

TERMS AND CONDITIONS FOR CONSULTANT SERVICES

TERMS AND CONDITIONS
FOR
CONSULTANT SERVICES AGREEMENTS
(OTHER THAN U.S. GOVERNMENT PROCUREMENTS)
CS-94

LOCKHEED MARTIN CORPORATION
MISSILES AND SPACE
SUNNYVALE, CALIFORNIA

SEPTEMBER 1994

TERMS AND CONDITIONS FOR CONSULTANT SERVICES

APPLICABILITY

These terms and conditions are applicable to all agreements for Consultant services except where the clause indicates it is applicable to only one or another type of consultant, (Domestic Business Development Consultant, U.S. Government Proposal Consultant, or Technical/Management Consultant.)

TERMS AND CONDITIONS FOR CONSULTANT SERVICES

TABLE OF CONTENTS

CLAUSE NO.	CLAUSE TITLE	PAGE NO.
A-1	Definitions	1
A-2	Limitation of Obligation	1
A-3	Labor Rates	2
A-4	Records and Audit	2
A-5	Payment and Invoices	2
A-6	Independent Contractor	4
A-7	Compliance With Laws	4
A-8	Indemnification	4
A-9	Patents and Data	4
A-10	Utilization and Performance of Personnel	5
A-11	Release of Information	5
A-12	Prior Agreements	5
A-13	Equal Opportunity	6
A-14	Affirmative Action for Handicapped Workers	6
A-15	Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era	6
A-16	Stop Work	6
A-17	Termination/Cancellation	6
A-18	Gratuities	7
A-19	Waiver	7
A-20	Remedies	7
A-21	Changes	7
A-22	Responsibility for Lockheed Martin Furnished Property	8

TERMS AND CONDITIONS FOR CONSULTANT SERVICES

A-23	Assignment of Claims	8
A-24	Compliance with Occupational Safety and Health Act (OSHA)	9
A-25	Amendments Required by Prime Contract	9
A-26	Retention Of Rights And Interest	9
A-27	Offset	10
A-28	Partial Invalidity	10
A-29	Excusable Delay	10
A-30	California Withholding Tax/Out Of State Subcontractors	10
A-31	Controlling Law	11
A-32	Security Requirements	11
A-33	Payments For Political Purposes	11
A-34	Ethics Policies	11
A-35	Receipt And Protection Of Information	11
A-36	Conflict Of Interest - Full Disclosure	12
A-37	Prohibition Against Certain Payments	12
A-38	Compliance With Lobbying Prohibitions	13
A-39	Reporting	13
A-40	Contact With Lockheed Martin Customers	13
A-41	Personal Performance Requirement	14
A-42	Possession Of Competitive Documents	14
A-43	Conflict Of Interest Certification Requirements	14

TERMS AND CONDITIONS FOR CONSULTANT SERVICES

A-1 DEFINITIONS

(A) As used throughout this agreement, the following terms shall have the meanings set forth below:

(1) The term "Lockheed Martin", "Buyer", or "LMMS", means Lockheed Martin Corporation acting by and through Missiles and Space

(2) The term "Prime Contract" means the contract, if any, between Lockheed Martin and its non-government customer under which a subcontract is issued.

(3) "Lockheed Martin Authorized Procurement Representative" means the person or persons authorized by Lockheed Martin to alter, modify, or change the provisions of this Agreement.

(4) The terms "contract" or "subcontract" or "Purchase Order" means the contractual instrument or Agreement or Schedule in which these "Terms and Conditions" are incorporated. Unless excepted by the provisions of a particular clause, the terms specified in this clause are interchangeable.

(5) The terms "Contractor", "Subcontractor", "Consultant" or "Seller" means the party awarded a contract, subcontract, consulting agreement or purchase order to provide services to Lockheed Martin. Unless excepted by the provisions of a particular clause, the terms specified in this clause are interchangeable.

(6) The terms "work" or "services" means all work to be performed under this Agreement including any studies covering fundamental, theoretical, or experimental investigations; and extension of the investigative findings and theories of a scientific or technical nature into practical application; and any reports, data, computations, plans, drawings and specifications with respect to any of the foregoing.

(7) The term "lower-tier subcontracts", except as otherwise provided in the Agreement, means purchase orders and other subcontracts (including changes and modifications to these purchase orders and subcontracts) issued under a subcontract and includes subcontracts and purchase orders under such lower-tier subcontract or purchase order.

(8) The term "CFR" means "Code of Federal Regulations" and all references to provisions thereof shall be to those provisions as in effect on the date of this Agreement.

A-2 LIMITATION OF OBLIGATION

Lockheed Martin shall not be obligated to make payment to Contractor in excess of the funding limitation set forth in the Schedule and Contractor shall not be obligated to continue performance under this Contract in excess of the funding limitation set forth in the Schedule, unless and until Lockheed Martin shall have notified Contractor in writing that such funding limitation has been increased and shall have specified in such notice a revised funding limitation which shall thereupon constitute the funding limitation for performance of this Agreement. If, at any time, Contractor expects 85% of the funding limitation to be reached within the next succeeding sixty (60) days, Contractor shall notify Lockheed Martin in writing to that effect. In the event of termination, Lockheed Martin's sole obligation hereunder shall be limited to the payment by Lockheed Martin to Contractor of charges incurred hereunder prior to the date of expiration or termination, but in any event, not in excess of the funding limitation specified in the Schedule.

