

**LOCKHEED MARTIN CORPORATION**

**CORPDOC 4EDU**

**GENERAL PROVISIONS AND FAR FLOWDOWN PROVISIONS FOR COST REIMBURSEMENT SUBCONTRACTS/PURCHASE ORDERS FOR NON-COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT (ALL AGENCIES) PLACED WITH A COLLEGE, UNIVERSITY OR OTHER EDUCATIONAL INSTITUTION**

**SECTION I - GENERAL PROVISIONS**

**1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS**

(a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.

(b) SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract.

(c) Unless expressly accepted in writing by LOCKHEED MARTIN, additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment are objected to by LOCKHEED MARTIN and have no effect.

(d) The headings used in this Contract are inserted for the convenience of the parties and shall not define, limit, or describe the scope or the intent of the provisions of this Contract.

**2. APPLICABLE LAWS**

(a) This Contract and any matter arising out of or related to this Contract shall be governed by the laws of the State from which this Contract is issued by LOCKHEED MARTIN, without regard to its conflicts of laws provisions, except that any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR) or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of Government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the federal Government.

(b)(1) SELLER, in the performance of this Contract, agrees to comply with all applicable local, state, and federal laws, orders, rules, regulations, and ordinances. SELLER shall procure all licenses/permits and pay all fees and other required charges. SELLER shall comply with all applicable guidelines and directives of any local, state, and/or federal governmental authority.

(2) If: (i) LOCKHEED MARTIN's contract cost or fee is reduced; (ii) LOCKHEED MARTIN's costs are determined to be unallowable; (iii) any fines, penalties, or interest are assessed on LOCKHEED MARTIN; or (iv) LOCKHEED MARTIN incurs any other costs or damages; as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, LOCKHEED MARTIN may proceed as provided for in (4) below.

(3) Where submission of cost or pricing data is required or requested at any time prior to or during performance of this Contract, if SELLER or its lower-tier subcontractors: (i) submit and/or certify cost or pricing data that are defective; (ii) with notice of applicable cutoff dates and upon LOCKHEED MARTIN's request to provide cost or pricing data, submit cost or pricing data, whether certified or not certified at the time of submission, as a prospective subcontractor, and any such data are defective as of the applicable cutoff

date on LOCKHEED MARTIN's Certificate of Current Cost or Pricing Data; (iii) claim an exception to a requirement to submit cost or pricing data and such exception is invalid; (iv) furnish data of any description that is inaccurate; or if (v) the U.S. Government alleges any of the foregoing; and, as a result, (A) LOCKHEED MARTIN's Contract price or fee is reduced; (B) LOCKHEED MARTIN's costs are determined to be unallowable; (C) any fines, penalties, or interest are assessed on LOCKHEED MARTIN; or (D) LOCKHEED MARTIN incurs any other costs or damages; LOCKHEED MARTIN may proceed as provided for in paragraph (4) below.

**(4) Upon the occurrence of any of the circumstances, other than withholdings, identified in paragraphs (2) and (3) above, LOCKHEED MARTIN may make a reduction of corresponding amounts (in whole or in part) in the costs and fee of this Contract or any other contract with SELLER, and/or may demand payment (in whole or in part) of the corresponding amounts. SELLER shall promptly pay amounts so demanded. Such sums shall not be considered allowable costs under any provision of the Contract. In the case of withholding(s), LOCKHEED MARTIN may withhold the same amount from SELLER under this Contract.**

(c) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to LOCKHEED MARTIN hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.

(d) SELLER shall provide to LOCKHEED MARTIN with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its state approved counterpart.

### **3. ASSIGNMENT**

Any assignment of SELLER's Contract rights or delegation of SELLER's duties shall be void, unless prior written consent is given by LOCKHEED MARTIN. Nevertheless, SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if LOCKHEED MARTIN is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned shall be subject to setoff or recoupment for any present or future claims of LOCKHEED MARTIN against SELLER. LOCKHEED MARTIN shall have the right to make settlements and/or adjustments in price without notice to any assignee financing institution.

### **4. COMMUNICATION WITH LOCKHEED MARTIN CUSTOMER**

LOCKHEED MARTIN shall be solely responsible for all liaison and coordination with the LOCKHEED MARTIN customer, including the U. S. Government, as it affects the applicable prime contract, this Contract, and any related contract.

### **5. CONTRACT DIRECTION**

(a) Only the LOCKHEED MARTIN Procurement Representative has authority on behalf of LOCKHEED MARTIN to make changes to this Contract. All amendments must be identified as such in writing and executed by the parties.

(b) LOCKHEED MARTIN engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with SELLER's personnel concerning the Work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.

(c) Except as otherwise provided herein, all notices to be furnished by SELLER shall be in writing and sent to the LOCKHEED MARTIN Procurement Representative.

