



**GENERAL PROVISIONS  
FIXED PRICE - GOVERNMENT CONSTRUCTION SUBCONTRACT**

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

- (a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.
- (b) SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract.
- (c) **Additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment hereof are hereby objected to by LOCKHEED MARTIN and have no effect unless expressly accepted in writing by LOCKHEED MARTIN.**

**2. APPLICABLE LAWS**

- (a) This Contract shall be governed by the laws of the State from which this Contract was issued, excluding its choice of laws rules, except that any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR) or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, Boards of Contracts Appeals, and quasi-judicial agencies of the federal Government.

- (b) (1) SELLER agrees to comply with all applicable laws, orders, rules, regulations, and ordinances.
- (2) If: (i) LOCKHEED MARTIN's contract price or fee is reduced; (ii) LOCKHEED MARTIN's costs are determined to be unallowable; (iii) any fines, penalties or interest are assessed on LOCKHEED MARTIN; or (iv) LOCKHEED MARTIN incurs any other costs or damages; as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, LOCKHEED MARTIN may proceed as provided for in (4) below.
- (3) Where submission of cost or pricing data is required or requested at any time prior to or during performance of this Contract, if SELLER or its lower-tier subcontractors: (i) submit and/or certify cost or pricing data that are defective; (ii) with notice of applicable cutoff dates and upon LOCKHEED MARTIN's request to provide cost or pricing data, submit cost or pricing data, whether certified or not certified at the time of submission, as a prospective subcontractor, and any such data are defective as of the applicable cutoff date on LOCKHEED MARTIN's Certificate of Current Cost or Pricing Data; (iii) claim an exception to a requirement to submit cost or pricing data and such exception is invalid; or (iv) furnish data of any description that is inaccurate; if (v) the U.S. Government alleges any of the foregoing, and, as a result, (1) LOCKHEED MARTIN's contract price or fee is reduced; (2) LOCKHEED MARTIN's costs are determined to be unallowable; (3)

any fines, penalties or interest are assessed on LOCKHEED MARTIN; or (4) LOCKHEED MARTIN incurs any other costs or damages; LOCKHEED MARTIN may proceed as provided for in (4) below.

- (4) Upon the occurrence of any of the circumstances identified in (2) and (3) above, LOCKHEED MARTIN may make a reduction of corresponding amounts (in whole or in part) in the price, or in the costs and fee, of this Contract or any other contract with SELLER, and/or may demand payment (in whole or in part) of the corresponding amounts. SELLER shall promptly pay amounts so demanded.

- (5) These rights and obligations shall survive the termination or completion of this Contract

### 3. ASSIGNMENT

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

### 4. BONDS

- (a) Payment Bonds - The SELLER shall furnish a payment bond with good and sufficient surety or sureties on an approved LOCKHEED MARTIN form for the protection of persons furnishing material or labor in connection with the performance of the Work under this Contract. The penal sum of such payment bond shall be 100% of the Contract price.
- (b) Performance Bonds - The SELLER shall furnish a performance bond with good and sufficient surety or sureties on an approved LOCKHEED MARTIN form in connection with the performance of the Contract Work. The penal sum of such performance bond shall be 100% of the Contract price.
- (c) Date of Bonds - Bonds required hereunder shall be dated before or as of the same date as this Contract and shall be furnished by the SELLER to LOCKHEED MARTIN at the time of execution of this Contract.
- (d) Additional Bond Security - If any surety upon any bond furnished in connection with this Contract becomes unacceptable to LOCKHEED MARTIN, or if the surety fails to furnish reports as to his financial condition as requested by LOCKHEED MARTIN, the SELLER shall promptly furnish additional security as shall be required to protect the interests of LOCKHEED MARTIN and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.
- (e) The duty of securing required bonds for this Contract and riders thereto shall be upon the SELLER.
- (f) In the event any changes, alterations, modifications, or amendments are made from time to time to this Contract or plans or specifications, subsequent to the date of bonds furnished hereunder, the SELLER shall secure from the Surety a Bond rider to the effect that the Surety waives notice and Right of Discharge by reason of such action.
- (g) Bonds will also contain a provision to the effect that if the SELLER fails to give the Surety notice of changes, alterations, modifications, or amendments to this Contract, Surety shall not be released of liability under existing bonds or any riders

issued thereto. LOCKHEED MARTIN shall have the right to withhold any payments due the SELLER hereunder until such time as the SELLER secures the bonds required or riders thereto, and the same have been approved by LOCKHEED MARTIN

### 5. CAS NONCOMPLIANCE

Award of this Contract does not constitute a determination that the SELLER'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 Procurement 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, processes, or specifications;
  - (2) Inspection, delivery, or acceptance methods and/or schedules; and
  - (3) Work schedules (i.e., hours of the day, days of the week, etc.
- (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, or otherwise affects any other terms and conditions of this Contract, an equitable adjustment shall be made in the Contract price, the Schedule, or both, and the Contract shall be modified accordingly.
- (c) The SELLER shall submit any "proposal for adjustment" (hereafter referred to as "proposal") under this clause within twenty (20) days from the date of receipt of the written order. However, if the LOCKHEED MARTIN Procurement Representative decides that the facts justify it, the LOCKHEED MARTIN Procurement Representative 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 SELLER written agreement as to the maximum (in the case of an increase) or minimum (in the case of a decrease) adjustment to be made in the price and/or in the 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 SELLER shall promptly submit a "not-to-exceed" (or "no-less-than") amount or maximum (or minimum) schedule adjustment when so requested by LOCKHEED MARTIN. Any such written agreement shall then be cited in the change order and upon its issuance shall be deemed to become part of the Contract. In no event shall the definitive equitable adjustment exceed the maximum (or be less than the minimum) 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, SELLER personnel in a liaison effort concerning the Work to be performed hereunder. However, such exchange of information or advice shall not vest the SELLER 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) Unless expressly stipulated elsewhere in this Contract as being excepted from this provision, wherever this Contract provides for submittal of designs, components, processes, or other items for review or approval by LOCKHEED MARTIN, such reviews or 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 reviews and approvals shall in no way relieve the SELLER of the responsibility for any error or deficiency which may exist in the submitted design or other items, as the SELLER shall be responsible for meeting all the requirements of the contract.
- (g) If the SELLER'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. However, nothing in this clause shall excuse the SELLER from proceeding with the Contract as changed.

#### 7. COMMUNICATION WITH THE GOVERNMENT

- (a) LOCKHEED MARTIN shall be solely responsible for all liaison and coordination between LOCKHEED MARTIN and the Government as it affects the Prime Contract between LOCKHEED MARTIN and the Government, as well as on all matters pertaining to this Contract, by and between LOCKHEED MARTIN and the SELLER, any associated contractors, and any designated LOCKHEED MARTIN subcontractors.
- (b) Unless otherwise directed in writing by the authorized LOCKHEED MARTIN Procurement Representative charged with responsibility for the administration of this Contract, all documentation requiring submittal to, or action by, the Government or the Contracting Officer shall be routed to, or through, the LOCKHEED MARTIN Procurement Representative. Significant informal communications between LOCKHEED MARTIN and the SELLER shall be confirmed in writing at the earliest practical date and copies submitted to both Parties.

#### 8. CONTRACT DIRECTION

- (a) Only the LOCKHEED MARTIN Procurement Representative has authority to amend this Contract on behalf of Lockheed Martin. Such amendments must be in writing.
- (b) LOCKHEED MARTIN engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with SELLER's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment. No reimbursement shall be made for any extra work or material unless the same has been ordered in writing by the authorized LOCKHEED MARTIN Procurement Representative.
- (c) Except as otherwise provided herein, all notices to be furnished by the SELLER shall be sent to the LOCKHEED MARTIN Procurement Representative.

#### 9. DEFINITIONS

The following terms shall have the meanings set forth below:

- (a) "Contract" means the instrument of contracting, such as "PO", "Purchase Order, or other such type designation, including all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the Release document for the Work to be performed.
- (b) "LOCKHEED MARTIN" means LOCKHEED MARTIN CORPORATION, acting through its companies, or business units, as identified on the face of the Contract. If a subsidiary or affiliate of LOCKHEED MARTIN CORPORATION is identified on the face of the Contract then "LOCKHEED MARTIN" means that subsidiary, or affiliate.
- (c) "LOCKHEED MARTIN Procurement Representative" means the person authorized by LOCKHEED MARTIN's cognizant procurement organization to administer this Contract. Maybe referred to as Materiel Representative in some exhibits.
- (d) "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this Contract.
- (e) "SELLER" means the Party identified on the face of the Contract with whom LOCKHEED MARTIN is contracting.
- (f) "Site" shall mean the physical place or places where the construction work called for in this Contract will remain when work on it has been completed. It includes other adjacent or nearby property used by the SELLER or subcontractors in such construction which can reasonably be said to be included in the "site".
- (g) Except as otherwise provided in this Contract, the term "subcontract" means all contracts placed by the SELLER or 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.
- (h) "Subcontractor" means those having a direct Contract with the SELLER for the performance of any part of the work called for hereunder. The term shall also include one who merely furnishes material.
- (i) "Work" means all required articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

#### 10. DIFFERING SITE CONDITIONS

- (a) The SELLER shall promptly, and before the conditions are disturbed, but in no event later than 48 hours after discovery, give a written notice to the Procurement Representative of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in Work of the character provided for in the Contract.
- (b) The Procurement Representative shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the SELLER's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment accounting solely for SELLER increased costs or additional time of performance (with no allowance for profit) may be made under this clause and this Contract modified in writing accordingly.
- (c) No request by the SELLER for an equitable adjustment to this Contract under this clause shall be allowed, unless the

SELLER has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Procurement Representative upon good cause shown.

