

EXHIBIT E

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JOINT DEFENSE AGREEMENT

This JOINT DEFENSE AGREEMENT ("Agreement") is made and entered into by and among The Lockformer Company ("Lockformer"), Met-Coil Systems Corporation ("Met-Coil"), Mestek, Inc. ("Mestek") and Honeywell International Inc. ("Honeywell") on behalf of themselves, their parents, subsidiaries, predecessors, successors and assigns, and is effective as of May 1, 2001.

WHEREAS, Lockformer, Met-Coil, Mestek and Honeywell (collectively referred to herein as the "Parties," or each individually referred to herein as a "Party") are or may become directly involved in the following matters: *LeClercq, et al. v. Lockformer, et al.* (Court No. 00 C 7164), pending in the United States District Court for the Northern District of Illinois, Eastern Division (the "*LeClercq Case*"); *Mejdrech, et al. v. Lockformer, et al.* (Court No. 01 C 6107), pending in the United States District Court for the Northern District of Illinois, Eastern Division (the "*LeClercq Case*"); *People of the State of Illinois v. Lockformer, et al.* (Court No. 01 CH 0062), pending in the Circuit Court for the Eighteenth Judicial District, DuPage County, Illinois (the "*Attorney General Case*"); *DeVane, et al. v. Lockformer, et al.* (Court No. 01 L 377), pending in the Circuit Court for the Eighteenth Judicial District, DuPage County, Illinois (the "*DeVane Case*"), and *Pelzer, et al. v. Lockformer, et al.* (Court No. 01 C-6485) pending in the United States District Court for the Northern District of Illinois (the "*Pelzer Case*"), *In re Lockformer Site*, (Docket No. V-W-02-C-665) pending before the United States Environmental Protection Agency, Region 5 (the "*USEPA matter*"), which cases shall be collectively referred to herein as the "Litigation;" and,

WHEREAS, the Parties each believe that in connection with their respective defenses against the claims in the Litigation, it is in their individual and collective interest to exchange

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factual and legal research, documents and information; to pool certain of their individual work product; to jointly, as well as separately, interview various witnesses, experts and/or consultants; to jointly retain certain litigation support services; to work with one another in connection with various joint defense projects; and to otherwise cooperate with one another in preparing a common defense (collectively referred to as "Joint Defense Efforts"); and,

WHEREAS, the Parties wish to establish the terms and conditions pursuant to which Joint Defense Efforts will be undertaken; and,

WHEREAS, in undertaking and effectuating the Joint Defense Efforts, it has been and will be advisable and necessary for the Parties to communicate with each other on matters which may be legally privileged and/or of a confidential nature, and all such communications among the parties are recognized to be in furtherance of the Joint Defense Efforts and are intended to be, and are, made in confidence and will not be disclosed to any person except as specified in this Agreement; and,

WHEREAS, the Parties understand and intend that their Joint Defense Efforts do not constitute nor should be construed as constituting a waiver of any attorney-client, work product, joint defense, common interest or other type of common law or statutory privilege, but rather that such Joint Defense Efforts have been and shall continue to be accomplished pursuant to the attorney-client privilege, the work product privilege, the joint defense privilege and/or the common interest privilege, and the Parties acknowledge and agree that they desire and intend by this Agreement that all available privileges, as broadly as are legally possible, attach to their Joint Defense Efforts in the Litigation; and,

WHEREAS, the Parties understand and agree that they do not intend, by entering this Agreement or conducting a joint defense, to (a) act in concert, conspire or otherwise act in a

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wrongful manner, (b) bind themselves in privity with each other with respect to any matters not expressly covered by the terms of this Agreement, (c) act or serve as agents for each other, or (d) admit any liability on the part of any Party or the existence of any facts upon which liability could be based.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the Parties agree as follows:

1. Authorization. The undersigned represent that they are fully authorized to enter into this Agreement on their own behalf and on behalf of the Parties they represent.

2. Retention of Counsel. Any Party, in its discretion, may retain one or more attorneys or law firms, hereinafter referred to as "Counsel," to assist in the Joint Defense Efforts. Communications among Counsel and the Parties, and between Counsel for one Party and Counsel for any other Party, in connection with the Joint Defense Efforts is intended to be and is subject to each of the terms of this Agreement, is further intended to be and is subject to all applicable privileges.