TERMS AND CONDITIONS FOR CONSULTANT SERVICES

A-3 LABOR RATES

(A) The rates specified in the Schedule under the part entitled "PAYMENT, FUNDING AND INVOICING" cover labor, indirect costs, and all elements of overhead, general and administrative expense and profit. The rates specified in the Schedule are the rates at which Lockheed Martin shall be invoiced for services under this Agreement. Travel, per diem and other expenses, when authorized, will be as stipulated in the Schedule.

(B) Unless specifically authorized in the Schedule, time spent in travel and other nonproductive time not directly in performance of services hereunder shall not be billable to Lockheed Martin.

A-4 RECORDS AND AUDIT

(A) The Contractor's accounting procedures and practices shall be subject to the approval of Lockheed Martin, provided, however, that no significant change will be required to be made in Contractor's accounting procedures and practices if they conform to generally acceptable accounting practices and if the charges properly applicable to this Agreement are readily ascertainable therefrom.

(B) The Contractor agrees to retain for a period of three (3) years from final payment hereunder, books, records, documents and other evidence pertaining to the costs and expenses of this Agreement (hereinafter collectively called the "records") to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this Agreement. The Contractor agrees to make available at the office of the Contractor at all reasonable times during such retention period any of the records for inspection, audit or reproduction by any representative authorized by Lockheed Martin. The term "records" shall also include work product, trip reports (indicating persons visited and subjects discussed), minutes of meetings, collateral memoranda, and related documents.

(C) When the use of Lockheed Martin-furnished time sheets is required by the Schedule, all charges for labor hereunder shall be supported by either Form LMMS 1656, "Consultant Weekly Personnel Roll" or other Lockheed Martin-furnished standard form.

(1) Contractor shall ensure that each time sheet is accurately filled out and identified to the applicable agreement or task number, and shall sign each time sheet certifying to its correctness.

(2) Lockheed Martin's cognizant Technical Representative supervisor or manager will complete the form by entering the organization and date and by signature in the space so provided and furnish at least one signed copy to the Contractor.

A-5 PAYMENT AND INVOICES

(A) Contractor shall submit an original invoice plus two copies to request payment from Lockheed Martin. Each invoice will include the original supporting documentation plus two copies. Each invoice shall carry an individual invoice date and a reference to the task number contained in the PAYMENT, FUNDING AND INVOICING Part of the Schedule. A separate invoice shall be submitted for each task number in the event more than one number is included in the Schedule. In the event Consultant's services are applied to different tasks above as directed by Lockheed Martin's Technical Representative separate invoices shall be submitted by Consultant for each task identifying the allowable costs incurred in performance of each task. Each such invoice shall carry the appropriate task number.

TERMS AND CONDITIONS FOR CONSULTANT SERVICES

(B) (1) Each invoice shall list all charges in sufficient detail, as required herein, including references to each time sheet being billed, so that the correctness of all charges may be determined by Lockheed Martin. Each invoice shall be accompanied by supporting documentation and receipts for any expenses over \$25.00.

(2) If this Agreement is for Domestic Business Development Consultant Services all invoices shall include and itemize, when applicable, a) Retainer fees and b) Commissions.

(C) If form LMMS 1656 or equivalent is used to record the time worked, Contractor shall provide with each invoice a breakdown of labor charges showing direct labor, overhead, general and administrative (G&A) expense, and profit in a format similar to that as provided by Lockheed Martin's Authorized Procurement Representative.

(D) All time worked must be documented on approved time sheets and submitted with all invoices. Time worked at Lockheed Martin Facilities shall be recorded on a Lockheed Martin provided Time Sheet which will be submitted with each invoice, completed in accordance with the instructions and containing the signatures of the Consultant or the Authorized Lockheed Martin Technical Representative and the applicable task number set forth in the Schedule. Work performed away from Lockheed Martin premises must also be reported on time sheets documented in accordance with the Consultant's internal accounting procedures. A statement relating the work performed to the scope of work and in sufficient detail to allow Lockheed Martin to determine the amount and quality of work performed, and summarizing the location and type of work performed must be included with the invoice submitted for payment thereof. Invoices not meeting this requirement will be rejected. Work will be subject to approval by the Lockheed Martin Technical representative.

(E) Lockheed Martin shall pay Contractor in accordance with the time period specified in the Schedule following the receipt and approval of properly identified and supported invoices.

(F) All invoices are to be submitted to the following address:

Lockheed Martin Corporation
Missiles and Space
Accounts Payable
P. O. Box 3645
Sunnyvale, CA 94086-3645

(G) Payment for services rendered shall be made by check to the order of Contractor. Payment shall not be made in cash or any other bearer instrument.