### **6. DEFINITIONS**

The following terms shall have the meanings set forth below:

- (a) "Contract" means the instrument of contracting, such as "Purchase Order", "PO", "Subcontract", or other such type designation, including these General Provisions, all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the Release document for the Work to be performed.
- (b) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- (c) "LOCKHEED MARTIN" means LOCKHEED MARTIN CORPORATION, acting through its companies or business units as identified on the face of this Contract. If a subsidiary or affiliate of LOCKHEED MARTIN CORPORATION is identified on the face of this Contract, then "LOCKHEED MARTIN" means that subsidiary or affiliate.
- (d) "LOCKHEED MARTIN Procurement Representative" means a person authorized by LOCKHEED MARTIN's cognizant procurement organization to administer and/or execute this Contract.
- (e) "SELLER" means the party identified on the face of this Contract with whom LOCKHEED MARTIN is contracting.
- (f) "Work" means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

## 7. DISPUTES

- (a) All disputes under this Contract that are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. **Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of under or in connection with this Contract.**
- (b) Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by LOCKHEED MARTIN.

## 8. ELECTRONIC CONTRACTING

The parties agree that if this Contract is transmitted electronically neither party shall contest the validity of this Contract, or any acknowledgement thereof, on the basis that this Contract or acknowledgement contains an electronic signature.

## 9. EXPORT CONTROL

- (a) SELLER agrees to comply, and will ensure that its employees, faculty, graduate assistants, and students comply, with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of Arms Export Control Act, 22 U.S.C.2751-2794, the International Traffic in Arms Regulations (ITAR), 22 C.F.R. 120 et seq., and the Export Administration Regulations, 15 C.F.R. 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, SELLER agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons including its employees, faculty, graduate assistants, and students, or others under contract to SELLER or SELLER's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.
- (b) SELLER agrees to notify LOCKHEED MARTIN if any deliverable under this Contract is restricted by export control laws or regulations.
- (c) SELLER shall immediately notify the LOCKHEED MARTIN Procurement Representative if SELLER is, or becomes, listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

(d) If SELLER is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, SELLER represents that it is registered with the Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.

(e) Where SELLER is a signatory under a LOCKHEED MARTIN export license or export agreement (e.g., TAA, MLA), SELLER shall provide prompt notification to the LOCKHEED MARTIN Procurement Representative in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR, and the initiation or existence of a U.S. Government investigation, that could affect SELLER's performance under this Contract.

**(f) SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.**

#### **10. EXTRAS**

Work shall not be supplied in excess of quantities specified in this Contract. SELLER shall be liable for handling charges and return shipment costs for any excess quantities.

#### **11. FEE (Applicable only if this Contract includes a fee.)**

LOCKHEED MARTIN shall pay SELLER for performing this Contract the fee as specified in this Contract.

#### **12. FOREIGN SOURCES/FOREIGN NATIONALS**

(a) In the event that SELLER anticipates utilizing foreign nationals or sources for any work under this Contract, SELLER shall notify LOCKHEED MARTIN ten (10) working days before either applying for an export license under International Traffic in Arms Regulation (ITAR), or the Export Administration Regulations, or before solicitation of the foreign sources, whichever shall occur first. This notification shall include detailed description of the data/equipment/material to be exported and a copy of the application for an export license, if such application has been made. This notification to LOCKHEED MARTIN shall not be construed as an application for an export license, nor shall it in any way be interpreted to impede the subcontractor's right to apply for an export license. However, if Lockheed Martin disagrees with the application, SELLER will be so notified.

(b) For purposes of this clause, foreign nationals are all persons not citizens of, or immigrant aliens to, the United States. Nothing in this clause is intended to waive or modify any statutory requirement or any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export control.

(c) SELLER acknowledges that equipment/technical data/materials generated or delivered in performance of this Contract may be controlled by the International Traffic in Arms Regulations (ITAR), or by the Export Administration Regulations and may require an export license before assigning any foreign national to perform work under this Contract or before granting access to foreign nationals to any equipment/technical data/materials generated or delivered in performance of this Contract. SELLER agrees to notify LOCKHEED MARTIN ten (10) working days prior to assigning or granting access to a foreign national to any work, equipment, technical data or material generated or delivered in performance of this Contract. This notification will include the name and country of origin of the foreign national, the specific work, equipment, data or material to which the person will have access, and whether the foreign national is cleared to have access to technical data. Such access shall not be granted to any foreign national unless LOCKHEED MARTIN has approved same in writing.

(d) The above requirements shall not be construed as an application for an export license nor shall they in any way be interpreted to impede SELLER's right to apply for an export license. However, if LOCKHEED MARTIN disagrees with the application, SELLER will be so notified.

### **13. FURNISHED PROPERTY**

(a) LOCKHEED MARTIN may provide to SELLER property owned by either LOCKHEED MARTIN or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.

(b) Title to Furnished Property shall remain in LOCKHEED MARTIN or its customer. SELLER shall clearly mark (if not so marked) all Furnished Property to show its ownership.

