

TERMS AND CONDITIONS  
FOR  
TIME-AND-MATERIAL AND LABOR-HOUR AGREEMENTS  
(OTHER THAN U.S GOVERNMENT PROCUREMENTS)  
TM-01

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

AUGUST 2001

## APPLICABILITY

All Section "A" clauses set forth herein are applicable to purchase orders and contracts which reference this document except for clauses which are self-deleting or which are specifically deleted in the purchase order or contract.

Section "B" clauses set forth herein are applicable when the clause is specifically referenced in the "Alterations and Special Provisions" section of the contract.

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# TIME AND MATERIAL/LABOR HOUR AGREEMENT

## SECTION A

All Section "A" clauses set forth herein are applicable to purchase orders and contracts which reference this document except for clauses which are self-deleting or which are specifically deleted in the purchase order or contract.

### A-1 DEFINITIONS

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

(1) The term "Lockheed Martin", "Buyer", or "LMSSC-MSO", means Lockheed Martin Corporation acting by and through Space Systems Company, Missiles & Space Operations.

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

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

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

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

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

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

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

### A-2 ACCEPTANCE

This contract becomes the exclusive agreement between the parties for the services or supplies, subject to the terms and conditions herein. Any of the following shall constitute Contractor's unqualified acceptance of this contract: (i) acknowledgment of this contract, (ii) furnishing of any services or supplies under this contract, (iii) acceptance of any payment for services or supplies under this contract, or (iv) commencement of performance under this contract. Additional or different terms and conditions proposed by Contractor shall be void and of no effect unless accepted in writing by Lockheed Martin. No change in, modification of, or revision to, this contract shall be valid unless in writing and signed by Lockheed Martin.

### A-3 PACKING AND SHIPMENT

(a) Unless otherwise specified in the purchase order/contract, all packing and packaging shall comply with good commercial practice and applicable carrier's tariffs. Supplies shall be prepared for shipment and

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packed to prevent damage or deterioration and to give optimum protection of the supplies during shipment and in plant handling and storage. The packaging, labeling and shipping of all HAZARDOUS SUBSTANCES, including DANGEROUS MATERIALS, must conform with all applicable international, federal, and state regulations. The price includes all charges for packing and packaging and for transportation to the F.O.B. point.

(b) If the terms of this contract require delivery F.O.B. place of shipment, the Contractor must at that place (i) bear the expense and risk of putting them into the possession of the carrier and (ii) at its risk and expense load the supplies on board.

(c) If the terms of this contract are based on F.O.B. place of destination, the Contractor must at its own expense and risk transport the supplies to that place and tender delivery of them to Lockheed Martin.

### A-4 INSPECTION--TIME-AND-MATERIAL AND LABOR-HOUR

(a) The Contractor shall provide and maintain an inspection system acceptable to Lockheed Martin covering the material, fabricating methods, work, and services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to Lockheed Martin during performance of this contract and for as long afterwards as the contract may require.

(b) Lockheed Martin shall have the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. Lockheed Martin may also inspect the plant or plants of the Contractor or any lower-tier supplier engaged in performance of this contract. Lockheed Martin shall perform inspections and tests in a manner that will not unduly delay the work.

(c) If Lockheed Martin performs an inspection or test on the premises of the Contractor or a lower-tier supplier, the Contractor shall furnish and shall require lower-tier suppliers to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(d) At any time during performance of this contract, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, Lockheed Martin may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (f) below, the cost of replacement or correction shall be determined under the Payment clause, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(e) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the funds allotted, or the funds allotted are increased by Lockheed Martin, Lockheed Martin may--

(i) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(ii) Terminate this contract for default as provided in the Termination/Cancellation/Stop Work clauses.

(f) Notwithstanding paragraphs (d) and (e) above, Lockheed Martin may at any time require the Contractor to remedy by correction or replacement, without cost to Lockheed Martin, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to (i) fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel or (ii) the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(g) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

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(h) Preliminary inspection and acceptance, if any, shall be at Contractor's plant but in any event final inspection and acceptance by Lockheed Martin shall be at Lockheed Martin's plant or at such other location as Lockheed Martin may designate.