(H) All invoices submitted by Contractor hereunder shall bear the following certification: "I certify that all amounts billed herein are correct, and are in accordance with the Agreement referenced herein, and that payment therefore has not been received."

(I) Concurrent with the final invoice, Consultant shall submit copies of documentation supporting Consultant's time charged to this Agreement. Such documentation, in addition to work product, shall include, but not be limited to, trip reports (indicating persons visited and subjects discussed), minutes of meetings, collateral memoranda, logs of time expended which support Consultant's time sheets, and related documents. Submission of such documentation does not relieve Consultant from the requirement of retaining original copies of such documentation pursuant to Clause A-3 of these Terms and Conditions.

TERMS AND CONDITIONS FOR CONSULTANT SERVICES

(J) In addition to the certification required above, the final invoice shall include the following certification: "I certify that all reports/work product to be delivered to Lockheed Martin pursuant to this Agreement have been delivered and accepted by the Lockheed Martin Technical Representative."

(K) Invoices not in compliance with the requirements of this section will be returned to the Consultant for correction and resubmitted.

A-6 INDEPENDENT CONTRACTOR

Neither this Agreement nor Contractor's performance hereunder shall constitute or create an employee/employer relationship. Contractor shall act solely as an independent contractor, not as an employee or agent of Lockheed Martin, and is not authorized to create obligations of Lockheed Martin to third parties.

A-7 COMPLIANCE WITH LAWS

Contractor shall comply with all applicable Federal, State and Local laws, executive orders and regulations issued pursuant thereto including but not limited to those relating to unemployment insurance, Federal Insurance Contribution ACT (FICA), worker's compensation, and conflict of interest as may be applicable to personnel and former personnel of the United States Government. Contractor agrees to defend, indemnify and hold Lockheed Martin harmless from any claim, suit, loss, cost, damage, expense (including attorney's fees) or liability by reason of Contractor's violation of any such law, order or regulation. Nothing in this agreement or in any requirement under this agreement shall be construed to mean that Contractor should perform such work in violation of any law, statute, code, or ordinance.

A-8 INDEMNIFICATION

In the event Contractor, its officers, employees, agents, or subcontractors at any tier enter premises occupied by or under the control of Lockheed Martin, the Government, or third parties in the performance of this agreement, Contractor shall defend, indemnify, and hold harmless Lockheed Martin, its officers, employees and agents from any claim, suit, loss, damage, expense (including attorneys' fees), or liability by reason of property damage or personal injury (including death) to any person, including Contractor's employees, of whatsoever nature or kind arising out of, as a result of, or in connection with such performance occasioned in whole or in part by the actions or omissions of Contractor, its officers, employees, agents or subcontractors at any tier. Contractor shall take all precautions necessary, special or otherwise, and shall be responsible for compliance with all Federal, state and local safety laws in the performance of work hereunder. Without in any way limiting the foregoing undertakings, Contractor and its subcontractors at any tier shall maintain commercial and general liability insurance in reasonable limits covering the obligations set forth and shall maintain, to the statutory limits required by law, proper Worker's Compensation Insurance or state approved self insurance program, and employer's liability insurance covering all employees performing work under this agreement. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of Lockheed Martin and is not contributory with any insurance which Lockheed Martin may carry. The requirement to provide insurance under this clause shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under this agreement.

A-9 PATENTS AND DATA

TERMS AND CONDITIONS FOR CONSULTANT SERVICES

(A) Title to Inventions and Materials Produced: It is understood and agreed that title to any and all information, inventions (whether or not patentable) designs, drawings, photographs, physical property, reports and other subject matter which is prepared, procured, generated or produced by Contractor in the course of, in connection with, or as may be related to his performance under this Agreement, shall be and hereby is vested in Lockheed Martin. Contractor agrees that he will execute any and all documents, including patent applications, prepared by Lockheed Martin, and do all other lawful acts as may be required by Lockheed Martin to establish, document, and protect such rights. Lockheed Martin shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work created by Contractor under this agreement.

(B) Protection of Information: Contractor agrees that he will hold in confidence, and will not reproduce or disclose to third parties any of the information defined in (a) above, or any other information or data relating to Lockheed Martin business which is acquired as a result of his relationship to Lockheed Martin under this Agreement without Lockheed Martin's prior written consent. This obligation of confidence shall not apply with respect to data which (1) is, or through action of persons other than Contractor, later falls within the public domain, (2) is available to Contractor from third parties on an unrestricted basis, or (3) is disclosed by Lockheed Martin to others on an unrestricted basis.

(C) Return of Materials: Contractor agrees upon termination (or sooner if requested by Lockheed Martin) of his relationship with Lockheed Martin, to return to Lockheed Martin any of the Materials or data mentioned in (a) and (b) above.

(D) Legends: The appearance of any legend or notice, on or in connection with any data submitted by Contractor to Lockheed Martin, or any information verbally indicated as being "proprietary" which is furnished by Contractor to Lockheed Martin, will not establish a confidential relationship or other obligation on the part of Lockheed Martin with respect to such information unless a written agreement specifying the obligations to be incurred and signed by both parties is entered into.

