



GOVERNMENT SUBCONTRACTS (ALL AGENCIES) GENERAL PROVISIONS

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1. ACCIDENT AND SIGNIFICANT INCIDENT REPORTING AND INVESTIGATION

- (a) CONTRACTOR shall report promptly to LOCKHEED MARTIN all pertinent facts relating to each accident involving products being developed, manufactured, modified, repaired, tested or overhauled under or in connection with this Contract, or involving services being performed hereunder. CONTRACTOR shall also report promptly to LOCKHEED MARTIN all significant incidents or occurrences which could affect the safety or performance of the product or service, whether favorably or unfavorably.
- (b) Notification of such accidents, incidents, and occurrences will be made to the LOCKHEED MARTIN resident representative (when assigned to CONTRACTOR's facility) or to the authorized Procurement Representative designated in the Contract. Such notice shall be given by telephone or fax followed by a written report giving pertinent details of the accident, incident, or occurrence and the effect or potential effect on Contract performance and product safety.
- (c) If LOCKHEED MARTIN or the cognizant Government Contracting Officer elects to conduct an investigation of the accident, incident, or occurrence, CONTRACTOR will cooperate fully and assist LOCKHEED MARTIN or Government personnel until the investigation is complete.
- (d) CONTRACTOR shall include the substance of this clause in each subcontract and lower-tier subcontract which could have a significant effect on performance, quality, reliability or safety of the products or services being provided under this Contract.

2. APPLICABLE LAWS

- (a) This Contract shall be governed by and construed in accordance with the law of U.S. Government contracts as set forth by statute and applicable regulations, and decisions by the appropriate courts and Boards of Contract Appeals. All provisions of this Contract not governed or construed pursuant to the provisions of this clause shall be governed by and construed in their entirety in accordance with the law of the State from which this Contract is issued.
- (b) CONTRACTOR agrees to comply with all applicable local, state and federal laws and executive orders and regulations issued pursuant thereto and agrees to defend, indemnify, and hold LOCKHEED MARTIN harmless from any claim, suit, loss, cost, damage, expense (including attorneys' fees) or liability by reason of CONTRACTOR's violation hereof. Nothing in this Contract or in any requirement under this Contract shall be construed to mean that CONTRACTOR should perform such work in violation of any law, statute, code or ordinance.

3. ASSIGNMENT

- (a) Any assignment or delegation of this Contract or rights or duties hereunder by the CONTRACTOR shall be void, unless prior written consent thereto is given by LOCKHEED MARTIN. However, any monies due, or to become due hereunder, may be assigned, provided that such assignment shall not be binding upon LOCKHEED MARTIN until the assignment agreement is accepted and acknowledged in writing, and shall be subject to any proper deductions or setoffs against such monies.

- (b) In no event shall copies of this Contract or of any plans, specifications, or other similar documents relating to work under this Contract, if marked "Top Secret," "Secret," "Confidential," or "Proprietary," or similarly marked, be furnished to any assignee of any claim arising under this Contract, or to any other person not entitled to receive the same.

4. BANKRUPTCY

Subject to the rights of any trustee in bankruptcy, for any voluntary or involuntary petition in bankruptcy by or against the CONTRACTOR, LOCKHEED MARTIN may terminate the right of the CONTRACTOR to proceed with the further performance of this Contract without further obligation, except that LOCKHEED MARTIN shall be obliged to pay for any article or services accepted. CONTRACTOR shall notify LOCKHEED MARTIN in writing within 20 days of the initiation of any bankruptcy action by or against CONTRACTOR.

5. CAS NONCOMPLIANCE

Award of this Contract does not constitute a determination that the CONTRACTOR's disclosed and applied accounting practices used in pricing this Contract are in compliance with the Cost Accounting Standards (CAS) (if CAS is applicable). LOCKHEED MARTIN retains its right to adjust the Contract price under the CAS clauses of this Contract if a subsequent final determination of noncompliance is made by the Government.

6. CHANGES

- (a) The LOCKHEED MARTIN Purchasing Representative may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this Contract, in any one or more of the following:
 - (1) Drawings, designs, or specifications;
 - (2) Method of shipment or packing;
 - (3) Description of services to be performed;
 - (4) Time of performance of services (i.e., hours of the day, days of the week, etc.);
 - (5) Place of performance of services; and
 - (6) Place of inspection, delivery, or acceptance.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Contract, whether or not changed by the order, LOCKHEED MARTIN shall make an equitable adjustment in the Contract price, the delivery schedule, or both, and shall modify the Contract.
- (c) The CONTRACTOR must assert its right to an adjustment under this clause within twenty (20) days from the date of receipt of the written order. However, if LOCKHEED MARTIN decides that the facts justify it, LOCKHEED MARTIN may receive and act upon a proposal submitted before final payment of the Contract.
- (d) Prior to the issuance of a change order under this Contract, LOCKHEED MARTIN may solicit from the CONTRACTOR a written agreement as to the maximum (in the case of an increase) adjustments to be made in the price and/or in the delivery schedule (or time of performance), by reason of the change. LOCKHEED MARTIN may also solicit such agreement on limitations on the adjustments to any other provisions of the Contract which may be subject to equitable adjustment by reason of the change. The CONTRACTOR shall promptly submit a "not-to-exceed" amount or maximum schedule adjustment when so requested by LOCKHEED MARTIN. Any such written agreement then shall be cited in the change order and upon its issuance shall be deemed to become part of the Contract. In no event shall the definitized equitable adjustment exceed the maximum price and/or

delivery schedule (or time of performance) adjustments so established, nor otherwise be inconsistent with other adjustment limitations so established. Except with respect to such limitations, nothing contained herein shall affect the right of the Parties to an equitable adjustment by reason of the change, pursuant to this clause.