### **A-5 DELIVERY, ADVANCE MANUFACTURING, AND PROCUREMENT**

Delivery according to schedule is a major condition of this contract. 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 such normal flow time unless Lockheed Martin's prior written consent has been obtained. If at any time it appears to Contractor that any delivery schedule cannot be met, Contractor shall notify Lockheed Martin as soon as possible as to the cause or causes therefor, action being taken to remove such cause or causes, when on-schedule status will be achieved, and shall take reasonable action necessary, with or without request of Lockheed Martin, to meet such schedules as set forth herein or to recover to the maximum extent possible any delay in meeting such schedules. Notification under this clause shall in no way limit Lockheed Martin's rights under the Termination/Cancellation/Stop Work clauses.

### **A-6 WARRANTY**

Contractor warrants that all services and supplies furnished hereunder will be free from defects in workmanship and material, conform to applicable specifications, drawings, samples and descriptions or other requirements of this contract and, unless of Lockheed Martin's detailed design, be free from design defects. If there is a breach of warranty, Lockheed Martin may: (i) require correction or reperformance of such services, at Contractor's expense, or issue credit as Lockheed Martin may direct; and (ii) return such supplies, at Contractor's expense, for correction, replacement or credit as Lockheed Martin may direct. Services and supplies required to be reperformed, corrected or replaced shall be subject to the provisions of this clause and the clause herein entitled Inspection. All warranties shall run to Lockheed Martin and its customers.

### **A-7 CHANGES**

(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 contract 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 twenty-five (25) 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. Where the cost of property made redundant as a result of a change is included in Contractor's claim for adjustment, Lockheed Martin shall have the right to prescribe the manner of disposition of such property.

(b) 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 authorized procurement 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.

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

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

### A-8 RESPONSIBILITY FOR LOCKHEED MARTIN FURNISHED PROPERTY

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

### A-9 USE OF LOCKHEED MARTIN 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 contracts 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. Notwithstanding any other provision of this contract, to the extent the Government has received from Lockheed Martin the right to authorize such use by Contractor, Contractor may utilize Lockheed Martin's data and information in the manufacture of supplies for direct sale to the Government; provided, however, that Contractor shall (a) give Lockheed Martin prior written notice of each such proposed use, (b) prominently identify, to the extent possible, each article as being manufactured by Contractor in the performance of contracts for the Government, and (c) make no claim against Lockheed Martin which arises out of use by Contractor of such data and information. Where Lockheed Martin's data, designs, or other information are furnished to Contractor's suppliers for procurement of supplies by Contractor for use in the performance of Lockheed Martin's contracts, Contractor shall insert the substance of this provision in its contracts.

### A-10 ASSIGNMENT OF CLAIMS

(a) Neither this contract nor any interest nor any sums becoming due to Contractor hereunder shall be assigned by Contractor without the prior written consent of Lockheed Martin, except that claims for monies due or to become due Contractor from Lockheed Martin under this contract may be assigned to a bank, trust company or other financial institution, including any federal lending agency. Any such assignment of monies due or to become due shall cover all amounts payable under this contract and not already paid, and shall not be made to one party as agent or trustee for two (2) or more parties participating in such financing. Payment by Lockheed Martin to an assignee of any claim under this contract shall be subject to set-off or recoupment for any present or future claim or claims arising in connection with this contract which Lockheed Martin may have against Contractor. Lockheed Martin reserves the right to make direct settlements and/or adjustments in price with Contractor under the terms of this contract notwithstanding any assignment of claims for monies due or to become due hereunder and without notice to assignee(s).