(E) Intellectual Property Infringement: To the extent that the information and/or data delivered hereunder are developed or generated to designs not originated or furnished by Lockheed Martin, or to a process or method, the use of which is not specifically directed by Lockheed Martin, Lockheed Martin shall have no responsibility to Consultant for infringement or misappropriation of patent, trademark, copyright, or trade secret rights of third parties and Consultant guarantees that the sale or use of such information and/or data or the use of any such process or method will not infringe or be a misappropriation of any United States or foreign patents, copyrights, or trade secrets, and Consultant shall indemnify and hold Lockheed Martin and its customers harmless from any expense, loss, cost, damage, or liability, expense, (including attorney's fees,) which may be incurred on account of the infringement or alleged infringement of such patent rights, trademarks, copyrights, or trade secrets with respect to such data, and to defend at his own expense any action or claim in which such infringement is alleged, provided Consultant is notified of such action or claims against Lockheed Martin. Indemnification shall not apply to infringement arising from use in combination with other items or infringement which would have not occurred from the normal use for which the supplied information and/or data alone was designated.

A-10 UTILIZATION AND PERFORMANCE OF PERSONNEL

(A) Lockheed Martin may at any time and for any reason request that Contractor remove from Lockheed Martin's premises any of Contractor's personnel. Contractor agrees to promptly comply with such requests.

(B) All work under this contract shall be performed in a skillful and workmanlike manner by experienced, responsible and capable personnel. Lockheed Martin may, in writing, require that Contractor

TERMS AND CONDITIONS FOR CONSULTANT SERVICES

remove from performance of work under this agreement any employee of Contractor or Contractor's subcontractors. Contractor agrees to promptly comply with such requests.

A-11 RELEASE OF INFORMATION

Contractor shall not, without the prior written approval of Lockheed Martin, (through Lockheed Martin's Public Relations organization,) disclose any information relating to this Agreement or any part of the subject matter hereof.

A-12 ENTIRE AGREEMENT

This Agreement shall constitute the entire agreement between Contractor and Lockheed Martin relating to the subject matter hereof. All other contracts or promises of any kind, either written or verbal relating to the subject matter hereof, if any, are hereby annulled and cancelled. This Agreement shall not be varied or added to in any manner except in writing signed by Lockheed Martin's authorized Procurement representative as identified in the Schedule.

A-13 EQUAL OPPORTUNITY

Unless exempt, 41 CFR Part 60 is incorporated herein by reference. As used in this clause, "Contractor" means Subcontractor. Unless this contract is so exempted, the applicable Equal Employment Opportunity Compliance Certificate previously submitted by Contractor to Lockheed Martin is by reference also incorporated herein.

A-14 AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

Unless exempt, 41 CFR Part 60 is incorporated herein by reference, unless this contract is under \$2,500. As used in this clause, "Contractor" means Subcontractor.

A-15 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

Unless exempt, 41 CFR Part 60 is incorporated herein by reference, unless this contract is under \$10,000. As used in this clause, "Contractor" means Subcontractor, and "Contract" means this Agreement.

A-16 STOP WORK

(A) Lockheed Martin may, at any time, by written order to Contractor, require the Contractor to stop all, or any part of the work called for by this Contract for a period of 180 days after the order is issued to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this Section. Upon receipt of such an order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize any additional costs allocable to the work covered by the Stop Work Order.

(B) If a Stop Work Order issued under this Section is canceled or the period of the Order expires the Contractor shall resume work. An equitable adjustment shall be made in the affected delivery schedule(s) or Contract Line Item price(s), or both, and the Contract shall be modified in writing accordingly, if:

TERMS AND CONDITIONS FOR CONSULTANT SERVICES

1. The Stop Work Order results in an increase in the time required for, or in the Contractor's cost required to provide or perform the affected the goods, documentation and/or services; and
2. The Contractor asserts a claim in writing, supported by a detailed cost and schedule proposal, within thirty (30) days following the cancellation or expiration of the Stop Work Order or such extension of time as agreed to by the Parties.

A-17 TERMINATION/CANCELLATION

(A) Termination-Convenience. Lockheed Martin, at its sole option and convenience, may terminate this Agreement in its entirety upon 15 days written notice. Lockheed Martin's sole obligation hereunder shall be limited to the payment by Lockheed Martin to Contractor of charges incurred hereunder prior to the effective date of termination, but in any event, not in excess of the funds allotted to this Agreement as specified in the Contract.

(B) Cancellation-Default. Except in the cases of delay or failure resulting from circumstances identified in A-29, Excusable Delay, Lockheed Martin shall be entitled, by written cancellation notice to Contractor, to cancel the whole or any part of this Contract for default, without granting an extension of time, and to have all other rights against Contractor by reason by Contractor's default as provided by law. If it be found that Contractor was not in default, the rights and obligations of the parties shall be the same as if Notice of Cancellation had been issued pursuant to (A) above.

