

**TERMS AND CONDITIONS FOR OPERATING SUPPORT SERVICES**

TERMS AND CONDITIONS  
FOR  
OPERATING SUPPORT SERVICES AGREEMENTS  
(OTHER THAN U.S. GOVERNMENT PROCUREMENTS)  
OSS-00

LOCKHEED MARTIN CORPORATION  
SPACE SYSTEMS COMPANY, MISSILES & SPACE OPERATIONS  
SUNNYVALE, CALIFORNIA

JUNE 2000

# TERMS AND CONDITIONS FOR OPERATING SUPPORT SERVICES

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## TERMS AND CONDITIONS FOR OPERATING SUPPORT 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 "LMSSC-MSO", means Lockheed Martin Space Systems Company, Missiles & Space Operations.

(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", 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 agreement 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.

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### **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) Contractor shall ensure that each Lockheed Martin-furnished Electronic Time & Attendance Time Sheet or other Time Card (as designated by the Lockheed Martin Procurement Representative) is accurately filled out and identified to the applicable agreement or task number, and shall certify to its correctness.

(D) Contractor shall ensure that Lockheed Martin's cognizant Technical Representative supervisor or manager will complete the ETA form by electronically approving all time recorded. Lockheed Martin's cognizant Technical Representative supervisor or manager will print, sign and date the ETA approved timesheet 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 Contractor's services are applied to different tasks above as directed by Lockheed Martin's Technical Representative separate invoices shall be submitted by Contractor for each task identifying the allowable costs incurred in performance of each task. Each such invoice shall carry the appropriate task number.

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(B) 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. Lockheed Martin may specify that certain Operating Support Services agreement will be subject to an automatic payment process and in those agreements invoices will not be required.

(C) All time worked must be documented on approved time sheets. Time worked at Lockheed Martin Facilities shall be recorded on Lockheed Martin provided Electronic Time & Attendance (ETA) time sheets (or time sheet as specified by the Lockheed Martin Procurement Representative). Time Sheets shall be completed in accordance with the instructions and contain the signatures of the Contractor and 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 Contractor'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.

(D) 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.

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

Accounts Payable – LMSSC-MSO  
P. O. Box 3645  
Sunnyvale, CA 94086-3645

(F) 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.

(G) 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."

(H) Invoices not in compliance with the requirements of this section will be returned to the Contractor 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. Contractor shall carry Workers' Compensation Insurance and be responsible for all obligations and responsibilities covering Social Security, Unemployment Insurance, taxes, and all other reports and deductions required by State and Federal law.

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### **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**

(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 is, or through action of persons other than Contractor, later falls within the public domain.

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(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 Contractor for infringement or misappropriation of patent, trademark, copyright, or trade secret rights of third parties and Contractor 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 Contractor 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 Contractor is notified of such action or claims against Lockheed Martin. Indemnification shall not apply to infringement arising solely 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 INDEPENDENT CONTRACTOR INNOVATION AGREEMENT WITH LOCKHEED MARTIN CORPORATION

Contractor in consideration of and as part of the terms of the agreement covering its continued efforts for and association with Lockheed Martin Corporation (LMC) and the remuneration paid to Contractor by LMC during such association, hereby agrees to the following:

Lockheed Martin Corporation (hereinafter referred to as "LMC" or "the Corporation") has developed and uses technical and non-technical information vital to the success of the Corporation's business. Generally, a Contractor becomes acquainted with this information and, depending on job assignments and responsibilities, may contribute to it either through inventions, discoveries, improvements, computer programs, mask works, works of authorship (collectively called "Innovations") or through studies, analyses, proposals, business plans (collectively called "Work for Hire") or otherwise. Therefore, it is necessary for the Corporation to protect certain of this technical and non-technical information generated by its Contractors by holding it as proprietary and confidential, or by obtaining statutory protection (comprising patents, trademarks, mask works, copyrights) or common law protection (such as trade secrets) or both.

