



GENERAL PROVISIONS AND FAR FLOWDOWN PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS FOR COMMERCIAL SERVICES UNDER A U.S. GOVERNMENT PRIME CONTRACT

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SECTION I: GENERAL PROVISIONS

1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

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

2. APPLICABLE LAWS

- (a) This Contract shall be governed by and construed in accordance with the laws of the State from which this Contract was issued, excluding its choice of laws rules, except that any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulation (FAR); or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or; (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the federal Government.
- (b) (1) SELLER agrees to comply with all applicable laws, orders, rules, regulations, and ordinances. SELLER agrees to comply with all applicable laws, orders, rules, regulations and ordinances, and shall procure all licenses/permits and pay all fees and other charges required thereby, and shall comply with of all guidelines and directives of any local, state and/or federal governmental authority having appropriate jurisdiction over environmental protection.
- (2) If: (i) LOCKHEED MARTIN's contract price or fee is reduced; (ii) LOCKHEED MARTIN's costs are determined to be unallowable; (iii) any fines, penalties or interest are assessed on LOCKHEED MARTIN; or (iv) LOCKHEED MARTIN incurs any other costs or damages; as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, LOCKHEED MARTIN may proceed as provided for in (3) below.
- (3) Upon the occurrence of any of the circumstances identified in (2) above, LOCKHEED MARTIN may make a reduction of corresponding amounts (in whole or in part) in the price, or in the costs and fee, of this Contract or any other contract with SELLER, or may demand payment (in whole or in part) of the corresponding amounts. SELLER shall promptly pay amounts so demanded.
- (4) In the event it is determined that the Work is not a Commercial Item as defined at FAR 2.101, then SELLER agrees that CORPDOC 3 and the corresponding agency flowdowns shall be applicable to this Contract, in lieu of these terms and conditions, effective as of the date of this Contract.

- (c) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to LOCKHEED MARTIN hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
- (d) SELLER shall be responsible for compliance with all requirements and obligations relating to its employees under all local, state, and federal statutes, ordinances, rules and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor or benefits related laws.
- (e) SELLER shall provide to LOCKHEED MARTIN with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated there under, or its state approved counterpart.

3. **ASSIGNMENT**

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

4. **CHANGES**

- (a) The LOCKHEED MARTIN Procurement Representative 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.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, LOCKHEED MARTIN shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify the Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.
- (c) Any claim for an equitable adjustment by SELLER must be submitted in writing to LOCKHEED MARTIN within thirty (30) days from the date of notice of the change, unless the Parties agree in writing to a longer period.
- (d) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse SELLER from proceeding without delay in the performance of this Contract as changed.

5. **COMMERCIAL COMPUTER SOFTWARE**

- (a) As used in this clause, "restricted computer software" means computer program, computer data base, or documentation thereof, that has been developed at private expense and either is a trade secret, is commercial or financial and confidential or privileged, or is published and copyrighted, and so marked when delivered or otherwise furnished.
- (b) Notwithstanding any provisions to the contrary contained in any SELLER's standard commercial license or lease agreement, SELLER agrees that the restricted computer software delivered under this Contract shall provide the following rights to LOCKHEED MARTIN and the U.S. Government.
 - (1) The restricted computer software may be:
 - (i) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
 - (ii) Used or copied for use in or with a backup computer if any computer for which it was acquired is inoperative;
 - (iii) Reproduced for safekeeping (archives) or backup purposes;
 - (iv) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to same restrictions set forth in this Contract;
 - (v) Disclosed to and reproduced for use by support service contractors or their subcontractors, subject to the same restrictions set forth in this Contract; and
 - (vi) Used or copied for use in or transferred to a replacement computer.
 - (c) Release from liability. The SELLER agrees that the Government and LOCKHEED MARTIN, and other persons to whom the Government or LOCKHEED MARTIN may have released or disclosed commercial computer software delivered or otherwise furnished under this Contract, shall have no liability for any release or disclosure of such commercial computer software that are not marked to indicate that such software are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

6. **COMMUNICATION WITH LOCKHEED MARTIN CUSTOMER**

LOCKHEED MARTIN shall be solely responsible for all liaison and coordination with the LOCKHEED MARTIN customer, including the U. S. Government, as it affects the applicable Prime Contract, this Contract, and any related contract.