(c) Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify LOCKHEED MARTIN of, any loss or damage. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.

(d) At LOCKHEED MARTIN's request, and/or upon completion of this Contract, SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by LOCKHEED MARTIN.

(e) The Government Property Clause contained in Section II shall apply in lieu of paragraphs (a) through (d) above with respect to Government-furnished property, or property to which the Government may take title under this Contract.

### **14. GRATUITIES/KICKBACKS**

(a) SELLER shall not offer or give a kickback or gratuity (in the form of entertainment, gifts, or otherwise) for the purpose of obtaining or rewarding favorable treatment as a LOCKHEED MARTIN supplier.

(b) By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

### **15. INDEPENDENT CONTRACTOR RELATIONSHIP**

SELLER is an independent contractor in all its operations and activities hereunder. The employees used by SELLER to perform Work under this Contract shall be SELLER's employees exclusively without any relation whatsoever to LOCKHEED MARTIN.

### **16. INFORMATION OF LOCKHEED MARTIN**

(a) Information provided by LOCKHEED MARTIN to SELLER remains the property of LOCKHEED MARTIN. SELLER agrees to comply with the terms of any proprietary information agreement with LOCKHEED MARTIN and to comply with all proprietary information markings and restrictive legends applied by LOCKHEED MARTIN to anything provided hereunder to SELLER. SELLER agrees not to use any LOCKHEED MARTIN provided information for any purpose except to perform this Contract and agrees not to disclose such information to third parties without the prior written consent of LOCKHEED MARTIN. SELLER shall maintain data protection processes and systems sufficient to adequately protect LOCKHEED MARTIN provided information and comply with any law or regulation applicable to such information.

(b) If SELLER becomes aware of any compromise of information provided by LOCKHEED MARTIN to SELLER, its officers, employees, agents, suppliers, or subcontractors (an "Incident"), SELLER will take appropriate immediate actions to investigate and contain the Incident and any associated risks, including prompt notification to LOCKHEED MARTIN soon after learning of the Incident. As used in

this Section, "compromise" means that any information provided by LOCKHEED MARTIN has been exposed to unauthorized access, inadvertent disclosure, known misuse, loss, destruction, or alteration other than as required to perform the Work. SELLER will additionally provide its reasonable cooperation to LOCKHEED MARTIN in any investigation it may conduct regarding the nature and scope of any Incident. Any costs that may be incurred for remedial actions caused by an Incident shall be borne by SELLER.

(c) Any LOCKHEED MARTIN provided information identified as proprietary or subject to restrictions on public disclosure by law or regulation shall be encrypted (i) if transmitted via the Internet, or (ii) during electronic storage if potentially accessible by the Internet or otherwise by non-authorized users.

(d) The provisions set forth above are in addition to and do not alter, change or supersede any obligations contained in a proprietary information agreement between the parties.

## **17. INFORMATION OF SELLER**

SELLER shall not provide any proprietary information to LOCKHEED MARTIN without prior execution of a proprietary information agreement by the parties.

## **18. INTELLECTUAL PROPERTY**

(a) SELLER warrants that the Work performed or delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Except to the extent that the U.S. Government assumes liability therefor, SELLER agrees to defend, indemnify, and hold harmless LOCKHEED MARTIN and its customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity. This indemnity and hold harmless shall not be considered an allowable cost under any provisions of this Contract except with regard to allowable insurance costs.

(b) SELLER's obligation to defend, indemnify, and hold harmless LOCKHEED MARTIN and its customers under Paragraph (a) above shall not apply to the extent FAR 52.227-1 "Authorization and Consent" applies to LOCKHEED MARTIN's Prime Contract for infringement of a U.S. patent and LOCKHEED MARTIN and its customers are not subject to any actions for claims, damages, losses, costs, and expenses, including reasonable attorneys fees by a third party.

(c) In addition to the Government's rights in data and inventions SELLER agrees that LOCKHEED MARTIN in the performance of its Prime contract obligation, shall have an unlimited, irrevocable, paid-up, royalty-free right to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works, and authorize others to do any, some or all of the foregoing, any and all, inventions, discoveries, improvements, maskworks and patents as well as any and all data, copyrights, reports, and works of authorship, conceived, developed, generated or delivered in performance of this Contract.

(d) The tangible medium storing all reports, memoranda or other materials in written form including machine readable form, prepared by SELLER and furnished to LOCKHEED MARTIN pursuant to this Contract shall become the sole property of LOCKHEED MARTIN.

## **19. OFFSET CREDIT/COOPERATION**

This Contract has been entered into in direct support of LOCKHEED MARTIN's international offset programs. All offset benefit credits resulting from this Contract are the sole property of LOCKHEED MARTIN to be applied to the offset program of its choice. SELLER agrees to assist LOCKHEED MARTIN in securing appropriate offset credits from the respective country government authorities.

