

COMMERCIAL CONTRACTS FASA GENERAL PROVISIONS

I. GENERAL PROVISIONS

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1. APPLICABLE LAWS

All provisions of this Contract shall be governed by and construed in their entirety in accordance with the law of the State from which this Contract is issued. CONTRACTOR agrees to comply with all applicable local, state and federal laws and executive orders and regulations issued pursuant thereto and agrees to defend, indemnify, and hold LOCKHEED MARTIN harmless from any claim, suit, loss, cost, damage, expense (including attorneys' fees) or liability by reason of CONTRACTOR's violation hereof. Nothing in this Contract or in any requirement under this Contract shall be construed to mean that CONTRACTOR should perform such work in violation of any law, statute, code or ordinance.

2. ASSIGNMENT

- (a) Any assignment or delegation of this Contract or rights or duties hereunder by the CONTRACTOR shall be void, unless prior written consent thereto is given by LOCKHEED MARTIN. However, any monies due, or to become due hereunder, may be assigned, provided that such assignment shall not be binding upon LOCKHEED MARTIN until the assignment agreement is accepted and acknowledged in writing, and shall be subject to any proper deductions or setoffs against such monies.
- (b) In no event shall copies of this Contract or of any plans, specifications, or other similar documents relating to work under this Contract, if marked "Top Secret," "Secret," or "Confidential," "Proprietary," or similarly, be furnished to any assignee of any claim arising under this Contract, or to any other person not entitled to receive the same.

3. BANKRUPTCY

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

4. CHANGES

(This clause is NOT applicable for commercial off-the-shelf purchases.)

- (a) LOCKHEED MARTIN may at any time by written notice, and without notice to sureties or assignees, make changes within the general scope of this order in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery; and (iv) delivery schedule. Should any such change increase or decrease the cost of, or the time required for, performance of this Contract, an equitable adjustment may be requested by CONTRACTOR or LOCKHEED MARTIN in the price, or delivery schedule, or both. No request by CONTRACTOR for adjustment will be valid unless submitted to LOCKHEED MARTIN in a form acceptable to LOCKHEED MARTIN within thirty (30) days from the date of notice of such change, and accompanied by an estimate of charges for redundant material or work in process, if any.
- (b) Prior to the issuance of a change order under this Contract, LOCKHEED MARTIN may solicit from the CONTRACTOR written agreement as to the maximum (in the case of an increase) adjustments to be made in the price and/or in the delivery schedule (or time of performance), by reason of the change. LOCKHEED MARTIN may also solicit such agreement on limitations on the adjustments to any other provisions of the Contract which may be subject to equitable adjustment by reason of the change. The CONTRACTOR shall promptly submit a "not-to-exceed" amount or maximum schedule adjustment when

so requested by LOCKHEED MARTIN. Any such written agreement 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 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.

- (c) CONTRACTOR agrees that its failure to submit such claim or claims within the applicable time period shall constitute a waiver thereof unless for good cause, CONTRACTOR requests in writing prior to expiration of the applicable time period that a time extension for filing its claim or claims be granted by LOCKHEED MARTIN, and LOCKHEED MARTIN grants such extension. Any such extensions, if approved, shall be effective only if authorized in writing by LOCKHEED MARTIN's Purchasing Representative. Prior to final settlement of any timely filed claim or claims, CONTRACTOR may submit revisions to such claim or claims provided that such revisions do not introduce different areas of costs or claim elements.
- (d) Any clarification, direction, approval, or assistance as may be provided by LOCKHEED MARTIN concerning the work to be performed or the supplies to be furnished pursuant to this Contract shall not constitute or be construed as a change to this Contract and no change order, express or implied, will be binding unless it is issued by written notice by LOCKHEED MARTIN's Purchasing Representative in accordance with paragraph (a) of this clause.
- (e) If the CONTRACTOR's proposal includes the cost of property made obsolete or excess by the change, LOCKHEED MARTIN shall have the right to prescribe the manner of the disposition of the property.
- (f) Nothing contained in this clause shall relieve CONTRACTOR from proceeding without delay in the performance of this Contract as changed.

