
5. Article 27 - Filing of Patent Applications  
Page 29, Paragraph a, line 6, 9th word, delete "of"  
and substitute "or".
6. Article 36 - Reports of Work  
Page 33, line 2, 6th word, delete "hereof" and substitute  
"thereof".
7. Article 37 - Rights in Data - Unlimited  
Page 34, Paragraph e, line 1, add the word "in" after  
the word "and".

ARTICLE 50 - ALTERATIONS (CONTINUED)

TYPOGRAPHICAL ERRORS

8. Article 35 - New Features of Design

Page 33, the first word of the article title  
"NEWS" should be changed to "NEW".

ARTICLE 50 - ALTERATIONS ( CONTINUED )

1. In line 9 of Paragraph a. of ARTICLE 5 - ALLOWABLE COSTS AND FIXED FEE on page 6, add the words "and fee" after the word "cost".

2. (a) Add the following sentence to Paragraph b. of ARTICLE 6 - PAYMENT AND REIMBURSEMENT:

"Failure to agree to any such adjustments shall be a dispute concerning a question of fact within the meaning of the clause of this subcontract entitled "DISPUTES"."

(b) Insert after the word "shall," appearing in the 7th line of Paragraph d. of said ARTICLE 6 the following phrase:

"subject to the provisions of the article hereof entitled "DISPUTES"."

(c) Delete Paragraph e. of said ARTICLE 6.

3. (a) Add the following subparagraph 4. to Paragraph a. of ARTICLE 7 - RELEASE PROVISIONS:

"4. Claims by the Contractor for reimbursement of costs of the correction or replacement of the supplies furnished hereunder, as may be required by Lockheed after the date of the release, in accordance with the provisions of Paragraph c. of ARTICLE 3 - INSPECTION AND CORRECTION OF DEFECTS of this subcontract.

(b) Change the period at the end of Paragraph c. of said ARTICLE 7 to a semi-colon and add the following:

"except that the Contractor shall not be required to deliver or otherwise dispose of Government Property prior to such final payment".

4. (a) Add the following sentence at the end of Paragraph a. of ARTICLE 8 - INSPECTION AND CORRECTION OF DEFECTS

"except as otherwise provided in this contract, acceptance of any supplies or lots of supplies shall be made as promptly as practicable after delivery thereof and shall be deemed to have been made no later than six months after the date of such delivery, if acceptance has not been made earlier within such period."

(b) Delete the words "the Government" appearing in line 2 of Paragraph c. of said ARTICLE 8 and substitute the word "Lockheed" in lieu thereof.

(c) Add the following new paragraphs at the end of said ARTICLE 8 identifiable as Paragraphs i and j.:

"i. For purposes of compliance with the provisions of Paragraph c. above of this ARTICLE 8, notwithstanding any provisions to the contrary appearing herein, the Contractor may retain Government Property for a period no later than twelve (12) months after final acceptance by Lockheed, or for such period as may be necessary for correction or replacement of supplies as may be required by Lockheed hereunder, whichever is later."

"j. Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace supplies or lots of supplies which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract."

5. To the last sentence of Paragraph a. of ARTICLE 10 - ASSIGNMENT OF CLAIMS on page 10 add the following before the period:

"but will not be subject to set-off for any present and future claim or claims arising independently of this subcontract."

6. In lines 4, 7, 9 and 10, respectively, of Paragraph c. of ARTICLE 14 - TERMINATION delete "twelve (12)" and in lieu thereof insert "eighteen (18)".

7. (a) In lines 1 and 3, respectively, of Paragraph b.(1) of ARTICLE 26 - PATENT RIGHTS delete the phrase "Lockheed and".

(b) In line 1 of Paragraph c. of said ARTICLE 26 delete the phrase "through Lockheed".

(c) At the end of subparagraph (i) of Paragraph d. of said ARTICLE 26 add the following:

"A copy of any patent application filed here-  
under shall be mailed to Lockheed. The contents  
of such patent application shall not be disclosed  
by Lockheed to anyone outside of Lockheed other  
than the Government."

(d) Delete the following phrase appearing in each of lines 10, 11, 12 and 13 of sub-subparagraph (B) of subparagraph (ii) of Paragraph d. of said ARTICLE 26: "subject to the reservation of the license granted by Contractor to Lockheed pursuant to Paragraph (b) of this Article and".

(e) Delete the word "further" appearing in line 13 of sub-subparagraph (B) of subparagraph (ii) of Paragraph d. of said ARTICLE 26.

(f) Add the following to subparagraph (iii) of Paragraph d. of said ARTICLE 26:

"provided, however, that the contents of such  
patent application shall not be disclosed  
by Lockheed to anyone outside of Lockheed  
other than the Government;".

(g) Delete the phrase "to Lockheed and" appearing in subparagraph (v) of Paragraph d. of said ARTICLE 26.

(h) In lines 8 and 9, respectively, of subparagraph (iii) of Paragraph e. of said ARTICLE 26 delete the phrase "and Lockheed".

(i) In line 11 of subparagraph (iii) of Paragraph e. of said ARTICLE 26 delete the phrase "or Lockheed's".

(j) In lines 5 and 6 of Paragraph g. of said ARTICLE 26 revise the clause "Lockheed and the Government are third party beneficiaries" to read as follows: "the Government is a third party beneficiary".

(k) Delete the phrase "Lockheed and" appearing in lines 12 and 13 of Paragraph f. of said ARTICLE 26.

(l) Delete the phrase "Lockheed and" appearing in line 14 of Paragraph f. of said ARTICLE 26.

(m) Delete the phrase "and Lockheed" appearing in lines 7 and 8, respectively, of Paragraph g. of said ARTICLE 26.

8. At the end of ARTICLE 35 - NEW FEATURES OF DESIGN change the period to a semi-colon and add the following:

"provided, however, that the Contractor shall not be required to disclose the proprietary aspects thereof."

9. In line 2 of ARTICLE 41 - AMENDMENTS REQUIRED BY PRIME CONTRACT on page 35, delete the word "into" and in lieu thereof insert the words "in good faith into negotiation for".

ARTICLE 51 - DISPUTES

Any decision, disapproval or omission made or omitted by Lockheed or the Contracting Officer hereunder concerning questions of fact, if disagreed with by Contractor, shall be treated by Lockheed as a dispute under the DISPUTES clause in the prime contract, and Lockheed shall, at Contractor's expense, take all available steps thereunder to the extent required by Contractor to resolve such dispute, except that Lockheed shall not be obligated to litigate the matter in any court. Any decision under the DISPUTES clause of said prime contract concerning a dispute hereunder shall be final and conclusive to the extent provided in said DISPUTES clause. Lockheed agrees that it will permit Contractor to participate with Lockheed in all such proceedings. If Lockheed fails to take action pursuant to this clause, or to the extent that a decision with respect to any dispute hereunder is not final and conclusive under the DISPUTES clause of the prime contract, Contractor may appeal such dispute by pursuing any right or remedy it may have at law or in equity in any court of competent jurisdiction. Pending final decision of any dispute hereunder, Contractor shall proceed diligently with the performance of this subcontract and in accordance with the decision appealed from.