7. **CONTRACT DIRECTION**

- (a) Only the LOCKHEED MARTIN Procurement Representative, has authority to amend this Contract. Such amendments must be in writing.
- (b) LOCKHEED MARTIN engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with SELLER's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.
- (c) LOCKHEED MARTIN shall appoint a Technical Representative(s) who shall be responsible for maintaining liaison with SELLER's supervisor(s).

- (d) SELLER shall appoint a supervisor(s) who shall supervise and direct the work of SELLER's employees.
- (e) Each party shall inform the other of names of the coordinators and/or supervisors appointed.
- (f) Except as otherwise provided herein, all notices to be furnished by the SELLER shall be sent to the LOCKHEED MARTIN Procurement Representative.

8. **DEFAULT**

- (a) LOCKHEED MARTIN, by written notice, may terminate this Contract for default, in whole or in part, if SELLER fails to comply with any of the terms of this Contract, fails to make progress so as to endanger performance of this Contract, or fails to provide adequate assurance of future performance. Seller shall have ten (10) days (or such longer period as LOCKHEED MARTIN may authorize in writing) to cure any such failure after receipt of notice from LOCKHEED MARTIN. Default involving delivery schedule delays shall not be subject to the cure provision.
- (b) LOCKHEED MARTIN shall not be liable for any Work not accepted; however, LOCKHEED MARTIN may require SELLER to deliver to LOCKHEED MARTIN any supplies and materials, manufacturing materials, and manufacturing drawings that SELLER has specifically produced or acquired for the terminated portion of this Contract. LOCKHEED MARTIN and SELLER shall agree on the amount of payment for these other deliverables.
- (c) SELLER shall continue all Work not terminated.
- (d) In the event of a termination for default, SELLER shall be liable to LOCKHEED MARTIN for cover costs, in addition to LOCKHEED MARTIN's other rights and remedies at law or in equity.
- (e) If after termination under paragraph (a), it is later determined that SELLER was not in default, such termination shall be deemed a Termination for Convenience.

9. **DEFINITIONS**

The following terms shall have the meanings set forth below:

- (a) "Contract" means this instrument of contracting, including any Purchaser Orders or Task Orders issued hereunder, or other such type designation, including all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for Releases, (in the form of a Task Order or other such document) the term "Contract" shall also mean the Release document for the Work to be performed.
- (b) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- (c) "LOCKHEED MARTIN" means LOCKHEED MARTIN CORPORATION, acting through its companies or business sites as identified on the face of this Contract. If a subsidiary or affiliate of LOCKHEED MARTIN CORPORATION is identified on the face of the Contract then "LOCKHEED MARTIN" means that subsidiary or affiliate.
- (d) "LOCKHEED MARTIN Procurement Representative" means the person authorized by LOCKHEED MARTIN's cognizant procurement organization to administer and/or execute this Contract.
- (e) "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this "Contract."
- (f) "SELLER" means the Party identified on the face of the Contract with whom LOCKHEED MARTIN is contracting.
- (g) "Work" means all required articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

10. **DISPUTES**

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

11. **ELECTRONIC CONTRACTING**

LOCKHEED MARTIN may issue and transmit Task Orders and attachment(s), (if any) electronically and execute such Task Orders by electronic signature in lieu of a hard copy Task Order. Such electronic transmission may be the only document that the SELLER will receive for placement of any Task Order. Both parties agree that the validity of the Task Order, and any acknowledgement by SELLER, shall not be contested on the basis that the documents contain an electronic signature.

12. **EXAMINATION OF RECORDS**

- (a) SELLER shall maintain complete and accurate records in accordance with generally accepted accounting principles to substantiate SELLER's charges hereunder. Such records shall include, but not be limited to, applicable time sheets, job cards, phone bills, travel receipts and job summaries. SELLER shall retain such records for three (3) years from the end of this Contract.
- (b) LOCKHEED MARTIN shall have access to such records, and any other records SELLER is required to maintain under this Contract, for the purpose of audit during normal business hours, upon reasonable notice for so long as such records are required to be retained.