- (d) No request by the SELLER for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract.

#### 11. DISPUTES

All disputes under this Contract which are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by LOCKHEED MARTIN.

#### 12. EXPORT OF TECHNICAL DATA

- (a) The SELLER represents and warrants that no technical data furnished to it by LOCKHEED MARTIN or developed by the SELLER 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 United States, without first complying with all requirements of the International Traffic in Arms Regulation, 22 C.F.R. 120 et seq.; the Export Administration Act, 28 U.S.C. 2778 et seq.; and DOD Directive 5230.25, "Withholding of Unclassified Technical Data From Public Disclosure," 32 C.F.R. 250, including the requirement for obtaining any export license, if applicable.
- (b) The SELLER shall first obtain the written consent of LOCKHEED MARTIN prior to submitting any request for authority to export any such technical data.
- (c) The SELLER shall indemnify and hold LOCKHEED MARTIN harmless from all claims, demands, damages, costs, fines, penalties, attorneys' fees and all other expenses arising from failure of the SELLER to comply with this clause.

#### 13. GRATUITIES/KICKBACKS

- (a) No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by SELLER, to any employee of LOCKHEED MARTIN with a view toward securing favorable treatment as a supplier.
- (b) By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

#### 14. HAZARDOUS MATERIALS NOTIFICATION

- (a) Prior to bringing any hazardous material or chemical (as determined by OSHA regulations at 29 C.F.R. Section 1910.1200(d)) onto LOCKHEED MARTIN property or work sites, the SELLER shall provide a "Material Safety Data Sheet" for each such material or chemical to the Occupational Safety and Health Department of LOCKHEED MARTIN. The form of the Material Safety Data Sheet shall be OSHA Form 20 or equivalent, containing all of the information required by 29 C.F.R. Section 1910.1200(g).

#### 15. INDEPENDENT CONTRACTOR RELATIONSHIP

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

- (b) SELLER shall be responsible for any costs or expenses including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

#### 16. INSPECTION AND ACCEPTANCE

- (a) The SELLER shall provide and maintain an inspection system in accordance with sound business practice and as may be otherwise provided in this Contract. Records of all inspection work by the SELLER shall be kept complete and available to LOCKHEED MARTIN during the performance of this Contract and for three (3) years after final payment, and in such manner as may be specified elsewhere in this Contract.
- (b) All material and workmanship furnished by the SELLER, its subcontractors and suppliers shall be subject to inspection, examination and test by LOCKHEED MARTIN at reasonable times, to the extent practicable, during manufacture or construction and at any and all places where such manufacture or construction is carried on. LOCKHEED MARTIN may also inspect the plant or plants of the SELLER or of any of its subcontractors and suppliers engaged in the performance of this Contract. The SELLER and its subcontractors, without additional charge, shall provide promptly all reasonable data, facilities, labor, materials, and assistance for LOCKHEED MARTIN's inspectors' performance of their duties. All inspections and tests shall be performed in such manner as not to unduly delay the work. The SELLER shall be charged with any additional cost of inspection when materials and workmanship are not ready at the time specified for inspection. No inspection or test made prior to final inspection and acceptance shall relieve the SELLER from responsibility for defects or other failure to meet the requirements of this Contract.
- (c) Should it be considered necessary or advisable by LOCKHEED MARTIN at any time before final acceptance of the entire Work to make an examination of work already completed, by removing or tearing out same, the SELLER shall upon request promptly furnish all necessary facilities, labor and material. If such Work is found to be defective or nonconforming in any material respect, the SELLER shall defray all the expenses of such examination and of satisfactory reconstruction.
- (d) LOCKHEED MARTIN shall have the right to reject defective material or workmanship or to require its correction. Rejected workmanship shall be immediately corrected and rejected material shall be immediately replaced with proper material at SELLER's sole expense. The SELLER shall promptly segregate and remove the rejected material from the premises. If the SELLER fails to proceed at once with the replacement of rejected material or the correction of defective workmanship, LOCKHEED MARTIN may, at its sole discretion, (i) by contract or otherwise, replace such material or correct such workmanship and charge to the SELLER the cost occasioned LOCKHEED MARTIN thereby; (ii) without further notice terminate this Contract for default, in accordance with the clause hereof titled "Termination for Default"; or (iii) require a reduction in price which is equitable under the circumstances. LOCKHEED MARTIN may also charge the SELLER for any additional cost of inspection or test when prior rejection makes reinspection necessary.
- (e) When SELLER deems the Work finally complete, SELLER shall give LOCKHEED MARTIN notice thereof in writing. After receipt of such notice, LOCKHEED MARTIN will determine if the Work has been completed according to the terms of the Contract and, if so, will notify SELLER in writing of acceptance thereof as provided below. If the Work is incomplete, LOCKHEED MARTIN will notify SELLER of

the defects and/or omissions, and SELLER shall repeat the procedure stated herein until the Work has been completed and accepted.

- (f) Final acceptance of the Work will be confirmed by Letter of Acceptance issued by LOCKHEED MARTIN promptly after being satisfied that all requirements of the Contract have been met, and presentation of a complete and executed Final Release of All Claims against LOCKHEED MARTIN and Waiver of Lien.
- (g) Nothing contained in this clause shall in any way restrict LOCKHEED MARTIN's rights under the clause hereof entitled "Warranty and Correction of Defects".

**17. INSURANCE/ENTRY ON LOCKHEED MARTIN'S PROPERTY**

- (a) In the event that SELLER, its' employees, agents, or subcontractors enter LOCKHEED MARTIN's or its' customer's premises for any reason in connection with this Contract, SELLER, its subcontractors and lower-tier subcontractors, shall procure and maintain worker's compensation, comprehensive general liability, bodily injury and property damage insurance in reasonable amounts, and such other insurance as LOCKHEED MARTIN may require and shall comply with all site requirements. All employees of the SELLER shall be subject to the applicable rules and regulations governing LOCKHEED MARTIN employees while on LOCKHEED MARTIN premises.
- (b) SELLER shall indemnify and hold harmless LOCKHEED MARTIN, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or personal injury to any person caused in whole or in part by the actions or omissions of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier.
- (c) SELLER shall provide LOCKHEED MARTIN thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance. If requested, SELLER shall send a "Certificate of Insurance" showing SELLER's compliance with these requirements. SELLER shall name LOCKHEED MARTIN as an additional insured for the duration of 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 LOCKHEED MARTIN may carry.
- (d) The SELLER shall also require all of its subcontractors to comply with the foregoing insurance coverage, limits and certification requirements prior to any of such subcontractors performing work at the site.

**18. LOCKHEED MARTIN PROPERTY**

(Applicable if LOCKHEED MARTIN property is furnished to the SELLER under this Contract.)

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

- (2) The delivery or performance dates for this Contract are based upon the expectation that LOCKHEED MARTIN-furnished property suitable for use (except for property furnished "as is") will be delivered to the SELLER at the times stated in the Schedule or, if not so stated, in sufficient time to enable the SELLER to meet the Contract's delivery or performance dates.

- (3) If LOCKHEED MARTIN-furnished property is received by the SELLER in a condition not suitable for the intended use, the SELLER 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 SELLER, LOCKHEED MARTIN shall make an equitable adjustment as provided in paragraph (h) of this clause. This provision does not apply to property furnished "as is".

- (4) If LOCKHEED MARTIN-furnished property is not delivered to the SELLER by the required time, LOCKHEED MARTIN shall, upon the SELLER's timely written request, make a determination of the delay, if any, caused the SELLER and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in LOCKHEED MARTIN-furnished property.

- (1) LOCKHEED MARTIN may, by written notice, (i) decrease the LOCKHEED MARTIN-furnished property provided or to be provided under this Contract, or (ii) substitute other LOCKHEED MARTIN-furnished property for the property to be provided by LOCKHEED MARTIN or to be acquired by the SELLER for LOCKHEED MARTIN, under this Contract. The SELLER 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 SELLER'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 LOCKHEED MARTIN-furnished property.

- (1) LOCKHEED MARTIN shall retain title to all LOCKHEED MARTIN-furnished property.

- (2) Title to LOCKHEED MARTIN property shall not be affected by its incorporation into or attachment to any property not owned by LOCKHEED MARTIN nor shall LOCKHEED MARTIN property become a fixture or lose its identity 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 SELLER for LOCKHEED MARTIN under this Contract shall pass to and vest in LOCKHEED MARTIN when its use in performing this Contract commences or when LOCKHEED MARTIN has paid for it, whichever is

earlier, whether or not title previously vested in LOCKHEED MARTIN.