- (e) LOCKHEED MARTIN's engineering and technical personnel may from time to time render assistance or give technical advice to, or effect an exchange of information with, CONTRACTOR personnel in a liaison effort concerning the work to be performed hereunder. However, such exchange of information or advice shall not vest the CONTRACTOR with the authority to change the work to be performed hereunder or the provisions of the Contract, nor shall such change in work or provisions of the Contract be binding upon LOCKHEED MARTIN unless incorporated as a change in accordance with paragraph (a) hereof.
- (f) No changes to this Contract or its scope may be made without the express written authorization of the designated LOCKHEED MARTIN Purchasing Representative.
- (g) If the CONTRACTOR's proposal includes the cost of property made obsolete or excess by the change, LOCKHEED MARTIN shall have the right to prescribe the manner of the disposition of the property.
- (h) Failure to agree to any adjustment shall be a dispute under the "Disputes" clause of this Contract. However, nothing in this clause shall excuse the CONTRACTOR from proceeding with the Contract as changed.

7. COMMUNICATION WITH THE GOVERNMENT

- (a) LOCKHEED MARTIN shall be solely responsible for all liaison and coordination with the Government as it affects the applicable Prime Contract, this Contract, and any related contract.
- (b) Unless otherwise directed in writing by the authorized LOCKHEED MARTIN Purchasing Representative, all documentation requiring submittal to, or action by, the Government or the Contracting Officer shall be routed to, or through, the LOCKHEED MARTIN Purchasing Representative.

8. DEFINITIONS

As used throughout this Contract, the following terms shall have the meanings set forth below:

- (a) "Articles" or "work" means the goods, products, supplies, lots of supplies, parts, assemblies, technical data, drawings, reports, services (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), or other items constituting the subject matter of this Contract which are to be furnished by the CONTRACTOR to LOCKHEED MARTIN hereunder, as further described in the schedule, and includes without limitation raw materials, components, and intermediate assemblies of such articles.
- (b) "CFR" means "Code of Federal Regulations."
- (c) "Contract" means this contract.
- (d) When used herein, the terms "Contract," "purchase order," and "purchase agreement" are synonymous.
- (e) "Contracting Officer" means any officer or civilian employee of the Government who is properly designated and duly au-

thorized to act as a Contracting Officer for the Prime Contract and so has authority to enter into, administer, and/or terminate contracts and to make related determination and findings. The term includes the authorized representative of a Contracting Officer acting within the limits of his/her authority.

- (f) "CONTRACTOR" or "SELLER" means the individual, partnership, corporation, or business association acting as the immediate (first-tier) subcontractor to LOCKHEED MARTIN for the goods and services provided under this Contract.
- (g) "DAR" mean the Defense Acquisition Regulation as in effect on 31 March 1984, and now superseded by the FAR.
- (h) "DEAR" means the Department of Energy Acquisition Regulations, issued as Chapter 9 of Title 48, Code of Federal Regulations.
- (i) "DFARS" means the Defense Federal Acquisition Regulation Supplement, issued as Chapter 2 of Title 48, Code of Federal Regulations.
- (j) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- (k) "Government" means the United States Government or any department or agency thereof."
- (l) "LOCKHEED MARTIN" or "BUYER" means Lockheed Martin Corporation, acting through an element of its Space and Strategic Missiles Sector.
- (m) "LOCKHEED MARTIN Purchasing Representative" means any duly authorized Buyer, Subcontract Administrator, authorized Procurement Representative, or authorized Materiel Representative employed by LOCKHEED MARTIN.
- (n) "NASA FAR Supp" means the NASA Federal Acquisition Regulation Supplement, issued as Chapter 18 of Title 48, Code of Federal Regulations.
- (o) "Prime Contract" means the Contract between LOCKHEED MARTIN and the United States of America under which this Contract is issued as a subcontract, and the number of which may be specified in the Contract.
- (p) "Subcontract" means any contract placed by the CONTRACTOR or its lower tier subcontractors for the specific purpose of performing any portion of the work under this Contract, and includes but is not limited to purchase orders and changes, or modifications thereto.

9. DISPUTES

The provisions of FAR, DAR, DEAR, DFARS, or NASA FAR Supplement clauses or any Government agency regulation incorporated herein by reference which provide that failure to agree shall be a dispute within the meaning of the Government contract clause entitled "Disputes" shall have no force or effect. In the event that any dispute arising under or relating to this Contract cannot be resolved by settlement between the Parties, either party may litigate any such dispute in any court of competent jurisdiction. Pending resolution of any such dispute by settlement or by final judgment, the CONTRACTOR shall proceed diligently with performance of this Contract, and shall comply with LOCKHEED MARTIN's written instructions.