5. DEFAULT

- (a) LOCKHEED MARTIN may, by written Notice of Default, issued by LOCKHEED MARTIN's Purchasing Representative, terminate the whole or any part of this Contract if (i) CONTRACTOR fails to make delivery of goods or documentation or to perform services within the time specified herein or any extension thereof; (ii) CONTRACTOR fails to perform any of the other provisions of this Contract; or (iii) CONTRACTOR fails to make adequate progress so as to endanger performance of this Contract in accordance with its terms. In either of these two latter circumstances, CONTRACTOR shall have ten (10) days (or such longer period as LOCKHEED MARTIN may authorize in writing) to correct such failure after receipt of notice from LOCKHEED MARTIN specifying such failure.
- (b) In the event LOCKHEED MARTIN terminates this Contract in whole or in part as provided in paragraph (a) above, LOCKHEED MARTIN may procure, in such manner as LOCKHEED MARTIN may deem appropriate and within a reasonable period of time and with terms similar to this Contract, goods, documentation and services similar to those so terminated, and the CONTRACTOR shall be liable to LOCKHEED MARTIN for any excess costs, including excess procurement costs, for such similar goods, documentation and services. The CONTRACTOR shall continue the performance of this Contract to the extent not terminated by paragraph (a).
- (c) Except with respect to default of its subcontractors at any tier, CONTRACTOR shall not be liable for any excess costs or other damages if any failure to perform arises out of causes beyond the control and without the fault or negligence of CONTRACTOR, or

its subcontractors, and as defined under the provision of this Contract entitled "Delays in Performance." CONTRACTOR shall not be liable for any excess costs or other damages for failure to perform, due to such causes, unless the supplies or services to be furnished by the CONTRACTOR were obtainable from other sources in sufficient time and at reasonable prices to permit CONTRACTOR to meet the required delivery schedule. The term "subcontractor" as it is used in this clause means a subcontractor at any tier.

- (d) If this Contract is terminated, as provided in paragraph (a) of this clause, LOCKHEED MARTIN, in addition to any other rights provided in this clause, may require CONTRACTOR to transfer title and deliver to LOCKHEED MARTIN in the manner and to the extent directed by LOCKHEED MARTIN, free and clear of all liens and claims, (i) any completed supplies and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and subcontract rights as CONTRACTOR has specifically produced or specifically acquired for the performance of any part of this Contract which has been terminated. CONTRACTOR shall protect and preserve property in possession of CONTRACTOR in which LOCKHEED MARTIN has an interest.
- (e) LOCKHEED MARTIN shall pay contract price for completed supplies delivered and accepted. The CONTRACTOR and LOCKHEED MARTIN shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the "Disputes" clause. LOCKHEED MARTIN may withhold from these amounts any sum it determines to be necessary to protect it against loss because of outstanding liens or claims of former lien holders.
- (f) If after termination under the provisions of this paragraph (a) of this clause, it is determined that failure to perform is due to causes beyond the control and without fault or negligence of CONTRACTOR or its subcontractor, such Notice of Default shall be deemed to have been issued pursuant to the clause of this Contract entitled "Termination" and the rights and obligations of the Parties hereof shall, in such event, be governed by that clause.
- (g) If this Contract is terminated as provided in paragraph (a) of this clause, LOCKHEED MARTIN, in addition to any other rights provided, shall be granted a perpetual, irrevocable, worldwide, non-exclusive, non-transferable royalty-free right and license to make, have made, use and sell products and services utilizing such Background Intellectual Property rights. Such license is limited in scope to the LOCKHEED MARTIN Prime Contract and its successors. Licensing of the Background Intellectual Property to LOCKHEED MARTIN for use in derivatives and the conditions therefor if any, under which this Contract is entered, shall be subject to the mutual agreement of the Parties. This License shall not include CONTRACTOR trademarks except as may be separately licensed between the Parties.
- (h) If this Contract is terminated as provided in paragraph (a) of this clause, CONTRACTOR shall not be relieved of those obligations contained in this Contract for the following provisions: Warranty; Patent Indemnity and Intellectual Property; Indemnification; and Release of Information.

6. DEFINITIONS

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

- (a) "Articles" or "work" means the goods, products, supplies, lots of supplies, parts, assemblies, technical data, drawings, reports, services, including any studies covering fundamental, theoretical, or experimental investigations; and extension of the investigative findings and theories of a scientific or technical nature into practical application, or other items constituting the subject matter of this Contract which are to be furnished by the

CONTRACTOR to LOCKHEED MARTIN hereunder, as further described in the Schedule, and includes without limitation raw materials, components, and intermediate assemblies of such articles.