- (4) If this Contract contains a provision directing the SELLER to purchase material for which LOCKHEED MARTIN will reimburse the SELLER as a direct item of cost under this Contract -
- (i) Title to material purchased from a vendor shall pass to and vest in LOCKHEED MARTIN upon the vendor's delivery of such material; and
  - (ii) Title to all other material shall pass to and vest in LOCKHEED MARTIN 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 LOCKHEED MARTIN property. LOCKHEED MARTIN property shall be used only for performing this Contract, unless otherwise provided in this Contract or approved by LOCKHEED MARTIN.
- (e) Property administration.
- (1) The SELLER shall be responsible and accountable for all LOCKHEED MARTIN property provided under this Contract.
  - (2) The SELLER shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of LOCKHEED MARTIN property.
  - (3) If damage occurs to LOCKHEED MARTIN property, the risk of which has been assumed by LOCKHEED MARTIN under this Contract, LOCKHEED MARTIN shall replace the items or the SELLER shall make such repairs as LOCKHEED MARTIN directs. However, if the SELLER cannot effect such repairs within the time required, the SELLER 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 SELLER 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 SELLER is responsible shall be accomplished by the SELLER at its own expense.
- (f) Access. LOCKHEED MARTIN and its designees shall have access at all reasonable times to the premises in which any LOCKHEED MARTIN property is located for the purpose of inspecting the LOCKHEED MARTIN property.
- (g) Risk of loss. Unless otherwise provided in this Contract, the SELLER assumes the risk of and shall be responsible for, any loss or destruction of, or damage to, LOCKHEED MARTIN property upon its delivery to the SELLER or upon passage of title to LOCKHEED MARTIN under paragraph (c) of this clause and for any other direct, indirect, special, incidental or consequential damages caused to LOCKHEED MARTIN on account of such loss, destruction or damage. However, the SELLER is not responsible for reasonable wear and tear to LOCKHEED MARTIN property or for LOCKHEED

MARTIN 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. The right to an equitable adjustment shall be the SELLER's exclusive remedy. LOCKHEED MARTIN shall not be liable for breach of contract or otherwise for -
- (1) Any delay in delivery of LOCKHEED MARTIN-furnished property;
  - (2) Delivery of LOCKHEED MARTIN-furnished property in a condition not suitable for its intended use;
  - (3) A decrease in or substitution of LOCKHEED MARTIN-furnished property; or
  - (4) Failure to repair or replace LOCKHEED MARTIN property for which LOCKHEED MARTIN is responsible.
- (i) Final accounting and disposition of LOCKHEED MARTIN-furnished property. Upon completing this Contract, or at such earlier dates as may be fixed by LOCKHEED MARTIN, the SELLER shall submit, in a form acceptable to LOCKHEED MARTIN, inventory schedules covering all items of LOCKHEED MARTIN property (including any resulting scrap) not consumed in performing this Contract or delivered to LOCKHEED MARTIN. The SELLER shall prepare for shipment, delivery f.o.b. origin, or dispose of the LOCKHEED MARTIN 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 as LOCKHEED MARTIN directs.
- (j) Abandonment and restoration of SELLER's premises. Unless otherwise provided herein, LOCKHEED MARTIN:
- (1) May abandon any LOCKHEED MARTIN property in place, at which time all obligations of LOCKHEED MARTIN regarding such abandoned property shall cease; and
  - (2) Have no obligation to restore or rehabilitate the SELLER's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the LOCKHEED MARTIN-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other LOCKHEED MARTIN 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.

## 19. MATERIAL AND WORKMANSHIP

- (a) Unless otherwise specifically provided in this Contract, all equipment, material, and articles incorporated in the Work covered by this Contract are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in this Contract, reference to any equipment, material, article, or patented process, by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the SELLER may at its option, use any equipment, material, article, or process which, in the judgment of LOCKHEED MARTIN is equal to that named.

Approvals of equals will not relieve the SELLER of responsibility for adequate fulfillment of the various parts of the work, or from specified guarantees and maintenance standards. Any requests for substitution which may be offered shall have been submitted for approval prior to award of this Contract. Unless specified in the Schedule, no such substitution will be permitted and the SELLER will be deemed to have hereby agreed to furnish only the brand names specified in the contract documents.

- (b) No materials or supplies for the Work contracted for shall be purchased by the SELLER or by any subcontractor working under SELLER which shall be subject to any chattel mortgage or under a conditional sale or other agreement in which an interest is retained by another party. The SELLER warrants that the title to all materials and supplies used by the SELLER in the performance of the Work hereunder shall be clear of all encumbrances of any nature whatsoever.
- (c) Unless waived in writing by LOCKHEED MARTIN, all tests or trials shall be made in the presence of a duly authorized representative of LOCKHEED MARTIN. When the presence of the inspector is waived, sworn statements, in triplicate, of the test made and results thereof shall be furnished to LOCKHEED MARTIN by the SELLER immediately after the tests are made. Costs of all tests and trials, including concrete aggregate and cylinder tests, and soil analysis, shall be borne by the SELLER.
- (d) All work under this Contract shall be performed in a skillful and workmanlike manner. LOCKHEED MARTIN may, in writing, require the SELLER to remove from the site any employee LOCKHEED MARTIN deems incompetent, careless, or otherwise objectionable. The SELLER shall additionally be responsible for requiring each employee engaged on the site to display such identification as may be approved and directed by LOCKHEED MARTIN. All prescribed identification shall immediately be delivered to LOCKHEED MARTIN, for cancellation, when such employee is no longer engaged on the site. When required by LOCKHEED MARTIN, the SELLER shall also obtain and submit fingerprints of all persons employed or to be employed on the project.

## 20. NOTICE OF LABOR DISPUTES

- (a) Whenever the SELLER has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the SELLER shall immediately give notice thereof, including all relevant information with respect thereto, to LOCKHEED MARTIN
- (b) The SELLER agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify its next higher tier subcontractor or LOCKHEED MARTIN as the case may be, of all relevant information concerning such dispute.

## 21. OPERATIONS, STORAGE AREAS AND TEMPORARY CONSTRUCTION FACILITIES

- (a) All operations of the SELLER (including storage of materials) upon LOCKHEED MARTIN premises shall be confined to areas authorized or approved by LOCKHEED MARTIN. No unauthorized or unwarranted entry upon or passage through, or storage or disposal of materials shall be made upon LOCKHEED MARTIN premises. Premises adjacent to the construction will be made available for use by the SELLER without cost whenever such use will not interfere with other contractors' uses or purposes. The SELLER shall be liable for damage caused by it to LOCKHEED MARTIN premises. The

SELLER shall hold and save LOCKHEED MARTIN, its officers and agents, free and harmless from liability of any nature or kind arising from any use, trespass or damages occasioned by its operations on premises of third persons.

- (b) Temporary buildings (storage sheds, shops, offices, etc.) may be erected by the SELLER only with the approval of LOCKHEED MARTIN and shall be built with labor and materials furnished by the SELLER without expense to LOCKHEED MARTIN. Such temporary buildings and/or utilities shall remain the property of the SELLER and will be removed by the SELLER at its sole expense upon the completion of the Work.
- (c) The SELLER shall use only established roadways or construct and use such temporary roadways as may be authorized by LOCKHEED MARTIN. Where materials are transported in the prosecution of the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state or local law or regulation. When it is necessary to cross curbing or sidewalks, protection against damage shall be provided by the SELLER and any damaged roads, curbs, or sidewalks shall be repaired by, and at the expense of the SELLER, to LOCKHEED MARTIN's satisfaction.
- (d) SELLER shall furnish adequate toilet facilities for its employees. Toilet facilities shall conform to all local sanitary regulations and be located as approved by LOCKHEED MARTIN.
- (e) Temporary construction facilities and any connections to utilities shall be removed by and at the sole expense of the SELLER. The site occupied by such facilities and connections shall be restored to a condition satisfactory to LOCKHEED MARTIN.
- (f) The Work shall be done without interference with the ordinary use of streets, easements and passages and the SELLER shall cooperate with other contractors of LOCKHEED MARTIN and LOCKHEED MARTIN employees as may be required by the circumstances or directed by LOCKHEED MARTIN. The SELLER shall not commit or permit any act which will interfere with the performance of work by any other contractors or LOCKHEED MARTIN employees whether at the site or not.

## 22. PATENT INDEMNITY AND NOTICE OF INFRINGEMENT

- (a) SELLER hereby agrees to indemnify and save harmless LOCKHEED MARTIN, its employees, customers, assigns, and others claiming under LOCKHEED MARTIN from liability from any actual or alleged patent, copyright, trademark or trade secret infringement by reason of any manufacture, use, or sale of any items delivered by SELLER under this Contract, or for any items manufacturable from reports, drawings, blueprints, data, or technical information delivered by SELLER under this Contract. Such liability shall include but is not limited to damages, costs, attorneys' fees, and expenses.
- (b) The SELLER shall report to LOCKHEED MARTIN promptly and in reasonable written detail, each notice or claim of patent infringement based on the performance of this Contract of which the SELLER has knowledge.
- (c) In the event of any suit against LOCKHEED MARTIN, or any claim against LOCKHEED MARTIN made before suit has been instituted, on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed hereunder, the SELLER shall furnish to LOCKHEED MARTIN, upon request, all evidence and information in possession of the SELLER pertaining to such suit or claim.

SELLER shall, unless otherwise adjusted, be repaid to LOCKHEED MARTIN upon demand.