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

(c) Any claim under this contract which has been assigned pursuant to the foregoing provisions of this clause may be further assigned and reassigned only with the prior written consent of Lockheed Martin to a bank, trust company or other financing institution, including any federal lending agency. In the event of such further



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assignment or reassignment the assignee shall be required to file one signed copy of a written notice of the further assignment or reassignment, together with a true copy of the instrument of further assignment or reassignment with Contractor, and shall file two (2) signed copies of such written notice, together with two (2) copies of such instrument with Lockheed Martin.

(d) No assignee shall divulge any information concerning this contract except to those persons concerned with the transaction. 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", be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same; provided, that a copy of any part or all of this contract so marked may be furnished, or any information contained herein may be disclosed, to such assignee upon the prior written authorization of Lockheed Martin.

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

### A-11 STOP WORK

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

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

1. The Stop Work Order results in an increase in the time required for, or in the Contractor's cost required to provide or perform the affected the goods, documentation and/or services; and

2. The Contractor asserts a claim in writing, supported by a detailed cost and schedule proposal as defined in Clause A-7, Changes, within thirty (30) days following the cancellation or expiration of the Stop Work Order or such extension of time as agreed to by the Parties.

### A-12 TERMINATION/CANCELLATION

(a) Termination-Convenience. 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 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.

(b) Cancellation-Default. Except in the cases of delay or failure resulting from circumstances identified in Clause A-28, Excusable Delay, Lockheed Martin shall be entitled, by written cancellation notice to Contractor, to cancel the whole or any part of this Contract for default, without granting an extension of time, and to have all other rights against Contractor by reason by Contractor's default as provided by law. If it is found that Contractor was not in default, the rights and obligations of the parties shall be the same as if Notice of Cancellation had been issued pursuant to (a) above.

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

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

### **A-13 INDEMNIFICATION**

In the event Contractor, its officers, employees, agents, or subcontractors at any tier enter premises occupied by or under the control of Lockheed Martin, Lockheed Martin's customer, or third parties in the performance of this contract, Contractor shall defend, indemnify, and hold harmless Lockheed Martin, its officers, employees and agents from any claim, suit, loss, damage, expense (including attorneys' fees), or liability by reason of property damage or personal injury (including death) to any person, including Contractor's employees, of whatsoever nature or kind arising out of, as a result of, or in connection with such performance occasioned in whole or in part by the actions or omissions of Contractor, its officers, employees, agents or subcontractors at any tier. Contractor shall take all precautions necessary, special or otherwise, and shall be responsible for compliance with all Federal, state and local safety laws in the performance of work hereunder. Without in any way limiting the foregoing undertakings, Contractor and its subcontractors at any tier shall maintain commercial and general liability insurance in reasonable limits covering the obligations set forth and shall maintain, to the statutory limits required by law, proper Worker's Compensation Insurance or state approved self insurance program, and employer's liability insurance covering all employees performing 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. 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.

### **A-14 PATENT INDEMNITY, TRADEMARKS, AND COPYRIGHTS**

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 patent infringement and Contractor guarantees that the sale or use of such supplies or the use of such process or method hereunder will not infringe any United States or foreign patents, trademarks, or copyrights. 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 alleged infringement of patent rights, trademarks, or copyrights with respect to such supplies, and defend, at its own expense, any action or claim in which such infringement is alleged by third parties, provided Contractor is notified of such actions or claims against Lockheed Martin.

### **A-15 EQUAL OPPORTUNITY**

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

### **A-16 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES**

Unless exempt, 41 CFR Part 60 is incorporated herein by reference, unless this contract is under \$10,000.

### **A-17 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA**

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

### **A-18 LABOR DISPUTES**

Whenever any actual or potential labor dispute develops or threatens to delay the timely performance of this contract, Contractor shall immediately give notice thereof to Lockheed Martin. Contractor shall insert the substance of this provision in its subcontracts and orders issued hereunder.

### **A-19 RELEASE OF INFORMATION**

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

### **A-20 GRATUITIES**

Lockheed Martin may, at any time, 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) 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 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 agreement.