- (b) When used herein, the terms "Contract," "purchase order," and "purchase agreement" are synonymous.
- (c) "CONTRACTOR" or "SELLER" means the individual, partnership, corporation, or business association acting as the immediate (first-tier) subcontractor to LOCKHEED MARTIN for the goods and services provided under this Contract.
- (d) "Government" means the United States Government or any department or agency thereof.
- (e) "LOCKHEED MARTIN" or "Buyer" means LOCKHEED MARTIN Corporation, acting through an element of its Space and Strategic Missiles Sector.
- (f) "LOCKHEED MARTIN Purchasing Representative" means any duly authorized Buyer, Subcontract Administrator, Authorized Procurement Representative, or an authorized Materiel Representative employed by LOCKHEED MARTIN.
- (g) "Prime Contract" means the contract between LOCKHEED MARTIN and the United States of America under which this Contract may have been issued as a subcontract, if applicable.
- (h) "Subcontract" means any contract placed by the CONTRACTOR 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.

7. DELAYS IN PERFORMANCE

- (a) Except for defaults of subcontractors at any tier, the CONTRACTOR shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the CONTRACTOR. Examples of such causes include:
 - (1) Acts of God or of the public enemy,
 - (2) Acts of the Government in either its sovereign or contractual capacity,
 - (3) Fires,
 - (4) Floods,
 - (5) Epidemics,
 - (6) Quarantine restrictions,
 - (7) Strikes,
 - (8) Freight embargoes, and
 - (9) Unusually severe weather.

In each instance the failure to perform must be beyond the control and without the fault or negligence of the CONTRACTOR.

- (b) In the event of an excusable delay, resulting from any of the above causes, the performance schedule of this Contract shall be extended equitably. CONTRACTOR has the burden to prove that an event constitutes an excusable delay. CONTRACTOR shall provide LOCKHEED MARTIN with evidence supporting CONTRACTOR's claim of excusable delay and shall exert its best efforts to mitigate such schedule impact to the extent reasonable, including providing a work around schedule.

8. DISPUTES

Except as otherwise specifically provided in this Contract, all disputes under this Contract which are not disposed of by mutual agreement may be decided by recourse to legal action subject to controlling law

as indicated in the clause entitled "Applicable Laws". Pending decision of any disputes hereunder, CONTRACTOR shall diligently proceed with the performance of this Contract as directed by LOCKHEED MARTIN in accordance with the provisions of this Contract.

9. EXPORT OF TECHNICAL DATA

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

10. EXTRAS

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

11. GRATUITIES/KICKBACKS

LOCKHEED MARTIN may, by written notice to CONTRACTOR, terminate for default the right of CONTRACTOR to proceed under this Contract if LOCKHEED MARTIN has reasonable cause to believe that gratuities (in the form of entertainment, gifts or otherwise) or kickbacks were offered or given by CONTRACTOR, or any agent or representative of CONTRACTOR, to any officer or employee of LOCKHEED MARTIN with a view toward securing this Contract or securing favorable treatment with respect to the award or amendment of this Contract or the making of any determination with respect to the performance of this Contract. The rights and remedies of LOCKHEED MARTIN provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. **By accepting this Contract, CONTRACTOR certifies that it has not and will not solicit or offer a kickback.**

12. INDEPENDENT CONTRACTOR RELATIONSHIP

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

wear and tear, and except to the extent that such property is consumed in the performance of this Contract.

13. INSURANCE - THIRD PARTY LIABILITY

- (a) Each party shall be solely responsible for any and all third party liability incurred or caused by it in connection with the performance of this Contract, and shall defend, indemnify and save the other party harmless from all such liabilities, claims, judgments, costs and attorneys' fees.
- (b) In connection with the performance of this Contract, CONTRACTOR and its subcontractors and lower-tier subcontractors shall maintain public liability and property damage insurance in prudent and reasonable limits covering the obligations set forth above, and shall maintain, to the statutory limits required by law, proper worker's compensation insurance or approved self insurance program and employer's liability insurance covering all its employees performing this Contract. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of LOCKHEED MARTIN and is not contributory with any insurance which CONTRACTOR may carry. The requirement to provide insurance under this clause shall not in any manner limit or qualify the liabilities and obligations assumed by CONTRACTOR under this Contract.
- (c) When requested to do so by LOCKHEED MARTIN, prior to or after the commencement of work hereunder, the CONTRACTOR shall furnish to LOCKHEED MARTIN a certificate or written statement evidencing issuance of the above required insurance. The policies of required insurance shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of LOCKHEED MARTIN in such insurance shall not be effective sooner than thirty (30) days after written notice thereof to LOCKHEED MARTIN. In the event the CONTRACTOR fails to furnish such certificates prior to the commencing of work or to continue to maintain such insurance during the performance of the Contract, LOCKHEED MARTIN shall have the right to terminate this Contract for default as provided above, or to withhold any payments or partial payments required to be made under this Contract.