13. **EXPORT CONTROL**

- (a) SELLER agrees to comply with all applicable U.S. export control laws and regulations, specifically the requirements of the International Traffic in Arms Regulation (ITAR), 22 CFR 120 et seq.; and the Export Administration Act, 50 U.S.C. Appx. 2401 et seq.; including the requirement for obtaining any export license, if applicable. Without limiting the foregoing, SELLER agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to SELLER or SELLER's lower-tier suppliers, without the authority of any export license or applicable license exemption.
- (b) SELLER agrees to notify LOCKHEED MARTIN if any deliverable under this Contract is restricted by export control laws or regulations.
- (c) SELLER shall immediately notify the LOCKHEED MARTIN Procurement Representative if SELLER is listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

- (d) SELLER agrees to maintain an effective export/import compliance program in accordance with the ITAR regulations and Office of Defense Trade Controls (ODTC) guidelines.
- (e) Where SELLER is a signatory under a LOCKHEED MARTIN license or agreement, SELLER shall provide prompt notification to the LOCKHEED MARTIN Procurement Representative in the event of changed circumstances under the Contract including, but not limited to, ineligibility, changes in the activities to be performed, a violation or potential violation of the ITAR, the initiation or existence of a U.S. government investigation that could affect the status of the SELLER under the ITAR, or any other compliance activity related to the Program and this Contract.
- (f) SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.
- (g) To ensure compliance with U.S. export laws, SELLER shall not assign foreign persons, who are not permanent resident aliens, to work on this Contract or any Task Order without first obtaining LOCKHEED MARTIN approval in writing.

14. **FURNISHED PROPERTY**

- (a) LOCKHEED MARTIN may provide to SELLER property owned by either LOCKHEED MARTIN or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.
- (b) Title to Furnished Property shall remain in LOCKHEED MARTIN or its customer. SELLER shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- (c) Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify LOCKHEED MARTIN of, any loss or damage. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.
- (d) At LOCKHEED MARTIN's request, and/or upon completion of this Contract the SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by LOCKHEED MARTIN.
- (e) The Government Property clause contained in Section II shall apply in lieu of paragraphs (a) through (d) above with respect to Government Furnished Property, or property to which the Government takes title under this Contract.

15. **GRATUITIES/KICKBACKS**

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

16. **INDEPENDENT CONTRACTOR RELATIONSHIP AND SELLER PERSONNEL**

- (a) SELLER's relationship to LOCKHEED MARTIN shall be that of an Independent Contractor and this Contract does not create an agency, partnership, or joint venture relationship between LOCKHEED MARTIN and SELLER or LOCKHEED MARTIN and SELLER personnel. Personnel supplied by SELLER hereunder shall be deemed employees of SELLER and shall not for any purposes be considered employees or agents of LOCKHEED MARTIN. SELLER assumes full responsibility for the actions and supervision of such personnel while performing services under this Contract. LOCKHEED MARTIN assumes no liability for SELLER personnel.
- (b) SELLER shall inform LOCKHEED MARTIN if a former employee of LOCKHEED MARTIN or its parent or any subsidiary will be assigned Work under this Contract, and any such assignment shall be subject to LOCKHEED MARTIN approval.
- (c) Nothing contained in this Contract shall be construed as granting to SELLER or any personnel of SELLER rights under any LOCKHEED MARTIN benefit plan.
- (d) SELLER will ensure that SELLER personnel assigned to work on LOCKHEED MARTIN's or Customer's premises comply with any on-premises guidelines and: (i) do not bring weapons of any kind onto LOCKHEED MARTIN's or Customer's premises; (ii) do not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages while on LOCKHEED MARTIN's or Customer's premises; (iii) do not possess hazardous materials of any kind on LOCKHEED MARTIN's or Customer's premises without LOCKHEED MARTIN's authorization; (iv) remain in authorized areas only; (v) will not conduct any non-LOCKHEED MARTIN related business activities (such as interviews, hirings, dismissals or personal solicitations) on LOCKHEED MARTIN's or Customer's premises, (vi) will not send or receive non-LOCKHEED MARTIN related mail through LOCKHEED MARTIN's or Customer's mail systems; and (vii) will not sell, advertise or market any products or memberships, distribute printed, written or graphic materials on LOCKHEED MARTIN's or Customer's premises without LOCKHEED MARTIN's written permission or as permitted by law.
- (e) All persons, property, and vehicles entering or leaving LOCKHEED MARTIN's or Customer's premises are subject to search.
- (f) SELLER will promptly notify LOCKHEED MARTIN and provide a report of any accidents or security incidents involving loss of or misuse or damage to LOCKHEED MARTIN's or Customer's intellectual or physical assets; physical altercations; assaults; or harassment.
- (g) SELLER must coordinate with LOCKHEED MARTIN access to LOCKHEED MARTIN's or Customer's premises.
- (h) SELLER personnel: (i) will not remove LOCKHEED MARTIN or Customer assets from LOCKHEED MARTIN's or Customer's premises without LOCKHEED MARTIN authorization; (ii) will use LOCKHEED MARTIN or Customer assets only for purposes of this Contract; (iii) will only connect with, interact with or use computer resources, networks, programs, tools or routines that LOCKHEED MARTIN agrees are needed to provide services; and (iv) will not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. LOCKHEED MARTIN may periodically audit SELLER's data residing on LOCKHEED MARTIN's or Customer's information assets.
- (i) LOCKHEED MARTIN may, at its sole discretion, have SELLER remove any specified employee of SELLER from LOCKHEED MARTIN's premises and request that such employee not be reassigned to any LOCKHEED MARTIN premises under this Contract.

