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**1. DEFINITIONS**

A. The term "Aerojet" as used herein means Aerojet General Corporation, a subsidiary of GenCorp, an Ohio corporation.

B. The term "Architect-Engineer" as used herein means the party with which Aerojet enters into the contract in which these Terms and conditions are incorporated.

C. The term "contract" as used herein means the contractual instrument in which these Terms and Conditions are incorporated.

D. The term "subcontractor" as used herein means any party furnishing materials or services to the Architect-Engineer pursuant to the requirements of the contract.

E. The term "work", "supplies", and "services" as used herein shall mean all materials, equipment, tools, facilities, transportation, and labor (including supervision) furnished pursuant to the requirements of the contracts.

F. The term "Aerojet Procurement Representatives" as used herein means the person or persons identified in the contract who are authorized by Aerojet to administer, alter, modify or change the provisions of the contract.

G. The term "site" as used herein means the geographical location set forth on the face of the contract.

**2. COMPOSITION OF THE ARCHITECT-ENGINEER**

If the Architect-Engineer hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

**3. INDEPENDENT CONTRACTOR**

It is understood and agreed that the Architect-Engineer shall be deemed to be an independent contractor in all its operations and activities hereunder; and that the employees furnished by the Architect-Engineer to perform work hereunder shall be deemed to be the Architect-Engineer's employees exclusively without any relation whatever to Aerojet as employees or as independent contractors; that said employees shall be paid by the Architect-Engineer for all services in this connection; that the Architect-Engineer shall carry Workers' Compensation insurance and that the Architect-Engineer shall be responsible for all obligations and reports covering Social Security, Unemployment Insurance, Workers' Compensation, Income Tax, and other reports and deductions required by Local, State and Federal law.

**4. RESPONSIBILITY OF THE ARCHITECT-ENGINEER**

A. The Architect-Engineer shall be totally responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, and other services furnished by the Architect-Engineer under this contract. The Architect-Engineer shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services which Aerojet determines to be necessary. If the Architect-Engineer disputes the necessity of such services, he will nonetheless proceed as instructed by Aerojet so as not to impede the progress of the work, as provided in Paragraph 7 .A.

B. Neither Aerojet's review, approval or acceptance of, nor payment for, any of the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Architect-Engineer shall be and remain liable to Aerojet for all damages to Aerojet resulting from the Architect-Engineer's performance of any of the services furnished under this contract.

C. The rights and remedies of Aerojet provided for under this contract are in addition to any other rights and remedies provided by law.

**5. SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS**

Any subcontractors and outside associates or consultants required by the Architect-Engineer in connection with the services covered by this contract will be limited to such individuals or firms as were specifically identified and agreed to in writing at the date of the contract. No substitution in such subcontractors, associates or consultants will be made without the prior written approval of Aerojet.

**6. REQUIREMENTS FOR REGISTRATION OF DESIGNERS**

The design of architectural, structural, mechanical, electrical, civil or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in the State in which such services are performed hereunder.

**7. CHANGES**

A. Aerojet may, at any time, by written order, make changes within the general Scope of this contract in the time of performance or the services to be performed. If any such change causes an increase or decrease in the Architect-Engineer's cost of, or time required for, performance of any services under this contract, whether or not changed by any such order, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. In no event shall the compensation for such additional services exceed the sums provided for in the contract as modified. Any claim of the Architect-

Engineer for adjustment under this clause must be asserted in writing, in a form acceptable to Aerojet, within thirty (30) days from the date of such change, unless Aerojet grants, in writing, a further period of time prior to the date of final payment under the contract. No claim for equitable adjustment shall be allowed if asserted after final payment under this contract. In the event of a dispute over any equitable adjustment, the Architect-Engineer agrees to continue diligent performance of this contract pending resolution of any such dispute. All claims for equitable adjustment must be submitted in accordance with the provisions of Paragraph 13.

B. The Architect-Engineer agrees that its failure to submit such claim or claims within the applicable time period shall constitute a waiver thereof unless the Architect-Engineer requests in writing prior to the expiration of the applicable time period that a time extension for filing its claim or claims be granted by Aerojet. Any such extensions, if approved, shall be effective only if authorized in writing by the Aerojet Procurement Representative. Prior to final settlement of any timely filed claim or claims, the Architect-Engineer may submit revisions to such claim or claims for evaluation by Aerojet provided that such revisions do not introduce different areas of cost or claim elements.

C. Aerojet may request the Architect-Engineer to submit cost estimates for contemplated changes which may or may not result in a change to this contract. The Architect-Engineer agrees to submit cost proposals for such contemplated changes within ten (10) days of receipt of Aerojet's request or such further period as may be stated in such request. Such cost estimates shall be prepared at no charge to Aerojet.

D. Any clarification or assistance as may be provided by Aerojet personnel concerning the work to be performed pursuant to this contract shall not be construed as a change to this contract and no change order, express or implied, will be binding unless it is issued in writing by the Aerojet Procurement Representative. No services for which an additional cost or fee will be charged by the Architect-Engineer shall be furnished without the prior written authorization of the designated Aerojet Procurement Representative.