3. Designation of Confidential Material. In furtherance of the Parties' Joint Defense Efforts, each Party, individually, or through Counsel, may make available to each other Party and to each other Parties' Counsel, information, documents, materials, agents, employees, former employees, representatives, and witnesses related to the Litigation. All information, documents or materials which any Party, or Counsel for any Party generates or receives from any other Party or Counsel for any other Party in connection with Joint Defense Efforts, and all information, documents, or materials directly or indirectly derived therefrom (hereinafter referred to collectively as "Confidential Material"), shall be deemed to be subject to the terms of

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this Agreement and shall be subject to all applicable privileges. The Party originating the Confidential Material, if in written form, may mark such document on its first page "(originating Party's name) Joint Defense Document." The intentional or inadvertent failure of the originating Party to designate any documents as Confidential Material in the manner specified in this paragraph is not and shall not be deemed to be a waiver of the originating Party's rights and privileges to protect such information from disclosure as specified in this Agreement, or otherwise. All Confidential Material originated by Counsel may bear the designation "Confidential Joint Defense Document: Prepared Pursuant to and Subject to Attorney-Client Privilege and Attorney Work-Product Doctrine." The intentional or inadvertent failure of Counsel to so designate materials generated by them is not and shall not be deemed a waiver of any Party's rights and privileges to protect such materials from disclosure as specified in this Agreement, or otherwise. Provided, however, the following materials shall not be designated as confidential and shall not be subject to the terms of this Agreement: Pleadings in this matter or any other matter; documents sent to or received from persons other than the Parties, or Counsel, Joint Consultants and/or witnesses; and other publicly available documents (i.e. public filings, published reports, books and articles). The Parties further understand and agree that no Party is under any obligation to share, produce or provide any information to any other Party or Parties solely as a result of executing this Agreement and/or participating in a joint defense in the Litigation.

4. **Communication of Confidential Material.** The Parties affirm that all Confidential Material that has been or will be exchanged among the Parties, and among Counsel and the Parties, is intended to be and is subject to the attorney-client, work product, joint defense, common interest and/or any other applicable privileges. The Confidential Material that has been

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or will be exchanged pursuant to this Agreement and information derived therefrom shall be used solely for purposes of investigating the allegations made in, and to prepare a defense to, the Litigation. Any disclosure of matters contained in Confidential Material to third parties, other than those specifically designated by this Agreement, shall be made only after joint consultation among and written agreement by each of the Parties to this Agreement, except as may be required by court order or as otherwise provided herein. The contents of this Agreement shall also remain confidential as between the Parties and shall not be disclosed to any outside party, other than those specifically designated by this Agreement, unless specifically agreed to by each of the Parties or compelled by court order.

Except as set forth above, Confidential Material shall not be given, shown, made available or communicated in any way to anyone other than the following:

- a. Counsel, and their associated attorneys, contract attorneys, paralegals and paraprofessionals, and support staff working on the Litigation to be used solely for the purpose of rendering legal advice and legal services in the Litigation and defending the Parties in the Litigation;
- b. the Parties' inside (house) counsel, investigators, paralegals, additional outside counsel and professionals, and support staff employed or retained by the Parties working on the Litigation to be used solely for the purpose of assisting counsel in defending the Litigation or legal matters relating to the Litigation;
- c. consultants and/or experts retained jointly by the Parties as specified in paragraph 5 herein, or retained by any Party individually, provided however, that Confidential

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Materials shall only be provided to consultants retained individually by any Party upon written consent of all Parties;

d. current directors, officers or management personnel of any Party, provided, however, that the purpose of that communication is to further the Joint Defense Efforts; or to protect the interests of Lockbman, Met-Coil, Mestek and/or Honeywell in connection therewith;

e. excepting the documents over which an attorney's work product privilege can be claimed, former directors, officers, or management personnel of a Party, or one of its affiliates, subsidiaries or partners, provided, however, that the purpose of that communication is to further the Joint Defense Efforts;

f. insurers, independent auditors and Counsel, to the extent necessary to evaluate and accept or deny claims for insurance coverage for any alleged liabilities related to the Litigation; for the purpose of insurance coverage litigation; to assess the potential effect of any such alleged liabilities in relation to any Party; for the purpose of tax reporting or for the preparation of financial accounting reports; and

g. to anyone required by law or pre-existing contractual obligations, specified by court order, or pursuant to subpoena or otherwise as set forth in paragraph 19 herein.