10. EXCUSABLE DELAYS

- (a) Except for defaults of subcontractors at any tier, neither Party hereto shall be in default because of any failure to perform this Contract under its terms if the failure arises from causes beyond the control and without the fault or

negligence of the nonperforming party. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the non-performing Party. "Default" includes failure to make progress in the work so as to endanger performance.

- (b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the CONTRACTOR and subcontractor, and without the fault or negligence of either, the CONTRACTOR shall not be deemed to be in default, unless:
 - (1) The subcontracted supplies or services were obtainable from other sources;
 - (2) LOCKHEED MARTIN ordered the CONTRACTOR in writing to purchase these supplies or services from the other source; and
 - (3) The CONTRACTOR failed to comply reasonably with this Contract.
- (c) Upon request of the CONTRACTOR, LOCKHEED MARTIN shall ascertain the facts and extent of the failure. If LOCKHEED MARTIN determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of LOCKHEED MARTIN under the "Termination" clause of this Contract

11. EXPORT OF TECHNICAL DATA

- (a) The CONTRACTOR represents and warrants that no technical data furnished to it by LOCKHEED MARTIN or developed by the CONTRACTOR during performance of the work under the Contract shall be disclosed to any foreign national, firm, or country, including foreign nationals employed by or associated with CONTRACTOR, without first complying with all requirements of the International Traffic in Arms Regulation, 22 CFR 120 et seq.; the Export Administration Act, 50 U.S.C. Appx. 2401 et seq.; and DOD Directive 5230.25, "Withholding of Unclassified Technical Data From Public Disclosure;" including the requirement for obtaining any export license, if applicable. The CONTRACTOR shall first obtain the written consent of LOCKHEED MARTIN prior to submitting any request for authority to export any such technical data.
- (b) The supplies or services provided hereunder by CONTRACTOR may be offered for, or as a part of, a foreign sale. In the event CONTRACTOR receives notification that such articles or services are to be offered for, or as a part of, a foreign sale, CONTRACTOR agrees to comply with the requirements (including reporting requirements) of all laws and regulations (including the International Traffic in Arms Regulation) insofar as they apply to it relating to foreign sales by LOCKHEED MARTIN that include supplies or services provided pursuant to this Contract. CONTRACTOR further agrees to make such reports or certifications to LOCKHEED MARTIN as may be necessary for compliance with any laws and regulations pertaining to foreign sales by LOCKHEED MARTIN that include supplies or services provided by CONTRACTOR under this Contract.

12. EXTRAS

Except as otherwise provided in this Contract, no payments for extras shall be made unless such extras and the price therefor have been first authorized in writing by LOCKHEED MARTIN.

13. GRATUITIES/KICKBACKS

- (a) LOCKHEED MARTIN may, by written notice to CONTRACTOR, terminate by default the right of CONTRACTOR to proceed under this Contract if LOCKHEED MARTIN has reasonable cause to believe that gratuities (in the form of entertainment, gifts or otherwise) or kickbacks 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 Contract or securing favorable treatment with respect to the award or amendment of this Contract or the making of any determination with respect to the performance of this Contract. 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 Contract.
- (b) **By accepting this Contract, CONTRACTOR certifies that it has not and will not solicit or offer a kickback. If this Contract is pursuant to a U.S. Government Prime Contract, CONTRACTOR certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference.**

14. INDEPENDENT CONTRACTOR RELATIONSHIP

It is understood and agreed that CONTRACTOR shall be an independent contractor in all its operations and activities hereunder; and that the employees furnished by CONTRACTOR to perform work under this Contract shall be CONTRACTOR's employees exclusively without any relation whatever to LOCKHEED MARTIN as employees, agents, or independent contractors; that such employees shall be paid by CONTRACTOR for all services in this connection; and that CONTRACTOR shall carry worker's compensation insurance.

15. INSURANCE - THIRD PARTY LIABILITY

- (a) Each party shall be solely responsible for any and all third party and Government liability incurred or caused by it in connection with the performance of this Contract, and shall defend, indemnify and save the other party harmless from all such liabilities, claims, judgments, costs and attorneys' fees.
- (b) In connection with the performance of this Contract, CONTRACTOR and its subcontractors and lower-tier subcontractors shall maintain public liability and property damage insurance in prudent and reasonable limits covering the obligations set forth above, and shall maintain, to the statutory limits required by law, proper worker's compensation insurance or an approved self insurance program and employer's liability insurance covering all its employees performing this Contract. 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 CONTRACTOR 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 Contract.
- (c) When requested to do so by LOCKHEED MARTIN, prior to or after the commencement of work hereunder, the CONTRACTOR shall furnish to LOCKHEED MARTIN a certificate or written statement evidencing issuance of the above required insurance. The policies of required insurance shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of LOCKHEED MARTIN in such insurance shall not be effective sooner than thirty (30) days after written notice

thereof to LOCKHEED MARTIN. In the event the CONTRACTOR fails to furnish such certificates prior to the commencing of work or to continue to maintain such insurance during the performance of the Contract, LOCKHEED MARTIN shall have the right to terminate this Contract for default as provided above, or to withhold any payments or partial payments required to be made under this Contract.

16. INVOICES

Invoices shall be submitted in triplicate and shall contain the following information: this Contract number, item number, description of articles, sizes, quantities, unit prices, and extended totals.