E. Nothing contained in this paragraph shall relieve the Architect-Engineer from proceeding without delay in the performance of this contract as changed.

#### 8. NOTICE AND APPROVAL OF RESTRICTED DESIGNS

In the performance of this contract, the Architect-Engineer shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by Aerojet, the Architect-Engineer shall not, in the performance of the work called for by this contract, produce a design or specification such as to require in this construction work the use of structures, products, materials, construction equipment, or processes which are known by the Architect-Engineer to be available only from a sole source. As to any such design or specification the Architect-

Engineer shall report to Aerojet giving the reason or reasons why it is considered necessary to so restrict the design or specification.

9. DRAWINGS AND OTHER DATA TO BECOME THE PROPERTY OF AEROJET

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of Aerojet and may be used on any other design or construction without additional compensation to the Architect-Engineer. Aerojet shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Architect-Engineer agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Architect-Engineer for a period of three years after completion of the project agrees to furnish all retained works on the request of Aerojet. Unless otherwise provided in this contract, the Architect-Engineer shall have the right to retain copies of all works beyond such period.

10. RETENTION OF RIGHTS AND INTEREST

Aerojet hereby retains all of its rights, title and interest in and to all information, data, designs and inventions furnished by Aerojet to the Architect-Engineer for the purpose of assisting the Architect-Engineer (1) in the performance of the contract or (2) in the submission of a bid by the Architect-Engineer for such performance, whether furnished prior to, or after acceptance of, this contract. None of such information, data, designs and inventions shall be reproduced or used by the Architect-Engineer, except in the performance of this contract, or disclosed by the Architect-Engineer to others without the consent of Aerojet. Upon completion of performance hereunder, all such information, data, designs and inventions shall be promptly returned by the Architect-Engineer to Aerojet.

11. REPRODUCTION RIGHTS

Aerojet does not grant to the Architect-Engineer (i) any reproduction rights to any materials, designs, drawings, data or other information produced in the performance of this contract or (ii) any rights to use, in the manufacture or design of articles or materials for anyone other than Aerojet, any of the designs, drawings or other information belonging to or supplied by Aerojet.

12. ASSIGNMENT

A. Neither this contract nor any interest nor any sums becoming due to the Architect-Engineer hereunder shall be assigned by the Architect-Engineer without the prior written consent of Aerojet, except that claims for monies due or to become due the Architect-Engineer from Aerojet under this contract may be assigned to a bank, trust company or other financial institution, including any federal lending agency. Any such

assignment of monies due or to come due shall cover all amounts payable under this contract and not already paid, and shall not be made to one party as agent or trustee for two (2) or more parties participating in such financing. Payment by Aerojet to an assignee of any claim under this contract shall be subject to set-off or recoupment for any present or future claim or claims arising in connection with this contract which Aerojet may have against the Architect-Engineer. Aerojet reserves the right to make direct settlements and/or adjustments in price with the Architect-Engineer under the terms of this contract notwithstanding any assignment of claims for monies due or to become due hereunder and without notice to assignee(s). Architect-Engineer agrees that design services depend upon the personal expertise and track record of the principal design professionals, and therefore acknowledges that Aerojet may reasonably refuse to consent to any assignment which would remove control of the work from the design professionals originally identified as principals on the contract.

B. In the event of any such assignment of monies, the assignee shall forward to Aerojet two (2) copies of a written notice of assignment and two (2) copies of the instrument of assignment, all copies signed by the assignor and assignee.

C. Any claim under this contract which has been assigned pursuant to the foregoing provisions of this clause may be further assigned and reassigned only with the prior written consent of Aerojet 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 the Architect-Engineer, and shall file two (2) signed copies of such written notice, together with two (2) copies of such instrument with Aerojet.

D. No assignee shall divulge any information concerning this contract without the prior written consent of Aerojet. The assignment must include provisions by which the assignee agrees to the conditions set forth in this paragraph.

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 the Architect-Engineer.

### 13. ALLOWABLE COST, FEE, AND PAYMENT

A. For all work performed under this Order, Aerojet shall pay the Architect Engineer (i) the Architect-Engineer's allowable costs incurred in performing such work, to the extent such costs are accepted by Aerojet and, if this Order is issued under a prime contract or subcontract of the United States Government, by an authorized official of that Government; and (ii) the fee, if any, provided for in this Order.

B. The costs of the Architect-Engineer shall, for all purposes of this Order, be determined pursuant to the terms of this Order and Part 31 of the Federal Acquisition Regulation ("FAR," Title 48 Code of Federal Regulations) as in effect on the date this Order was issued by Aerojet. The costs determined in accordance with the preceding sentence are referred to below as "allowable costs."