### **A-21 CONTROLLING LAW**

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

### **A-22 COMPLIANCE WITH LAWS**

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

### **A-23 REMEDIES**

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

### **A-24 WAIVER**

The failure of Lockheed Martin in any one or more instances to insist on performance of any of the provisions of this contract shall in no way be construed to be a waiver of such provisions in the future.

### **A-25 INVOICES**

(a) All invoices submitted by Contractor hereunder shall: (i) be supported by evidence of actual payment and by individual daily job timecards, or such other substantiation approved by Lockheed Martin; (ii) indicate any assignments; and (iii) bear the following certification:

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"I certify that the payment herein requested is accurate and correct and that payment of the sum herein specified has not been received."

(b) The original and two copies of such invoices and supporting documentation covering labor hours and materials certified by an officer or other responsible official of Contractor authorized by it to certify such statements, shall be submitted for approval to:

Lockheed Martin Shared Services  
Attn.: Accounts Payable  
PO Box 33063  
Lakeland, FL 33807-3063

Concurrently, a copy shall be submitted to Lockheed Martin's authorized representative, as specified in the Amendments and Notices section of the contract. Invoices shall be forwarded to Lockheed Martin not more frequently than once every thirty (30) days (or at more frequent intervals if approved by Lockheed Martin).

(c) The "Completion Voucher" or "Final Invoice" shall comply in all respects with paragraphs (a) and (b) of this clause, except that it will be addressed to Lockheed Martin in accordance with paragraph (d) of the Closure Requirements clause, and be accompanied by a Cumulative Claim and Reconciliation.

### A-26 PAYMENT

(a) Payment to Contractor shall be made upon the basis of invoices submitted to Lockheed Martin which shall be in such form and detail as Lockheed Martin may require. Lockheed Martin shall make payment within thirty (30) days after receipt and approval of such invoices.

(b) Payment for labor shall be based upon the amounts computed by multiplying the appropriate hourly rate, or rates, set forth in this contract by the number of direct labor hours performed, which rates shall include wages, overhead, general and administrative expense and profit. Fractional parts of an hour shall be payable on a prorated basis. The hourly rates specified in this contract are the rates at which Lockheed Martin shall be invoiced for labor hereunder and are not necessarily the rates which Contractor shall pay its employees.

(c) Unless otherwise set forth in this contract, five percent (5%) of the amount due under paragraph (a) above shall be withheld from each payment by Lockheed Martin but the total amount withheld shall not exceed \$50,000. Such amounts withheld shall be retained until the Closure Requirements clause has been satisfied.

(d) Unless provisions of this contract otherwise specify, the hourly rate or rates set forth in this contract shall not be varied by virtue of Contractor having performed work on an overtime basis. If no overtime rates are provided in this contract and overtime work is approved in advance by Lockheed Martin, overtime rates will be negotiated. If this contract provides rates for overtime, the premium portion of such rates will be reimbursable only to the extent that overtime is approved by Lockheed Martin.

(e) Payment for materials shall be based upon the allowable costs of direct materials as substantiated in accordance with standard accounting practices. Reasonable and allocable material handling costs may be included in the charge for material at cost to the extent they are clearly excluded from hourly rates. Contractor shall support all material costs claimed by submitting paid invoices or storeroom requisitions, or by other substantiation acceptable to Lockheed Martin. Direct materials, as referenced by this clause, are defined as those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of such product.

(f) Payment for subcontracted effort shall be based upon the cost of lower-tier subcontracts which are authorized pursuant to the Subcontracts clause, provided such costs are consistent with paragraph (g) below. Reimbursable costs in connection with lower-tier subcontracts shall be limited to the amounts actually paid by Contractor to lower-tier subcontractors and shall not include any costs arising from the letting, administration or supervision of performance of lower-tier subcontracts, which costs are included in the hourly rate or rates

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payable under (b) above. The requirement of payment prior to reimbursement shall not apply if Contractor is a Small Business concern.