(C) Other. By written notice to Contractor, Lockheed Martin may cancel the whole or part of this contract in the event of suspension of Contractor's business, insolvency of Contractor, institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against Contractor for the benefit of creditors or for any failure by Contractor to provide adequate assurances (as provided for in Uniform Commercial Code, section 2-609) of its ability or willingness to perform its obligations under this Contract. Such cancellation shall be deemed "for default" in accordance with paragraph (b) of this Termination/Cancellation clause and the rights and obligations of the parties shall be determined as therein provided.

(D) Remedies. Lockheed Martin's remedy for exercising the provisions included in this clause shall include the right to procurement costs. This remedy shall be in addition to, and not in lieu of, any remedies identified elsewhere in this contract or at law.

A-18 GRATUITIES

(A) Lockheed Martin may, at any time, by written notice to Contractor, terminate for default the right of Contractor to proceed under this Agreement if Lockheed Martin has reasonable cause to believe that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of Lockheed Martin with a view toward securing this Agreement or securing favorable treatment with respect to the award or amendment of this Agreement, or to the making of any determination with respect to the performance of this Agreement. The rights and remedies of Lockheed Martin provided in this Clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

(B) Consultant, in performance of this agreement, shall not provide any gifts, gratuities and/or favors to any employee of any U.S. Government agency doing or expected to do business with Lockheed Martin which would be in contravention of that employee's agency regulations.

TERMS AND CONDITIONS FOR CONSULTANT SERVICES

A-19 WAIVER

The failure of Lockheed Martin in any one or more instances to insist upon performance of any of the provisions of this Agreement shall not be construed a waiver of such provisions with regard to future performance.

A-20 REMEDIES

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

A-21 CHANGES

(A) In accordance with the section of the SCHEDULE entitled AMENDMENTS AND NOTICES, Lockheed Martin may at any time, by written order, and without notice to the sureties, if any, make changes, within the general scope of this agreement, in any one or more of the following: (1) specification, (2) work effort, (3) period of performance, (4) assignment of task numbers or other similar administrative requirements.

(B) If any such change in (A)(1), (A)(2) or (A)(3) above causes an increase or decrease in the funding requirements or the period of performance of the work under this Agreement, whether or not changed by any such order, or otherwise affects any other provisions of this agreement, an equitable adjustment may be requested by Contractor or Lockheed Martin in any of the following: (1) funding, (2) period of performance and (3) such other provisions of this Agreement as may be affected, and this Agreement shall be modified in writing accordingly. Any claim by Contractor for adjustment under this clause must be asserted within ten (10) days from the date of receipt by Contractor of the notification of change. Except as provided in paragraph (E) below, nothing in this clause shall excuse Contractor from proceeding with the Agreement as changed.

(C) Contractor agrees that its failure to submit such claim or claims within the applicable time period shall constitute a waiver thereof unless for good cause, Contractor requests in writing prior to expiration of the applicable time period that a time extension for filing its claim or claims be granted by Lockheed Martin and Lockheed Martin grants such extension. Any such extension, if approved, shall be effective only if authorized in writing by Lockheed Martin's authorized procurement representative in accordance with paragraph (A) of this clause.

(D) Any clarification, direction, approval, or assistance as may be provided by Lockheed Martin concerning the work to be performed or the supplies to be furnished pursuant to this contract shall not constitute or be construed as a change to this contract and no change order, express or implied, will be binding unless it is issued by written notice by Lockheed Martin's authorized Procurement Representative in accordance with paragraph (A) of this clause.

(E) Notwithstanding the provisions of paragraphs (A) and (B) above, the funds allotted shall not be increased or deemed to be increased except by specific written modification of this Agreement indicating the new amount allotted to this Agreement. Until such modification is made, Contractor shall not be obligated to continue performance or incur costs beyond the point established in the clause of this Schedule entitled

TERMS AND CONDITIONS FOR CONSULTANT SERVICES

Limitation of Obligation. Nothing contained in this clause shall relieve Contractor from proceeding without delay in the performance of this contract as changed.

A-22 RESPONSIBILITY FOR LOCKHEED MARTIN FURNISHED PROPERTY

Unless otherwise specified, Consultant shall be liable for any loss or destruction or damage to Lockheed Martin property furnished to Consultant by Lockheed Martin and shall be responsible for returning any such property in as good condition as when received except for reasonable wear and tear or for the utilization of it in accordance with the provisions of this contract. Lockheed Martin does not require Consultant to purchase insurance covering property of Lockheed Martin but if Consultant shall nevertheless carry insurance against direct loss or damage the cost thereof shall not be a direct charge to this contract. Title thereto shall not be affected by the incorporation or attachment thereof to any property not owned by Lockheed Martin, nor shall any such property, or any part thereof, be or become a fixture or lose its identity as personal property by reason of affixation to any realty.