C. (1) Except as provided in subparagraph C(2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions, the term "costs" that may be reimbursed to the Architect-Engineer includes only:

- (a) Those recorded costs that, at the time of the request for reimbursement, the Architect-Engineer has paid by cash, check, or other form of actual payment for items or services purchased directly for this Order.
  - (b) When the Architect-Engineer is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for -
    - (i) Materials issued from the Architect-Engineer's inventory and placed in the production process for use on this Order;
    - (ii) Direct labor;
    - (iii) Direct travel;
    - (iv) Other direct in-house costs; and
    - (v) Properly allocable and allowable indirect costs, as shown in the records maintained by the Architect-Engineer in accordance with this Order.
  - (c) The amount of progress payments that the Architect-Engineer has paid its subcontractors under standards conforming to this Order.
- (2) The Architect-Engineer's contributions to any pension, profit-sharing or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; provided that the Architect-Engineer pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Architect-Engineer actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be

excluded from indirect costs for payment purposes until the Architect-Engineer actually makes the payment.

- (3) Final annual indirect cost rates and the appropriate bases shall be determined in accordance with Subpart 42.7 of the Federal Acquisition Regulation in effect at the start of the period covered by the indirect cost rate proposal of the Architect-Engineer. The final annual indirect cost rate approved for the Architect-Engineer by the cognizant official of the United States Government for billings to that Government shall be used for this Order, except as follows. Until final annual indirect cost rates are established for any period, Aerojet shall reimburse the Architect-Engineer at billing rates determined by Aerojet; to assist Aerojet in setting such rates, the Architect-Engineer shall furnish Aerojet with full details about provisional and final billing rates that the cognizant official of the United States Government has authorized be paid by the Government to the Architect-Engineer. The billing rates shall be no higher than the anticipated final rates payable under this Order, and may be prospectively or retroactively revised by mutual agreement, at either party's request. Or unilaterally by Aerojet, to prevent substantial underpayment or overpayment.

D. Once each month (or more frequently, if approved in writing by Aerojet), the Architect-Engineer may submit to Aerojet an invoice covering (i) costs incurred by the Architect-Engineer in the performance of this Order and claimed to constitute allowable cost and (ii) any fee the Architect-Engineer is authorized by this order to include in such invoice. Each invoice shall contain such information and be supported by such details and documents as Aerojet may reasonably prescribe and shall be subject to the requirements of the Clause below entitled the Architect-Engineer's Invoices and Claims.

E. Within a reasonable time Aerojet shall pay the Architect-Engineer on each invoice the allowable costs determined in accordance with this Order. Payment of the fee, if any, shall be made to the Architect-Engineer in the manner stated on the face of this Order; if there is no such statement, the Architect-Engineer may include in each invoice a percentage of the total fee payable under this Order equaling the percentage of work the Architect-Engineer has completed bears to the total work contemplated by this Order, adjusted to reflect prior fee payment. Notwithstanding the preceding sentence, after payment of eighty-five percent (85% of the fee set forth in this Order, Aerojet may withhold further payment of fee until a reserve shall have been created in an amount that Aerojet considers necessary to protect Aerojet's interests, but such reserve may not exceed fifteen percent (15%) of the total fee (or, if the fee is not fixed, of Aerojet's reasonable estimate thereof), or \$100,000, whichever is less. If this Order does not provide for the payment of fee, Aerojet may, after payment of eighty percent (80%) of the Estimated Cost of this Order, withhold payments to the Architect-Engineer until Aerojet has created a reserve of the lesser of two percent (2%) of such Estimated Cost or \$100,000.

F. The Architect-Engineer shall maintain an accounting system adequate to provide full and detailed books and records sufficient to support all amounts claimed as allowable costs under this Order and to prove compliance with all cost accounting requirements of this Order. The Architect-Engineer shall maintain those records for the longer of (a) five years after final payment by Aerojet under this Order or (b) the retention period established by any applicable statute or regulation. At any time, including after final payment, Aerojet (or an authorized representative of the United States Government if this Order is issued under a prime contract or subcontract of that Government) may audit any invoice submitted by the Architect-Engineer, and may review all books and records that this Clause requires or that bear on the costs covered by such invoice.

G. Aerojet may withhold from any payment to the Architect-Engineer any amounts that are determined by Aerojet (or by the United States Government, if this Order is issued under any prime contract of that Government) to be for costs or fee not allowable under this Order. Upon request by Aerojet, the Architect-Engineer shall repay to Aerojet any amounts so determined not to be allowable. However, to the extent to which the amount so disallowed is the result of work authorized by Aerojet, but not by the Government, the Architect-Engineer shall not be required to repay to Aerojet the costs that are otherwise reimbursable under this Order, but were disallowed by the Government.

H. After receiving and approving the invoice designated by the Architect-Engineer as the "completion invoice" and after full performance of this Contract (including, without limitation, the provisions related to patents), Aerojet shall pay the Architect-Engineer any balance of allowable cost, and any part of the fee not earlier paid. The Architect-Engineer shall submit such "completion invoice" promptly following completion of the work under this Order and in any event not later than six months after such completion. Prior to or with submission of such "completion invoice," the Architect-Engineer shall furnish Aerojet in writing:

- (1) An assignment to Aerojet or Aerojet's customer, in form and substance satisfactory to Aerojet, of refunds, rebates, credits, or other amounts (including interest, if any) that are allocable to costs for which the Architect-Engineer has been reimbursed by Aerojet under this Order.
- (2) A release discharging Aerojet, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this Order, subject only to the following exceptions:
  - (a) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Architect-Engineer.