## 23. PAYMENTS

- (a) LOCKHEED MARTIN shall pay the Contract price as provided in this Contract.
- (b) LOCKHEED MARTIN will make progress payments monthly as the Work progresses, based on estimates of acceptable Work accomplished submitted by the SELLER and approved by LOCKHEED MARTIN. If requested by LOCKHEED MARTIN, the SELLER shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In preparing estimates of Work accomplished, the material delivered on the site and preparatory work completed may be taken into consideration. Such payments shall be made on submission of itemized requests by the SELLER and shall be subject to reduction for overpayments or increase for underpayments on preceding payments to the SELLER.
- (c) In making such progress payments there shall be retained ten (10) percent of the approved estimated amount until final completion and acceptance of all Work covered by the Contract; provided, that upon completion and acceptance of each building, or other division of the Contract, on which the price is stated separately in the Contract, payment may be made in full, including retained percentage thereon, less authorized deductions.
- (d) All material and Work covered by progress payments made shall thereupon become the sole property of LOCKHEED MARTIN but this provision shall not be construed as relieving the SELLER from the sole responsibility for all materials and Work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of LOCKHEED MARTIN to require the fulfillment of all of the terms of the Contract.
- (e) Upon completion and final acceptance of all Work required hereunder as provided in the clause herein entitled "Inspection and Acceptance", the amount due the SELLER under this Contract will be paid upon the presentation of a properly executed and duly certified voucher therefor and presentation of release of all claims against LOCKHEED MARTIN arising by virtue of this Contract, other than claims, in stated amounts, that the SELLER has specifically excepted from the operation of the release. If the SELLER's claim to amounts payable under the Contract has been assigned, a release may be required of the assignee at the option of LOCKHEED MARTIN.
- (f) Neither the final payment nor any part of the retained percentage shall become due until the SELLER delivers to LOCKHEED MARTIN complete releases from itself and each of its subcontractors of all liens arising out of this Contract, or receipts in full in lieu thereof, and, an affidavit that so far as it has knowledge or information the release includes all the labor and material for which a lien could be filed; but the SELLER may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to LOCKHEED MARTIN, to indemnify LOCKHEED MARTIN against any lien. If any lien remains unsatisfied after all payments are made, the SELLER shall refund to LOCKHEED MARTIN all monies that the latter may be compelled to pay in discharging such a lien, including all costs and reasonable attorneys' fees.
- (g) The obligation of LOCKHEED MARTIN to make the payments required under the provisions of this Contract shall, in the discretion of LOCKHEED MARTIN, be subject to (1) reasonable deductions on account of defects in material or workmanship, and (2) any claims which LOCKHEED MARTIN may have against the SELLER under or in connection with this Contract. Any overpayments to the

## 24. PRECEDENCE

- (a) Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) Face of the Purchase Order, Release document or Schedule, (which shall include continuation sheets), as applicable, including any Special terms and conditions; (2) Any master-type agreement (such as corporate, sector or blanket agreements); (3) these General Provisions; and (4) Statement of Work, and any other documents incorporated herein by reference.
- (b) The Contract documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the documents is to include all labor and materials, equipment, and transportation required for the proper execution of the work.

## 25. PRESERVATION OF EXISTING VEGETATION

- (a) The SELLER will preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site which do not unreasonably interfere with the construction as may be determined by LOCKHEED MARTIN. The SELLER will be responsible for all unauthorized cutting or damaging of trees and shrubs, including damage due to careless operation of equipment, stockpiling of materials or tracking of grass areas by equipment.
- (b) Care shall be taken by the SELLER in felling trees, authorized for removal, to avoid any unnecessary damage to vegetation that is to remain in place. Any limbs or branches of trees broken during such operations, shall be trimmed with a clean cut and painted with an approved tree pruning compound. The SELLER may be required to replace or restore at its own expense all vegetation not protected and preserved as required herein that may be destroyed or damaged.

## 26. PRIORITY RATING

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

## 27. PROGRESS CHARTS/CONSTRUCTION SCHEDULE

- (a) The SELLER shall, prior to commencement of work, prepare and submit for approval a practicable schedule and report, showing the order in which the SELLER proposes to carry on the work, the date on which it will start the several salient features of the work (including procurement of materials, plant and equipment) and the contemplated dates for completing the same. The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of Work scheduled for completion at any time.
- (b) The SELLER shall furnish sufficient forces, construction plant and equipment, and shall work such hours, including night shifts and overtime operations, as may be necessary to insure the performance of the work in accordance with the approved progress schedule. If, in the opinion of LOCKHEED MARTIN, the SELLER falls behind the progress schedule, the SELLER shall take such steps as may be necessary to improve its progress, and LOCKHEED MARTIN may require it to increase the number of shifts, overtime operations, days of work, and/or the amount of construction equipment at no additional cost to LOCKHEED MARTIN. Any direction issued to the SELLER to provide premium labor in any form must first be coordinated with and approved by the LOCKHEED MARTIN Procurement Representative.



28. **PROTECTION OF MATERIALS AND WORK PERFORMED**

- (a) The SELLER shall at all times protect and preserve all materials, supplies and equipment of every description (including property which may be LOCKHEED MARTIN furnished or owned) and all Work performed. All reasonable requests of LOCKHEED MARTIN to enclose or specially protect such property shall be complied with. If as determined by LOCKHEED MARTIN, material, equipment, supplies and Work performed are not adequately protected by the SELLER, such property may be protected by LOCKHEED MARTIN and the cost thereof may be charged to the SELLER or deducted from any payments due the SELLER.
- (b) Any damage to existing structure or work of any kind, or the interruption of a utility service, shall be repaired or restored immediately by and at the expense of the SELLER.
- (c) The necessary materials, tools and equipment to be utilized in the performance of this Contract shall be consigned to and delivered to or by the SELLER at the site and shall be SELLER's responsibility to unload and safeguard from all hazards.
- (d) The SELLER shall protect the materials and Work from deterioration and damage during construction and shall store and secure flammable material from fire, remove oily rags, waste, and refuse from buildings each night and during cold weather furnish all heat necessary for the proper conduct of the work. SELLER shall provide and maintain all temporary walkways, roadways, trench covers, barricades, colored lights, danger signals, and other devices necessary to provide for safety and traffic.

29. **RECORDS**

The SELLER agrees that LOCKHEED MARTIN shall, until the expiration of three years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the SELLER involving transactions related to this Contract.

30. **RELEASE OF INFORMATION**

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by SELLER without the prior written approval of LOCKHEED MARTIN.

31. **REMOVAL OF EQUIPMENT AND CLEANUP**

- (a) The SELLER shall at all times keep the construction site, including storage areas, free from accumulations of waste material and rubbish; and prior to completion of the Work remove any rubbish from and about the premises and all tools, scaffolding equipment, and materials not the property of LOCKHEED MARTIN. Upon completion of the construction, the SELLER shall leave the site in a clean, neat and workmanlike condition satisfactory to LOCKHEED MARTIN.
- (b) Upon the completion of Work, the SELLER shall remove its equipment, tools, materials, and other articles from the site. Should the SELLER fail to take prompt action to this end, LOCKHEED MARTIN (at its option and without waiver of such other rights as it may have) may after thirty (30) days' notice to SELLER treat them as abandoned property and thereby dispose or use them as it deems appropriate. The SELLER shall also sweep all floors broom clean, clean all exterior brickwork and window lights, and remove all rubbish from the property.

32. **REPRODUCTION AND USE OF TECHNICAL DATA**

- (a) For use in performance of this Contract, the SELLER 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 SELLER 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 SELLER prompt notice in writing of any suit or action alleging such liability.
- (b) 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 authorized Procurement 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 Procurement Representative by written amendment of this Contract.
- (c) SELLER agrees not to deliver or furnish any data or software subject to limited use or reproduction unless otherwise agreed as specified above.
- (d) 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 SELLER 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.

33. **SAFETY AND ACCIDENT PREVENTION**

- (a) In performing Work under this Contract on LOCKHEED MARTIN property, the SELLER is responsible for the safety and health of contractor or subcontractor employees and shall:
  - (1) Conform to the specific safety requirements contained in this Contract;
  - (2) Comply with the safety rules of LOCKHEED MARTIN that concern related activities not directly addressed in this Contract;
  - (3) Take all reasonable steps and precautions to prevent accidents and preserve the life and health of LOCKHEED MARTIN and SELLER personnel performing or in any way coming in contact with the performance of this Contract; and
  - (4) Take such additional immediate precautions as LOCKHEED MARTIN may reasonably require for safety and accident prevention purposes.
  - (5) Be responsible for informing all SELLER and SUBCONTRACTOR employees of any hazards associated with the job site.

- (b) The LOCKHEED MARTIN Procurement Representative may, by written order, direct additional safety and accident standards as may be required in the performance of this Contract and any adjustments resulting from such direction will be in accordance with the Changes clause of this Contract.
- (c) The SELLER shall immediately notify and promptly report to LOCKHEED MARTIN, any accident, incident or exposure resulting in fatality, lost-time, occupational injury or occupational disease; or, contamination of property or property loss of \$10,000 or more arising out of Work performed under this Contract; provided, however, the SELLER will not be required to include in any report an expression of opinion as to the fault or negligence of any employee. In addition, the SELLER shall comply with any illness, incident and injury experience reporting requirements set forth in the Schedule of the Contract. The SELLER will investigate all such work-related incidents or accidents to the extent necessary to positively determine the cause, and furnish LOCKHEED MARTIN with a report, in such form as LOCKHEED MARTIN may require, of the investigative findings, together with proposed and/or completed corrective actions.
- (d) Any violation of these safety rules and requirements, unless promptly corrected as directed by the LOCKHEED MARTIN Procurement Representative, shall be grounds for termination of this Contract in accordance with the Termination for Default clause of this Contract.
- (e) SELLER shall be responsible for and hereby agrees to indemnify and save LOCKHEED MARTIN harmless from any and all:
  - (1) damage to the property of LOCKHEED MARTIN, the SELLER or other contractors or subcontractors; or
  - (2) injury to employees of LOCKHEED MARTIN, the SELLER, or other contractors or subcontractors; or
  - (3) for any liability of whatsoever nature arising out of or in connection with the presence of SELLER or its subcontractors pursuant to this Contract.
- (f) The SELLER shall cause the substance of this clause including this paragraph (f) and any applicable Schedule Provisions to be inserted in subcontracts of every tier which: (i) amount to \$1,000,000 or more unless LOCKHEED MARTIN makes a written determination that this is not required; (ii) require construction, repair, or alteration in excess of \$10,000; or (iii) the SELLER, regardless of dollar amount, determines that hazardous materials or operations are involved.