## 20. PACKING AND SHIPMENT

- (a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.
- (b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the LOCKHEED MARTIN Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.
- (c) Unless otherwise specified, delivery shall be FOB Place of Shipment.

## 21. PAYMENTS, TAXES, AND DUTIES

- (a) Unless otherwise provided, terms of payment shall be net 30 days from the latest of the following: (i) LOCKHEED MARTIN's receipt of SELLER's proper invoice; (ii) scheduled delivery date of the Work; or (iii) actual delivery of the Work.
- (b) Each payment made shall be subject to reduction to the extent of amounts which are found by LOCKHEED MARTIN or SELLER not to have been properly payable, and shall also be subject to reduction for overpayments. SELLER shall promptly notify LOCKHEED MARTIN of any such overpayments found by SELLER.
- (c) LOCKHEED MARTIN shall have a right of setoff against payments due or at issue under this Contract or any other contract between the parties.
- (d) Payment shall be deemed to have been made as of the date of mailing LOCKHEED MARTIN's payment or electronic funds transfer.
- (e) Unless otherwise specified, estimated costs include all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

## 22. PRECEDENCE

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) Face of the Purchase Order and/or Task Order, release document, or schedule, (including any continuation sheets), as applicable, including any special terms and conditions; (2) this CorpDoc; (3) any supplementary CorpDoc invoked in this Contract (CorpDoc A, B, C, or D series), and (4) the Statement of Work.

## 23. PRIORITY RATING

If so identified, this Contract is a "rated order" certified for national defense, emergency preparedness, and energy program use, and SELLER shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

## 24. RELEASE OF INFORMATION

SELLER and its subcontractors shall not, without the prior written consent of LOCKHEED MARTIN, disclose any information of any nature whatsoever relative to this Contract except as may be required to ensure performance or is required by law. SELLER shall not use "Lockheed Martin," "Lockheed Martin Corporation" or any other name, trademark or logo owned by LOCKHEED MARTIN, in whatever shape or form, without the prior written consent of LOCKHEED MARTIN. LOCKHEED MARTIN recognizes that SELLER may wish to publish, for example in a lecture or in a scientific journal, certain of the Contract results and LOCKHEED MARTIN agrees that it will not, after being given the opportunity to examine the relevant draft, prevent such publication in accordance with normal academic custom, provided that: (a) it may be necessary for such publication to be delayed in order not to prejudice the obtaining or

validity of intellectual property rights in any country of the world, and (b) such results or information shall not include any information that LOCKHEED MARTIN deems proprietary or confidential. Any delay in publication shall not exceed ninety (90) days from the date LOCKHEED MARTIN receives a copy of the proposed publication.

## **25. RETENTION OF RECORDS**

Unless a longer period is specified in this Contract or by law or regulation, SELLER shall retain all records related to this Contract for four (4) years from the date of final payment received by SELLER. Records related to this Contract include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping and export, and certification records. At no additional cost, SELLER shall timely provide access to such records to the US Government and/or LOCKHEED MARTIN upon request.

## **26. SELLER BUSINESS SYSTEMS**

"SELLER Business Systems" as used in this clause means SELLER's accounting, billing, estimating, earned value management, property management, and purchasing systems. If SELLER's Business Systems are reviewed and approved by a Government agency, SELLER shall provide prompt notice to LOCKHEED MARTIN whenever there is a material change in the status of the Government's approval or determination of adequacy of any of SELLER's Business Systems.

## **27. SEVERABILITY**

Each clause, paragraph and subparagraph of this Contract is severable, and if one or more of them are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

## **28. SURVIVABILITY**

(a) If this Contract expires, is completed, or is terminated, SELLER shall not be relieved of those obligations contained in the following clauses:

- Applicable Laws
- Disputes
- Electronic Contracting
- Export Control
- Independent Contractor Relationship
- Information of Lockheed Martin
- Intellectual Property
- Prohibited Software
- Release of Information
- Retention of Records
- Use of Free, Libre and Open Source Software (FLOSS)

(b) Those U. S. Government flowdown provisions that by their nature should survive.

## **29. TIMELY PERFORMANCE**

(a) SELLER's timely performance is a critical element of this Contract.

(b) If SELLER becomes aware of difficulty in performing the Work, SELLER shall timely notify LOCKHEED MARTIN, in writing, giving pertinent details. This notification shall not change any performance schedule.



### 30. USE OF FREE, LIBRE AND OPEN SOURCE SOFTWARE (FLOSS)

- (a) This clause only applies to Work that includes the delivery of software (including software residing on hardware).
- (b) SELLER shall disclose to LOCKHEED MARTIN in writing any FLOSS that will be used or delivered in connection with this Contract and shall obtain LOCKHEED MARTIN's prior written consent before using or delivering such FLOSS in connection with this Contract. LOCKHEED MARTIN may withhold such consent in its sole discretion.
- (c) As used herein, "FLOSS License" means the General Public License ("GPL"), Lesser/Library GPL, (LGPL), the Affero GPL (AGPL), the Apache license, the Berkeley Software Distribution ("BSD") license, the MIT license, the Artistic License (e.g., PERL), the Mozilla Public License(MPL), or variations thereof, including without limitation licenses referred to as "Free Software License", "Open Source License", "Public License", or "GPL Compatible License."
- (d) As used herein, "FLOSS" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source, publicly available, or "free" software, library or documentation, or (2) software that is licensed under a FLOSS License, or (3) software provided under a license that (a) subjects the delivered software to any FLOSS License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates LOCKHEED MARTIN to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.