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- (b) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Architect-Engineer to third parties arising out of the performance of this Order, which claims are not known to the Architect-Engineer by the date of the execution of the release. The Architect-Engineer must give notice of such claims in writing to Aerojet not more than four years after the release date or notice of final payment date, whichever is earlier.
- (c) Claims for reimbursement of costs (other than expenses of the Architect-Engineer by reason of any indemnification of Aerojet or Aerojet's customer against liability for patent, trademark, or copyright infringement), including reasonable expenses incidental thereto, incurred by the Architect-Engineer under the provisions of this Order.

I. The Architect-Engineer shall promptly pay to Aerojet the amount of any refunds, rebates, credits or other amounts (including any interest received by Aerojet thereon), accruing to or received by the Architect-Engineer to the extent they are properly allocable to costs for which the Architect-Engineer has been reimbursed by Aerojet under this Order. Reasonable expenses incurred by the Architect-Engineer for the purpose of securing such refunds, rebates, credits, or other amounts shall be deemed to be allowable costs under this Order when approved by the Aerojet.

J. Any statement in specifications or other document, other than these Standard Terms and Conditions and the Schedule of this Order, about the performance or furnishing of materials at the Architect-Engineer's expense or at no cost to Aerojet shall not be read as meaning that the Architect-Engineer is not entitled to reimbursement under this Clause, unless this Order, in a provision expressly referring to this Clause, states that the Architect-Engineer will not be reimbursed.

#### 14. LIMITATIONS OF COST OR FUNDS

- A. If this Order is fully funded, paragraphs A(1) through A(7) apply:
  - (1) The parties estimate that performance of this Order, exclusive of any fee, will not cost Aerojet more than the Estimated Cost set out in this Order. The Architect-Engineer shall use its best efforts to perform all of its obligations under this Order within the Estimated Cost.
  - (2) The Architect-Engineer shall promptly notify Aerojet in writing if at any time the Architect-Engineer has reason to believe (a) that the costs of performing this Order may exceed 75% of the Estimated cost within the next sixty days, or (b) that the total cost, exclusive of any fee, for performing this Order will be either greater or

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- substantially less than the Estimated Cost. As part of such notification, the Architect-Engineer shall provide a revised estimate of the total costs of performing this Order.
- (3) Except as required by some other provision of this Order, specifically citing and stated to be an exception to this Clause, (i) Aerojet shall not be obligated to reimburse the Architect-Engineer for costs exceeding the Estimated cost of this Order, and (ii) the Architect-Engineer shall have no obligation to continue performance or incur costs under this Order (including actions under the Clause entitled "Termination") in excess of the Estimated cost unless Aerojet notifies the Architect-Engineer in writing that the Estimated Cost has been increased and provides a revised Estimated Cost.
  - (4) No notice, communication or representation in any form other than that specified in paragraph A(3) above, or signed by anyone other than the representative of Aerojet's procurement department responsible for administration of this Order, shall alter this Order's Estimated Cost. Absent such notice, Aerojet is not obligated to reimburse the Architect-Engineer for any costs in excess of the Estimated Cost.
  - (5) If the Estimated cost is increased, any costs the Architect-Engineer incurs before the increase that exceed the previously Estimated cost shall be allowable to the same extent as if incurred afterward, unless Aerojet issues a notice directing that the increase is solely to cover termination or other specified expenses.
  - (6) A change Order (or any other action treated as a Change Order) shall not be considered an authorization to exceed the Estimated cost except to the extent that is explicitly states that the Estimated Cost is increased.
  - (7) Nothing in this Clause shall affect the right of Aerojet to terminate this Order. If this Order is Terminated or the Estimated cost is not increased, the Architect-Engineer and Aerojet shall negotiate an equitable distribution of all property produced or purchased under the Order, based upon the share of costs incurred by each. Absent agreement, Aerojet may unilaterally determine such an equitable distribution. The Architect-Engineer shall have, as to such a determination; the rights set out in the Clause entitled Disputes.