14. INVOICES

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

15. LEGAL ACTION AND INTEREST

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

16. LOCKHEED MARTIN- OWNED/PROVIDED PROPERTY

- (a) Unless otherwise provided in this Contract, the CONTRACTOR, upon delivery to CONTRACTOR of any LOCKHEED MARTIN property, assumes the risk of and shall be responsible for any loss, damage, or destruction of such property, except for reasonable

- (b) Any such property furnished to the CONTRACTOR shall, unless otherwise provided in this Contract, be used only for the performance of this Contract, and shall be protected, managed and controlled in accordance with good commercial practice.

- (c) Upon completion of this Contract or at such earlier date as may be fixed by LOCKHEED MARTIN, the CONTRACTOR shall submit, in a form acceptable to LOCKHEED MARTIN, inventory lists covering all items of LOCKHEED MARTIN property not previously consumed or not delivered, and shall deliver or make such other disposal of such property as may be directed or authorized by LOCKHEED MARTIN. The net proceeds of such disposal (including sale of scrap) shall be credited to the Contract price.

17. MERGER INTO CONTRACT

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

18. PACKING AND SHIPMENT

- (a) All articles are to be packed in accordance with sound commercial practices to obtain the lowest transportation rates unless otherwise specified in this Contract.
- (b) A complete packing list shall be enclosed with all shipments hereunder.
- (c) CONTRACTOR shall mark containers or packages with necessary lifting, loading, and shipping information, including the LOCKHEED MARTIN contract number, item number, dates of shipment, and the names and addresses of consignor and consignee.

19. PATENT AND DATA RIGHTS

(This clause is NOT applicable for commercial off-the-shelf purchases.)

- (a) As used in this clause, the following terms shall have the meaning set forth below:
 - (1) The term "Subject Data" means all data, including reports, drawings, blueprints, technical data, computer software and other matters of fact and theory developed in the course of performance of this Contract.
 - (2) The term "Subject Invention" means any invention, improvement, or discovery conceived or first actually reduced to practice either,
 - (i) In the performance of the work called for or required under this Contract; or
 - (ii) In the performance of any work relating to objectives of this Contract which was done upon an understanding in writing that a Contract would be awarded;

provided, however, that the term "Subject Invention" shall not include any invention, improvement, or discovery which is specifically identified and listed in the Statement of Work or Schedule of this Contract excluding it from the rights granted by this clause.

- (b) CONTRACTOR shall deliver to LOCKHEED MARTIN full disclosures of all Subject Data and Subject Inventions made or conceived in the course of performance of this Contract, whether made or conceived solely by CONTRACTOR or

jointly with others. Such disclosures shall be made or deemed to have been made with complete and exclusive grant to LOCKHEED MARTIN of all right, title, and interest in and to any and all Subject Data and Subject Inventions and CONTRACTOR disclaims any property right in and claim to such Subject Data or Subject Inventions; any such Subject Data and Subject Inventions disclosed to LOCKHEED MARTIN under this clause are to be and remain the sole and exclusive property of LOCKHEED MARTIN, its customers, its assigns, or others claiming under LOCKHEED MARTIN, whether or not such Subject Data or Subject Inventions are patentable or copyrightable.