### 31. WAIVERS, APPROVALS, AND REMEDIES

- (a) Failure by either party to enforce any of the provisions of this Contract or applicable law shall not constitute a waiver of the requirements of such provisions or law, or as a waiver of the right of a party thereafter to enforce such provision or law.
- (b) LOCKHEED MARTIN's approval of documents shall not relieve SELLER of its obligation to comply with the requirements of this Contract.
- (c) The rights and remedies of either party in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

## SECTION II - FAR FLOWDOWN PROVISIONS

### A. INCORPORATION OF FAR CLAUSES

The Federal Acquisition Regulation (FAR) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Contract. If the date or substance of any of the clauses listed below is different from the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead. The Contracts Disputes Act shall have no application to this Contract. Any reference to a "Disputes" clause shall mean the "Disputes" clause of this Contract.

### B. GOVERNMENT SUBCONTRACT

- (a) This Contract is entered into by the parties in support of a U.S. Government contract.
- (b) As used in the FAR clauses referenced below and otherwise in this Contract:

1. "Commercial Item" means a commercial item as defined in FAR 2.101.
2. "Contract" means this contract.
3. "Contracting Officer" shall mean the U.S. Government Contracting Officer for LOCKHEED MARTIN's government prime contract under which this Contract is entered.
4. "Contractor" and "Offeror" means SELLER, as defined in this CorpDoc, acting as the immediate subcontractor to LOCKHEED MARTIN.
5. "Prime Contract" means the contract between LOCKHEED MARTIN and the U.S. Government or between LOCKHEED MARTIN and its higher-tier contractor who has a contract with the U.S. Government.
6. "Subcontract" means any contract placed by SELLER or lower-tier subcontractors under this Contract.

#### **C. NOTES**

The following notes apply to the clauses incorporated by reference below only when specified in the parenthetical phrase following the clause title and date.

1. Substitute "LOCKHEED MARTIN" for "Government" or "United States" throughout this clause.
2. Substitute "LOCKHEED MARTIN Procurement Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.
3. Insert "and LOCKHEED MARTIN" after "Government" throughout this clause.
4. Insert "or LOCKHEED MARTIN" after "Government" throughout this clause.
5. Communication/notification required under this clause from/to SELLER to/from the Contracting Officer shall be through LOCKHEED MARTIN.
6. Insert "and LOCKHEED MARTIN" after "Contracting Officer", throughout the clause.
7. Insert "or LOCKHEED MARTIN PROCUREMENT REPRESENTATIVE" after "Contracting Officer", throughout the clause.

#### **D. AMENDMENTS REQUIRED BY PRIME CONTRACT**

SELLER agrees that upon the request of LOCKHEED MARTIN it will negotiate in good faith with LOCKHEED MARTIN relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as LOCKHEED MARTIN may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of amendments to such Prime Contract. If any such amendment to this Contract causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made pursuant to the "Changes" clause of this Contract.

#### **E. PRESERVATION OF THE GOVERNMENT'S RIGHTS**

If LOCKHEED MARTIN furnishes designs, drawings, special tooling, equipment, engineering data, or other technical or proprietary information (Furnished Items) which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be

construed to mean that LOCKHEED MARTIN, acting on its own behalf, may modify or limit any rights the Government may have to authorize SELLER's use of such Furnished Items in support of other U. S. Government prime contracts.

#### **F. PROVISIONS OF THE FEDERAL ACQUISITION REGULATION INCORPORATED BY REFERENCE**

The following FAR clauses apply to this Contract:

FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006) (Applies if this Contract exceeds \$150,000.)

FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010) (Applies if this Contract exceeds \$150,000.)

FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (APR 2010) (Applies if this Contract exceeds 5,000,000 and the period of performance is more than 120 days. Disclosures made under this clause shall be made directly to the Government entities identified in the clause.)

FAR 52.203-14 DISPLAY OF HOTLINE POSTER(S) (DEC 2007) (Applies if this Contract exceeds 5,000,000. Contact Lockheed Martin Procurement Representative for the location where posters may be contained if not indicated elsewhere in the Contract.)

FAR 52.204-2 SECURITY REQUIREMENTS (AUG 1996) (ALT I) (APR 1984) (Applies if the Work requires access to classified information.)

FAR 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011) (Applies where Seller will have physical access to a federally-controlled facility or access to a Federal information system.)