**34. SITE INVESTIGATIONS AND REPRESENTATIONS**

- (a) The SELLER represents that it has investigated and satisfied itself as to the nature and location of the work, the general and local conditions, including but not limited to those bearing upon transportation, disposal, handling and storage of materials; the availability of labor, water, electric power, and roads; the uncertainties of weather, river stages, tides, or similar physical conditions at the site; the conformation and conditions of the ground; the character of equipment and facilities needed preliminary to and during the prosecution of the Work and all other matters upon which information is reasonably obtainable and which can in any way affect the Work or the cost thereof under this Contract.
- (b) The SELLER further represents that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site including all exploratory work done by LOCKHEED

MARTIN, as well as from information presented by the drawings and specifications.

- (c) Failure by the SELLER to acquaint itself with all available information shall not relieve it of responsibility for successfully performing the Work. LOCKHEED MARTIN assumes no responsibility for any conclusions or interpretations made by the SELLER based on the information made available by LOCKHEED MARTIN or for any understandings reached or representations made by any of its officers, employees or agents prior to the execution of this Contract, unless (1) such understanding or representations are expressly stated in this Contract and (2) this Contract expressly provides that the responsibility therefor is assumed by LOCKHEED MARTIN.
- (d) Where alterations of and/or additions to existing construction are required under this Contract, the SELLER shall verify all dimensions and determine all existing conditions which may affect its work and shall be responsible for the accuracy of such dimensions and determinations.

**35. SPECIFICATIONS AND DRAWINGS**

- (a) SELLER shall comply with all specifications and drawings set forth in the Statement of Work hereof. All Work called for in said specifications and drawings shall be accomplished in accordance with the applicable national and local codes.
- (b) The SELLER shall keep on the site a copy of the drawings and specifications and shall at all times give LOCKHEED MARTIN access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In any case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to LOCKHEED MARTIN, who shall promptly make a determination in writing. Any adjustment by the SELLER without this determination shall be at its own risk and expense. LOCKHEED MARTIN shall furnish from time to time such detail drawings and other information as may be considered necessary, unless otherwise provided.
- (c) Omissions and Misdescriptions-Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications or which are customarily performed, shall not relieve the SELLER from performing such omitted or misdescribed details of work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.
- (d) Checking of Drawings and Dimensions-The SELLER shall check all drawings furnished him immediately upon their receipt and shall promptly notify LOCKHEED MARTIN of any discrepancies. Dimensions marked on drawings shall in general be followed in preference to scale measurements. Large scale detail drawings shall in general govern small scale drawings. The SELLER shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors which might have been avoided thereby. When measurements are affected by field conditions, the SELLER shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings.
- (e) Deviations-Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall not be made until written authority is obtained from LOCKHEED MARTIN.
- (f) Base Lines and Grades-The SELLER shall lay out its work from base lines and grades established by LOCKHEED

MARTIN and shall be responsible for all measurements in connection therewith. The SELLER shall, at its own expense, furnish all stakes, templates, platforms, equipment, and ranges and labor that may be required in setting and cutting, or laying out any part of the Work. The SELLER will be held responsible for the proper execution of the Work to such lines and grades as may be established or indicated by LOCKHEED MARTIN, and all stakes or other marks thus established shall be preserved by it until their removal is authorized by LOCKHEED MARTIN. LOCKHEED MARTIN will furnish, on request from the SELLER, all location and limit marks reasonably necessary for the conduct of the Work.

- (g) All drawings shall become the property of LOCKHEED MARTIN, and LOCKHEED MARTIN shall be entitled, without further payment or liability to the SELLER and without further permission to use such drawings and to reproduce them; provided, however, the use of such drawings shall not imply a license to LOCKHEED MARTIN under any patent or shall not be construed as affecting the scope of any license otherwise granted to LOCKHEED MARTIN under any patent.
- (h) The SELLER shall furnish to LOCKHEED MARTIN for all phases of the Work under specification sections wherein they apply, a sufficient number of submittals so that LOCKHEED MARTIN can retain copies. Submittals include, but are not limited to, complete sets of certified shop drawings, fabrication and welding procedures, specifications, reports, any applicable standards, and/or catalog data including vendors' delivery dates. Submittals will be marked "approved", "approved as noted", or "disapproved". Submittals marked "approved" or "approved as noted" need not be resubmitted. Submittals marked "disapproved" shall be resubmitted within seven (7) calendar days. All submittals shall be "approved" or "approved as noted" before starting fabrication.
- (i) LOCKHEED MARTIN review and/or approval of submittals shall not relieve the SELLER from the responsibility of producing completed and installed Work in strict conformance with the Contract requirements. LOCKHEED MARTIN will not assume the responsibility for searching out deviations in the SELLER's submittals or any specifications indicated by the SELLER on submittals. It is understood that the review and/or approval by LOCKHEED MARTIN of the SELLER's submittals shall not be construed as a complete check as to their adequacy, nor as an agreement that the submittal will meet the requirements of the Contract. Such reviews and/or approvals shall in no way relieve the SELLER for any error or deficiency which may exist in the submittal as the SELLER shall be responsible for meeting all requirements of the Contract.
- (j) In the event the Work set forth in the specifications and drawings does not comply with requirements within the applicable national or local codes, the SELLER shall notify LOCKHEED MARTIN of such fact and LOCKHEED MARTIN may, by issuing a Change Order in accordance with the provisions of the Changes clause hereof, authorize compliance by the SELLER with the requirements of the applicable national or local codes.
- (k) The SELLER shall provide to LOCKHEED MARTIN, one (1) set of drawings which accurately portray "as-built" conditions of all construction items within the Contract. Each of these drawings shall be neatly and clearly marked-up (in red) to show all variations between the as-built construction and that indicated or specified by the Contract documents. Where a choice of material, equipment and/or methods is permitted herein, or where variations in the scope or character of the Work from that indicated or specified is permitted by subsequent change to the Contract, such choices or variations shall be reflected on these drawings. The as-built drawings shall include such supplementary notes, legends and details as

may be necessary for legibility and clear portrayal of the as-built construction. All of the required as-built drawings will be delivered to LOCKHEED MARTIN within four (4) weeks after completion of construction.

- (l) The requirements of this clause relating to the approval of documents by LOCKHEED MARTIN shall apply with equal force and effect to all items required by this Contract to be submitted for either "review"/"approval" or language of similar import.

#### 36. SUBCONTRACTORS

- (a) The SELLER shall at all times select qualified vendors and subcontractors for performance of all subcontract work and the furnishing of materials and supplies. Prior to commencement of necessary procurement on a subcontract basis, LOCKHEED MARTIN reserves the right to refuse or reject any subcontractor or supplier. Nothing noted in any subcontract hereunder shall create any contractual relation between the subcontractor and LOCKHEED MARTIN, and, further, the rights of LOCKHEED MARTIN under this Contract shall not be nullified thereby.
- (b) No subcontract shall be made by the SELLER for performing any Work herein contracted for, without the prior written approval of LOCKHEED MARTIN.
- (c) SELLER shall keep all invoices for labor, materials, tools, services, etc., incurred in connection with this Contract on a current basis and if required by LOCKHEED MARTIN, shall present further evidence that payment therefor has been made.

#### 37. SUPERINTENDENCE

- (a) The SELLER shall provide a competent superintendent with necessary assistants, sufficient and competent management and supervisory personnel on site subject to acceptance by LOCKHEED MARTIN and subject to continuing satisfaction to LOCKHEED MARTIN. Such superintendence and management shall efficiently supervise the Work and be responsible for all requirements of this Contract. If such personnel become unacceptable, LOCKHEED MARTIN will present the reasons for dissatisfaction to the SELLER in writing whereby the SELLER shall take immediate steps to replace such person(s).
- (b) SELLER superintendence and/or management at the job site shall have the authority to commit the SELLER to agreements and amendments to this Contract to a sufficient monetary value that will assure the orderly progress of the Work. Upon acceptance of the Contract, SELLER shall provide LOCKHEED MARTIN with written notice as to designated personnel and their monetary authority and such authority shall be assumed to remain in force until written notice otherwise is received by LOCKHEED MARTIN.

