

TERMS AND CONDITIONS CHANGE SHEET (1-96)

1. The following clause is added to the terms and conditions of this subcontract:

RESOLUTION OF DISPUTES

(a) The Seller and the Company agree to make good faith efforts to settle any dispute or claim that arises under this subcontract through discussion and negotiation. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of alternative disputes resolution (ADR). In the event mediation or non-binding arbitration is agreed upon, the mediator or arbitrator shall be selected within forty-five (45) days after the parties have agreed to the use of ADR. Neither party shall unreasonably withhold consent to the selection of the mediator or arbitrator. The costs of the proceedings shall be allocated in accordance with the decision of the mediator or arbitrator, except that neither party shall be liable for pre-judgment interest, and each party shall bear its discretionary costs. In any case, the site of the proceedings shall be Oak Ridge, Tennessee.

(b) In the event that ADR fails or is not used, the parties agree that the appropriate forum for resolution shall be as follows:

(1) Where the Company is the claimant under a subcontract with a State agency such as a University located in a state which by statute waives sovereign immunity, that statute will determine the appropriate forum. If the State agency is the claimant under the subcontract, subparagraph (2) or (3) below, shall apply as appropriate.

(2) In all other subcontracts, subject to paragraph (b)(3) of this clause, any litigation shall be brought and prosecuted exclusively in Federal District Court, with venue in the United States Court for the Eastern District of Tennessee, Northern Division.

(3) Provided, however, that in the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in either Anderson, Knox or Roane County, State of Tennessee, in the Circuit or Chancery Court, as appropriate.

(c) The parties agree that substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with the body of law and regulations applicable to procurement of goods and services by the Federal Government. In the event this agreement as to choice of law is decided by the presiding court or administrative body to be unenforceable, then the laws of the State of Tennessee shall apply. Nothing in this clause shall grant to the Seller by implication any statutory rights or remedies not expressly set forth in this subcontract.

(d) There shall be no interruption in the prosecution of the work and the Seller shall proceed diligently with the performance of this subcontract pending final resolution of any mediation, arbitration, dispute, claim, litigation or other effort at problem resolution, arising under or related to this subcontract between the parties hereto or between the Seller and sub-tier subcontractors or suppliers.

2. The clause entitled "Restrictions on Contracting With Sanctioned Persons" is deleted from the terms and conditions of this subcontract, and the following clause is substituted in its place:

RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

(a) Parastatal organization, as used in this clause, means a corporation, partnership, or entity owned, controlled, or subsidized by the Government of South Africa. It does not include a corporation, partnership, or entity that previously

received start-up assistance from the South African Industrial Development Corporation but that is now privately owned and that is not owned, controlled, or subsidized by the Government of South Africa.

(b) Unless advance written approval of the Company is obtained, the Seller shall not acquire for use in the performance of this subcontract:

(1) Any supplies or services originating from source within the communist areas of North Korea, Vietnam, Cambodia, or Cuba;

(2) Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba;

(3) Arms, ammunition, or military vehicles produced in South Africa, or manufacturing data for such articles; or

(4) Supplies or services from the South African Government or parastatal organizations of South Africa.

(c) The Seller shall not acquire for use in the performance of this subcontract supplies or services originating from source within Iraq, any supplies that are or were located in or transported from or through Iraq, or any supplies or services from entities controlled by the Government of Iraq.

(d) The Seller agrees to insert the provisions of this clause including this paragraph (d), in all subcontracts hereunder.

3. The following clause is added to subcontracts requiring work to be performed on-site at a DOE-owned or leased facility:

WHISTLEBLOWER PROTECTION FOR SELLER EMPLOYEES

(a) The Seller shall comply with the requirements of the "DOE Contractor Employee Protection Program" at 10 CFR Part 708.

(b) The Seller shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts, at all tiers, with respect to work performed on-site at a DOE-owned or leased facility, as provided for at 10 CFR Part 708.

4. The clause entitled "Representation Concerning Nuclear Hazard Indemnification Agreement" is deleted from the terms and conditions form designated "L (4-91)."

5. The following clause is added to the terms and conditions of this subcontract:

PRINTING

(a) To the extent that duplicating or printing services may be required in the performance of this subcontract, the Seller shall provide or secure such services in accordance with the Government Printing and Binding Regulations, published by the Joint Committee on Printing, United States Congress.