- (c) CONTRACTOR shall assist LOCKHEED MARTIN, its customers, its assigns, or others claiming under LOCKHEED MARTIN during and subsequent to the term of this Contract, in every reasonable way to obtain for LOCKHEED MARTIN, its customers, its assigns, or others claiming under LOCKHEED MARTIN, patents for such Subject Inventions in any and all countries.
- (d) CONTRACTOR shall make and maintain adequate and current written records of all such Subject Data and Subject Inventions, in the form of notes, sketches, drawings, and reports relating thereto, which records shall be and remain the property of and available to LOCKHEED MARTIN, its customers, its assigns, or others claiming under LOCKHEED MARTIN; CONTRACTOR shall not publish or disclose to any third parties any Subject Data or Subject Inventions without the prior written consent of LOCKHEED MARTIN.
- (e) LOCKHEED MARTIN shall, with regard to Subject Data and Subject Inventions originated in performance of this Contract, undertake at its expense to secure any and all patents and copyrights as LOCKHEED MARTIN shall deem necessary.
- (f) CONTRACTOR shall and does hereby assign to LOCKHEED MARTIN the entire right, title, and interest in and to any and all inventions, improvements, discoveries, and copyrightable material discovered or generated by CONTRACTOR, whether solely or jointly with others, in the performance of this Contract.
- (g) CONTRACTOR shall report to LOCKHEED MARTIN promptly and in reasonable written detail each notice or claim of patent infringement, copyright infringement, or invasion of any right of privacy of which CONTRACTOR has knowledge and which is based on the performance of this Contract.
- (h) In the event of litigation against LOCKHEED MARTIN or its customer(s) on account of any claim of patent, trademark, trade secret or copyright infringement, or invasion of any right of privacy arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed hereunder, CONTRACTOR shall furnish to LOCKHEED MARTIN upon request all evidence and information in possession of CONTRACTOR pertaining to such litigation.
- (i) 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 Purchasing Representative.
- (j) CONTRACTOR agrees not to deliver or furnish any data or software subject to limited use or reproduction unless otherwise agreed as specified above.
- (k) If any services, articles, or parts thereof, contracted for hereunder are performed or made to data, standards, plans, drawings or designs furnished by LOCKHEED MARTIN, the

CONTRACTOR shall not reproduce, use, or disclose to others any such information without LOCKHEED MARTIN's written consent, nor without such written consent supply or disclose any information regarding any such services or articles, or equipment or any material used therein, nor incorporate in other services, products, or articles any special features of design or manufacture peculiar to the services or articles contracted for under this Contract.

20. PATENT AND INTELLECTUAL PROPERTY INFRINGEMENT

To the extent that the supplies are produced to detailed designs not originated and furnished by LOCKHEED MARTIN or by a process or method, the use of which is not specifically directed by LOCKHEED MARTIN, LOCKHEED MARTIN shall have no responsibility to CONTRACTOR for infringement or misappropriation of patent, trademark, copyright, or trade secret rights of third parties; and CONTRACTOR guarantees that the sale or use of such supplies or the use of such process or method hereunder will not infringe or be a misappropriation of any United States or foreign patents, trademarks, copyrights, or trade secrets. CONTRACTOR shall defend, indemnify, and hold LOCKHEED MARTIN and its customers harmless from any loss, cost, damage, expense (including attorneys' fees), or liability which may be incurred on account of infringement or misappropriation (actual or alleged) of patent rights, trademarks, copyrights, or trade secrets with respect to such supplies, and defend, at its own expense, any action or claim in which such infringement or misappropriation is alleged by third parties, provided CONTRACTOR is notified of such actions or claims against LOCKHEED MARTIN.

21. PAYMENTS

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

22. PRECEDENCE

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

- (a) The Purchase Order release document or the Schedule of this Contract, whichever is applicable, including any special provisions or Government clauses added to or incorporated by reference in the Schedule or in the Purchase Order release document,
- (b) The standard, preprinted terms and conditions or attachments of this Contract identified as LOCKHEED MARTIN Sector Documents,
- (c) Any documents, such as, but not limited to, Statements of Work, drawings or specifications, incorporated by reference in the Purchase Order release document or in the Schedule of this Contract, whichever is applicable.

23. RELEASE OF INFORMATION

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

24. REMEDIES

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

25. QUALITY CONTROL SYSTEM

CONTRACTOR shall provide and maintain a quality control system certified to an industry recognized Quality Standard for the supplies covered by this Contract. CONTRACTOR shall similarly require its subcontractors to provide and maintain a certified quality control system where applicable.

26. SAFETY AND ACCIDENT PREVENTION

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

27. STOP WORK ORDER

(This clause is NOT applicable for commercial off-the-shelf purchases.)