- (j) SELLER shall provide LOCKHEED MARTIN any information about SELLER's personnel that LOCKHEED MARTIN is required by law to obtain, including information on "leased employees" and "management services organization" as these terms are used in Secs. 414(m), (n) and (o) of the Internal Revenue Code.
- (k) Violation of this clause may result in termination of this Contract in addition to any other remedy available to LOCKHEED MARTIN at law or in equity. SELLER shall reimburse LOCKHEED MARTIN or Customer for any unauthorized use of LOCKHEED MARTIN or Customer assets.
- (l) SELLER shall advise the LOCKHEED MARTIN Procurement Representative of any unauthorized direction or course of conduct.
- (m) SELLER shall be responsible for any costs or expenses including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.
- (n) SELLER shall indemnify and hold harmless LOCKHEED MARTIN from and against any actual or alleged liability, loss, costs, damages, fees of attorneys, and other expenses which LOCKHEED MARTIN may sustain or incur in consequence of (i) SELLER's failure to pay any employee for the Work rendered under this Contract, or (ii) any claims made by SELLER's personnel against LOCKHEED MARTIN.

17. INFORMATION OF LOCKHEED MARTIN

- (a) SELLER shall not use, reproduce or disclose any information, knowledge, or data of LOCKHEED MARTIN which SELLER may receive from LOCKHEED MARTIN or have access to, including proprietary or confidential information of LOCKHEED MARTIN or of others when in possession of LOCKHEED MARTIN (hereinafter LOCKHEED MARTIN INFORMATION). LOCKHEED MARTIN INFORMATION includes, but is not limited to, business plans, marketing information, cost estimates, forecasts, bid and proposal data, financial data, formulae, compositions, products, processes, procedures, inventions, systems or designs.
- (b) Prior to commencement of assignment, SELLER shall have a written Work with each of its employees performing services hereunder sufficient to enable SELLER to comply with this Section.
- (c) LOCKHEED MARTIN INFORMATION provided to the SELLER remains the property of LOCKHEED MARTIN. Within thirty (30) days of the expiration or termination of this Contract or upon the request of LOCKHEED MARTIN, SELLER shall return or certify the destruction of all LOCKHEED MARTIN INFORMATION and any reproductions, and the SELLER shall promptly surrender all information or proprietary data developed by SELLER in performance of this Contract, unless its retention is authorized in writing by LOCKHEED MARTIN.
- (d) The provisions set forth above are in addition to any obligations contained in a Proprietary Information Agreement between the parties.

18. INFORMATION OF SELLER

SELLER shall not provide any Proprietary Information to LOCKHEED MARTIN without prior execution by LOCKHEED MARTIN of a Proprietary Information Agreement.