A-23 ASSIGNMENT OF CLAIMS

(A) Neither this Agreement nor any interest nor any sums becoming due to Contractor hereunder shall be assigned by Contractor without the prior written consent of Lockheed Martin, except that claims for monies due or to become due Contractor from Lockheed Martin under this Agreement 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 become due shall cover all amounts payable under this Agreement 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 Lockheed Martin to an assignee of any claim under this Agreement shall be subject to set-off or recoupment for any present or future claim or claims arising in connection with this Agreement which Lockheed Martin may have against Contractor. Lockheed Martin reserves the right to make direct settlements and/or adjustments in price with Contractor under the terms of this Agreement notwithstanding any assignment of claims for monies due or to become due hereunder and without notice to assignee(s).

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

(C) Any claim under this Agreement 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 Lockheed Martin to a bank, trust company or other financing institution, including any federal lending agency. In the event of such further assignment or reassignment the assignee shall be required to file one signed copy of a written notice of the further assignment or reassignment, together with a true copy of the instrument of further assignment or reassignment with Contractor, and shall file two (2) signed copies of such written notice, together with two (2) copies of such instrument with Lockheed Martin.

(D) No assignee shall divulge any information concerning this Agreement except to those persons concerned with the transaction. In no event shall copies of this Agreement or of any plans, specifications, or other similar documents relating to work under this Agreement, if marked "Top Secret", "Secret", or "Confidential", be furnished to any assignee of any claim arising under this Agreement or to any other person not entitled to receive the same; provided, that a copy of any part or all of this Agreement so marked may be furnished, or any information contained herein may be disclosed, to such assignee upon the prior written authorization of Lockheed Martin.

TERMS AND CONDITIONS FOR CONSULTANT SERVICES

(E) Indication of the assignment of claim and of any further assignment thereof and the name of the assignee shall be made on all vouchers or invoices certified by Contractor.

A-24 COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)

If Consultant furnishes equipment, supplies, or materials pursuant to this Agreement, such equipment, supplies, or materials shall comply with the Occupational Safety and Health Act and regulations issued pursuant thereto. Consultant agrees to repair, modify or replace any equipment, supplies, or materials not complying with OSHA at its sole cost and expense and to hold harmless and indemnify Lockheed Martin from any liability and expense (including attorneys' fees) by reason of property damage or personal injury (including death) occasioned in whole or in part from a violation of OSHA standards.

A-25 AMENDMENTS REQUIRED BY PRIME CONTRACT

If the agreement is in support of a Lockheed Martin prime contract, Contractor 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 Lockheed Martin's prime contract or with the provisions of amendments to the prime contract. If such amendment to this contract causes an increase or decrease in the estimated 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.

A-26 RETENTION OF RIGHTS AND INTEREST

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

A-27 OFFSET

If Lockheed Martin is fined or penalized as a result of any violation of any law or regulation by Contractor or Contractor's lower-tier suppliers, or, where this contract is pursuant to a Lockheed Martin prime contract, if Lockheed Martin's customer reduces Lockheed Martin's prime contract as a result of actions by Contractor or Contractor's lower-tier suppliers, Lockheed Martin shall reduce the amount of this Contract by the same amount. If Lockheed Martin has already paid Contractor, Contractor shall, upon demand from Lockheed Martin, promptly repay to Lockheed Martin the amount of the offset. Exercise of Lockheed Martin's right under this clause shall not be a waiver of any rights Lockheed Martin has under any other clause or provision in this contract.

A-28 PARTIAL INVALIDITY

If any provision of this contract is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.

TERMS AND CONDITIONS FOR CONSULTANT SERVICES

A-29 EXCUSABLE DELAY

Neither party shall be liable for any damages or penalties for delay in performance of any obligation arising from this contract when such a delay is due to such Acts of God, acts of civil or military authority, fires or floods, epidemics, quarantine restrictions, war, riots, strikes, lockouts or other labor disputes, and any such changes in specifications which are requested by Lockheed Martin and agreed to by the Contractor after the effective date of this agreement.

A-30 CALIFORNIA WITHHOLDING TAX/OUT OF STATE CONTRACTORS

(A) In the absence of one of the exemptions stated below or upon receipt of a Notice to Withhold, Lockheed Martin shall withhold and transmit to the California State Franchise Tax Board an amount equal to 7%, or such other rate as may be authorized in writing by the Franchise Tax Board, of Contractor's submitted invoice for services provided in the State of California.

(B) Exempt from the withholding provisions of this clause are (1) Individuals who are California residents and claim a waiver of the withholding requirement by submitting California State Franchise Tax Board Form 590; (2) Corporations who are qualified to do business in California.

(C) If a Contractor claims to be a California resident the Contractor shall submit to Lockheed Martin, upon execution of this Contract or no later than the first invoice, an executed California Franchise Tax Board Form 590. Contractor shall continue to submit a new form 590 for each calendar year, no later than October 31 of the preceding year, for the duration of this contract. Failure of the Contractor to provide a current Form 590 for any year will result in withholding as indicated in (A) above.

A-31 CONTROLLING LAW

All provisions of this agreement shall be governed by and construed in their entirety in accordance with the law of the State of California, excluding its conflict of law rules.