- (a) LOCKHEED MARTIN may, at any time, by written order to CONTRACTOR, require the CONTRACTOR to stop all, or any part of the work called for by this Contract for a period of 90 days after the Stop Work Order is issued to the CONTRACTOR, and for any further period to which the parties may agree. Any such Order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize additional costs allocable to the work covered by the Stop Work Order.
- (b) If a Stop Work Order, issued under this clause, is canceled or the period of the Order expires the CONTRACTOR shall resume work. An equitable adjustment shall be made in the affected delivery schedule(s) or Contract Line Item price(s), or both, as well as in other affected provisions, and the Contract shall be modified in writing accordingly, if:
 - (1) The Stop Work Order results in an increase in the time required for, or in the CONTRACTOR's cost required to provide or perform the affected goods, documentation or services; and
 - (2) The CONTRACTOR asserts a claim in writing, supported by a detailed cost and schedule proposal as defined in "Changes" clause within thirty (30) days following the cancellation or expiration of the Stop Work Order or such extension of time as agreed to by the Parties.

28. SUBCONTRACTING FOR SERVICES

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

29. TAXES AND DUTIES

- (a) The prices, herein, include all transportation and related charges and all applicable taxes, duties, tariffs and similar liabilities whatsoever for delivery of all goods, documentation and services to LOCKHEED MARTIN at a destination in the continental United States, including all sales and use taxes and duty drawback claims.
- (b) CONTRACTOR shall be responsible for and pay all its appropriate and customary license fees, sales, use, service occupation, retailer's occupation, personal property and excise taxes, royalty fees, and any other fees, assessments or taxes which may be assessed or levied by any U. S. federal, state, local or foreign government and any departments and subdivisions thereof upon the products and services which CONTRACTOR provides. LOCKHEED MARTIN will cooperate and assist CONTRACTOR by taking reasonable action to reduce or eliminate any tariffs, duties, or other taxes or charges that may be assessed, including, but not limited to, the provision of any appropriate resale certificate.

30. TERMINATION

The performance of work under this Contract may be terminated in whole or in part, by LOCKHEED MARTIN for LOCKHEED MARTIN's convenience at any time and for any reason on LOCKHEED MARTIN's giving written termination notice to CONTRACTOR and shall pay to CONTRACTOR termination charges computed in the following manner: (1) a sum computed and substantiated in accordance with standard accounting practices for those reasonable costs incurred by CONTRACTOR prior to the date of termination for completed work, work in process, materials directly related to the Contract, for orderly phase out of performance as requested by LOCKHEED MARTIN in order to minimize the costs of the termination and for preparation and settlement of CONTRACTOR's termination claim and (2) a reasonable profit on such work performed; provided, however, that LOCKHEED MARTIN shall not be liable to CONTRACTOR for any costs which would not have been charged had the Contract not been terminated nor for any sum in excess of the total price stated in the Contract for terminated goods.

31. TERMS AND CONDITIONS

No terms or conditions other than the terms and conditions set forth in this Contract, including terms and conditions in any document attached to or incorporated by reference in this Contract, shall be binding upon LOCKHEED MARTIN unless accepted by it in writing. Terms and conditions contained in any acknowledgment of this Contract which are different from or in addition to the terms and conditions of this Contract shall not be binding on LOCKHEED MARTIN, whether or not they would materially alter this Contract, and LOCKHEED MARTIN hereby objects thereto. CONTRACTOR will be deemed to have assented to all terms and conditions contained herein if any part of the articles covered by this Contract is shipped or services are performed.

32. TIMELY PERFORMANCE

- (a) CONTRACTOR's timely performance is a critical element of this Contract.
- (b) Early Delivery: CONTRACTOR shall not, without LOCKHEED MARTIN's prior written consent, manufacture or procure materials in advance of CONTRACTOR's normal flow time or deliver in advance of schedule. In the event of termination or change, no claim will be allowed for any such manufacture or procurement in advance of CONTRACTOR's normal flow time unless there has been prior written consent by LOCKHEED MARTIN. Unless advance shipment has been authorized in writing by LOCKHEED MARTIN,

LOCKHEED MARTIN may return, shipping charges collect, all articles received in advance of schedule.

- (c) Late Delivery: In the event CONTRACTOR encounters difficulty in meeting performance requirements, or when CONTRACTOR anticipates difficulty in complying with the contract delivery schedule or date, CONTRACTOR shall immediately notify LOCKHEED MARTIN, in writing, giving pertinent details; provided, however, that this data shall be informational only in character and that this provision shall not be construed as a waiver by LOCKHEED MARTIN of any delivery schedule or of any rights or remedies provided by law or by this Contract.