19. INSPECTION AND ACCEPTANCE

- (a) LOCKHEED MARTIN and its customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.
- (b) No such inspection shall relieve SELLER of its obligations to furnish all Work in accordance with the requirements of this Contract. LOCKHEED MARTIN's final inspection and acceptance shall be at destination.
- (c) If SELLER delivers non-conforming Work, LOCKHEED MARTIN may: (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; or (iii) make, or have a third party make all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Contract requirements and charge the cost incurred to SELLER.
- (d) SELLER shall not re-tender rejected Work without disclosing the corrective action taken.

20. INSURANCE/ENTRY ON LOCKHEED MARTIN PROPERTY

In the event that SELLER, its employees, agents, or subcontractors enter the site(s) of LOCKHEED MARTIN or its customers for any reason in connection with this Contract, then SELLER and its subcontractors shall procure and maintain worker's compensation, comprehensive general liability, bodily injury and property damage insurance in reasonable amounts, and such other insurance as LOCKHEED MARTIN may require. In addition, SELLER and its subcontractors shall comply with all site requirements. SELLER shall indemnify and hold harmless LOCKHEED MARTIN, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of SELLER, its officers, employees, agents, suppliers, or subcontractors. SELLER shall provide LOCKHEED MARTIN thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance. If requested, SELLER shall send a "Certificate of Insurance" showing SELLER's compliance with these requirements. SELLER shall name LOCKHEED MARTIN as an additional insured for the duration of this Contract. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of LOCKHEED MARTIN and is not contributory with any insurance which LOCKHEED MARTIN may carry. "Subcontractor" as used in this clause shall include SELLER's subcontractors at any tier.

21. INTELLECTUAL PROPERTY

- (a) SELLER shall assign, convey and transfer to LOCKHEED MARTIN without any further consideration each and every invention, discovery, improvement, maskwork and patent relating to the Work, conceived, developed, or generated in performance of this Contract, and upon request shall execute any required papers and furnish all reasonable assistance to LOCKHEED MARTIN to vest all right, title and interest in such inventions, discoveries, improvements, maskworks and patents in LOCKHEED MARTIN.
- (b) All data, copyrights, reports and works of authorship developed in performance of this Contract shall be the sole property of LOCKHEED MARTIN, shall be used by SELLER solely in work for LOCKHEED MARTIN. To the extent that any of the deliverable items may not, by operation of law, be works made for hire, SELLER hereby assigns to LOCKHEED MARTIN the ownership of copyright in the deliverable items and LOCKHEED MARTIN shall have the right to obtain and hold in its own name copyrights, registrations and similar protection which may be available in the deliverable items. SELLER agrees to give LOCKHEED MARTIN or its designees all assistance reasonably required to perfect such rights. SELLER certifies the originality of all deliverable items and states that no portion is protected by any copyright or similar right vested in any third party.
- (c) To the extent that any pre-existing materials are contained in the deliverable items and not owned by LOCKHEED MARTIN pursuant to this or a previous agreement with SELLER, SELLER grants to LOCKHEED MARTIN an irrevocable, nonexclusive, world-wide, royalty-free license to: [i] use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works based upon, such pre-existing materials and derivative works thereof, and [ii] authorize others to do any, some or all of the foregoing.