(b) The term "Printing" is defined in the Government Printing and Binding Regulations and includes the following processes: composition, platemaking, presswork, binding, microfilm publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this subcontract involving the duplication of less than 5,000 copies of a single page, or not more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.

(c) In all subcontracts hereunder that require printing (as th

term is defined in the Government Printing and Binding Regulations), the Seller shall include a provision substantially the same as this clause.

6. Paragraphs (a) and (b) of the "Security" clause of terms and conditions forms designated "L (4-91)," "CTAE (4-91)," "CTR (4-91)," "CTSER (4-91)," "CTSUP (4-91)," "FPRD (4-91)," "FPSE (4-91)," and "TM (4-91)" are revised to read as follows:

(a) Responsibility. It is the Seller's duty to safeguard all classified information, special nuclear material, and other DOE property. The Seller shall, in accordance with DOE security and counterintelligence regulations and requirements, be responsible for safeguarding all classified, unclassified sensitive, and proprietary information and protecting against sabotage, espionage, loss and theft of the classified, unclassified sensitive, and proprietary matter in the Seller's possession in connection with the performance of work under this subcontract. Except as otherwise expressly provided in this subcontract, the Seller shall, upon completion or termination of this subcontract, transmit to the Company any classified, unclassified sensitive, and proprietary matter in the possession of the Seller or any person under the Seller's control in connection with performance of this subcontract. If retention by the Seller of any classified, unclassified sensitive, and proprietary matter in the Seller's possession is required after the completion or termination of the subcontract and such retention is approved by the Company, the Seller shall complete a certificate of possession to be furnished to the Company specifying the classified, unclassified sensitive, and proprietary matter in the Seller's possession to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter, and the period of retention, if known. If the retention is approved by the Company, the security provisions of the subcontract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the subcontract.

(b) Regulations. The Seller agrees to comply with all security and counterintelligence regulations and requirements of DOE in effect at the date of award of this subcontract.

7. The "Classification" clause of terms and conditions forms designated "L (4-91)," "CTAE (4-91)," "CTR (4-91)," "CTSER (4-91)," "CTSUP (4-91)," "FPRD (4-91)," "FPSE (4-91)," and "TM (4-91)" is revised to read as follows:

In the performance of work under this subcontract, the Seller shall ensure that all information and equipment originated or generated under the subcontract in a classified or potentially classified subject area are reviewed by a Federal Government Original Classifier or a Federal Government or Seller Derivative Classifier in accordance with classification regulations (e.g., internal DOE directives) and guidance furnished to the Seller by the Company. Every subcontract and purchase order issued hereunder by the Seller involving the origination or generation of classified information or equipment shall require that, in the performance of such subcontract or purchase order, the subcontractor or supplier shall ensure that all such information or equipment in a classified or potentially classified subject area is reviewed by a Federal Government Original Classifier or a Federal Government or Subcontractor Derivative Classifier in accordance with classification regulations (e.g., internal DOE directives) and guidance furnished to such subcontractor or supplier by the Seller.

8. The "Foreign Travel" clause of terms and conditions form designated "CTAE (4-91)," "CTE (4-91)," "CTR (4-91)," "CTSE (4-91)," and "CTSUP (4-91)" is revised to read as follows:

Foreign travel, when charged directly, shall be subject to the prior approval of the Department of Energy for each separate trip. Foreign travel is defined as any travel outside the United States and its territories and possessions, Canada, and Mexico. Requests for approval shall be submitted at least 45 days prior to the planned departure date, be on DOE "Request for Approval - Foreign Travel" forms (which are available from the Company) and, when applicable, include notifications of proposed Soviet bloc travel.

9. The "Buy American Act" clause of this subcontract is amended to adding the following:

(Applicable if subcontract exceeds \$2500.)

10. The clause entitled "Certified Cost or Pricing Data" is deleted from terms and conditions forms designated "L (4-91)," "CTAE (4-91)," "CTR (4-91)," "CTSER (4-91)," "CTSUP (4-91)," "FPRD (4-91)," "FPSE (4-91)," and "TM (4-91)" and the following clause is substituted in its place:

CERTIFIED COST OR PRICING DATA

(a) (1) The Seller shall require under the situation described in (2) below, unless exempted under the exceptions set forth in (3) below, each subcontractor under this subcontract to submit cost or pricing data and to certify that, to the best of his knowledge and belief, such cost or pricing data are accurate, complete, and current.