17. LEGAL ACTION AND INTEREST

In the event that LOCKHEED MARTIN brings any lawsuit or other legal proceeding to enforce its rights against the CONTRACTOR under this Contract and prevails in such action, the CONTRACTOR shall pay all court costs and reasonable attorneys' fees incurred by LOCKHEED MARTIN in such action. Whether or not litigation is commenced, the CONTRACTOR shall pay interest as specified elsewhere in this Contract on any sum due to LOCKHEED MARTIN from the date due until paid unless paid within thirty (30) days of becoming due. No such reimbursed legal fees, court costs or interest shall be "allowable costs" under this Contract.

18. LIABILITY AND INDEMNIFICATION

- (a) In addition to any other remedies provided by law or under this Contract, CONTRACTOR further agrees to indemnify and hold LOCKHEED MARTIN harmless to the full extent of any loss, damage, or expense, excluding profit or fee, as applicable, if LOCKHEED MARTIN is subjected to any liability as the result of failure of the CONTRACTOR or its subcontractors or its lower-tier subcontractors to comply with any law, regulation, or clause whose terms are part of this Contract.
- (b) If the Contracting Officer who has cognizance over LOCKHEED MARTIN's prime contract reduces LOCKHEED MARTIN's prime contract, or if LOCKHEED MARTIN is fined or penalized by a Government Agency, as a result of any violation of any Public Law or Federal, State, or Local Regulation by CONTRACTOR or CONTRACTOR's subcontractors or lower-tier subcontractors, LOCKHEED MARTIN may reduce the amount of this Contract by the same amount. If LOCKHEED MARTIN already has 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.

19. LOCKHEED MARTIN OR GOVERNMENT PROPERTY

(Applicable if LOCKHEED MARTIN or Government property is furnished to the CONTRACTOR under this Contract.)

- (a) Government-furnished property.
 - (1) LOCKHEED MARTIN or the Government shall deliver to the CONTRACTOR, for use in connection with and under the terms of this Contract, the LOCKHEED MARTIN and/or Government-furnished property described in the Schedule or specifications together with any related data and information that the CONTRACTOR may request and is reasonably required for the intended use of the property (hereinafter collectively referred to as "Government-furnished property").

- (2) The delivery or performance dates for this Contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as-is") will be delivered to the CONTRACTOR at the times stated in the Schedule or, if not so stated, in sufficient time to enable the CONTRACTOR to meet the Contract's delivery or performance dates.
- (3) If Government-furnished property is received by the CONTRACTOR in a condition not suitable for the intended use, the CONTRACTOR shall, upon receipt of it, notify LOCKHEED MARTIN detailing the facts, and, as directed by LOCKHEED MARTIN and at LOCKHEED MARTIN's expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the CONTRACTOR, LOCKHEED MARTIN shall make an equitable adjustment as provided in paragraph (h) of this clause.
- (4) If Government-furnished property is not delivered to the CONTRACTOR by the required time, LOCKHEED MARTIN shall, upon the CONTRACTOR's timely written request, make a determination of the delay, if any, caused the CONTRACTOR and shall make an equitable adjustment in accordance with paragraph (h) of this clause.
- (b) Changes in Government-furnished property.
- (1) LOCKHEED MARTIN may, by written notice:
- (i) Decrease the Government-furnished property provided or to be provided under this Contract, or
- (ii) Substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the CONTRACTOR for the Government, under this Contract.
- The CONTRACTOR shall promptly take such action as LOCKHEED MARTIN may direct regarding the removal, shipment, or disposal of the property covered by such notice.
- (2) Upon the CONTRACTOR's written request, LOCKHEED MARTIN shall make an equitable adjustment to the Contract in accordance with paragraph (h) of this clause, if LOCKHEED MARTIN has agreed in the Schedule to make the property available for performing this Contract and there is any:
- (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
- (ii) Withdrawal of authority to use this property, if provided under any other Contract or lease.
- (c) Title in Government property.
- (1) The Government or LOCKHEED MARTIN, according to its interest, shall retain title to all Government-furnished property.
- (2) All Government-furnished property and all property acquired by the CONTRACTOR, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identify as personal property by being attached to any real property.
- (3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the CONTRACTOR for the Government under this Contract shall pass to and vest in the Government when its use in performing this Contract commences or when LOCKHEED MARTIN or the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.
- (4) If this Contract contains a provision directing the CONTRACTOR to purchase material for which LOCKHEED MARTIN will reimburse the CONTRACTOR as a direct item of cost under this Contract:
- (i) Title to material purchased from a supplier shall pass to and vest in the Government upon the supplier's delivery of such material; and
- (ii) Title to all other material shall pass to and vest in the Government upon:
- (A) Issuance of the material for use in Contract performance;
- (B) Commencement of processing of the material or its use in Contract performance; or
- (C) Reimbursement of the cost of the material by LOCKHEED MARTIN, whichever occurs first.
- (d) Use of Government property. The Government property shall be used only for performing this Contract, unless otherwise provided in this Contract or approved by LOCKHEED
- (e) Property administration.
- (1) The CONTRACTOR shall be responsible and accountable for all Government property provided under this Contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5 (or DAR Appendix B if this Contract was issued under the Defense Acquisition Regulation), as in effect on the date of this Contract.
- (2) The CONTRACTOR shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of the FAR, DEAR, DFARS, or NASA FAR Supp.
- (3) If damage occurs to Government property, the risk of which has been assumed by LOCKHEED MARTIN under this Contract, LOCKHEED MARTIN shall replace the items or the CONTRACTOR shall make such repairs as LOCKHEED MARTIN directs. However, if the CONTRACTOR cannot effect such repairs within the time required, the CONTRACTOR shall dispose of the property as directed by LOCKHEED MARTIN. When any property for which LOCKHEED MARTIN is responsible is replaced or repaired, LOCKHEED MARTIN shall make an equitable adjustment in accordance with paragraph (h) of this clause.
- (4) The CONTRACTOR represents that the Contract price does not include any amount for repairs or replacement for which LOCKHEED MARTIN is responsible. Repair or replacement of property for which the CONTRACTOR is responsible shall be accomplished by the CONTRACTOR at its own expense.
- (f) Access. LOCKHEED MARTIN and the Government and all their designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.
- (g) Risk of loss. Unless otherwise provided in this Contract, the CONTRACTOR assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the CONTRACTOR or upon passage of title to the Government under paragraph (c) of this clause. However, the CONTRACTOR is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this Contract.