FAR 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUL 2010) (Subparagraph (c)(1) does not apply. If Seller meets the thresholds specified in paragraphs (c)(2) and (d) of the clause, Seller shall report required executive compensation by posting the information to the Government's Central Contractor Registration (CCR) database at <http://www.ccr.gov>. All information posted will be available to the general public.

FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (DEC 2010) (Applies if this Contract exceeds \$30,000. Copies of notices provided by Seller to the Contracting Officer shall be provided to LOCKHEED MARTIN.)

FAR 52.211-5 MATERIAL REQUIREMENTS (AUG 2000) (Note 2 applies.)

FAR 52.215-2 AUDIT AND RECORDS-NEGOTIATION (OCT 2010) (ALT II) (APR 1998) (Applies if this Contract exceeds \$150,000.)

FAR 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (AUG 2011) (Applies if submission of certified cost or pricing data is required. Notes 2 and 4 apply except the first time "Contracting Officer" appears in paragraph (c)(1). "Government" means "LOCKHEED MARTIN" in paragraph (d)(1). Rights and obligations under this clause shall survive completion of the Work and final payment under this Contract.)

FAR 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS (AUG 2011) (Applies if submission of certified cost or pricing data is required for modifications. Notes 2 and 4 apply except the first time "Contracting Officer" appears in paragraph (d)(1). "Government" means "LOCKHEED MARTIN" in paragraph (e)(1). Rights and obligations under this clause shall survive completion of the Work and final payment under this Contract.)

FAR 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 2010) (Applies if this Contract exceeds \$700,000 and is not otherwise exempt under FAR 15.403.)

FAR 52.215-13 SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS (OCT 2010) (Applies if this Contract exceeds \$700,000 and is not otherwise exempt under FAR 15.403.)

FAR 52.215-14 INTEGRITY OF UNIT PRICES (OCT 2010) (Applies if this Contract exceeds \$150,000. Delete paragraph (b) of the clause.)

FAR 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2010) (Applies if this Contract meets the applicability requirements of FAR 15.408(g). Note 5 applies.)

FAR 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POST-RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005) (Applicable if this Contract meets the applicability requirements of FAR 15.408(j). Note 5 applies.)

FAR 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997) (Applies if this Contract meets the applicability requirements of FAR 15.408(k). Note 5 applies.)

FAR 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 2010) (Note 2 applies in paragraph (a)(1).)

FAR 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (OCT 2010) (Note 2 applies in paragraphs (a)(1) and (b).)

FAR 52.215-23 LIMITATION ON PASS-THROUGH CHARGES (OCT 2009) (Applies if this Contract exceeds \$150,000 except if the prime contract is with the Department of Defense, applies if this Contract exceeds \$700,000 except those that meet the criteria of 15.408(n)(2)(i)(B)(2). Notes 4 and 6 apply.)

FAR 52.216-7 ALLOWABLE COST AND PAYMENT (JUN 2011) (Note 1 applies except in paragraphs (a)(3) and (b)(1)(ii)(F) where note 3 applies. Note 2 applies except in paragraph (g) where note 7 applies. The blank in paragraph (a)(3) is completed with "the 30th" unless otherwise specified in this Contract. Paragraphs (a)(2), (b)(4), and (d)(4) are deleted. In paragraph (h) "six years" is changed to "5 years." The references to government entities in paragraph (d) are unchanged.)

FAR 52.216-8 FIXED FEE (JUN 2011) (Applies only if this Contract includes a fixed fee. Notes 1 and 2 apply. Delete the last two sentences of the clause.)

FAR 52.216-10 INCENTIVE FEE (JUN 2011) (Applies only if this Contract includes an incentive fee. Notes 1 and 2 apply, except in paragraphs (e)(4)(v) and (e)(4)(vi) where "Government" is unchanged. Subparagraph (e)(4)(iv) and the last two sentences of paragraph (c)(2) are deleted. The amounts in paragraph (e) are set forth on the face of the Contract.)

FAR 52.216-11 COST CONTRACT - NO FEE (APR 1984) (Applies only if this Contract is placed on a cost reimbursement - no fee basis. Notes 1 and 2 apply.)

FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (JAN 2011)

FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2011) (Applies if this Contract exceeds \$650,000 except the clause does not apply if Seller is a small business concern. Note 2 is applicable to paragraph (c) only. Seller's subcontracting plan is incorporated herein by reference.)

FAR 52.222-2 PAYMENT FOR OVERTIME PREMIUMS (JUL 1990) (Insert Zero in the blank. Notes 2 and 3 apply.)

FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (JUL 2005) (Applies if the Contract may require or involve the employment of laborers and mechanics.)

FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

FAR 52.222-26 EQUAL OPPORTUNITY (MAR 2007)

FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (SEP 2010) (Applies if this Contract is for \$100,000 or more.)

FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (OCT 2010) (Applies if this Contract exceeds \$15,000.)

FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS (SEP 2010) (Applies if this Contract is for \$100,000 or more.)

FAR 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010) (Applies if this Contract exceeds \$10,000.)

FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (FEB 2009) (Note 2 applies. In paragraph (e) Note 3 applies.)

FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) (Applies if this Contract involves hazardous material. Notes 2 and 3 apply, except for paragraph (f) where Note 4 applies.)

FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009) (Applies if this Contract exceeds \$3,000.)

FAR 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997) (Applies to Work containing covered radioactive material. In the blank insert "30". Notes 1 and 2 apply.)

FAR 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001) (Applies if the Work was manufactured with or contains ozone-depleting substances.)

FAR 52.223-18 CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING (SEP 2010) (Applies if this Contract exceeds \$3,000.)

FAR 52.225-1 BUY AMERICAN ACT -- SUPPLIES (FEB 2009) (Applies if the Work contains other than domestic components. Note 2 applies to the first time "Contracting Officer" is mentioned in paragraph (c).)

FAR 52.225-5 TRADE AGREEMENTS (NOV 2011) (Applies if the Work contains other than U.S. made or designated country end products as specified in the clause.)

FAR 52.225-8 DUTY FREE ENTRY (OCT 2010) (Applies if Work will be imported into the Customs Territory of the United States. Note 2 applies.)

FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)

FAR 52.227-1 AUTHORIZATION AND CONSENT (DEC 2007) (Applies only if the Prime Contract contains this clause.)

FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007) (Applies if this Contract exceeds \$150,000. Notes 2 and 4 apply.)

FAR 52.227-9 REFUND OF ROYALTIES (APR 1984) (Applies when reported royalty exceeds \$250. Note 1 applies except for the first two times "Government" appears in paragraph (d). Note 2 applies.)

FAR 52.227-10 FILING OF PATENT APPLICATIONS-CLASSIFIED SUBJECT MATTER (DEC 2007) (Applies if the Work or any patent application may cover classified subject matter.)

FAR 52.227-11 PATENT RIGHTS-OWNERSHIP BY THE CONTRACTOR (DEC 2007) (Applies if this Contract includes, at any tier, experimental, developmental, or research Work and Seller is a small business concern or domestic nonprofit organization. Reports required by this clause shall be filed with the agency identified in this Contract. If no agency is identified, contact the LOCKHEED MARTIN Procurement Representative identified on the face of this Contract.)

FAR 52.227-14 RIGHTS IN DATA - GENERAL (DEC 2007)

FAR 52.228-5 INSURANCE -- WORK ON A GOVERNMENT INSTALLATION (JAN 1997) (Applies if this Contract involves Work on a Government installation. Note 2 applies. Note 4 applies to paragraph (b). Unless otherwise specified by this Contract, the minimum kinds and amount of insurance shall be as described in FAR 28.307-2.)

FAR 52.230-5 COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTIONS (OCT 2010) (Applies only when referenced in this Contract that this CAS clause applies. "United States" means "United States or LOCKHEED MARTIN." Delete paragraph (b) of the clause.)

FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2016) (Applies if FAR 52.230-2 or FAR 52.230-3 applies.)

FAR 52.232-20 LIMITATION OF COST (APR 1984) (Applies when this Contract becomes fully funded. Notes 1 and 2 apply.)

FAR 52.232-22 LIMITATION OF FUNDS (APR 1984) (Applies if this Contract is incrementally funded. When the Contract becomes fully funded 52.232-20 shall apply in lieu of this clause. Notes 1 and 2 apply.)

FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996) (ALT I) (JUN 1985) (In the event LOCKHEED MARTIN's customer has directed LOCKHEED MARTIN to stop performance of the Work under the Prime Contract under which this Contract is issued pursuant to FAR 33.1, LOCKHEED MARTIN may, by written order to Contractor, direct Contractor to stop performance of the Work called for by this Contract. "30 days" means "20 days" in paragraph (b)(2). Note 1 applies except the first time "Government" appears in paragraph (f). In paragraph (f) add after "33.104(h) (1)" the following: "and recovers those costs from LOCKHEED MARTIN".)

FAR 52.234-1 INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III (DEC 1994) (Notes 1 and 2 apply.)

FAR 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT AND VEGETATION (APR 1984) (Applies if Work is performed on a Government installation. Note 2 applies. Note 4 applies to the second time "Government" appears in the clause.)

FAR 52.242-15 STOP-WORK ORDER (AUG 1989) (ALT I) (APR 1984) (Notes 1 and 2 apply.)

FAR 52.243-2 CHANGES - COST REIMBURSEMENT (AUG 1987) (Notes 1 and 2 apply.)

FAR 52.243-6 CHANGE ORDER ACCOUNTING (APR 1984) (Applies if the Prime Contract requires Change Order Accounting. Note 2 applies.)

FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2010)

FAR 52.245-1 GOVERNMENT PROPERTY (AUG 2010) (ALT I) (AUG 2010) ("Contracting Officer" means "Lockheed Martin" except in the definition of Property Administrator and in paragraphs (h)(1)(iii) where it is unchanged, and in paragraphs (c) and (h)(4) where it includes Lockheed Martin. "Government" is unchanged in the phrases "Government property" and "Government furnished property" and where elsewhere used except in paragraph (d)(1) where it means "Lockheed Martin" and except in paragraphs (d)(2)

and (g) where the term includes Lockheed Martin. The following is added as paragraph (n) "Seller shall provide to Lockheed Martin immediate notice if the Government or other customers (i) revokes its assumption of loss under any direct contracts with Seller, or (ii) makes a determination that Seller's property management practices are inadequate, and/or present an undue risk, or that Seller has failed to take corrective action when required."

FAR 52.246-3 INSPECTION OF SUPPLIES - COST REIMBURSEMENT (MAY 2001) (Note 1 applies, except in paragraphs (b), (c), and (d) where Note 3 applies, and in paragraph (k) where the term is unchanged. In paragraph (e), change "60 days" to "120 days", and in paragraph (f) change "6 months" to "12 months".)

FAR 52.246-5 INSPECTION OF SERVICES - COST REIMBURSEMENT (APR 1984) (Note 3 applies in paragraphs (b) and (c). Note 1 applies in paragraphs (d) and (e).)

FAR 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003) (Applies if this Contract involves international air transportation.)

FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS (FEB 2006)

FAR 52.247-67 SUBMISSION OF TRANSPORTATION DOCUMENTS FOR AUDIT (FEB 2006) (Applicable when Seller is a first-tier supplier and transportation will be reimbursed as a direct charge to the Contract. Note 5 applies. Delete subparagraph (a)(2).)

FAR 52.248-1 VALUE ENGINEERING (OCT 2010) (Applies if this Contract exceeds \$150,000. Note 1 applies, except in paragraphs (c)(5), where Note 3 applies and except in (b)(3) where Note 4 applies, and where "Government" precedes "cost" throughout. Note 2 applies. In paragraph (m) "Government is unchanged." Also, "Government" does not mean "LOCKHEED MARTIN" in the phrase "Government costs.")

FAR 52.249-5 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS (SEP 1996) (Notes 1 and 2 apply. In paragraph (c) "120 days" is changed to "60 days." In paragraph (d) "1 year" is changed to "6 months" In paragraph (e) "1 year" is changed to "6 months." Paragraph (h) is deleted. Settlements and payments under this clause may be subject to the approval of the Contracting Officer.)

FAR 52.249-14 EXCUSABLE DELAYS (APR 1984) (Note 2 applies; Note 1 applies to (c). In (a)(2) delete "or contractual".)

## **G. CERTIFICATIONS AND REPRESENTATIONS**

SELLER acknowledges that LOCKHEED MARTIN will rely upon SELLER certifications and representations contained in this clause and in any written offer, proposal or quote, or company profile submission, which results in award of a contract to SELLER. By entering into such contract, SELLER republishes the certifications and representations submitted with its written offer, including company profile information, and oral offers/quotations made at the request of LOCKHEED MARTIN, and SELLER makes those certifications and representations set forth below. SELLER shall immediately notify LOCKHEED MARTIN of any change of status regarding any certification or representation.

### **1. FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Applicable to solicitations and contracts exceeding \$150,000)**

(a) Definitions. As used in this provision--

"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8).

The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).

(b) Prohibition. The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.

(c) Certification. SELLER hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.

(d) Disclosure. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, SELLER shall complete and submit, with its offer, to LOCKHEED MARTIN OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. SELLER need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(e) Penalty. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

**2. FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters**

(a)(1) SELLER certifies, to the best of its knowledge and belief, that--

(i) SELLER and/or any of its Principals--

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision; and

(ii) SELLER has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(D) Have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:



(i) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) Examples. (i) The taxpayer has received a statutory notice of deficiency, under I.R.C. Sec. 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. Sec. 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. Sec. 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(2) Principal, for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division, or business segment; and similar positions).

(b) SELLER shall provide immediate written notice to LOCKHEED MARTIN if, at any time prior to contract award, SELLER learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that SELLER knowingly rendered an erroneous certification, in addition to other remedies available, LOCKHEED MARTIN may terminate this contract for default.

### **3. FAR 52.222-22 Previous Contracts and Compliance Reports**

SELLER represents that if SELLER has participated in a previous contract or subcontract subject to the Equal Opportunity clause (FAR 52.222-26) (a) SELLER has filed all required compliance reports and (b) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

### **4. FAR 52.222-25 Affirmative Action Compliance**

SELLER represents: (a) that SELLER has developed and has on file at each establishment, Affirmative Action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (b) that in the event such a program does not presently exist, SELLER will develop and place in operation such a written Affirmative Action Compliance Program within one-hundred twenty (120) days from the award of this Contract.