(A) Proprietary Information: Contractor shall not, except as authorized by the Corporation, at any time during or after its association directly or indirectly disclose to any other person or entity any proprietary or sensitive information of the Corporation or of others (collectively called "Proprietary Information"), which has come into the Corporation's or its possession, custody or knowledge during its association with the Corporation, nor shall Contractor use any such Proprietary Information for Contractor's personal use or advantage or make such Proprietary Information available to others. Neither shall Contractor disclose or use, directly or indirectly, any Proprietary Information, or make such Information available to others for use in competition with the Corporation for work being performed or opportunities being pursued by the Corporation. Proprietary Information includes

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existing and contemplated technical information such as, for example, compositions, formulas, products, processes, methods, systems, designs, specifications, mask works, testing or evaluation procedures, machines, manufacturing procedures, production techniques, research and development activities, inventions, discoveries and improvements and also existing and contemplated business, marketing and financial information such as, for example, business plans and methods, marketing information, cost estimates, forecasts, financial data, bid and proposal information, customer identification, and sources of supply.

All information, both technical and non-technical, pertaining to the Corporation's businesses in whatever form, including but not limited to text, drawings, mask works or computer software programs, is presumed to be proprietary and confidential until it becomes readily available to the general public lawfully and without breach of confidential obligation.

(B) Innovations: Contractor agrees to fully disclose to the Corporation within ten (10) days of the first triggering event (e.g., creation, conception, or reduction to practice) all Innovations and/or Work for Hire, whether or not patentable, copyrightable or registerable, including but not limited to products, processes, methods, systems, designs, techniques, mask works, computer programs, facilities, equipment, and devices that have been or may be conceived, made or authored by Contractor solely or jointly with others in the performance of efforts owed under Agreements with the Corporation: (a) which are along the lines of or relate to the business, work, or investigations of the Corporation or of any company with which it is affiliated; (b) which result from or arise out of any work that it may do for or on behalf of the Corporation; (c) which result from or arise out of any Proprietary Information that may have been disclosed or otherwise made available to it as a result of duties assigned it by the Corporation or (d) that are otherwise made through use of the Corporation's time, facilities or materials. All such Innovations and Works for Hire shall be the sole and exclusive property of Lockheed Martin, and Contractor agrees to assign and hereby assign to the Corporation all of Contractor's right, title and interest therein.

(C) Execution of Documents: Contractor also agrees, during and after the period of its performance under Agreements with the Corporation, to execute all documents and perform all reasonable acts requested by the Corporation relating to the perfection and exercise of the Corporation's rights in all Innovations described in Paragraph 2 above, including but not limited to the assignment and exploitation of, and application for, issuance, and maintenance of U.S. and foreign statutory protection for such innovations.

(D) Records and Documents; Prior Inventions: All records, documents, and other writings including text, drawings, computer software programs, mask works or works of authorship relating to or containing Proprietary Information as defined above, which are prepared or created by Contractor or which may come into its possession in the performance of efforts owed under Agreements with the Corporation, are deemed to be the property of the Corporation. Upon termination of the Agreements with the Corporation under which its performance is owed, Contractor agrees to leave all such records, documents, and writings and all copies thereof with the Corporation. Contractor also agrees that I will not disclose to or use on behalf of the Corporation any proprietary or confidential information of any third party without authorization therefrom.

(E) Miscellaneous: No provision in this Agreement is intended to require assignment to the Corporation of any of Contractor's rights in an invention for which no equipment, supplies, facilities or trade secret information of the Corporation was used, and which was developed entirely on Contractor's own time, unless such invention (1) relates to the business of the Corporation or to the actual or demonstrably anticipated research or development of the Corporation; or results from any work performed by Contractor for the Corporation. This clause shall be binding upon Contractor, its heirs, administrators, assigns, executors or other legal representatives and shall be binding upon and inure to the benefit of the Corporation, its assigns, nominees or successors; however, neither this Agreement nor any provision thereof shall be construed to be an employment agreement. Contractor agrees that either during or after the period of its performance under Agreements with the Corporation, the Corporation may advise others of the existence of this clause and the provisions of all or any part thereof.