- B. If this Order is incrementally funded, paragraphs B(1) through B(12) apply:
- (1) The parties estimate that performance of this Order will not cost Aerojet more than the Estimated Cost set out in this Order. The Architect-Engineer shall use its best efforts to perform all of its obligations under this order within the Estimated Cost.
  - (2) This Order specifies the amount presently available for payment by Aerojet and funded for this Order, the items covered, and the period of performance. The parties contemplate that Aerojet will fund additional sums incrementally for this Order up to the Estimated Cost set out in this Order, exclusive of any fee. The Architect-Engineer agrees to perform work on this Order up to the point at which the total amount paid and payable by Aerojet under this Order approximates but does not exceed the total amount actually funded by Aerojet for this Order.
  - (3) The Architect-Engineer shall notify Aerojet in writing whenever the Architect-Engineer has reason to believe that the costs that the Architect-Engineer expects to incur under this Order in the next 90 days, when added to all costs previously incurred, will exceed 75% of the total amount funded for this Order by Aerojet. The notice shall state the estimated amount of additional funds required to continue performance for the period specified on the face of this Order.
  - (4) At least 90 days before the end of the period specified on the face of this Order, the Architect-Engineer shall notify Aerojet in writing of the estimated amount of additional funds, if any, required to continue timely performance, or for any further period specified in this Order or otherwise agreed upon, and when the funds will be required.
  - (5) If, after notification by the Architect-Engineer, Aerojet does not fund additional sums by the end of the period specified on the face of this Order, or another agreed-upon date, Aerojet will, upon the Architect's written request, terminate this Order as of that date in accordance with the provisions of the Clause entitled Termination.
  - (6) Except as required by some other provision of this Order, specifically citing and stated to be an exception to this Clause, (i) Aerojet shall not be obligated to reimburse the Architect-Engineer for costs exceeding the total amount funded by Aerojet for this Order; and (ii) the Architect-Engineer shall have no obligation to continue performance or to incur costs under this Order (including actions under the Clause entitled "Termination") in excess of the amount funded for this Order by Aerojet unless Aerojet notifies the Architect-

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Engineer in writing that the amount funded by Aerojet has been increased and specifies an increased amount, which shall then constitute the total amount funded by Aerojet for this Order.

- (7) If Aerojet funds an amount exceeding the Estimated Cost, the latter shall be increased to the total of the amount funded by Aerojet.
- (8) No notice, communication or representation in any form other than that specified in paragraph B(6) above, or signed by anyone other than the representative of Aerojet's purchasing organization responsible for administration of this Order, shall alter the amount funded to this Order or this Order's Estimated Cost. Absent such notice, Aerojet is not obligated to reimburse the Architect-Engineer for any costs in excess of the amount funded to this Order or the Estimated Cost, whether such costs are incurred for performance of this Order or as a result of termination.
- (9) When and to the extent that the amount allotted by Aerojet to this Order is increased, any costs the Architect-Engineer incurs before the increase that exceed the amount previously funded by Aerojet, shall be allowable to the same extent as if incurred afterward, unless Aerojet issues a notice directing that the increase is solely to cover termination or other specified expenses.
- (10) A Change Order (or any other action treated as a Change Order) shall not be considered an authorization to exceed the amount funded or the Estimated Cost except to the extent that it explicitly states that either or both such figures are increased.
- (11) Nothing in this Clause shall affect the right of Aerojet to terminate this Order. If this order is terminated or the Estimated Cost is not increased, the Architect-Engineer and Aerojet shall negotiate an equitable distribution of all property produced or purchased under the Order, based upon the share of costs incurred by each. Absent agreement, Aerojet may unilaterally determine such an equitable distribution. The Architect-Engineer shall have, as to such a determination, the rights set out in the Clause entitled Disputes.
- (12) If Aerojet does not fund this Order in an amount sufficient to allow completion of the work, the Architect-Engineer is entitled to a percentage of the fee specified in this Order equaling the percentage that the work the Architect-Engineer has completed bears to the total work contemplated by this Order.

**15. AEROJET'S SECURITY INTEREST**

Subject to any paramount interest that Aerojet's customer may have, the Architect-Engineer grants to Aerojet a security interest in all material, tooling, equipment, supplies, parts, fittings, accessories, renewals, and replacements the cost of which is in whole or part included on invoices submitted to Aerojet under this Order. The Architect-Engineer may not permit any other security interest inconsistent with the foregoing. Aerojet may file such documents as Aerojet deems necessary to protect its security interest. The Architect-Engineer hereby grants Aerojet an irrevocable power of attorney to execute any such documents on behalf of the Architect-Engineer.

**16. OVERTIME PREMIUMS**

A. Allowable cost under the Clause entitled Allowable Cost, Fee, and Payment, shall not include any amount for overtime premiums except as specified on the face of this Order or for work -

- (1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or unavoidable production bottlenecks of a sporadic nature;
- (2) By indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities or accounting;
- (3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise, or
- (4) That will result in lower overall cost to Aerojet.

B. Before performing any work involving overtime premiums, except as specified in paragraph A, the Architect-Engineer shall request Aerojet's written permission. The Architect-Engineer's request shall be in writing and shall -

- (1) Identify the work unit, e.g., department or section, in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit Aerojet to evaluate the necessity for the overtime.
- (2) Demonstrate the effect that denial of the request will have on the delivery or performance schedule of this Order;

- (3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other orders of Aerojet or Aerojet's customer, together with identification of each affected order; and
- (4) Provide reasons why the required work cannot be performed by multishift operations or by additional personnel.

## 17. TERMINATION

A. Aerojet may, by written notice to the Architect-Engineer, terminate this contract in whole or in part at any time, either for Aerojet's convenience or because of the failure of the Architect-Engineer to fulfill its contract obligations. Upon receipt of such notice, the Architect-Engineer shall (i) immediately discontinue all services affected (unless the notice directs otherwise), and (ii) deliver to Aerojet all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Architect-Engineer in performing this contract, whether completed or in process.