- (h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected Contract provision in accordance with the procedures of the "Changes" clause. When appropriate, LOCKHEED MARTIN may initiate an equitable adjustment in favor of itself or the Government. The right to an equitable adjustment shall be the CONTRACTOR's exclusive remedy. LOCKHEED MARTIN shall not be liable to suit for breach of contract for:
- (1) Any delay in delivery of Government-furnished property;
 - (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
 - (3) A decrease in or substitution of Government-furnished property; or
 - (4) Failure to repair or replace Government property for which LOCKHEED MARTIN is responsible.
- (i) Final accounting and disposition of Government property. Upon completing this Contract, or at such earlier dates as may be fixed by LOCKHEED MARTIN, the CONTRACTOR shall submit, in a form acceptable to LOCKHEED MARTIN, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this Contract or delivered to the Government. The CONTRACTOR shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by LOCKHEED MARTIN. The net proceeds of any such disposal shall be credited to the Contract price or shall be paid to LOCKHEED MARTIN or the Government as LOCKHEED MARTIN directs.
- (j) Abandonment and restoration of CONTRACTOR's premises. Unless otherwise provided herein, LOCKHEED MARTIN or the Government:
- (1) May abandon any Government property in place, at which time all obligations of LOCKHEED MARTIN and the Government regarding such abandoned property shall cease; and
 - (2) Has no obligation to restore or rehabilitate the CONTRACTOR's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon Contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.
- (k) Communications. All communications under this clause shall be in writing.
- (l) Overseas contracts. If this subcontract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.
- (m) Insurance. LOCKHEED MARTIN does not require Contractor to purchase insurance covering property of LOCKHEED MARTIN but if CONTRACTOR shall nevertheless carry any insurance against direct loss or damage the cost thereof shall not be a direct charge to this Contract.
- (n) Recovery Against Third Parties. The CONTRACTOR shall do nothing to prejudice the Government's or LOCKHEED MARTIN's rights to recover against third parties for any loss or destruction of, or damage to, Government or LOCKHEED MARTIN property. Upon the request of the Contracting Officer or LOCKHEED MARTIN, the CONTRACTOR shall at LOCKHEED MARTIN's or the Government's expense furnish to the Government and LOCKHEED MARTIN all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the

Government and/or LOCKHEED MARTIN) in obtaining recovery. In addition, where a lower-tier subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government or LOCKHEED MARTIN property, the CONTRACTOR shall enforce for the benefit of the Government and/or LOCKHEED MARTIN the liability of the lower-tier subcontractor for such loss, destruction, or damage.

20. MERGER INTO CONTRACT

This Contract integrates, merges, and supersedes all prior offers, negotiations, or agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.

21. PARTS OBSOLESCENCE

CONTRACTOR shall notify LOCKHEED MARTIN of any pending or contemplated future action to discontinue items purchased pursuant to this Contract and shall allow LOCKHEED MARTIN to submit a forecast of expected annual usage prior to the CONTRACTOR's finalizing its decision to discontinue the items. CONTRACTOR shall provide LOCKHEED MARTIN with a "Last Time Buy Notice" at least twelve (12) months prior to the actual discontinuance. CONTRACTOR shall extend opportunities to LOCKHEED MARTIN to place last time buys of such items with deliveries not to exceed twelve (12) months after the last time buy date.

22. PATENT AND INTELLECTUAL PROPERTY INFRINGEMENT

To the extent that the supplies are produced to detailed designs not originated and furnished by LOCKHEED MARTIN or by 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 supplies or the use of such process or method hereunder will not infringe or be a misappropriation of any United States or foreign patents, trademarks, copyrights, or trade secrets. CONTRACTOR shall defend, indemnify, and hold LOCKHEED MARTIN and its customers harmless from any loss, cost, damage, expense (including attorneys' fees), or liability which may be incurred on account of infringement or misappropriation (actual or alleged) of patent rights, trademarks, copyrights, or trade secrets with respect to such supplies, and defend, at its own expense, any action or claim in which such infringement or misappropriation is alleged by third parties, provided CONTRACTOR is notified of such actions or claims against LOCKHEED MARTIN.