(2) Except as provided in (3) below, certified cost or pricing data shall be submitted prior to (i) the award of each subcontract, the price of which is expected to exceed \$500,000 and (ii) the negotiation of the price of each change or modification to a subcontract under this subcontract for which the price adjustment is expected to exceed \$500,000.

(3) Certified cost or pricing data need not be furnished pursuant to this paragraph (a) where (i) the Seller has not been required to furnish cost or pricing data, or (ii) the price or price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or the prices are set by law or regulation; and the Seller states in writing the basis for applying this exception.

(4) In submitting the cost or pricing data, the Seller or subcontractor shall use the form of certificate set forth in paragraph (b) below and shall certify that the data are accurate, complete, and current. Such certificate and data (actual or identified, as provided in the certificate prescribed below), shall be submitted by subcontractors to the next higher-tier subcontractor or the Seller, as applicable, for retention.

(b) The certificates required by this clause shall be in the form set forth below:

**SUBCONTRACTOR'S CERTIFICATE
OF CURRENT COST OR PRICING DATA**

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in Section 15.801 of the Federal Acquisition Regulation [FAR] and required under FAR Subsection 15.804-2) submitted, either actually or by specific identification in writing, in support of _____* are accurate, complete, and current as of _____.**. This certificate includes the cost or pricing data supporting any advanced

agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm _____

Signature _____

Name _____

Title _____

Date of Execution*** _____

* Identify the proposal, quotation, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

** Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

*** Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the subcontract price was agreed to.

(c) For purposes of verifying that certified cost or pricing data submitted in conjunction with the negotiation of this subcontract or any subcontract change or other modification involving an amount in excess of \$500,000 were accurate, complete, and current, the Company, DOE, or any of DOE's authorized representatives shall, until the expiration of 3 years from the date of final payment under this subcontract, have the right to examine those books, records, documents, papers, and other supporting data which involve transactions related to this subcontract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

(d) Whenever the price of any change or other modification to this subcontract is expected to exceed \$500,000, the Seller agrees to furnish the Company certified cost or pricing data, using the certificate set forth in paragraph (b) above, unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(e) The requirement for submission by the Seller's subcontractors of certified cost or pricing data with respect to any change or other modification does not apply to any subcontract change or other modification, at any tier, where this subcontract is firm fixed-price or fixed-price with escalation, unless such change or other modification results from a change or other modification to this subcontract, nor does it apply to a subcontract change or modification, at any tier, where this subcontract is not firm fixed-price or fixed-price with escalation, unless the price for such change or other modification becomes reimbursable under this subcontract.

(f) The Seller agrees to insert paragraph (c) without change and the substance of paragraphs (a), (b), (d), (e), and (f) of this clause in each subcontract hereunder in excess of \$500,000 and in each subcontract of \$500,000 or less at the time of making a change or other modification thereto in excess of \$500,000.

(g) If the Company determines that any price, including profit or fee, negotiated in connection with this subcontract or any cost reimbursable under this subcontract was increased by any significant sums because the Seller, or any subcontractor

pursuant to this clause or any subcontract clause herein require furnished incomplete or inaccurate cost or pricing data or data not current as certified in the Seller's certificate of current cost or pricing data, then such price or cost shall be reduced according and this subcontract shall be modified in writing to reflect such reduction.

NOTE: Since this subcontract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain of the Seller subcontracts, it is expected that the Seller may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Seller. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data to be submitted by his lower-tier subcontractors.

- 11. The following clause is added to terms and conditions form designated "B (4-91)," "S (4-91)," "L (4-91)," "CTSER (4-91)" "CTSUP (4-91)," "FPRD (14-91)," "FP SER (4-91)," and "TI (4-91)":

ASBESTOS

Unless this subcontract specifically provides otherwise, no item or materials containing asbestos shall be provided in the supplied articles, or equipment, including individual parts or components of an assembly, delivered under this subcontract.

- 12. The clause entitled "Protest After Award" is deleted from the terms and conditions of this subcontract.
- 13. Paragraph (c) of the clause entitled "Definitions" of the terms and conditions of this subcontract is revised to read as follows:

(c) The term "Company" means Lockheed Martin Energy Systems, Inc., acting under Contract No. DE-AC05-84OR21400 or DE-AC05-96OR22464 with DOE and includes any duly authorized representative thereof.