- (d) Items delivered under this Contract such as operation and maintenance manuals shall be delivered with the right to copy for internal use and/or copy and deliver with the right to use to LOCKHEED MARTIN's customers.
 - (e) All reports, memoranda or other materials in written form, including machine readable form, prepared by SELLER pursuant to this Contract and furnished to LOCKHEED MARTIN by SELLER hereunder shall become the sole property of LOCKHEED MARTIN.
 - (f) SELLER warrants that the Work performed or delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. SELLER agrees to defend, indemnify and hold harmless LOCKHEED MARTIN and its customers from and against any claims, damages, losses costs and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.
22. **NEW MATERIALS**
The Work to be delivered hereunder shall consist of new materials, as defined in FAR 52.211-5 (not used, or reconditioned, remanufactured, or of such age as to impair its usefulness or safety).
23. **OFFSET CREDIT/COOPERATION**
All offset or countertrade credit value resulting from this Contract shall accrue solely to the benefit of LOCKHEED MARTIN. SELLER agrees to cooperate with LOCKHEED MARTIN in the fulfillment of any foreign offset/countertrade obligations.
24. **PAYMENTS, TAXES, AND DUTIES**
- (a) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (i) LOCKHEED MARTIN's receipt of the SELLER's proper invoice; (ii) Scheduled delivery date of the Work; or (iii) Actual delivery of the Work. LOCKHEED MARTIN shall have a right of setoff against payments due or at issue under this Contract or any other contract between the Parties.
 - (b) Each payment 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.
 - (c) Payment shall be deemed to have been made as of the date of mailing LOCKHEED MARTIN's payment or electronic funds transfer.
 - (d) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.
 - (e) SELLER agrees to submit upon the request of LOCKHEED MARTIN's Procurement Representative a Release of Claims upon final payment under this Contract.
25. **PRECEDENCE**
Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) Face of the Purchase Order, Release document or Schedule, (which shall include continuation sheets), as applicable, including any Special Provisions; (2) Any master-type agreement (such as corporate or blanket agreements); (3) These General Provisions; and (4) Statement of Work.
26. **PRIORITY RATING**
If so identified, this Contract is a "rated order" certified for national defense use, and the SELLER shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).
27. **QUALITY CONTROL SYSTEM**
- (a) SELLER shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Contract.
 - (b) Records of all quality control inspection work by SELLER shall be kept complete and available to LOCKHEED MARTIN and its customers.
28. **RELEASE OF INFORMATION**
Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by SELLER without the prior written approval of LOCKHEED MARTIN.
29. **SEVERABILITY**
Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect.
30. **STOP WORK ORDER**
- (a) SELLER shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from LOCKHEED MARTIN, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.
 - (b) Within such period, LOCKHEED MARTIN shall either terminate or continue the Work by written order to SELLER. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause, shall be made to the price, delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation.
31. **SURVIVABILITY**
If this Contract expires, is completed, or is terminated, SELLER shall not be relieved of those obligations contained in the following provisions:
- (a) Applicable Laws
Electronic Contracting
Export Control
Independent Contractor Relationship and Seller Personnel
Information of Lockheed Martin

Insurance/Entry on Lockheed Martin Property
Intellectual Property
Release of Information
Warranty

- (b) Those U. S. Government flowdown provisions that by their nature should survive.

32. **TERMINATION FOR CONVENIENCE**

- (a) Lockheed Martin may terminate part or all of this Contract for its convenience by giving written notice to SELLER.
- (b) Upon termination, in accordance with LOCKHEED MARTIN written direction, SELLER will immediately: [i] cease work; [ii] prepare and submit to LOCKHEED MARTIN an itemization of all completed and partially completed deliverables and services; [iii] deliver to LOCKHEED MARTIN deliverables satisfactorily completed up to the date of termination at the agreed upon Prices in the relevant statement of work (SOW); and [iv] deliver upon request any Work in process. In the event LOCKHEED MARTIN terminates for its convenience, after performance has commenced, LOCKHEED MARTIN will compensate SELLER for the actual, allowable and reasonable expenses incurred by SELLER for Work in process up to and including the date of termination provided SELLER uses reasonable efforts to mitigate LOCKHEED MARTIN's liability under this clause by, among other actions, accepting the return of, returning to its suppliers, selling to others, or otherwise using the canceled deliverables (including raw materials or work in process) and provided such expenses do not exceed the prices set forth in the payment schedule.
- (c) In no event shall LOCKHEED MARTIN be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. SELLER's termination claim shall be submitted within ninety (90) days from the effective date of the termination.
- (d) SELLER shall continue all Work not terminated.

33. **TIMELY PERFORMANCE**

- (a) SELLER's timely performance is a critical element of this Contract.
- (b) If SELLER becomes aware of difficulty in performing the Work, SELLER shall timely notify LOCKHEED MARTIN, in writing, giving pertinent details. This notification shall not change any delivery schedule.