A-32 SECURITY REQUIREMENTS

(A) Contractor and Contractor's employees who will be working on Lockheed Martin premises will be required to comply with Lockheed Martin security requirements and obtain and display Non-Employee or Visitor badges and must be citizens of the U.S. or have been lawfully admitted for permanent residence in the U.S. under the Immigration and Naturalization Act (8 USC, 1101, Section 101 (a) 20, 60 Stat. 163) (i.e. individuals referred to as "immigrant aliens" under previous laws and regulations).

(B) Lockheed Martin may, from time to time, furnish Consultant with literature, data, or technical information which Lockheed Martin considers necessary to the Consultant for the performance of services pursuant to the Agreement. In the event any of the furnished material is classified or restricted, Lockheed Martin shall so inform Consultant and Consultant agrees to comply with United States government security regulations applicable to such classified materials or information. In the event any information furnished to Consultant is Lockheed Martin Private Data, Lockheed Martin Proprietary Data, or data that is competition sensitive, Lockheed Martin shall so inform Consultant and Consultant agrees to disclose this information only

TERMS AND CONDITIONS FOR CONSULTANT SERVICES

to individuals or organizations approved by Lockheed Martin. Consultant also agrees to return all classified or restricted materials and such other unclassified materials as Lockheed Martin may request at any time and upon the expiration or termination of the Consultant's security clearance or this Agreement, whichever shall occur first.

A-33 PAYMENTS FOR POLITICAL PURPOSES

Consultant shall not, in performance of this Agreement, make any payments for political purposes.

A-34 ETHICS POLICIES (Domestic Business Development Consultants and U.S. Government Proposal Consultants Only)

Consultant shall, in performance of this Agreement, act in conformity with the ethics policies expressed in "Setting the Standard". Consultant acknowledges receipt of a copy of "Setting the Standard".

A-35 RECEIPT AND PROTECTION OF INFORMATION (Domestic Business Development Consultants and U.S. Government Proposal Consultants Only)

(A) Consultant, in performance under this Agreement, shall not solicit or receive any information, classified or unclassified, directly or indirectly, from the U.S. Government or any other source, except in strict accordance with all laws and regulations and Lockheed Martin policies, specifically including Lockheed Martin MPS 78, "Government and Competitive Information," a copy of which has been provided the Consultant, pertaining to the protection, possession, acquisition, and use of (i) U.S. Government information or documents or (ii) proprietary, competitive information of any competitor.

(B) When requested to do so by Lockheed Martin, Consultant agrees to provide supporting information and to execute certifications as may be required to permit Lockheed Martin to fully comply with:

- 1) Section 27, "Procurement Integrity," of the Office of Federal Procurement Policy (OFPP) Act, 41 U. S. Code, Section 423 and implementing regulations contained in the Federal Acquisition Regulation (FAR);
- 2) Federal Acquisition Regulation (FAR) Sections 52.209-7 and 52.209-8, Office of Federal Procurement Policy Letter 89-1, and FAR Subpart 9.5, related to consultant's conflict of interest; and
- 3) Other applicable government regulations which may become effective during the term of this Agreement.

(C) Failure to timely furnish any required certificate or disclosure upon request from either Lockheed Martin or a U.S. Government procurement authority, or when required by a FAR clause or other regulation, shall be the basis for immediate termination of this consulting agreement. Certifications required pursuant to FAR 52.209-7 shall be executed and returned to Lockheed Martin within ten business days from being notified of the requirement for such certification.

(D) If the consultant personally and substantially participates in the preparation or submission of any offer or bid, or in the modification or extension of any contract, the consultant shall execute a certificate, in

TERMS AND CONDITIONS FOR CONSULTANT SERVICES

conformance with FAR 52.203-8, Alt I, or FAR 52.203-9, provided by Lockheed Martin, (Certificate of Procurement Integrity). Lockheed Martin's decision as to whether such a certificate is necessary shall be binding on the consultant.

(E) If Consultant has executed a certification pursuant to (B) above, Consultant agrees that it will indemnify and hold harmless Lockheed Martin, its officers and employees from and against any claim, loss, cost (including attorney's fees), liability or damage of any kind or nature whatsoever, including reduction in price or fee of Lockheed Martin's Prime Contract, if any, arising out of, caused by, or resulting from Consultant's violation of or failure to comply with the Procurement Integrity Act, 41 U.S.C. Section 423, et seq. (the "Act") as implemented by FAR 3.104 whether by act or omission of Consultant, Consultant's agents, employees, supplier's or subcontractors, including but not limited to, the failure to report or disclose potential violations of the Act.

A-36 CONFLICT OF INTEREST - FULL DISCLOSURE

Consultant represents that it has and will make full disclosure during the term of this Agreement of each instance where Consultant or any of employee of Consultant is currently providing to a supplier, customer, or competitor of Lockheed Martin, services similar to those provided for hereunder or has provided such services during a period of twelve (12) months prior to the date of any certification provided pursuant to Clause A-35 above. Consultant further agrees to make disclosure to Lockheed Martin prior to entering into such arrangements in the future and to provide current certifications as may be requested by Lockheed Martin in order to facilitate its compliance with applicable laws and regulations.