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Note: The term "Confidential" as used herein does not refer to official security classification of the United States Government.

A-11 CALIFORNIA ADDENDUM TO INDEPENDENT CONTRACTOR INNOVATION AGREEMENT WITH LOCKHEED MARTIN CORPORATION (This clause is applicable only when the performance of the contract will occur in California)

The terms of Section A-10 do not apply to an invention which qualifies fully under California Labor Code Article 3.5, Section 2870, as amended.

Nothing in Section 2870 shall be construed to forbid or restrict the right of Lockheed Martin to provide for full title to certain patents and inventions to be in the United States, as required by contracts between Lockheed Martin and the United States or any of its agencies.

All inventions, including those qualifying under Section 2870, which are made by Contractor solely or jointly with others during the period of Contractor's performance under Agreements with Lockheed Martin shall be disclosed to Lockheed Martin for review to consider such issues as may arise under the California Labor Code and the terms of Section A-10.

A-12 NONDISCLOSURE AGREEMENT WITH LOCKHEED MARTIN CORPORATION

Contractor agrees that the sole purpose of this clause is to allow the Contractor to receive certain documentation/information relating to LMC proprietary information in connection with this agreement.

NOW THEREFORE, in consideration of these premises and the mutual covenants contained herein, the parties hereto agree as follows:

(A) During the course of this Agreement, LMC may exchange or disclose to the Contractor, information and data which the disclosing party considers to be proprietary. Contractor agrees that all information received from Lockheed Martin under this Agreement shall be deemed Lockheed Martin Proprietary Information. Unless otherwise authorized in writing by Lockheed Martin, Contractor shall place a legend stating "Lockheed Martin Proprietary Information" on all information received under this Agreement, unless the information already has such a legend. The receiving party agrees that it will use all such information submitted in written or other tangible, retainable form only in connection with the activity contemplated by this Agreement. Any proprietary information which is disclosed to receiving party orally or visually, in order to be subject to this agreement, shall be identified to the receiving party orally at the time of disclosure as proprietary and a summary of said information shall be transmitted to the receiving party in writing within thirty (30) business days after such initial oral or visual disclosure. The receiving party agrees to disclose such proprietary information only to its employees having a need to know, and not to any third parties or consultants and agrees to use such information only for the purposes contemplated by this Agreement as set forth above. The parties agree that the receiving party will use the same reasonable efforts to protect the transmitting party's information as it uses to protect its own information, but will at least use reasonable care. All proprietary information, data and equipment shall remain the property of the disclosing party and shall be returned, together with all copies thereof, upon termination of this Agreement or upon the written request of the disclosing party, except for one copy of information and data which may be retained for record purposes.

(B) Information and data shall not be subject to protection pursuant to this clause if such information:

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1. is, by dated documentation, established by the receiving party to have been known by the receiving party at the time of receipt;
2. is or becomes a part of the Public Domain through no wrongful act of the receiving party;
3. is approved for release by proper written authorization of the disclosing party;
4. is disclosed seven (7) years or more after the effective date of this Agreement.

If any portion of a party's proprietary information falls within any of the above exceptions, the remainder shall continue to be subject to the foregoing prohibitions and restrictions.

(C) The primary points of contact for the transmission and control of proprietary information subject to the protection of this clause are designated in the body of this issuing contract.

(D) The effective date of this clause shall be the date the last party signs the Agreement. This clause shall expire seven (7) years after the effective date. This Agreement may be terminated earlier per clause A-20, Termination/Cancellation. Termination shall not, however, effect the rights and obligations contained herein with respect to proprietary information disclosed prior to termination.

(E) Except as expressly provided herein, neither the execution and delivery of this Agreement, nor the furnishing of any proprietary information under it, shall be construed as granting, either expressly or by implication, estoppel or otherwise, any license or ownership right under any invention, improvement, discovery, patent or application for patent, copyright, trademark, or trade secret now or hereafter owned or controlled by a party disclosing proprietary information hereunder.