5. Retention of Joint Consultants. The Parties by and through Counsel, may jointly retain consultants and experts (hereinafter, a "Joint Consultant") as they deem necessary to assist in the formulation of legal advice and of strategy in preparation for, or in the defense of, the Litigation. All communications and any information exchanged between the Parties and

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Counsel and any such Joint Consultant shall be considered Confidential Material, and is intended to be and is subject to all applicable privileges. Counsel may make such arrangements as they deem appropriate to provide for the supervision or administration of the work of any Joint Consultant so retained.

6. **Pre-Existing Privileges.** Nothing in this Agreement is intended to waive, and nothing in this Agreement shall be interpreted as waiving, any privilege applicable to any document or other communication between any individual Party and Counsel. Such privileges shall continue to exist and will survive the termination of this Agreement, even if such communications are shared with all of the Parties pursuant to this Agreement. The Parties intend that all such privileges related to any document or other communication be interpreted to the broadest extent possible under statutory and/or common law.

7. **Pre-Existing Agreement.** Nothing in this Agreement is intended to supercede, amend, waive, change, ratify or otherwise alter the terms, conditions, agreements and/or covenants set forth in the Release, Settlement and Indemnity Agreement between and among Lockformer, Met-Coil and AlliedSignal Inc. dated on or about December 8, 1994.

8. **Withdrawal.** Any Party to this Agreement may withdraw on prior written notice hand-delivered or by facsimile to all of the undersigned Counsel, in which case this Agreement prospectively shall no longer apply to the withdrawing Party, but this Agreement shall continue to protect all Confidential Materials disclosed by or to the withdrawing Party and or the withdrawing Party's Counsel prior to that Party's withdrawal. Each party to this Agreement has a duty to expressly withdraw when, in good faith, it determines that it no longer has a commonality of interest in a joint defense and hereby agrees to give prompt written notice of

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such withdrawal to the other Parties' Counsel providing the basis for the withdrawal. Any withdrawing Party shall continue to be bound by this Agreement with regard to any Confidential Materials provided, disclosed, received, learned or obtained from any other Party by that Party and/or its Counsel prior to withdrawal. In the event a Party enters into a settlement with the government or any other third party, the settling Party may withdraw, but that Party and its Counsel shall continue to keep in confidence and shall not disclose to the government or any other individual or entity not a party to this Agreement any Confidential Materials obtained by that Party or its Counsel from any other Party before its withdrawal.

9. **Termination of Entire Agreement.** This Agreement may be terminated by written agreement of all Parties. In such case, this Agreement shall no longer be operative as to any Party, except that, unless otherwise agreed by all Parties in writing, each Party's obligation to protect all applicable privileges and the confidential and/or privileged nature of the Confidential Material as set forth in this Agreement shall fully survive such termination. Each Party specifically agrees that, in the event of any such termination, each Party shall continue to be bound by all obligations related to all applicable privileges, confidentiality and the disclosure of Confidential Material as set forth herein.

10. **Recognition of Possible Conflicts.** The Parties to this Agreement acknowledge and understand that Parties or their representatives may become witnesses against each other and that Parties may have, or may develop, positions adverse to each other in the Litigation. In particular, but without limitation, sharing Confidential Materials shall not prevent a Party from asserting a claim against another Party in the Litigation or any other proceeding provided, however, that no party shall use Confidential Materials produced by any other Party pursuant to the Agreement against that Party in the Litigation or any other proceeding, unless that

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Confidential Material has been obtained in discovery in the Litigation or in some other proceeding.

11. **Waiver of Disqualification Rights.** Each Party to this Agreement, after full opportunity to discuss the matter with Counsel, waives any right to object to the continued representation of any Party in the Litigation by Counsel currently representing each Party, or to seek disqualification of Counsel for any other Party to this Agreement, based upon (a) disclosure and/or receipt or access to Confidential Material pursuant to this Agreement, or (b) a conflict of interest by reason of participation in Joint Defense Efforts under this Agreement. This waiver entails, among other things, the prospect that representatives of a Party to this Agreement may be subject to cross-examination by Counsel for another Party to the Agreement.

12. **No Admission of Liability.** Nothing herein is intended to be, or shall be deemed to be, an admission of any liability on the part of any Party or of the existence of facts upon which liability could be based.