B. If the termination is for the convenience of Aerojet, the Architect-Engineer shall be compensated for allowable cost of all services performed to the termination date, together with properly reimbursable expenses then due plus expenses directly attributable to termination for which the Architect-Engineer is not otherwise compensated. No amount shall be allowed for anticipated profit on unperformed services.

C. If the termination is due to the failure of the Architect-Engineer to fulfill its contract obligations, Aerojet may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Architect-Engineer shall be liable to Aerojet for any additional cost occasioned to Aerojet thereby.

D. If, after notice of termination for failure to fulfill contract obligations, it is determined that the Architect-Engineer has not so failed, the termination shall be deemed to have been effected for the convenience of Aerojet. In such event, payment shall be made as provided in subparagraph B. Of this paragraph 14.

E. The rights and remedies of Aerojet provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

## 18. SUSPENSION OF WORK

A. Aerojet may order the Architect-Engineer in writing to suspend all or any part of the work for such period of time as it may determine to be appropriate for the convenience of Aerojet.

B. If the performance of all or any part of the work is, for an unreasonable period of time, suspended or delayed by an act of Aerojet in the administration of this contract, or by its failure to act within a reasonable time), an adjustment shall be made for any increase in cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension or delay, and the contract modified in writing accordingly. However, no adjustment shall be made under this paragraph for any suspension or delay to the extent (i) the performance would have been suspended or delayed by any other cause, including the fault or negligence of the Architect-Engineer or (ii) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

C. No claim under this paragraph shall be allowed (i) for any costs incurred more than twenty (20) days before the Architect-Engineer shall have notified Aerojet in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (ii) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension or delay, but not later than the date of final payment. No part of any claim based on the provisions of this paragraph shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a delay within the provisions of this paragraph.

## 19. INDEMNIFICATION

A. The Architect-Engineer shall indemnify and save harmless Aerojet and its agents, representatives, shareholders, partners, and employees, and each of them, against and from:

- (1) Any and all claims, demands, causes of action, damages, costs, expenses, losses and liabilities, in law or in equity, of every kind or nature whatsoever, including, but not limited to, injury to or death of any person or persons and damage to or destruction of any property brought or instituted, as a result of the Architect-Engineer's negligence in connection with the Architect-Engineer's obligations hereunder, regardless of when such negligence may have been discovered or determined.
- (2) Any and all penalties threatened, sought or imposed on account of the violation of any law or regulation, compliance with which is assigned by law or by this Agreement to the Architect-Engineer.

B. The Architect-Engineer shall, except to the extent Aerojet shall be covered and compensated by insurance carried by the Architect-Engineer:

- (1) At the Architect-Engineer's own cost, expense and risk, defend all suits, actions or other legal or administrative proceedings, that may

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- be brought or instituted against Aerojet, or Aerojet's agents, shareholders, representatives, partners or employees, or any of them, on account of any matter arising under or within Subsections (1) or (2) above.
- (2) Pay and/or satisfy any judgment or decree that may be rendered against Aerojet or Aerojet's agents, representatives, partners or employees, or any of them, in any such action or other legal or administrative proceeding, as a result of the Architect-Engineer's negligence in connection with the Architect-Engineer's obligations hereunder, regardless of when such negligence may have been discovered or determined for the cost of, or for any payment made by any of them with respect to, any repairs, alterations, corrections or other modifications to any of the work undertaken as a result of any demands, causes of action, lawsuits, other proceedings, or any other claims threatened, made or brought by Aerojet or any other person arising out of Architect-Engineer's obligations under this Agreement and resulting from the Architect-Engineer's negligence in performing those obligations, regardless of when such negligence may have been discovered or determined; and
- (3) Reimburse Aerojet and Aerojet's shareholders, partners, agents, employees, representatives, and any of them for any and all expenses, including but not limited to all legal expenses arising under or within the above acts or in connection with enforcing the indemnity granted in this paragraph 16.

## 20. ARCHITECT-ENGINEER'S LIABILITY INSURANCE

A. The Architect-Engineer shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the site is located such insurance as will protect the Architect-Engineer from claims set forth below which may arise out of or result from the Architect-Engineer's operations under the contract and for which the Architect-Engineer may be legally liable, whether such operations be by the Architect-Engineer or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (1) claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the work to be performed;
- (2) claims for damages because of bodily injury, occupational sickness or disease, or death of the Architect-Engineer's employees;

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- (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than the Architect-Engineer's employees;
- (4) claims for damages insured by usual personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of such person by the Architect-Engineer, or (b) by another person;
- (5) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- (6) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of motor vehicle; and
- (7) claims involving contractual liability insurance applicable to the Architect-Engineer's obligations under this contract.

B. The insurance required by Subparagraph A. Shall be written for not less than limits of liability specified in the Contract Documents or required or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. The insurance shall meet the requirements of all applicable labor codes, acts, laws or statutes, Federal and State, in which the Architect-Engineer operates.

C. Certificates of Insurance acceptable to Aerojet shall be filed with Aerojet prior to commencement of the work. These Certificates and the insurance policies required by this paragraph 17.C shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to Aerojet. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

D. The Architect-Engineer shall similarly maintain a policy of professional liability insurance with limits no less than \$5,000,000, including coverage for contractual liability unless a lesser amount is specifically set forth on the face of this contract.