(g) Contractor shall, to the extent of its ability, procure materials at the most advantageous prices available with due regard to securing required delivery of satisfactory materials, and shall take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of such benefits, it shall promptly notify Lockheed Martin to that effect, and give the reason therefor. Credit shall be given to Lockheed Martin for cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap when the amount of such scrap is appreciable, commissions, and other amounts which have been accrued to the benefit of Contractor, or would have so accrued except for the fault or neglect of Contractor. Such benefits lost through no fault or neglect of Contractor, or lost through fault of Lockheed Martin, shall not be deducted from gross costs.

(h) At any time or times prior to final payment under this contract, Lockheed Martin may cause to be made such audit of the invoices or vouchers and substantiating material and records as Lockheed Martin deems necessary. Each payment theretofore made shall be subject to reduction to the extent of amounts which are found by Lockheed Martin not to have been properly payable, and shall also be subject to reduction for overpayments, or to increase for underpayment, on preceding invoices or vouchers.

### A-27 CLOSURE REQUIREMENTS

(a) Contractor and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract shall execute and deliver at the time of and as a condition precedent to final payment (i) an assignment to Lockheed Martin, in form and substance satisfactory to Lockheed Martin, of rebates, refunds, credits or other amounts (including interest thereon) properly allocable to costs for which Contractor has been reimbursed under this contract, and (ii) a release discharging Lockheed Martin together with their respective officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(1) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by Contractor;

(2) Claims, together with reasonable expenses incidental thereto, based upon the liabilities of Contractor to third parties arising out of the performance of this contract (but not including claims based on personal injury or death or property damage) which are not known to Contractor on the date of the execution of the release, and of which Contractor gives notices in writing to Lockheed Martin not more than five (5) years after the date of the release or the date of any notice to Contractor that Lockheed Martin is prepared to make final payment, whichever is earlier; and

(3) Claims for reimbursement of costs (other than expenses of Contractor by reason of its indemnification of Lockheed Martin against patent liability), including reasonable expenses incidental thereto, incurred by Contractor under any provisions of this contract relating to patents.

(b) Contractor agrees that any refunds, rebates or credits (including any interest thereon) accruing to or received by Contractor or any assignee which arise out of the performance of this contract and on account of which Contractor has received reimbursement shall be paid by Contractor to Lockheed Martin.

(c) In addition to the release and the assignment required by paragraph (a) above, Contractor shall, prior to final payment, submit the following:

(1) An invoice which complies with the Invoices clause and is clearly labeled "Completion Voucher" or "Final Invoice",

(2) A letter setting forth the manner in which it complied with the Security Requirements clause, if applicable to this contract,

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(d) All items required to be sent to Lockheed Martin by paragraphs (a) and (c) of this clause shall be addressed to the Contract Administrator or Lockheed Martin specified in this contract.

### A-28 EXCUSABLE DELAYS

Except with respect to default of lower-tier subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of Contractor. Such causes may include, but are not restricted to: acts of God or the public enemy; acts of the Government in either its sovereign or contractual capacity; fires, floods, epidemics; quarantine restrictions; strikes; freight embargoes; and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of Contractor. If the failure to perform is caused by the failure of a lower-tier subcontractor to perform or make progress, and if such failure arises out of causes beyond the control of both Contractor and lower-tier subcontractor, and without the fault or negligence of either of them, Contractor shall not be deemed to be in default, unless (i) the supplies or services to be furnished by the lower-tier subcontractor were obtainable from other sources, (ii) Lockheed Martin shall have ordered Contractor in writing to procure such supplies or services from such other sources, and (iii) Contractor shall have failed to comply reasonably with such order. Upon request of Contractor, Lockheed Martin shall ascertain the facts and extent of such failure and, if it shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of Lockheed Martin under the Termination clause. (As used in this clause "lower-tier subcontractor" means all suppliers or subcontractors of Contractor at any tier.)