**(F) SUCH INFORMATION AS MAY BE TRANSMITTED OR EXCHANGED BY THE RESPECTIVE PARTIES UNDER THIS CLAUSE IS PROVIDED "AS-IS" AND SHALL NOT CONSTITUTE ANY REPRESENTATION, WARRANTY, ASSURANCE, GUARANTEE OR INDUCEMENT BY EITHER PARTY TO THE OTHER WITH RESPECT TO THE INFRINGEMENT OF ANY PATENT OR OTHER PROPRIETARY RIGHT OWNED OR CONTROLLED BY ANY THIRD PARTY. NO WARRANTY OF MERCHANTABILITY NOR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE IS PROVIDED HEREUNDER FOR ANY OF THE DISCLOSED PROPRIETARY INFORMATION. NOTHING IN THIS CLAUSE SHALL BE CONSTRUED AS A WARRANTY, REPRESENTATION, ASSURANCE, GUARANTEE OR INDUCEMENT BY EITHER PARTY TO THE OTHER WITH RESPECT TO THE CONTENT, COMPLETENESS OR ACCURACY OF DOCUMENTS AND INFORMATION TRANSMITTED OR EXCHANGED BY THE PARTIES UNDER THIS CLAUSE. EACH PARTY SHALL USE AND RELY UPON PROPRIETARY INFORMATION RECEIVED FROM THE OTHER AT ITS SOLE RISK AND EXPENSE.**

(G) Except as may be required by Federal, State or local laws and regulations or courts of competent jurisdiction, or as required to meet credit and financing arrangements or as required or appropriate in the reasonable judgment of either party to satisfy the disclosure requirements of any Federal or security laws or regulations, no publicity or advertising shall be released by either party in connection with this Agreement without the prior written approval of the other.

(H) This clause shall not be construed as creating a teaming, joint venture, or other business arrangement; rather, the parties expressly agree that this clause is for the purpose of protecting proprietary information only.

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(I) This clause contains the entire understanding between the parties relative to the protection of proprietary information and supersedes all prior and collateral communication, reports and understandings, if any, between the parties relating the subject matter hereof. No changes, modifications, alterations, or additions to any provision hereof shall be binding unless reduced to writing and signed by the parties hereto. This clause shall apply in lieu of, and notwithstanding any specific legend or statements associated with any proprietary information, and the duties of the parties shall be determined exclusively by the terms and conditions of this clause.

(J) The Receiving Party shall adhere to the U.S. Export Administration Laws and Regulations and shall not export or re-export any technical data or products received from the Disclosing Party or the direct product of such technical data to any proscribed country listed in the U.S. Export Administration Regulations, unless properly authorized by the U.S. Government.

### **A-13 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 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-14 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-15 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 canceled. 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-16 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-17 AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS**

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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.

### A-18 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-19 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:

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-20 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-32, 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 of 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.

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

### **A-21 GRATUITIES**

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.

### **A-22 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-23 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-24 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

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

### **A-25 RESPONSIBILITY FOR LOCKHEED MARTIN FURNISHED PROPERTY**

Unless otherwise specified, Contractor shall be liable for any loss or destruction or damage to Lockheed Martin property furnished to Contractor 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 agreement. Lockheed Martin does not require Contractor to purchase insurance covering property of Lockheed Martin but if Contractor shall nevertheless carry insurance against direct loss or damage the cost thereof shall not be a direct charge to this agreement. 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. Lockheed Martin shall have the right to enter Contractor's premises at all reasonable times to inspect its property and Contractor's records with respect thereto.

### **A-26 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;

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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.

(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-27 COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)**

If Contractor 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. Contractor 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-28 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-29 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 returned by Contractor to Lockheed Martin.

### **A-30 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-31 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.

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### **A-32 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-33 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 1405; (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 1405. Contractor shall continue to submit a new form 1405 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 1405 for any year will result in withholding as indicated in (A) above.

### **A-34 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-35 SECURITY REQUIREMENTS**

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).

### **A-36 LABOR DISPUTES**

Whenever any actual or potential labor dispute develops or threatens to delay the timely performance of this agreement, Contractor shall immediately give notice thereof to Lockheed Martin.