23. PAYMENTS

The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for articles delivered and accepted, less any proper deductions or setoffs. Unless otherwise specified, payment will be made on partial deliveries accepted by LOCKHEED MARTIN when the amount due on such deliveries so warrants. Unless otherwise specified, payment shall be made net thirty (30) days after submission of proper invoices or vouchers.

24. PRECEDENCE

All documents and clauses in this Contract shall be read so as to be consistent to the extent practicable. In the event of any inconsistency between provisions of this Contract, the order of precedence in this Contract shall be:

- (a) The Purchase Order release document or the Schedule of this Contract, whichever is applicable, including any special provisions or Government clauses added to or incorporated by

reference in the Schedule or in the Purchase Order release document;

- (b) The standard, preprinted terms and conditions or attachments of this Contract identified as "Lockheed Martin Sector Documents";
- (c) Any documents, such as, but not limited to, Statements of Work, drawings, or specifications, incorporated by reference in the Purchase Order release document or in the Schedule of this Contract, whichever is applicable.

25. PRIORITY RATING

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

26. RELEASE OF INFORMATION

No release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter thereof, will be made without the prior coordination and express written approval of LOCKHEED MARTIN.

27. REMEDIES

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

28. REPAIR OR SPARE PARTS--FURNISHING ADDITIONAL

With respect to such spare or repair parts list(s) as may be specified in this Contract, LOCKHEED MARTIN may, at any time, prior to the completion date specified for the delivery of such items, if any, by written order revise the type and quantity of such spare or repair parts. If any such order issued pursuant to this clause causes any increase or decrease in the (i) estimated cost and fee, or (ii) the time required for the delivery of such repair or spare parts, or (iii) otherwise affects any other provision of this Contract, an equitable adjustment will be made therein pursuant to the procedures contained in the "Changes" Clause.

29. REPRODUCTION OF DATA

- (a) For use in performance of this Contract and of the Prime Contract, the CONTRACTOR agrees to and does hereby grant to LOCKHEED MARTIN the right to reproduce, use, and dispose of all or any part of the reports, drawings, blueprints, technical data, computer software, and technical information deliverable or delivered to LOCKHEED MARTIN pursuant to this Contract, and warrants title to same. The CONTRACTOR agrees to indemnify and hold LOCKHEED MARTIN and its assigns harmless from any damages, cost, claims and liability arising out of claims that said reproduction, use, or disposition infringes upon third party rights. LOCKHEED MARTIN shall give the CONTRACTOR prompt notice in writing of any suit or action alleging such liability.
- (b) By predetermination, the Parties agree that all technical data and computer software, as defined elsewhere in this Contract, deliverable or subject to delivery under this Contract, as well as all concepts that may be derived from such data, shall be furnished to the U.S. Government with "unlimited rights." Unlimited rights means rights to use, duplicate, or disclose the data and software, including but not limited to the right to prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

- (c) LOCKHEED MARTIN shall be under no obligation to restrict disclosure or use, or hold in confidence any data, software, or information which is furnished, delivered, or disclosed under this Contract, or in connection herewith, or as a result hereof, either directly or indirectly, unless and until an agreement to hold same in confidence or restrict disclosure or use is accepted in writing by LOCKHEED MARTIN's Purchasing Representative. In the absence of such written agreement, LOCKHEED MARTIN may ignore and disregard any restrictive legend on any such data and software, which shall be void and of no effect whatsoever. Acceptance by LOCKHEED MARTIN of data or software with a restrictive legend not in full compliance with the terms of this Contract shall in no way imply or create a waiver of such terms, unless first authorized by the LOCKHEED MARTIN Purchasing Representative by written amendment of this Contract.

- (d) CONTRACTOR agrees not to deliver or furnish any data or software subject to limited use or reproduction unless otherwise agreed as specified above.

- (e) 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, whether furnished prior to or after acceptance of this Contract. If any services, articles, or parts thereof, contracted for hereunder are performed or made to data, standards, plans, drawings or designs furnished by LOCKHEED MARTIN, the CONTRACTOR shall not reproduce, use, or disclose to others any such information without LOCKHEED MARTIN's written consent, nor without such written consent, supply or disclose any information regarding any such services or articles, or equipment or any material used therein, nor incorporate in other services, products, or articles any special features of design or manufacture peculiar to the services or articles contracted for under this Contract. Upon completion of performance hereunder, all such information, data, designs and inventions shall be promptly returned by CONTRACTOR to LOCKHEED MARTIN.

30. QUALITY CONTROL SYSTEM

- (a) CONTRACTOR shall provide and maintain a quality control system acceptable to the Government and LOCKHEED MARTIN for the supplies covered by this Contract. CONTRACTOR shall similarly require its subcontractors and lower-tier subcontractors to provide and maintain a quality control system acceptable to CONTRACTOR where applicable.
- (b) CONTRACTOR's quality control system will be subject to periodic audits by representatives of LOCKHEED MARTIN's Product Assurance organization.