### A-29 SUBCONTRACTS

(a) As used in this clause, the term "subcontract" includes but is not limited to purchase orders, changes and modifications thereto.

(b) No subcontract shall be made by Contractor for the furnishing of any of the work herein contracted for without the written consent of Lockheed Martin. For the purpose of this clause, purchase of raw material or commercial stock items shall not be considered work.

(c) Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-percentage-of-cost basis.

(d) Consent by Lockheed Martin to any subcontract or any provisions thereof shall not be construed to be a determination of the acceptability of any subcontract terms or conditions, of the acceptability of any subcontract price or of any amount paid under any subcontract, or to relieve Contractor of any responsibility for performance under this contract; unless such consent specifically provides otherwise.

### A-30 OFFSET

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

### A-31 UTILIZATION OF SMALL AND SMALL DISADVANTAGED BUSINESS CONCERNS AND WOMEN-OWNED SMALL BUSINESSES

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Contractor hereby agrees to use its best efforts to ensure that small and small disadvantaged businesses, and women-owned small businesses, as defined in statute or regulation by the Small Business Administration, have the maximum practicable opportunity, consistent with the efficient performance of this contract, to participate in lower-tier subcontracts issued pursuant to this contract.

### **A-32 UTILIZATION AND PERFORMANCE OF PERSONNEL**

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

(b) All work under this contract shall be performed in a skillful and workmanlike manner by experienced, responsible and capable personnel. Lockheed Martin may, in writing, require that Contractor remove from performance of work under this agreement any employee of Contractor or Contractor's subcontractors. Contractor agrees to promptly comply with such requests.

### **A-33 PAYMENT FOR OVERTIME PREMIUMS**

(a) Contractor shall obtain the prior written approval of Lockheed Martin for any work to be performed which would require payment by Lockheed Martin of an overtime or premium rate, other than payment for work:

- (1) For which such payment is specifically authorized by the provisions of this contract;
- (2) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature; or
- (3) The performance of which is continuous in nature and cannot reasonably be interrupted or otherwise completed.

(b) Any request for overtime (i) must be submitted reasonably in advance of the period for which overtime will be required, (ii) will be for all overtime which can be estimated with reasonable certainty to be necessary for completion of performance of this contract, and (iii) shall contain the following:

- (1) Work to be performed and reasons why it cannot be performed on other than an overtime basis;
- (2) Number of employees by labor category to be utilized; and
- (3) Hours by labor category and total hours required.

(c) Contractor shall report overtime hours authorized and expended in accordance with the requirements of the Data Requirements clause of this contract.

### **A-34 QUALITY PROGRAM**

Contractor shall provide and maintain a Quality Control system acceptable to Lockheed Martin. During performance of this contract, Contractor's Quality Control, Inspection System, and Manufacturing Processes are subject to review, verification, and analysis by Lockheed Martin.

### **A-35 INDEPENDENT CONTRACTOR**

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 or as independent contractors; that such employees shall be paid by Contractor for all services in this connection; that Contractor shall carry worker's compensation insurance and that Contractor shall be responsible for all obligations and reports covering social security, unemployment insurance, worker's compensation, income tax, and other reports and deductions required by Local, State and/or Federal law.

### **A-36 INSOLVENCY OR BANKRUPTCY**

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In the event Contractor makes an assignment for the benefit of creditors, or enters or is placed in bankruptcy, Contractor shall notify Lockheed Martin of the same in writing within 30 days.

### **A-37 SOURCE SURVEILLANCE**

Lockheed Martin may assign product assurance representatives to Contractor's facilities to conduct and maintain surveillance as necessary to ensure quality and reliability. Contractor likewise shall reserve such right to Lockheed Martin with respect to Contractor's lower-tier subcontractors. If such examination is made, Contractor shall provide, and require its subcontractors to provide, such representatives with reasonable facilities, equipment 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.