14. The "Affirmative Action for Special Disabled and Vietnam Era Veterans" clause of terms and conditions forms designated "L (4-91)," "CTAE (4-91)," "CTE (4-91)," "CTR (4-91)," "CTSER (4-91)," "CTSUP (4-91)," "FPRD (4-91)," "FPSE (4-91)," and "TM (4-91)" is revised to read as follows:

AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS

(a) Definitions. "Appropriate office of the State employment service system," as used in this clause, means the local office of the Federal-State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

"Employment openings," as used in this clause, includes full-time employment, temporary employment of over 3 days and part-time employment, but does not include (1) executive and top management positions,

(2) positions that will be filled from within the Seller's organization or under a customary and traditional employer-union hiring arrangement, or

(3) openings in an educational institution that are restricted to students of the institution.

"Openings that the Seller proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this clause, means employment openings that the Seller proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

"Positions that will be filled from within the Seller's organization," as used in this clause, means employment openings for which no consideration will be given to persons outside the Seller's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings that the Seller proposes to fill from regularly established "recall" lists.

(b) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Seller shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Seller agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as (i) Employment; (ii) Upgrading; (iii) Demotion or transfer; (iv) Recruitment; (v) Advertising; (vi) Layoff or termination; (vii) Rates of pay or other forms of compensation; and (viii) Selection for training, including apprenticeship.

(2) The Seller agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing Openings. (1) The Seller agrees to list all employment openings existing at subcontract award or occurring during subcontract performance, at the appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Seller facility, including one not connected with performing this subcontract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their openings with

the appropriate office of the State employment service.

(3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Seller from any requirement of Executive orders or regulatory concerning nondiscrimination in employment.

(4) Whenever the Seller becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Seller is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent subcontracts. The Seller may advise the State system when it is no longer bound by this clause.

(5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the Government's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (i) the requirement of listing would not be in the Government interest.

(d) Applicability. (1) This clause does not apply to the listing of employment openings which occur and are filled outside the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(2) The terms of paragraph (c) above of this clause do not apply to openings that the Seller proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to particular opening once an employer decides to consider applicants outside of its organization or employer-union arrangement for that opening.

(e) Postings. (1) The Seller agrees to post employment notices stating (i) the Seller's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The notices shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director) and provided by or through the Company.

(3) The Seller shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that the Seller is bound by the terms of the Act, and is committed to take affirmative action to employ and advance in employment, qualified special disabled and Vietnam Era veterans.

(f) Noncompliance. If the Seller does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts. The Seller shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations or orders of the Secretary. The Seller shall act as specified by the Director to enforce the terms, including action for noncompliance.

15. The clause entitled "Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment" is deleted from terms and conditions forms designated "L (4-91)," "CTAE (4-91)," "CTE (4-91)," "CTR (4-91)," "CTSER (4-91)," "CTSUP (4-91)," "FPRD (4-91)," "FPSE (4-91)," and "TM (4-91)"

and the following clause is substituted in its place:

**PROTECTING THE GOVERNMENT'S INTEREST
WHEN SUBCONTRACTING WITH CONTRACTORS
DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT**

(Applicable if subcontract exceeds \$25,000.) The Government suspends or debar Contractors to protect the Government's interests. The Seller shall not enter into any subcontract equal to or in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. If the Seller intends to subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs), a corporate officer or designee of the Seller shall notify the Company, in writing, before entering into such subcontract. The notice must include the following:

- (a) The name of the subcontractor;
- (b) The Seller's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs;
- (c) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs; and
- (d) The systems and procedures the Seller has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

16. The following clause is added to the terms and conditions of this subcontract:

ELECTRONIC FUNDS TRANSFER PAYMENT METHOD

- (a) Payments under this subcontract will be made by the Company either by check or electronic funds transfer through the Automated Clearing House (ACH) at the option of the Company.
- (b) If the Seller is a new enrollee in the electronic funds transfer payment program, a "Vendor Payment Profile" form, an "Electronic Trade Payments Agreement," and a "Contact Names List" must be completed before payment by electronic funds transfer can be processed.
- (c) In the event the Seller elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the Company at least seven days prior to the date such change is requested to become effective.
- (d) Failure of the Seller to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.