33. TITLE, RISK OF LOSS, AND FINAL ACCEPTANCE

- (a) Unless this Contract specifically provides elsewhere for earlier passage of title, title to the articles covered by this Contract shall pass to LOCKHEED MARTIN upon final acceptance, regardless of when or where LOCKHEED MARTIN takes physical possession.
- (b) Risk of loss or damage to articles shall remain with the CONTRACTOR until:
 - (1) delivery of the articles to an authorized carrier, if transportation is f.o.b. origin; or
 - (2) final acceptance by LOCKHEED MARTIN or receipt of articles by LOCKHEED MARTIN at the destination specified in this Contract, whichever is later, if transportation is f.o.b. destination.
- (c) Notwithstanding (b) above, the risk of loss or damage to articles which fail to conform so as to give a right of rejection shall remain with the CONTRACTOR until cure or final acceptance at which time (b) above shall apply.
- (d) Unless specified otherwise in this Contract, final acceptance by LOCKHEED MARTIN shall be deemed to occur thirty (30) days after receipt.

34. USE OF LOCKHEED MARTIN'S DATA

CONTRACTOR shall not reproduce, use, or disclose any data, designs, or other information belonging to or supplied by or on behalf of LOCKHEED MARTIN, except as necessary in the performance of the Contract for LOCKHEED MARTIN. Upon LOCKHEED MARTIN's request, such data, designs, or other information, and any copies thereof, shall be returned to LOCKHEED MARTIN. LOCKHEED MARTIN shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work created by CONTRACTOR under this Contract. Where LOCKHEED MARTIN's data, designs, or other information are furnished to the CONTRACTOR's suppliers for procurement of supplies by the CONTRACTOR for use in the performance of LOCKHEED MARTIN's Contracts, CONTRACTOR shall insert the substance of this provision in its subcontracts. Except as specifically provided otherwise in this Contract, Proprietary Information of LOCKHEED MARTIN disclosed hereunder to CONTRACTOR may only be used by CONTRACTOR in performance of the work specified in this Contract.

35. VERIFICATION AND ACCEPTANCE

- (a) Unless otherwise specifically identified herein, acceptance shall occur thirty (30) day after receipt of the deliverable item at LOCKHEED MARTIN's facilities. LOCKHEED MARTIN will accept deliverable items in writing or shall notify the CONTRACTOR in writing of those particulars in which the items delivered do not meet the requirements of this Contract within thirty (30) calendar days after acceptance. In the event that any deliverable item or service is defective in material or workmanship, or otherwise not in conformity with the requirements of this Contract, LOCKHEED MARTIN shall

have the right to reject them (with or without instructions as to their disposition) or to require their correction. Such items which have been rejected or required to be corrected shall be removed, or, if permitted or required by LOCKHEED MARTIN, corrected in place if this can be reasonably accomplished, by and at the expense of the CONTRACTOR promptly after notice, and shall not thereafter be tendered for acceptance unless the former reason for rejection, repair or replacement is rectified. LOCKHEED MARTIN may notify CONTRACTOR, in writing, of those particulars in which the items delivered do not meet the requirements of the Contract. The period of the warranty, herein, shall not be deemed to have started until such time as delivery of conforming items has occurred.

- (b) LOCKHEED MARTIN may assign Engineering, Program Management and/or Quality Engineering representatives to CONTRACTOR's facilities to conduct and maintain surveillance, as necessary, on an itinerant or resident basis to coordinate and ensure product quality, reliability and compliance with the requirements. CONTRACTOR shall provide such representatives with reasonable access to facilities, equipment, personnel, documentation and unescorted access (except in areas where proprietary processes or data are located in which case access shall be on an escorted basis) to all areas essential to the proper conduct of the above described activity. CONTRACTOR shall also provide such representatives with reasonable services and facilities to conduct such above described activities.