A-37 PROHIBITION AGAINST CERTAIN PAYMENTS

(A) Notwithstanding any other provision of this Agreement, no payments shall be made to Consultant which are in violation of applicable U.S. law or which would not be deductible under Sections 162 and 274(d) of the Internal Revenue Code and applicable Internal Revenue Service regulations.

(B) Consultant shall not, in performance of this Agreement, make any payment to third parties if such payments would not be deductible by Lockheed Martin under Sections 162 and 274(d) of the Internal Revenue Code and implementing IRS regulations, or would be in violation of applicable law.

A-38 COMPLIANCE WITH LOBBYING PROHIBITIONS (Domestic Business Development Consultants And U.S. Government Proposal Consultants Only)

Consultant shall comply with 31 U.S. Code 1352 and implementing regulations contained in the Federal Acquisition Regulation (FAR) which prohibits use of federal appropriated funds to influence or attempt to influence any federal actions. Consultant shall promptly inform Lockheed Martin of any instance which may involve efforts to influence or attempt to influence agency or congressional personnel with respect to federal action (as these terms are defined by Section 1352 and its implementing regulations) and Consultant's invoices shall separately identify any time spent under this Agreement for such efforts.

A-39 REPORTING (Domestic Business Development Consultant Services only)

TERMS AND CONDITIONS FOR CONSULTANT SERVICES

If this Agreement is for Domestic Business Development Consultant Services, the Consultant shall provide a written summary of consulting activities provided under this Agreement. Such summary shall be provided periodically, but no less frequently than quarterly, and at the termination or completion of this Agreement.

A-40 CONTACT WITH LOCKHEED MARTIN CUSTOMERS

(A) With the exception of casual contact at domestic trade shows, a Domestic Business Development Consultant shall not in performance under this Agreement, have contact with any foreign Lockheed Martin customer, or any foreign government official for the purpose of collecting marketing intelligence or providing marketing related services or perform services for markets outside the United States.

(B) If this Agreement is for U.S. Government Proposal Consultant Services, or Technical/Engineering Management Services, (Consultant shall not, in performance under this Agreement, have any contact with any U.S. government official, foreign Lockheed Martin customer, or any foreign government official for the purpose of making a sales presentation, collecting marketing intelligence, or providing any other marketing related services. This clause does not preclude contacts with Lockheed Martin customers solely for the purpose of discussing or explaining technical, engineering, financial, or other information related to the Consultant's proposal preparation responsibilities or performance not of a marketing nature.

(C) If any such foreign contacts are anticipated, the Procurement Representative shall be notified in writing. Such notification shall set forth all pertinent data including but not limited to (1) the purpose of the contact, (2) the name of the foreign country if any, (3) the name of the anticipated contact, and (4) the frequency and places of such anticipated contacts. Such notification in no way constitutes approval by Lockheed Martin of such contacts and no such contacts shall be made by Consultant until and unless a written modification to this Agreement is furnished to Consultant.

A-41 PERSONAL PERFORMANCE REQUIREMENT

Consultant shall personally perform the consulting services described and shall not assign to any third party the performance obligation or any rights to compensation or benefits accruing to Consultant under this agreement without the written consent of Lockheed Martin.

A-42 POSSESSION OF COMPETITIVE DOCUMENTS

Consultant shall not, in the performance of this agreement, solicit, accept, use or possess:

A) Documents containing a legend indicating that it originates with or belongs to another company and that its contents are of a competitive nature.

B) Information or documents (whether or not containing legends) which constitute part of, or contain information relating to, contents of another company's proposal at any state of competition,

C) Government documents or information of a procurement planning nature whose release has not been approved by an official with release authority (the Government Contracting Officer or the Agency Head);

TERMS AND CONDITIONS FOR CONSULTANT SERVICES

D) Government documents containing procurement planning information not available to other potential competitors and whose possession would give the company an unfair competitive advantage; or

E) Documents containing markings indicating that the information is considered government property whose release was not permitted.

A-43 CONFLICT OF INTEREST CERTIFICATION REQUIREMENTS (All Consulting Agreements Other Than Domestic Business Development Consultants and U.S. Government Proposal Consultants)

(A) When requested to do so by Lockheed Martin, Consultant agrees to provide supporting information and to execute certifications as may be required to permit Lockheed Martin to fully comply with:

1) Federal Acquisition Regulation (FAR) Sections 52.209-7 and 52.209-8, Office of Federal Procurement Policy Letter 89-1, and FAR Subpart 9.5, related to consultant's conflict of interest; and

2) Other applicable government regulations which may become effective during the term of this Agreement.

(B) Failure to timely furnish any required certificate or disclosure upon request from either Lockheed Martin or a U.S. Government procurement authority, or when required by a FAR clause or other regulation, shall be the basis for immediate termination of this consulting agreement. Certifications required pursuant to FAR 52.209-7 shall be executed and returned to Lockheed Martin within ten business days from being notified of the requirement for such certification.