31. SAFETY AND ACCIDENT PREVENTION

- (a) In performing any work under this Contract on premises which are under the direct control of the Government, CONTRACTOR shall, and shall require its subcontractors and lower-tier subcontractors, to (i) conform to all safety rules and requirements prescribed by the cognizant Government Agency, as in effect on the date of this Contract and (ii) take such additional precautions as LOCKHEED MARTIN or the Government may reasonably require for safety and accident prevention purposes. CONTRACTOR agrees to take all reasonable steps and precautions to prevent accidents and preserve the life and health of personnel performing or in any way coming in contact with the performance of this Contract on such premises.
- (b) In performing work under this Contract on LOCKHEED MARTIN-owned or -controlled premises, CONTRACTOR shall, and shall require its subcontractors and lower-tier

subcontractors, to conform to the safety and health regulations of applicable Federal, State and local Occupational Safety and Health Agencies as well as those of LOCKHEED MARTIN.

- (c) Any violation of safety rules and regulations affecting work described in (a) and (b) above which results in injury or death or which endangers life or health of personnel shall be grounds for termination for default of this Contract.
- (d) This Contract will be equitably adjusted under the "Changes" Clause if changes in safety regulations or requirements affecting work described in (a) and (b) above occurring after the date of this Contract affect costs, delivery or other provisions of this Contract.

32. SOURCE SURVEILLANCE

- (a) In addition to inspections as otherwise provided in this Contract and at no increase in Contract price, LOCKHEED MARTIN may assign its representatives to CONTRACTOR's facilities to conduct and maintain surveillance as necessary to ensure quality and reliability, and may conduct a comprehensive supplier system surveillance audit ("mission success audit") at the CONTRACTOR's facility, which may encompass all aspects of the CONTRACTOR's operations and systems of manufacturing, fabrication, inspection and test of the deliverable articles. The audit may entail a review for implementation of and compliance with all requirements of this Contract, including without limitation the engineering and specification requirements, subtier procurements, receiving inspection, work instructions, processes, inspection and test procedures, configuration, DAS control, quality assurance system and other disciplines associated with the build and acceptance of deliverable hardware (e.g., equipment calibration, nonconformance reporting and controls, manufacturing allowances, control of furnished property and tooling, etc.). The CONTRACTOR agrees to provide reasonable office and working space, equipment, and unescorted access (except in areas where proprietary processes or data are located, in which cases access may be on an escorted basis) for the audit team and to cooperate with its review by furnishing relevant documentation and records, answering questions and the like. Such audits may be conducted no more frequently than once per year.
- (b) CONTRACTOR likewise shall reserve such rights as specified in paragraph (a) above to LOCKHEED MARTIN with respect to CONTRACTOR's subcontractors and lower-tier subcontractors.

33. STATUTORY FEE LIMITATIONS

No subcontract placed under this Contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement-type subcontracts shall not exceed the fee limitations in FAR Part 15.

34. SUBCONTRACTING FOR SERVICES

If this Contract is primarily for the purpose of furnishing services, no subcontract shall be made by the CONTRACTOR with any other party for furnishing all or substantially all of the work or services herein contracted for without the advance written approval of LOCKHEED MARTIN, but this provision shall not be construed to require the approval of contracts of employment between the CONTRACTOR and personnel assigned for services hereunder.

35. SUPERSEDING SPECIFICATIONS

All references in any LOCKHEED MARTIN or Government specification incorporated herein shall be deemed to include all specifications supplementary to or superseding the specifications referenced, to the extent that such supplementary or superseding specifications are in effect at the date of CONTRACTOR's latest quotation or proposal, unless such referenced specification is identified by specific issue.

36. TAXES

Except as otherwise provided in this Contract, the Contract price includes all applicable federal, state and local taxes and duties.

37. TERMS AND CONDITIONS

- (a) Binding Effect. No terms or conditions other than the terms and conditions set forth in this Contract, including terms and conditions in any document attached to or incorporated by reference in this Contract, shall be binding upon LOCKHEED MARTIN unless accepted by it in writing. Terms and conditions contained in any acknowledgment of this Contract which are different from or in addition to the terms and conditions of this Contract shall not be binding on LOCKHEED MARTIN, whether or not they would materially alter this Contract, and LOCKHEED MARTIN hereby objects thereto. CONTRACTOR will be deemed to have assented to all terms and conditions contained herein if any part of the articles covered by this Contract is shipped or services are performed.
- (b) Additional Flowdowns. In the event that any clause required by law, regulation, policy, or the Prime Contract to be included in this Contract is not already incorporated in this Contract, or in the event that the Prime Contract is modified subsequent to the effective date of this Contract so as to modify or add any additional such clause, the CONTRACTOR agrees to enter into a modification of this Contract to insert the substance of any such clause. If any such additional clause causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this Contract, an equitable adjustment will be made in the Contract price or delivery schedule, or both, pursuant to the "Changes" clause of this Contract.

38. TIMELY PERFORMANCE

- (a) CONTRACTOR's timely performance is a critical element of this Contract.
- (b) Early Delivery: CONTRACTOR shall not, without LOCKHEED MARTIN's prior written consent, manufacture or procure materials in advance of CONTRACTOR's normal flow time or deliver in advance of schedule. In the event of termination or change, no claim will be allowed for any such manufacture or procurement in advance of CONTRACTOR's normal flow time unless there has been prior written consent of LOCKHEED MARTIN. Unless advance shipment has been authorized in writing by LOCKHEED MARTIN, LOCKHEED MARTIN may return, shipping charges collect, all articles received in advance of schedule.
- (c) Late Delivery: In the event CONTRACTOR encounters difficulty in meeting performance requirements, or when CONTRACTOR anticipates difficulty in complying with the Contract delivery schedule or date, CONTRACTOR shall immediately notify LOCKHEED MARTIN, in writing, giving pertinent details; provided, however, that this data shall be informational only in character and that this provision shall not be construed as a waiver by LOCKHEED MARTIN of any delivery schedule or of any rights or remedies provided by law or by this Contract.