36. WAIVER AND APPROVAL

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

37. WARRANTY

- (a) The CONTRACTOR warrants that it has good title to articles delivered under the Contract. In addition, for a period of one (1) year from the date of final acceptance, CONTRACTOR warrants that all articles and services furnished hereunder shall be free from defects in workmanship and material, shall strictly comply with the requirements of this Contract and any drawings or specifications incorporated herein, regardless of any prior course of performance or of dealing between LOCKHEED MARTIN and the CONTRACTOR, and where design is CONTRACTOR's responsibility, be free from defects in design. The foregoing warranties are in addition to all other warranties, whether expressed or implied, and shall survive any delivery to, or inspection, acceptance, or payment by LOCKHEED MARTIN, of or for the articles and services furnished hereunder.
- (b) If any article delivered hereunder does not meet the warranties specified herein or that are otherwise applicable, LOCKHEED MARTIN may, at its election:
 - (1) Require the CONTRACTOR to correct at no cost to LOCKHEED MARTIN, any defective or nonconforming article by repair or replacement; or
 - (2) Return such defective or nonconforming articles to the CONTRACTOR and recover from the CONTRACTOR the Contract price thereof, plus transportation charges.
- (c) If any of the services delivered under this Contract do not meet the warranties specified herein or that are otherwise applicable, LOCKHEED MARTIN may require the CONTRACTOR to correct or reperform any defective or nonconforming services.
- (d) If the CONTRACTOR is required to correct or reperform, it shall be at no cost to LOCKHEED MARTIN and any articles or services corrected or reperformed by the CONTRACTOR pursuant to this clause shall be subject to all provisions of this clause to the same extent as work initially performed. Time devoted to the correction or reperformance of such work shall not be included in the computation of the warranty period.
- (e) If the CONTRACTOR fails or refuses to correct or reperform, LOCKHEED MARTIN may, by contract or otherwise, correct or replace with similar articles or services and charge to the CONTRACTOR the cost occasioned to LOCKHEED MARTIN thereby or obtain an equitable adjustment in the Contract price. If LOCKHEED MARTIN does not require correction or reperformance, the LOCKHEED MARTIN Purchasing Representative shall make an equitable adjustment in the Contract price.
- (f) The foregoing remedies are in addition to all other remedies at law or under this Contract and shall not be deemed to be exclusive. All warranties shall run to LOCKHEED MARTIN and its Customers.

II. FEDERAL ACQUISITION STREAMLINING ACT (FASA) FLOWDOWN PROVISIONS

- A. 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. Additional Flowdowns. In the event that any clause required by law, regulation, policy, or the Prime Contract to be included in this Contract is not already incorporated in this Contract, or in the event that the Prime Contract is modified subsequent to

the effective date of this Contract so as to modify or add any additional such clause, the CONTRACTOR agrees to enter into a modification of this Contract to insert the substance of any such clause. If any such additional clause causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this Contract, an equitable adjustment will be made in the Contract price or delivery schedule, or both, pursuant to the "Changes" clause of this Contract.

- C. This contract is entered into by the Parties in support of a contract between the US Government and Lockheed Martin Corporation.
- D. As used in the FAR clauses referenced below:
 - a. "Commercial item" means
 - (1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that --
 - (i) Has been sold, leased, or licensed to the general public; or
 - (ii) Has been offered for sale, lease, or license to the general public;
 - (2) Any item that evolved from an item described in paragraph (a)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
 - (3) Any item that would satisfy a criterion expressed in paragraphs (a)(1) or (a)(2) of this clause, but for--
 - (i) Modifications of a type customarily available in the commercial marketplace; or
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
 - (4) Any combination of items meeting the requirements of paragraphs (a)(1), (2), (3), or (5) of this clause that are of type customarily combined and sold in combination to the general public;
 - (5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (a)(1), (2), (3), or (4) of this clause, and if the source of such services--
 - (i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(ii) Offers to use the same work force for providing the Federal Government with such services as the sources uses for providing such services to the general public;

(c) 52.222-36 AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (APR 1984) (Applicable if this Contract exceeds \$2,500.)

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace base on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service provided;

(7) Any item, combination of items, or services referred to in subparagraphs (a)(1) through (a)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of the CONTRACTOR; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

b. "CONTRACTOR" means the individual, partnership, corporation, or business association acting as the immediate (first tier) subcontractor to LOCKHEED MARTIN for the goods and services provided under this Contract.

c. "Contract" means this Contract.

d. "Subcontract" means any contract placed by the CONTRACTOR 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. Also includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the CONTRACTOR or subcontractor at any tier.

E. To the maximum extent practicable, the CONTRACTOR shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this Contract.

F. Notwithstanding any other clause of this Contract, the CONTRACTOR is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components;

G. The CONTRACTOR shall include the terms of this section, including this paragraph (G), in subcontracts awarded under this Contract.

H.. FAR FLOWDOWN CLAUSES

REFERENCE TITLE

1. The following FAR clauses apply to this Contract :

(a) 52.222-26 EQUAL OPPORTUNITY (APR 1984)

(b) 52.222-35 AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS (APR 1984) (Applicable if this Contract equals or exceeds \$10,000.)