E. Insurance required hereunder shall include, by endorsement to the policy (ies) Aerojet as an additional insured insofar as work performed by the Architect-Engineer for Aerojet is concerned, contain a severability of interest clause, provide that Aerojet shall not by reason of its inclusion as an additional insured incur liability to the insurance carrier for payment of premium for such insurance, and provide a thirty (30) day written notice to Aerojet prior to cancellation, termination, alteration or material change of such insurance.

F. Evidence of coverage required hereunder shall state that coverage provided is primary and is not excess or contributing with any insurance or self-insurance maintained by Aerojet.

G. Upon request, the Architect-Engineer shall provide to Aerojet a copy of the original policy (ies) of insurance.

H. The Architect-Engineer shall furnish the required certificates and endorsements to Aerojet prior to commencing performance hereof.

I. All insurance certificates, endorsements, cancellations, terminations, alterations and material changes of such insurance shall be issued and submitted to the designated Aerojet Procurement Representative.

J. Aerojet shall have the right to require the Architect-Engineer to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

Upon request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

## 21. DISPUTES

A. Any dispute between Aerojet and the Architect-Engineer arising under, for alleged breach of, or in any other way related to, this Order shall, if not resolved by mutual agreement, be subject to resolution only as provided below.

B. Aerojet may pursue Aerojet's rights against the Architect-Engineer in any tribunal with jurisdiction.

C. The Architect-Engineer may pursue its rights against Aerojet only in a court of competent jurisdiction in the State of California and any such court action shall be subject to the following limitations. If Aerojet deems that any dispute arising under, for breach of, or in any other way related to, this Order may affect, or be connected with, any dispute between Aerojet and Aerojet's customer (including within that term, solely for

purposes of this Clause, anyone with whom Aerojet has a dispute related in any way to this Order or the products or services procured under it), Aerojet may by written notice to the Architect-Engineer at any time before a final judgement invoke this paragraph C, and thereupon the Architect-Engineer's sole remedy shall be as stated in (1) through (4) below:

- (1) The Architect-Engineer shall fully cooperate at its own expense with Aerojet in any proceeding involving Aerojet's customer. When Aerojet so requests and authorizes the Architect-Engineer to proceed in Aerojet's name, the Architect-Engineer shall conduct the litigation at the Architect-Engineer's expense. In any other instance, with Aerojet's permission (which shall not be unreasonably denied but may be conditioned upon such terms as Aerojet deems appropriate), the Architect-Engineer may have its interest represented in any such proceeding, to the extent that the forum's procedures allow. The Architect-Engineer shall, however, hold Aerojet harmless against any adverse effects on Aerojet's interest that may be caused by having the Architect-Engineer's interests represented in such a proceeding. Subject to the foregoing, Aerojet shall cooperate with the Architect-Engineer in any such proceeding. Pending the conclusion of such proceeding, the Architect-Engineer may not pursue against Aerojet or Aerojet's customer any litigation that Aerojet states, in a written notice to the Architect-Engineer, involves one or more issues of law or fact in common with any dispute between Aerojet and Aerojet's customer. In consideration of Aerojet's promises under this Order, the Architect-Engineer hereby grants to Aerojet an irrevocable power of attorney to file papers on behalf of the Architect-Engineer for a stay or dismissal of any litigation designated by Aerojet in a notice under this paragraph (1). The Architect-Engineer and Aerojet shall treat as conclusive between them all portions of any decision in any such proceeding that Aerojet designates in a written determination communicated to the Architect-Engineer.
- (2) Upon final disposition of any dispute between Aerojet and Aerojet's customer covered by a notice issued by Aerojet under paragraph C of this Clause, the Architect-Engineer may proceed to seek resolution consistent with this Clause, of any issue as to which the disposition between Aerojet and Aerojet's customer is not conclusive upon the Architect-Engineer under the Clause.
- (3) Without the Architect-Engineer's consent, Aerojet shall not settle with Aerojet's customer in any manner that would be substantially adverse to the Architect-Engineer. The Architect-Engineer shall cooperate fully in assisting Aerojet to reach a settlement and shall not unreasonably withhold or condition consent to any proposed

settlement. The Architect-Engineer's sole remedy in the event Aerojet settles in violation of this paragraph (3) shall be to have its original dispute with Aerojet determinable in a court of competent jurisdiction in the State of California.

- (4) To the extent to which the Architect-Engineer may have the right to litigate against Aerojet under paragraphs C(2) or (3) above, Aerojet will, to the extent appropriate, cooperate in seeking the lifting of any stay of litigation obtained under paragraph C(1) above; and the Architect-Engineer may refile against Aerojet any court action that had been earlier dismissed in implementation of Aerojet's rights under paragraph C(1) above. Provided that the Architect-Engineer refiles such litigation against Aerojet within forty-five (45) days after the Architect-Engineer knows or has reason to know that it may refile, Aerojet shall not assert action any statute of limitation that expired after such an action was dismissed in implementation of Aerojet's rights under paragraph C(1) above.