39. TITLE, RISK OF LOSS, AND FINAL ACCEPTANCE

- (a) Unless this Contract specifically provides elsewhere for earlier passage of title, title to the articles covered by this Contract shall pass to LOCKHEED MARTIN upon final acceptance, regardless of when or where LOCKHEED MARTIN takes physical possession.
- (b) Risk of loss or damage to articles shall remain with the CONTRACTOR until:
 - (1) delivery of the articles to an authorized carrier, if transportation is f.o.b., origin; or
 - (2) final acceptance by LOCKHEED MARTIN or receipt of articles by LOCKHEED MARTIN at the destination specified in this Contract, whichever is later, if transportation is f.o.b. destination.
- (c) Notwithstanding (b) above, the risk of loss or damage to articles which fail to conform so as to give a right of rejection shall remain with the CONTRACTOR until cure or final acceptance at which time (b) above shall apply.
- (d) Unless specified otherwise in this Contract, final acceptance by LOCKHEED MARTIN shall be deemed to occur one hundred and eighty (180) days after delivery.

40. WAIVER AND APPROVAL

- (a) One Party's approval of the other Party's design or material shall not relieve such other Party of any warranties or of any other requirements of this Contract. Waiver by LOCKHEED MARTIN of any drawings or specification requirements for one or more articles shall not constitute a waiver of such requirements for the remaining articles to be delivered under this Contract unless so stated by LOCKHEED MARTIN in writing.
- (b) Waiver, alteration, or modification of any of the provisions or specifications of this Contract shall not be binding on LOCKHEED MARTIN unless evidenced in writing signed by the authorized LOCKHEED MARTIN Purchasing Representative. LOCKHEED MARTIN's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or LOCKHEED MARTIN's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, privileges, or breaches, whether of the same or similar type.
- (c) Unless expressly stipulated elsewhere in this Contract as being excepted from this provision, wherever this Contract provides for submittal of designs, components, or other items for approval of LOCKHEED MARTIN, such approvals shall not be construed as a complete check as to the adequacy of said design or item, nor as an agreement that the design or items will meet the requirements of the Statement of Work, nor as any change to the requirements of the Statement of Work. Such approvals are for the purpose of ensuring LOCKHEED MARTIN's knowledge of the CONTRACTOR's plans and progress and will indicate only that the CONTRACTOR's general approach toward meeting contractual requirements is satisfactory. Such approvals shall in no way relieve the CONTRACTOR of the responsibility for any error or deficiency which may exist in the submitted design or other items, as the CONTRACTOR shall be responsible for meeting all the requirements of the Contract.

41. WARRANTY

- (a) The CONTRACTOR warrants that it has good title to articles delivered under the Contract. In addition, for a period of one (1) year from the date of final acceptance, CONTRACTOR warrants that all articles and services furnished hereunder shall

be free from defects in workmanship and material, shall strictly comply with the requirements of this Contract and any drawings or specifications incorporated herein, regardless of any prior course of performance or of dealing between LOCKHEED MARTIN and the CONTRACTOR, and where design is CONTRACTOR's responsibility, be free from defects in design. The foregoing warranties are in addition to all other warranties, whether expressed or implied, and shall survive any delivery to, or inspection, acceptance, or payment by LOCKHEED MARTIN, of or for the articles and services furnished hereunder.

- (b) If any article delivered hereunder does not meet the warranties specified herein or that are otherwise applicable, LOCKHEED MARTIN may, at its election:
 - (1) Require the CONTRACTOR to correct at no cost to LOCKHEED MARTIN, any defective or nonconforming article by repair or replacement; or
 - (2) Return such defective or nonconforming articles to the CONTRACTOR and recover from the CONTRACTOR the Contract price thereof, plus transportation charges.
- (c) If any of the services delivered under this Contract do not meet the warranties specified herein or that are otherwise applicable, LOCKHEED MARTIN may require the CONTRACTOR to correct or reperform any defective or nonconforming services.
- (d) If the CONTRACTOR is required to correct or re-perform, it shall be at no cost to LOCKHEED MARTIN and any articles or services corrected or re-performed by the CONTRACTOR pursuant to this clause shall be subject to all provisions of this clause to the same extent as work initially performed. Time devoted to the correction or re-performance of such work shall not be included in the computation of the warranty period. If the CONTRACTOR fails or refuses to correct or reperform, LOCKHEED MARTIN may, by Contract or otherwise, correct or replace with similar articles or services and charge to the CONTRACTOR the cost occasioned to LOCKHEED MARTIN thereby or obtain an equitable adjustment in the Contract price. If LOCKHEED MARTIN does not require correction or re-performance, the LOCKHEED MARTIN Purchasing Representative shall make an equitable adjustment in the Contract price.
- (e) The foregoing remedies are in addition to all other remedies at law or under this Contract and shall not be deemed to be exclusive. All warranties shall run to LOCKHEED MARTIN and its customers.