34. **WAIVER, APPROVAL, AND REMEDIES**

- (a) Failure by LOCKHEED MARTIN to enforce any of the provision(s) of this Contract shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of LOCKHEED MARTIN thereafter to enforce each and every such provision(s).
- (b) LOCKHEED MARTIN's approval of documents shall not relieve SELLER from complying with any requirements of this Contract.
- (c) The rights and remedies of LOCKHEED MARTIN in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

35. **WARRANTY**

- (a) SELLER warrants that it is and shall remain free of any obligation or restriction which would interfere or be inconsistent with or present a conflict of interest concerning the Work to be furnished by SELLER under this Contract.
- (b) SELLER warrants that it will perform the services under this Contract with the degree of high professional skill and sound practices and judgment which is normally exercised by recognized professional firms with respect to services of a similar nature. Warranties shall begin upon final acceptance and extend for a period of one (1) year.
- (c) SELLER warrants that all articles, materials, supplies, and goods furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, and descriptions, and other requirements of this Contract and be free from defects in design, material and workmanship. This warranty shall begin upon final acceptance and extend for a period of (i) the manufacturer's warranty period or six (6) months, whichever is longer, if SELLER is not the manufacturer and has not modified the Work or, (ii) one (1) year or the manufacturer's warranty period, whichever is longer if the SELLER is the manufacturer of the Work or has modified it.
- (d) If any non-conformity with Work appears within the warranty period herein, SELLER, at LOCKHEED MARTIN's option, shall, for services, promptly reperform the service, and, for articles, materials, supplies or goods, shall promptly repair, or replace the articles, materials, supplies or goods. Transportation of replacement Work and return of non-conforming Work and repeat performance of Work shall be at SELLER's expense. If repair or replacement or reperformance of Work is not timely, LOCKHEED MARTIN may elect to return the non-conforming Work, repair, replace, or reperform the Work or reprocur the Work at SELLER's expense. All warranties shall run to LOCKHEED MARTIN and its customers.
- (e) Any implied warranty of merchantability and fitness for a particular purpose is hereby disclaimed.

SECTION II: FAR FLOWDOWN PROVISIONS

A. **INCORPORATION OF FAR CLAUSES**

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

B. **GOVERNMENT SUBCONTRACT**

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

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

1. "Commercial Item" means a commercial item as defined in FAR 2.101.
2. "Contract" means this contract.
3. "CONTRACTOR" means the SELLER, as defined in this CORPDOC 2, acting as the immediate (first tier) subcontractor to LOCKHEED MARTIN.
4. "Prime Contract" means the contract between LOCKHEED MARTIN and the U.S. Government or between LOCKHEED MARTIN and its higher-tier contractor who has a contract with the U.S. Government.
5. "Subcontract" means any contract placed by the CONTRACTOR or lower-tier subcontractors under this Contract.

C. **NOTES**

1. Substitute "LOCKHEED MARTIN" for "Government" or "United States" as applicable throughout this clause.
2. Substitute "LOCKHEED MARTIN Procurement Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.
3. Insert "and LOCKHEED MARTIN" after "Government" or "Contracting Officer", as appropriate, throughout this clause.
4. Insert "or LOCKHEED MARTIN" after "Government" throughout this clause.
5. Communication/notification required under this clause from/to the CONTRACTOR to/from the Contracting Officer shall be through LOCKHEED MARTIN.

D. **AMENDMENTS REQUIRED BY PRIME CONTRACT**

CONTRACTOR agrees that upon the request of LOCKHEED MARTIN it will negotiate in good faith with LOCKHEED MARTIN relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as LOCKHEED MARTIN may reasonably deem necessary in order to comply with the provisions of the applicable Prime contract or with the provisions of amendments to such Prime contract. If any such amendment to this Contract causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, an equitable adjustment shall be made pursuant to the "Changes" clause of this Contract.

E. **PRESERVATION OF THE GOVERNMENT'S RIGHTS**

If LOCKHEED MARTIN furnishes designs, drawings, special tooling, equipment, engineering data or other technical or proprietary information (Furnished Items) which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that LOCKHEED MARTIN, acting on its own behalf, may modify or limit any rights the Government may have to authorize the CONTRACTOR's use of such Furnished Items in support of other U. S. Government prime contracts.