#### 38. SURVIVABILITY

If this Contract is terminated for default or convenience, SELLER shall not be relieved of those obligations contained in this Contract for the following provisions:

- Applicable Laws
- Independent Contractor Relationship
- Patent Indemnity and Notice of Infringement
- Reproduction and Use of Technical Data
- Release of Information
- Warranty and Correction of Defects

#### 39. SUSPENSION OF WORK

- (a) LOCKHEED MARTIN may order the SELLER in writing to suspend all or any part of the Work of this Contract for such

period of time as LOCKHEED MARTIN may determine to be appropriate for the convenience of LOCKHEED MARTIN. If, without the fault or negligence of the SELLER, the performance of all or any part of the Work is suspended, for an unreasonable period of time, an adjustment may be made by LOCKHEED MARTIN for any increase in the cost of performance of the Contract (excluding profit) necessarily caused by the unreasonable suspension, and the Contract shall be modified in writing accordingly. No adjustment shall be made to the extent that performance by the SELLER would have been prevented by other causes even if the Work had not been so suspended. Any claim for adjustment must be asserted to the LOCKHEED MARTIN Procurement Representative in writing within twenty-four (24) hours after the termination of the suspension and a proposal for adjustment must be submitted to the LOCKHEED MARTIN Procurement Representative in writing within twenty (20) days after the termination of suspension and must fully set forth the amount claimed and adjustment in the period of performance, if any. If an adjustment in the period of performance is requested, the proposal for adjustment shall also separately set forth the amounts required, including premium time, to maintain the present period of performance.

- (b) In the event the SELLER is instructed to vacate an area where work on this job is being performed, the completion schedules will be extended by the amount of time thus lost. If the SELLER is ordered to vacate for more than one hour at any one time, then the SELLER will make every reasonable effort to place his labor force in other productive work. If no other work is available, upon receipt of a claim for adjustment acceptable to LOCKHEED MARTIN, LOCKHEED MARTIN will reimburse the SELLER for the labor cost (excluding profit) of the time lost in excess of one hour per man but in no event more than 15 hours per man. If the SELLER is required to vacate an area for more than sixteen (16) normal working hours the provisions of subparagraph (a) above shall apply in lieu of this paragraph.

#### 40. TAXES

Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government.

#### 41. TERMINATION FOR DEFAULT

- (a) Time is of the essence of this Contract.
- (b) If the SELLER refuses or fails (i) to prosecute the Work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Contract, or any extension thereof, or (ii) fails to complete such Work in said time, or (iii) fails to perform any other requirement under this Contract, LOCKHEED MARTIN may, by written notice to the SELLER, terminate this Contract in whole or in part. LOCKHEED MARTIN's right to terminate this Contract under subdivisions (b) (i) and (b) (iii) above, may be exercised if the SELLER does not cure such failure within ten (10) days (or more if authorized in writing by LOCKHEED MARTIN) after receipt of the notice from LOCKHEED MARTIN specifying the failure.
- (c) In the event LOCKHEED MARTIN terminates this Contract in whole or in part, LOCKHEED MARTIN may take over the Work and complete it, by contract or otherwise, and may take possession of and use any materials, appliances and plant on the work site necessary for completing the Work. However, the SELLER shall continue the Work not terminated. The SELLER and its sureties shall be liable for any damage to LOCKHEED MARTIN resulting from the SELLER's refusal or failure to complete the Work within the specified time, whether or not the SELLER's right to proceed with the Work is terminated. This liability includes any excess costs incurred by LOCKHEED MARTIN in completing the Work; and, if

specified in the Schedule of this Contract, liquidated damages for each calendar day of delay until the Work is finally accepted.

- (d) The right of the SELLER to proceed shall not be terminated, nor the SELLER charged with damages under this clause, if the delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the SELLER. Examples of such causes include acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; freight embargoes; unusually severe weather; and delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the SELLER and such subcontractors or suppliers; provided, that the SELLER shall within ten (10) days from the beginning of any such delay, notify LOCKHEED MARTIN in writing of the cause of delay.
- (e) If, after notice of termination of the SELLER's right to proceed under the provisions of this clause, it is determined for any reason that the SELLER was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause entitled "Termination for Convenience".
- (f) If this Contract is terminated for default, LOCKHEED MARTIN may require the SELLER to transfer title and deliver to LOCKHEED MARTIN any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights that the SELLER has specifically produced or acquired for the terminated portion of this Contract. Upon direction of LOCKHEED MARTIN, the SELLER shall also protect and preserve property in its possession in which LOCKHEED MARTIN has an interest.
- (g) Failure of LOCKHEED MARTIN to enforce any right under this clause shall not be deemed a waiver of any right hereunder. The rights and remedies of LOCKHEED MARTIN in this clause are in addition to any other rights and remedies provided by law or under this Contract.

#### 42. USE OF STRUCTURE BEFORE ACCEPTANCE

- (a) LOCKHEED MARTIN or others may, during the performance of the Work, enter the structure for the purpose of performing any necessary Work. In doing so LOCKHEED MARTIN shall endeavor not to interfere with the SELLER and the SELLER shall not interfere with other work being done by or on behalf of LOCKHEED MARTIN.
- (b) If, prior to completion and final acceptance of all the Work, LOCKHEED MARTIN takes possession of any structure (whether completed or otherwise) comprising a portion of the work with the intent of retaining possession thereof (as distinguished from temporary possession contemplating return to the SELLER), then, while LOCKHEED MARTIN is in possession, the SELLER, notwithstanding any other provision herein, shall be relieved of the responsibility for loss or damage to structure other than that resulting from the SELLER's fault or negligence. Such taking of possession by LOCKHEED MARTIN shall not relieve the SELLER from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.

#### 43. WAIVER, APPROVAL, AND REMEDIES

- (a) Failure by LOCKHEED MARTIN to enforce any of the provision(s) of this Contract shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of

the right of LOCKHEED MARTIN thereafter to enforce each and every such provision(s).

- (b) LOCKHEED MARTIN's approval of documents shall not relieve SELLER from complying with any requirements of this Contract.
- (c) The rights and remedies of LOCKHEED MARTIN in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

#### 44. **WARRANTY AND CORRECTION OF DEFECTS**

- (a) In addition to any other warranties in this Contract, the SELLER warrants, except as provided in paragraph (h) of this clause, that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the SELLER or any subcontractor or supplier at any tier.
- (b) This warranty shall continue for a period of one (1) year from the date of final acceptance of the entire Work.
- (c) The SELLER shall remedy at the SELLER's expense, any failure to conform or any defect. In addition, the SELLER shall remedy, at the SELLER's expense, any damage to LOCKHEED MARTIN-owned or controlled real or personal property, when that damage is the result of:
  - (1) The SELLER's failure to conform to Contract requirements; or
  - (2) Any defect of equipment, material, workmanship, or design furnished.
- (d) The SELLER shall restore any Work damaged in fulfilling the terms and conditions of this clause. The SELLER's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement.
- (e) LOCKHEED MARTIN shall notify the SELLER, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- (f) If the SELLER fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, LOCKHEED MARTIN shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the SELLER's expense.
- (g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Contract, the SELLER shall:
  - (1) Obtain all warranties that would be given in normal commercial practice;
  - (2) Require all warranties to be executed, in writing, for the benefit of LOCKHEED MARTIN;
  - (3) Enforce all warranties for the benefit of LOCKHEED MARTIN.
- (h) All subcontractor warranties shall inure to the benefit of LOCKHEED MARTIN and its assigns.
- (i) This warranty shall not limit LOCKHEED MARTIN's rights under the Inspection and Acceptance clause of this Contract with respect to latent defects, gross mistakes, or fraud.
- (j) The remedies provided above shall not be restrictive of, but shall be cumulative and in addition to, all other remedies of LOCKHEED MARTIN.

## **SECTION II: FAR/DFAR FLOWDOWN PROVISIONS**

### **A. INCORPORATION OF FAR CLAUSES.**

The Federal Acquisition Regulation (FAR) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, during the performance of this Contract. If the date or substance of any of the clauses listed below is different than the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead.

### **B. GOVERNMENT SUBCONTRACT.**

This Contract is entered into by the Parties in support of a U.S. Government Contract.

As used in the FAR clauses referenced below and otherwise in this Contract:

1. "CONTRACTOR" means the SELLER, as defined in the definitions of this document, acting as the immediate (first-tier) subcontractor to LOCKHEED MARTIN.
2. "Prime Contract" means the contract between LOCKHEED MARTIN and the U.S. Government or between LOCKHEED MARTIN and its higher-tier contractor who has a contract with the U.S. Government.
3. "Contract" means this Contract.
4. "Subcontract" means any contract placed by the CONTRACTOR or lower-tier subcontractors under this Contract.

### **C. NOTES.**

1. Substitute "LOCKHEED MARTIN" for "Government" or "United States" as applicable throughout this clause.
2. Substitute "LOCKHEED MARTIN Procurement Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.
3. Insert "and LOCKHEED MARTIN" after "Government" or "Contracting Officer", as appropriate, throughout this clause.
4. Insert "or LOCKHEED MARTIN" after "Government" throughout this clause.
5. Communication/notification required under this clause from/to the CONTRACTOR to/from the Contracting Officer shall be through LOCKHEED MARTIN.
6. "Contracting Officer" shall mean the U.S. Government Contracting Officer for LOCKHEED MARTIN's government prime contract under which this Contract is entered.

### **D. AMENDMENTS REQUIRED BY 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 the applicable prime contract or with the provisions of amendments to such prime contract. If any such amendment to this Contract causes an increase or decrease in the 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.