D. Except insofar as this Order expressly gives the Architect-Engineer greater rights against Aerojet than Aerojet has against its customer, the parties intend that parallel results be reached on any issue common to disputes between (i) The Architect-Engineer and Aerojet and (ii) Aerojet and its customer; the law applicable to this Order shall be that applicable between Aerojet and Aerojet's customer to the extent that will effectuate such intent. On any issue for which the choice of law is not determined by the immediately preceding sentence, the law applicable to the interpretation of this Order and the resolution of disputes between Aerojet and the Architect-Engineer in connection with this Order shall be the law of the State of California.

E. Pending resolution of any dispute with Aerojet, the Architect-Engineer shall proceed diligently to perform all of the duties that it would have, in the absence of the dispute, toward Aerojet.

F. Whenever a provision of this Order grants the Architect-Engineer a form of remedy, whether an "equitable adjustment" or otherwise, that shall be the exclusive form of remedy available to The Architect-Engineer, and the Architect-Engineer shall not have any other or broader right, including, but not limited to, one for "breach of contract."

## 22. COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAW

In the performance of this contract, the Architect-Engineer agrees to comply with all applicable Local, State and Federal laws and executive orders and regulations issued pursuant thereto and agrees to indemnify Aerojet against any loss, cost, damage, or liability by reason of the Architect-Engineer's violation of this clause.

**23. SAFETY**

A. In performing work under this contract on the site or on Aerojet-owned or Aerojet-controlled premises, the Architect-Engineer shall, and shall require its subcontractors to (i) conform to the safety and health laws, rules and regulations as in effect on the date of this contract and (ii) take such additional precautions for accident prevention and safety purposes as may be reasonably recommended by relevant federal, state, or local authorities or insurers of Aerojet. The Architect-Engineer agrees to take all reasonable steps and precautions to prevent accidents and preserve the life and health of personnel performing or in any way affected by performance under this contract on such premises.

B. All designs, drawings, materials, and other items produced or furnished by the Architect-Engineer pursuant to this contract shall be in accordance with, incorporate, and comply with the Occupational Safety and Health Act (OSHA) and all regulations issued pursuant thereto. The Architect-Engineer agrees to redesign, revise, repair, modify or replace at its sole cost and expense, any such items furnished or produced pursuant to this contract, which do not comply with OSHA.

C. The Architect-Engineer agrees to defend, hold harmless, and indemnify Aerojet from and against any claim, loss, cost damage, or liability (including attorneys' fees) by reason of property damage or personal injury (including death) to anyone including the Architect-Engineer's employees) occasioned in whole or in part by the Architect-Engineer's failure to comply with the provisions of this paragraph or by a violation (by the Architect-Engineer or any item produced or furnished hereunder) of OSHA standards.

D. In the event the Architect-Engineer encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Architect-Engineer shall immediately stop Work in the area affected and report the condition to Aerojet in writing. The Work in the affected area shall not thereafter be resumed except by written order of Aerojet if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written order of Aerojet.

**24. RELEASE OF INFORMATION**

A. The Architect-Engineer shall not, without the prior written consent of Aerojet, disclose any information of any nature whatsoever relative to this contract except as may be required to ensure performance or as is required by law.

B. The Architect-Engineer shall insert like provisions of this paragraph, including this Subparagraph B., in any subcontract issued hereunder.

**25. EQUAL OPPORTUNITY**

The Equal Employment Opportunity clause in Section 202 of Executive Order (E.O.) 11246, as amended, and the implementing rules and regulations (41 CFR Part 60) are incorporated herein by reference, unless this contract is exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of E.O. 11246 or provisions of any superseding E.O. Unless this contract is so exempted, the applicable Equal Employment Opportunity Compliance Certificate previously submitted by the Architect-Engineer to Aerojet is by reference also incorporated herein.

**26. AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA**

The Affirmative Action clause of Title 41, Code of Federal Regulations, Part 60, Subsection 250.4 and the implementing rules and regulations of the Department of Labor associated therewith are incorporated herein by reference, unless this contract is under \$10,000.

**27. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS**

The Affirmative Action Clause in Title 41, Code of Federal Regulations, Part 60, Subsection 741-4 and the implementing rules and regulations of the Department of Labor associated therewith are incorporated herein by reference, unless this contract is under \$2,500.

**28. CLEAN AIR AND WATER**

Unless this contract is for \$100,000 or less or is otherwise exempt, the Architect Engineer agrees as follows:

A. to comply with all the requirements of Section 114 of the clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract;

B. that no portion of the work required by this contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing;

C. to use its best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed; and

D. to insert the substance of the provisions of this clause in any nonexempt subcontract, including this Subparagraph D.

29. REMEDIES

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

30. WAIVER

The failure of Aerojet in any one or more instances to insist on performance of any of the provisions of this contract shall in no way be construed to be a waiver of such provisions in the future.

31. GOVERNING LAW

Any dispute concerning any question of fact or law arising hereunder which is not settled by agreement between Architect-Engineer and Aerojet shall be decided by a court of competent jurisdiction of the State of California.