### **A-38 NOTICE REGARDING 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.

### **A-39 ACCIDENT REPORTING AND INVESTIGATION INVOLVING PRODUCTS AND SERVICES**

(a) Contractor shall report promptly to Lockheed Martin all pertinent facts relating to each accident involving products being developed, manufactured, modified, repaired, tested or overhauled under or in connection with this contract, or involving services being performed hereunder. Contractor shall also report promptly to Lockheed Martin all significant occurrences or incidents which could affect the safety or performance of the product or service.

(b) Notification of such accidents and occurrences will be made to the Lockheed Martin resident representative (when assigned to Contractor's facility) or to the authorized representative designated in the contract. Such notice shall be given by telephone or fax followed by a written report giving pertinent details of the accident or occurrence and the effect or potential effect on contract performance and product safety.

(c) If Lockheed Martin elects to conduct an investigation of the accident or occurrence, Contractor will cooperate fully and assist Lockheed Martin personnel until the investigation is complete.

(d) Contractor shall include the substance of this clause in each lower-tier subcontract which could have a significant effect on performance, quality, reliability or safety of the products or services being provided under this contract.

### **A-40 LASER PRODUCTS**

In accordance with Title 21, Code of Federal Regulations (CFR), Chapter 1, Subchapter J, Parts 1010.2 and 1010.3, all manufacturers of laser products are required to certify that such products conform to all applicable radiation safety performance standards of 21 CFR 1040.10 and 1040.11. Unless Contractor obtains an exemption therefrom and furnishes a written confirmation of such exception to Lockheed Martin, Contractor agrees to comply with such applicable certification requirements and standards on all laser products (as defined in the referenced regulations) furnished to Lockheed Martin under this contract and require similar certification and standards compliance from any of its suppliers of laser products where such products will be delivered to Lockheed Martin or its customers as an end item or component thereof under this contract. Contractor further agrees to indemnify and hold Lockheed Martin and its customers harmless from any claim, suit, loss, cost, damage, expense (including attorneys' fees) or liability arising out of, as a result of, or in connection with Contractor's (or its suppliers') failure to so certify or comply with the applicable standards as specified above.



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### **A-41 COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)**

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

### **A-42 RETENTION OF RIGHTS AND INTEREST**

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

### **A-43 LIENS**

Contractor shall pay promptly, when due, all wages of laborers and employees as well as all bills for materials used in the performance of this contract, together with all claims of any Contractor and all statutory withholdings. Contractor further agrees to indemnify Lockheed Martin and hold it, the work site, and the work harmless from and against any and all liens including subcontractors' liens, claims for labor, services and materials, and Contractor agrees to forthwith discharge and pay any and all liens and claims. If a lien is filed against Lockheed Martin property, Contractor shall (1) pay such lien and obtain a recorded Release of Lien; or (2) post a Release Bond to lift the lien from Lockheed Martin's property within five (5) working days of notification by Lockheed Martin. Failure to do so shall be deemed to be a material breach of this contract and Contractor shall be liable to Lockheed Martin for all expenses (including attorney's fees) as a result of its failure. Lockheed Martin at its discretion may withhold any monies due Contractor and use said money to satisfy any lien or past-due amounts.

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## SECTION B

Section "B" clauses set forth herein are applicable when the clause is specifically referenced in the "Alterations and Special Provisions" section of the contract.

### B-1 FOREIGN SALES

The articles 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 articles 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 articles or services provided by Contractor under this contract.

### B-2 LIMITATION OF FUNDS

(a) Lockheed Martin shall not be obligated to reimburse Contractor for costs incurred (including amounts payable with respect to lower-tier subcontracts and termination settlement costs) or to pay any fee to which Contractor may be entitled in excess of the total funds from time to time allotted to this contract. However, when, and to the extent that, the total funds allotted to this contract have been increased, any costs incurred by Contractor and any fee to which Contractor may be entitled prior to the increase which were in excess of funds previously allotted, shall be allowable to the same extent as if such costs had been incurred and fee earned after such increase in funds allotted.