E. **FAR FLOWDOWN CLAUSES.**

**REFERENCE TITLE**

**1. The following FAR clauses apply to this Contract :**

- (a) 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)
- (b) 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION (JUL 2005) (Applicable as prescribed at FAR 22.305.)
- (c) 52.222-6 DAVIS-BACON ACT (JUL 2005)
- (d) 52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)
- (e) 52.222-17 LABOR STANDARDS FOR CONSTRUCTION WORK - FACILITIES CONTRACTS (FEB 1988)
- (f) 52.222-20 WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)
- (g) 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
- (h) 52.222-26 EQUAL OPPORTUNITY (APR 2002) (Only subparagraphs (b)(1)-(11) applies.)
- (i) 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) (Applicable if hazardous materials are to be delivered. See note 2 and 3.)
- (j) 52.223-11 OZONE-DEPLETING SUBSTANCES (MAR 2001) (Applicable if the Work was manufactured with or contains ozone-depleting substances.)
- (k) 52.225-9 BUY AMERICAN ACT - CONSTRUCTION MATERIALS (JAN 2005)
- (l) 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (MAR 2005) (In paragraph (a), see Notes 5 and 6.)
- (m) 52.234-1 INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III (DEC 1994). (See Note 2.)
- (n) 52.242-13 BANKRUPTCY (JUL 1995) (See Note 2.)
- (o) 52.242-15 STOP-WORK ORDER (AUG 1989) (See Notes 1 and 2.)
- (p) 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DEC 2004)
- (q) 52.246-2 INSPECTION OF SUPPLIES - FIXED PRICE (AUG 1996) (The Government also may exercise any of LOCKHEED MARTIN's inspection rights under this clause. See Notes 1 and 2.)
- (r) 52.246-4 INSPECTION OF SERVICES - FIXED PRICE (AUG 1996) (The Government also may exercise any of LOCKHEED MARTIN's inspection rights under this clause. See Note 1.)

(s) 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (APR 2003) (Applicable for ocean transportation of supplies.)

(t) 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (MAY 2004) (Applicable only for fixed-price contracts. See Notes 1 and 2. "Government" and "Contracting Officer" mean "LOCKHEED MARTIN" except in paragraph (n) where "Government" means LOCKHEED MARTIN and the "Government" and "Contracting Officer" means "LOCKHEED MARTIN or the "Contracting Officer." In paragraph (c) "120 days" is changed to "60 days." In paragraph (d) "15 days" is changed to "30 days," and "45 days" is changed to "60 days." In paragraph (e) "1 year" is changed to "6 months." Paragraph (j) is deleted. In paragraph (l) "90 days" is changed to "45 days." Settlements and payments under this clause may be subject to the approval of the Contracting Officer.)

**2. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$10,000:**

(a) 52.222-23 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION (FEB 1999)

(b) 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)

(d) 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUNE 1998)

**3. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$25,000:**

(a) 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VIETNAM ERA VETERANS (DEC 2001)

(b) 52.222-37 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (DEC 2001)

**4. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$100,000:**

(a) 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)

(b) 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2005) (See Note 5.)

- (c) 52.215-2 AUDIT AND RECORDS-NEGOTIATION (JUN 1999) (Insert "and the LOCKHEED MARTIN Purchasing Representative" after "the Contracting Officer or representatives of the Contracting Officer" or after "... representatives of the Contracting Officer who are employees of the Government", where indicated throughout the clause.)
- (d) 52.215-14 INTEGRITY OF UNIT PRICES (OCT 1997) (Delete paragraph (b) of the clause.)
- (e) 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003) (See Notes 2 and 5, delete subparagraph (e).)
- (f) 52.227-1 AUTHORIZATION AND CONSENT (JUL 1995) (Applicable only if the Prime Contract contains this clause. In the clause, in paragraph (a)(1) see Note 4, and in paragraph (a)(2)(ii) see Note 2.)
- (g) 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996) (See Notes 2 and 4.)
- (h) 52.248-1 VALUE ENGINEERING (FEB 2000) (See Note 1, except in subparagraphs (c)(5) and (m), see Note 3.)
5. **The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$500,000:**
- (a) 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JUL 2005) (Applicable if the CONTRACTOR is not a small business; see Note 1 and Note 2, applicable to subparagraph (c) only; the CONTRACTOR's subcontracting plan is incorporated herein by reference.)
6. **The following FAR clauses apply to this Contract only if the stipulation in the relevant parenthetical applies:**
- (a) 52.204-2 SECURITY REQUIREMENTS (AUG 1996) (Applicable if the Work requires access to classified information; delete paragraph (c) of the clause.)
- (b) 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997) (Applicable if 52.215-12 applies to this Contract. See Notes 2 and 4. Rights and obligations under this clause shall survive completion of the Work and final payment under this Contract.)
- (c) 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS (OCT 1997) (Applicable if 52.215-13 applies to this Contract, and FAR 52.215-10 is not applicable. See Notes 2 and 4. Rights and obligations under this clause shall survive completion of the work and final payment under this Contract.)
- (d) 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997) (Applicable if FAR 52.215-10 applies to this Contract. The threshold for applicability of this clause is specified at FAR 15.403-4(a)(1).)
- (e) 52.215-13 SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS (OCT 1997) (Applicable if FAR 52.215-11 applies to this Contract. The threshold for applicability of this clause is specified at FAR 15.403-4(a)(1). All of the duties and obligations which this clause imposes upon a sub-tier contractor shall be and are hereby imposed upon the CONTRACTOR with respect to LOCKHEED MARTIN in pricing the award of this Contract or any modification to this Contract.)
- (f) 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004) (Applicable if this Contract meets the applicability requirements of FAR 15.408(g); see Note 5.)
- (g) 52.215-16 FACILITIES CAPITAL COST OF MONEY (JUN 2003) (Applicable only if the Contract is subject to the Cost Principles at FAR Subpart 31.2 and the CONTRACTOR proposed facilities capital cost of money in its offer.)
- (h) 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997) (Applicable only if the Contract is subject to the cost principles at FAR Subpart 31.2 for Contracts with commercial organizations, and the CONTRACTOR did not propose facilities capital cost of money in its offer.)
- (i) 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POST-RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005) (Applicable if this Contract meets the applicability requirements of FAR 15.408(j); see Note 5.)
- (j) 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997) (Applicable if this Contract meets the applicability requirements of FAR 15.408(k); See Note 2.)
- (k) 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997) (See Note 2.)
- (l) 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (OCT 1997) (See Note 2.)
- (m) 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997) (Applicable to Work containing covered radioactive material. In the blank insert "30"; See Notes 1 and 2.)
- (n) 52.225-1 BUY AMERICAN ACT - BALANCE OF PAYMENT PROGRAM - SUPPLIES (JUN 2003) (Applicable if the Work contains other than domestic components as defined by this clause.)
- (o) 52.225-8 DUTY FREE ENTRY (FEB 2000) (Applicable if supplies will be imported into the Customs Territory of the United States. In paragraph (b)(1) the notice provision shall be 20 days. See Notes 3, 5 and 6.)
- (p) 52.227-9 REFUND OF ROYALTIES (APR 1984) (Applicable when reported royalty exceeds \$250; see Notes 1 and 2.)

- (q) 52.227-10 FILING OF PATENT APPLICATIONS-CLASSIFIED SUBJECT MATTER (APR 1984) (Applicable if the Work or any patent application may cover classified subject matter.)
- (r) 52.227-11 PATENT RIGHTS-RETENTION BY THE CONTRACTOR (SHORT FORM) (JUN 1997) (Applicable if CONTRACTOR is a small business or non-profit organization performing experimental or R&D work.) Alternate I (Jun 1989), II (Jun 1989), III (Jun 1989), and IV (Jun 1989)
- (s) 52.227-12 PATENT RIGHTS-RETENTION BY THE CONTRACTOR (LONG FORM) (JAN 1997) (Applicable to other than a small business or non-profit organization performing experimental or R&D work.)
- (t) 52.227-14 RIGHTS IN DATA - GENERAL (JUN 1987) (Applicable for the delivery of data under this Contract.)
- (u) 52.230-2 COST ACCOUNTING STANDARDS (APR 1998) (When referenced in the Contract, Full CAS Coverage applies. In subparagraph (a)(4)(ii) and (a)(5) see Note 1. Delete paragraph (b) of the clause.)
- (v) 52.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (APR 1998) (When referenced in the Contract, Modified CAS Coverage applies. In subparagraphs (a)(3)(ii) and (a)(4) see Note 1. Delete paragraph (b) of the clause.)
- (w) 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (APR 2005) (Applicable if FAR 52.230-2 or FAR 52.230-3 applies.)
- (x) 52.233-3 PROTEST AFTER AWARD (AUG 1996) (In the event LOCKHEED MARTIN's customer has directed LOCKHEED MARTIN to stop performance of the work under the prime contract under which this contract is issued pursuant to FAR 33.1, LOCKHEED MARTIN may, by written order to SELLER, direct SELLER to stop performance of the work called for by this Contract; "30 days" means "20 days" in paragraph (b)(2); Note 1 applies except the first time it appears in paragraph (f); in paragraph (f) add after "33.104(h)(1)" "and recovers those costs from LOCKHEED MARTIN"; See Note 2.)
- (y) 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT AND VEGETATION (APR 1984) (Applicable if work performed on Government installation. See Note 2.)
- (z) 52.243-6 CHANGE ORDER ACCOUNTING (APR 1984) (Applicable only if Prime Contract requires Change Order Accounting. See Note 2; delete reference to the "Disputes" clause in the last sentence.)
- (aa) 52.245-2 GOVERNMENT PROPERTY (FIXED PRICE CONTRACTS) (MAY 2004) (Applicable if Government Furnished Property is to be provided under the Contract. In the clause, "Government" means "LOCKHEED MARTIN" except in the phrases "Government Furnished Property; and "Government Property" and in references to Government title to property. "Contracting Officer" means "LOCKHEED MARTIN Procurement Representative.")
- (bb) 52.245-17 SPECIAL TOOLING (MAY 2004) (Applicable if this is a fixed-price Contract and the Contract involves the use of special tooling; see Note 2. DoD Contracts shall incorporate the (APR 1984) clause.)
- (cc) 52.245-18 SPECIAL TEST EQUIPMENT (FEB 1993) (Applicable if this Contract involves the acquisition or fabrication of Special Test Equipment. Notice to acquire shall be through LOCKHEED MARTIN. See Notes, 4, 5, and 6.)
- (dd) 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003) (Applicable if this Contract involves international air transportation.)