F. **FAR FLOWDOWN CLAUSES**

REFERENCE TITLE

1. The following FAR clauses apply to this Contract :

- (a) 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997) (See Note 2.)
- (b) 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (OCT 1997) (See Note 2.)
- (c) 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)
- (d) 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
- (e) 52.222-26 EQUAL OPPORTUNITY (FEB 1999) (Only subparagraphs (b)(1)-(11) apply.)
- (f) 52.225-13 RESTRICTION ON CERTAIN FOREIGN PURCHASES (FEB 2000)
- (g) 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DEC 2001)

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

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

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

- (a) 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001).

4. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$500,000:

- (a) 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2001) (Applicable if the CONTRACTOR is not a small business. See Note 2, applicable to subparagraph (c) only; the CONTRACTOR's subcontracting plan is incorporated herein by reference.)

5. The following clauses apply as indicated:

- (a) 52.204-2 SECURITY REQUIREMENTS (AUG 1996) (Applicable if the Work involves access to classified information. Delete paragraph (c) of the clause.)

- (b) 52.223-11 OZONE-DEPLETING SUBSTANCES (MAR 2000) (JUN 1996) (Applicable if the Work was manufactured with or contains ozone-depleting substances.)
- (c) 52.225-1 BUY AMERICAN ACT—BALANCE OF PAYMENTS PROGRAM—SUPPLIES (FEB 2000) (Applicable if the Work Requires furnishing of items containing other than domestic components.)
- (d) 52.225-5 TRADE AGREEMENTS (APR 2000) (JAN 1996) (Applicable if the Work contains other than domestic components.)
- (e) 52.245-2 GOVERNMENT PROPERTY (FIXED PRICE CONTRACTS) (DEC 1989) (Applicable if Government property is furnished in the performance of the Contract. Note 1 applies except in the phrases "Government property," "Government-furnished property," and in references to title to property. See Note 2. The following is added as paragraph (m) "Seller shall provide to LOCKHEED MARTIN immediate notice of any disapproval, withdrawal of approval, or nonacceptance by the Government of its property control system.")

G. CERTIFICATIONS AND REPRESENTATIONS

1. **This clause contains certifications and representations that are material representations of fact upon which LOCKHEED MARTIN will rely in making awards to CONTRACTOR. By submitting its written offer, or providing oral offers/quotations at the request of LOCKHEED MARTIN, or accepting any Contract, CONTRACTOR certifies to the representations and certifications as set forth below in this clause. These certifications shall apply whenever these terms and conditions are incorporated by reference in any Contract, agreement, other contractual document or any quotation, request for quotation (oral or written), request for proposal or solicitation (oral or written), issued by LOCKHEED MARTIN. CONTRACTOR shall immediately notify LOCKHEED MARTIN of any change of status with regard to these certifications and representations.**
2. The following clauses of the Federal Acquisition Regulation (FAR) are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable to any order, agreement, or subcontract. In each clause incorporated below, substitute "LOCKHEED MARTIN" for "Government" and "Contracting Agency" and "LOCKHEED MARTIN Procurement Representative" for "Contracting Officer" throughout.
 - (a) **FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.**
 - (1) CONTRACTOR certifies that, to the best of its knowledge and belief, that CONTRACTOR and/or any of its Principals, (as defined in FAR 52.209-5,) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.
 - (2) CONTRACTOR shall provide immediate written notice to LOCKHEED MARTIN if, any time prior to award of any contract, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
 - (b) **FAR 52.222-22 Previous Contracts and Compliance Reports.** CONTRACTOR represents that if CONTRACTOR has participated in a previous contract or subcontract subject to Equal Opportunity clause (FAR 52.222-26) (i) CONTRACTOR has filed all required compliance reports and (ii) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.
 - (c) **FAR 52.222-25 Affirmative Action Compliance.** CONTRACTOR represents (1) that CONTRACTOR has developed and has on file at each establishment, Affirmative Action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (2) that in the event such a program does not presently exist, CONTRACTOR will develop and place in operation such a written Affirmative Action Compliance Program within 120 days from the award of this Contract.