13. **Obligations Are Continuing In Nature.** Other than as set forth above, the obligations which a Party assumes by becoming a signatory hereto are continuing in nature and are not terminable because of any disposition of the Litigation, whether by judgment, settlement or otherwise. This Agreement shall remain in force and effect until the conclusion of all cases comprising the Litigation, including all appeals or until modified or withdrawn by the written consent of all Parties, and all obligations of the Parties respecting the confidential and/or privileged nature of the Confidential Material shall fully survive the termination of this Agreement after the Litigation is resolved.

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14. **Binding Effect on Successors.** This Agreement shall remain in effect and be binding upon successor Counsel and successors to the Parties in accordance with its terms.

15. **Return of Confidential Materials.** All documents a Party receives pursuant to this Agreement, and all records that contain or reveal any Confidential Materials, shall be returned to the originating source (or destroyed, accompanied by written confirmation) within thirty (30) days after the final termination of any and all proceedings, including the Litigation and any related litigation and all appeals thereof.

16. **Waiver or Modification Must Be In Writing.** The terms, representations, and conditions of this Agreement may be waived or modified only by a written instrument executed by each of the Parties. The failure of any Party at any time to require performance of any provisions hereof shall, in no way, affect its right at a later date to enforce same.

17. **Governing Law.** This Agreement shall be governed by federal common law concerning the attorney-client privilege and attorney work product doctrine, and any other applicable common law or statutory privileges, and the enforceability of joint defense agreements, and by the substantive law of the State of Illinois in all other respects, without regard to choice of law or conflict of law rules.

18. **No Consent to Jurisdiction.** No Party, by reason of entering into this Agreement, or availing itself of the terms and provisions of this Agreement, intends to or shall be deemed thereby to have consented to, or submitted itself to, the jurisdiction of any court in the United States or elsewhere. Further, no Party shall argue in any litigation that by reason of entering into this Agreement, any Party consented to, or submitted itself to, the jurisdiction of any court in the United States or elsewhere.

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FROM BAKER & MCKENZIE, CHICAGO

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19. Money Damages Are An Inadequate Remedy For Breach of this Agreement.

The Parties agree that, due to the nature of the harm that each Party may suffer if Confidential Material is disclosed in violation of this Agreement, money damages provide an inadequate remedy for any breach of this Agreement, and therefore specific performance and injunctive relief are appropriate remedies to compel compliance with this Agreement.

20. Notice of Subpoena or Other Disclosure Order. If any person or entity

requests or demands, by subpoena or otherwise, that a Party provide or disclose either any Confidential Material supplied by another Party or the existence of this Agreement, the Party in receipt of the request or demand shall immediately notify each other Party of the request or demand. Each Party shall take all steps necessary or appropriate to permit the assertion of all applicable rights and privileges in the appropriate forum to protect Confidential Material from disclosure, and will fully cooperate, at the expense of the Party or Parties wishing to protect Confidential Material from disclosure, in the assertion of those rights and privileges.

21. Privileged Nature of Disclosures. The Parties understand and agree that all

communications among the Parties and/or among any of the Parties and Counsel, whether those discussions occurred prior to or subsequent to the execution of this Agreement, relating to the formation of this Agreement and/or any changes or modifications to this Agreement, are intended to be and are subject to the attorney client privilege, the attorney work product privilege and the joint defense and/or common interest privilege.

22. Severability. If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

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23. **Effective Date.** This Agreement memorializes and supersedes the prior oral understanding among Counsel regarding Joint Defense Materials and applies to all communications and other exchanges of information (whether written or oral) among Counsel related to the Litigation prior to the execution of this Agreement.

24. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

25. **Headings.** The headings of each paragraph contained in this Agreement are inserted for convenient reference only and shall not limit or otherwise affect the meaning or interpretation of the paragraph to which they apply.

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FROM BAKER & McKENZIE, CHICAGO

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IN WITNESS WHEREOF, the Parties through their authorized representatives, have executed this Agreement in counterparts.

THE LOCKFORMER COMPANY

MET-COIL SYSTEMS CORPORATION, INC.

By: Daniel B. Brindman
Title: Counsel for Lockformer

By: Daniel B. Brindman
Title: Counsel for Met-Coil

MESTEK, INC.

HONEYWELL INTERNATIONAL INC.

By: Vincent O'Leary
Title: Counsel for Mestek Inc.

By: Anthony M. Hogg
Title: Counsel for Honeywell

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FROM BAKER & MCKENZIE, CHICAGO