**F. DoD FAR SUPPLEMENT (DFARS) FLOWDOWN CLAUSES.**

**REFERENCE TITLE**

**1. The following DFARS clauses apply to this Contract :**

- (a) 252.227-7013 RIGHTS IN TECHNICAL DATA - NON-COMMERCIAL ITEMS (NOV 1995)
- (b) 252.227-7014 RIGHTS IN NON-COMMERCIAL COMPUTER SOFTWARE AND NON-COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (JUN 1995)
- (c) 252.227-7016 RIGHTS IN BID OR PROPOSAL INFORMATION (JUN 1995)
- (d) 252.227-7019 VALIDATION OF ASSERTED RESTRICTIONS - COMPUTER SOFTWARE (JUN 1995)
- (e) 252.227-7025 LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (JUN 1995) For subparagraph (c)(1) (See Note 3.)
- (f) 252.227-7026 DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE (APR 1988) (See Note 1.)
- (g) 252.227-7027 DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (APR 1988) (See Note 4.)
- (h) 252.227-7028 TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT (JUNE 1995) (In this clause, the term "contract" and "subcontract" shall not change in meaning)
- (i) 252.227-7030 TECHNICAL DATA - WITHHOLDING OF PAYMENT (MAR 2000) (See Notes 1 and 2.)



- (j) 252.227-7037 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (SEP 1999)
- (k) 252.228-7005 ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (DEC 1991) (In subparagraph (a), see Note 5; in subparagraph (b) see Note 3.)
- (l) 252.231-7000 SUPPLEMENTAL COST PRINCIPLES (DEC 1991)
- (m) 252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000) (See Note 2.)
2. **The following DFARS clause applies to this Contract if the value of this Contract equals or exceeds \$100,000:**
- (a) 252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE CONTRACT-RELATED FELONIES (DEC 2001) (In this clause, the terms "contract," "contractor," and "subcontract" shall not change in meaning; Delete paragraph g; See Note 2.)
- (b) 252.225-7014 PREFERENCE FOR DOMESTIC SPECIALTY METALS (JUN 2005) ALTERNATE I (APR 2003) (Applicable if the Work to be furnished hereunder contains specialty metals.)
- (c) 252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (MAR 2002) (Substitute the DFARS clause for the FAR clause 52.247-64 in all Contracts for ocean transportation of supplies; In paragraph (f) delete the reference to the "Prompt Payment" clause; See Notes 1, 2, except for paragraph (c) of the clause which shall retain its original meaning.)
3. **The following DFARS clauses apply to this Contract if the value of this Contract equals or exceeds \$500,000:**
- (a) 252.249-7002 NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION (DEC 1996) (See Note 1.)
4. **The following DFARS clause applies to this Contract if the value of this Contract equals or exceeds \$1,000,000:**
- (a) 252.211-7000 ACQUISITION STREAMLINING (DEC 1991)
5. **The following DFARS clauses apply to this Contract only if the stipulation in the relevant parenthetical applies:**
- (a) 252.215-7000 PRICING ADJUSTMENTS (DEC 1991) (Applicable if FAR 52.215-12 or 52.215-13 applies to this Contract.)
- (b) 252.219-7003 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (DoD CONTRACTS) (APR 1996) (Applicable if FAR 52.219-9 applies to this Contract; delete subparagraph (g).)
- (c) 252.223-7001 HAZARD WARNING LABELS (DEC 1991) (Applies if this Contract requires submission of hazardous material data sheets; see FAR 23.302(c).)
- (d) 252.223-7002 SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (MAY 1994) (Applicable only if the articles furnished under the Contract contain ammunition or explosives, including liquid and solid propellants. See Notes 1, 3 and 5.)
- (e) 252.223-7003 CHANGE IN PLACE OF PERFORMANCE - AMMUNITION AND EXPLOSIVES (DEC 1991) (Applicable if DFARS 252.223-7002 applies to this Contract. See Notes 2 and 4.)
- (f) 252.223-7007 SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES (SEP 1999) Only applicable if this contract involves arms, ammunition, and explosives)
- (g) 252.225-7001 BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (JUN 2005) (Substitute the DFARS clause for the FAR clause 52.225-1 in all Contracts for supplies; applicable if the Work contains other than domestic components as defined by this clause)
- (h) 252.225-7002 QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (APR 2003) (Applicable if 252.225-7001 applies to this Contract.)
- (i) 252.225-7016 RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (JUN 2005) (Applicable if items supplied under this Contract contain ball or roller bearings. See Note 2.)
- (j) 252.225-7032 WAIVER OF UNITED KINGDOM LEVIES (APR 2003) (Applicable if this Contract exceeds \$1 million and is with a United Kingdom firm. See Note 2.)
- (k) 252.225-7043 ANTI-TERRORISM/FORCE PROTECTION FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES (JUN2005) (Applies where CONTRACTOR will be performing or traveling outside the U.S. under this Contract.)
- (l) 252.235-7003 FREQUENCY AUTHORIZATION (DEC 1991) (Applicable if this Contract requires developing, producing, constructing, testing, or operating a device requiring a frequency authorization. See Note 2.)
- (m) 252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991) (Applicable only if this is a fixed price contract.)

(n) 252.245-7001 REPORTS OF GOVERNMENT PROPERTY (MAY 1994) (Applicable if Government Property provided or acquired under this Contract. CONTRACTOR shall submit its required reports to LOCKHEED MARTIN, not later than October 10, not withstanding anything to the contrary in this clause. See Note 5.)

with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, in accordance with its instructions, and

3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

#### G. CERTIFICATIONS AND REPRESENTATIONS

(a) This clause contains certifications and representations that are material representations of fact upon which LOCKHEED MARTIN will rely in making awards to CONTRACTOR. By submitting its written offer, or providing oral offers/quotations at the request of LOCKHEED MARTIN, or accepting any Contract, CONTRACTOR certifies to the representations and certifications as set forth below in this clause. These certifications shall apply whenever these terms and conditions are incorporated by reference in any Contract, agreement, other contractual document or any quotation, request for quotation (oral or written), request for proposal or solicitation (oral or written), issued by LOCKHEED MARTIN. CONTRACTOR shall immediately notify LOCKHEED MARTIN of any change of status with regard to these certifications and representations.

(b) The following clauses of the Federal Acquisition Regulation (FAR) are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable to any order, agreement, or subcontract. In each clause incorporated below, substitute "LOCKHEED MARTIN" for "Government" and "Contracting Agency" and "LOCKHEED MARTIN Procurement Representative" for "Contracting Officer" throughout.

(1) **FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions** (Applicable to solicitations and contracts exceeding \$100,000)

a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions are hereby incorporated by reference in paragraph (b) of this certification.

b) CONTRACTOR certifies that to the best of its knowledge and belief that on and after December 23, 1989--

1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with a solicitation or order, the offeror shall complete and submit,

c) **Submission of this certification and disclosure is a prerequisite for making or entering into a contract as imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.**

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

a) CONTRACTOR certifies that, to the best of its knowledge and belief, that CONTRACTOR and/or any of its Principals, (as defined in FAR 52.209-5,) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.

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

(3) **FAR 52.222-22 Previous Contracts and Compliance Reports.** CONTRACTOR represents that if CONTRACTOR has participated in a previous contract or subcontract subject either to Equal Opportunity clause (FAR 52.222-26) of the Solicitation/Contract, the clause originally contained in Section 310 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114, (i) CONTRACTOR has filed all required compliance reports and (ii) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(4) **FAR 52.222-25 Affirmative Action Compliance.** CONTRACTOR represents (1) that CONTRACTOR has developed and has on file at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (2) that in the event such a program does not presently exist, CONTRACTOR will develop and place in operation such a written Affirmative Action Compliance Program within 120 days from the award of this Contract.

(5) **FAR 52.223-13 Certification Of Toxic Chemical Release Reporting** (Applicable to competitive solicitations/POs which exceed \$100,000)

a) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995.

b) CONTRACTOR certifies that—

- 1) As the owner or operator of facilities that will be used in the performance of this PO that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), SELLER will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or
- 2) None of its owned or operated facilities to be used in the performance of this PO is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons:
  - (i) The facility does not manufacture, process or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);
  - (ii) The facility does not have 10 or more full-time employees as specified in section 313.(b)(1)(A) of EPCRA 42 U.S.C. 11023(b)(1)(A);
  - (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);
  - (iv) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in FAR section 19.102 of the Federal Acquisition Regulation; or
  - (v) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.