(b) Contractor agrees to perform or have performed work on this contract up to the point at which, in the event of termination of this contract in accordance with the Contract Termination Clause, the total amount paid and payable by Lockheed Martin pursuant to any settlement including cost and fee under paragraph (e) of such Termination Clause would, in the exercise of reasonable judgment by Contractor, approximate the total funds at the time allotted to this contract. Contractor shall not be obligated to continue performance of work beyond such point.

(c) Contractor shall notify Lockheed Martin in writing when within the next thirty (30) days the work will reach a point at which, in the event of termination of this contract pursuant to the provisions of the Termination Clause, the total amount paid and payable by Lockheed Martin pursuant to a settlement, including cost and fee under paragraph (e) of such Contract Termination Clause, will approximate eighty-five percent (85%) of the total funds then allotted to this contract. The notice shall state the estimated date when such point will be reached, the estimated date the funds then allotted to this contract will be totally exhausted, and the estimated amount of additional funds (in monthly increments) which will be required to continue the performance of the work under this contract for such further period as may be specified in Completion and Delivery Clause of this contract, or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the date estimated for the exhaustion of funds in such notification, Lockheed Martin will, upon written request of Contractor and pursuant to the Contract Termination Clause, terminate this contract on such date, or on a date to be specified in such request, on which Contractor, in the exercise of its reasonable judgment, estimates that it will have discharged its obligation to perform hereunder in accordance with paragraph (b) hereof.

(d) If at any time Contractor has reason to believe that the total cost to Lockheed Martin, including fee, for the performance of this contract will be substantially greater or less than the estimated cost and fee (or target price if this is a CPIF contract) set forth in the contract, Contractor shall notify Lockheed Martin in writing to that effect, giving its revised estimate of such total cost for the performance of this contract, together with an

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appropriate breakdown of such estimate and a statement setting forth the reasons for such anticipated increase or decrease in cost.

(e) Lockheed Martin may, at any time prior to termination, allot additional funds to this contract, and with the consent of Contractor, after notice of termination, may rescind such termination in whole or in part and allot additional funds to this contract. For the purposes of this Limitation of Funds Clause, the allotment or allotments specified in the Funding and Limitation of Obligation Clause of this contract shall not be decreased without the consent of Contractor.

(f) Contract Change Notices issued pursuant to the Changes Clause, or by mutual agreement of the parties, and revisions to the effort required to be performed under this contract shall not be considered authorization to Contractor to exceed the funds allotted to this contract in the absence of a statement in the Contract Change Notice, or other contractual modification, increasing the amount of funds allotted.

(g) Nothing in this Limitation of Funds Clause shall effect the right of Lockheed Martin to terminate this contract pursuant to the Termination Clause.

### B-3 INSURANCE

In accordance with the "Indemnification" clause of this contract, paragraph (a), (b) or (c) of this clause shall be applicable as specified in the contract.

(a) By acceptance of this contract Contractor agrees to carry insurance in the following minimum amounts:

Property Damage	\$ 250,000
Bodily Injury or Death (Each Person)	\$ 250,000
Bodily Injury or Death (Each Occurrence)	\$ 500,000

Contractor further agrees that Lockheed Martin will be named as an additional insured on insurance policies maintained to comply with the foregoing.

(b) By acceptance of this contract Contractor agrees to carry insurance in the following minimum amounts:

Property Damage	\$500,000
Bodily Injury or Death (Each Person)	\$500,000
Bodily Injury or Death (Each Occurrence)	\$1,000,000

Contractor further agrees that Lockheed Martin will be named as an additional insured on insurance policies maintained to comply with the foregoing.

(c) By acceptance of this contract Contractor agrees to carry insurance in the following minimum amounts:

Property Damage	\$1,000,000
Bodily Injury or Death (Each Person)	\$1,000,000
Bodily Injury or Death (Each Occurrence)	\$2,000,000

Contractor further agrees that Lockheed Martin will be named as an additional insured on insurance policies maintained to comply with the foregoing.