



**GENERAL PROVISIONS  
COMMERCIAL FIXED-PRICE CONSTRUCTION SUBCONTRACTS**

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

- (a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.
- (b) This Contract shall not be construed to create a contractual relationship of any kind (1) between LOCKHEED MARTIN and a Subcontractor or Sub-subcontractor, or (2) between any persons or entities other than LOCKHEED MARTIN and CONTRACTOR.
- (c) CONTRACTOR's acknowledgment, acceptance of payment, or commencement of performance, shall constitute CONTRACTOR's unqualified acceptance of this Contract.
- (d) **Additional or differing terms or conditions proposed by CONTRACTOR or included in CONTRACTOR's acknowledgment hereof are hereby objected to and rejected by LOCKHEED MARTIN and have no effect unless expressly accepted in writing by LOCKHEED MARTIN.**

**2. APPLICABLE LAWS**

This Contract shall be governed by, subject to, and construed in accordance with the law of the State from which this Contract is issued, excluding its choice of law rules. The CONTRACTOR shall, at its own expense, give all Notices and comply with all applicable federal, state and local laws, ordinances, codes, rules and regulations bearing on the conduct of the Work as drawn and specified and shall, without expense to LOCKHEED MARTIN, obtain all licenses and permits required for the Work.

**3. ASSIGNMENT**

Any assignment of CONTRACTOR's contract rights or delegation of duties shall be void, unless prior written consent is given by LOCKHEED MARTIN. However, CONTRACTOR 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 CONTRACTOR. LOCKHEED MARTIN shall have the right to make settlements and/or adjustments in price with CONTRACTOR without notice to the assignee.

**4. BONDS**

- (a) **Payment Bonds** - The CONTRACTOR shall furnish a payment bond with good and sufficient surety or sureties on an approved LOCKHEED MARTIN form for the protection of persons furnishing material or labor in connection with the performance of the Work under this Contract. The penal sum of such payment bond shall be 100% of the Contract price.
- (b) **Performance Bonds** - The CONTRACTOR shall furnish a performance bond with good and sufficient surety or sureties on an approved LOCKHEED MARTIN form in connection with the performance of the Work under this Contract. The penal sum of such performance bond shall be 100% of the Contract price.
- (c) **Date of Bonds** - Bonds required hereunder shall be dated before or as of the same date as this Contract and shall be furnished by the CONTRACTOR to LOCKHEED MARTIN at the time of execution of this Contract.
- (d) **Additional Bond Security** - If any surety upon any bond furnished in connection with this Contract becomes unacceptable to LOCKHEED MARTIN, or if the surety fails to furnish reports as to its financial condition when requested by LOCKHEED

MARTIN, the CONTRACTOR shall promptly furnish additional security as shall be required to protect the interests of LOCKHEED MARTIN and of persons supplying labor or materials in the performance of the Work contemplated by this Contract.

- (e) The duty of securing required bonds for this Contract and riders thereto shall be upon the CONTRACTOR.
- (f) In the event any changes, alterations, modifications, or amendments are made from time to time to this Contract or plans or specifications, subsequent to the date of bonds furnished hereunder, the CONTRACTOR shall secure from the Surety a Bond Rider to the effect that the Surety waives notice and Right of Discharge by reason of such action, and increasing the penal sum of the bond to 100% of the Contract Price as modified.
- (g) Bonds will also contain a provision to the effect that if the CONTRACTOR fails to give the Surety notice of changes, alterations, modifications, or amendments to this Contract, Surety shall not be released of liability under existing bonds or any riders issued thereto. LOCKHEED MARTIN shall have the right to withhold any payments due the CONTRACTOR hereunder until such time as the CONTRACTOR secures the bonds required or riders thereto, and the same have been approved by LOCKHEED MARTIN.

## 5. CHANGES

- (a)
  - (1) Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Field Change Authorization or Construction Change Directive.
  - (2) A Field Change Authorization shall be based upon agreement among and between LOCKHEED MARTIN and the CONTRACTOR and may be initiated by either Party. A Construction Change Directive may come solely from the LOCKHEED MARTIN Procurement Representative and may or may not be agreed to by the CONTRACTOR.
  - (3) Changes in the Work shall be performed under applicable provisions of the Contract, and CONTRACTOR shall proceed promptly unless otherwise provided in the Field Change Authorization or Construction Change Directive.
- (b) Field Change Authorizations. A Field Change Authorization is a written instrument prepared by LOCKHEED MARTIN and signed by the LOCKHEED MARTIN Procurement Representative and the CONTRACTOR stating their agreement upon the following:
  - (1) A change in the Work;
  - (2) The amount of the adjustment, if any, in the Contract Price, determined as follows:
    - (i) The Field Change Authorization Not-To-Exceed Price, wherein the adjustment will be based on a negotiated price, with the CONTRACTOR providing properly itemized data to permit evaluation by LOCKHEED MARTIN, or
    - (ii) The Field Change Authorization Firm Fixed Price, wherein the adjustment will be the stated firm fixed price; and
  - (3) The extent of the adjustment, if any, in the Contract Construction Schedule.
- (c) Construction Change Directives.
  - (1) A Construction Change Directive is a written order prepared by LOCKHEED MARTIN and signed by the LOCKHEED MARTIN Procurement Representative

directing a change in the Work prior to agreement on adjustment, if any, in the Contract Price or the Contract Construction Schedule, or both, and stating a proposed basis for adjustment, if any, in the Contract Price or Contract Construction Schedule, or both. LOCKHEED MARTIN may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or revisions, the Contract Price and Contract Construction Schedule being adjusted accordingly.

- (2) A Construction Change Directive shall be used in absence of total agreement on the terms of a Field Change Authorization.
  - (3) If the Construction Change Directive provides for an adjustment to the Contract Price, the adjustment shall be based on one of the following methods:
    - (i) Price Negotiation between the Parties, with CONTRACTOR providing properly itemized data to permit evaluation by LOCKHEED MARTIN; or
    - (ii) Unit price as stated in the Contract documents or subsequently agreed upon.
  - (4) Cost to be determined in a manner agreed upon by the Parties at a mutually acceptable fixed or percentage fee, as otherwise allowed herein.
  - (5) Upon receipt of a Construction Change Directive, the CONTRACTOR shall promptly proceed with the change in the Work as directed and advise the LOCKHEED MARTIN Procurement Representative of the CONTRACTOR's agreement or disagreement with the method, if any, proposed in the Construction Change Directive for adjustment in the Contract Price or Contract Construction Schedule.
  - (6) A Construction Change Directive signed by the CONTRACTOR indicates the agreement of the CONTRACTOR therewith, including adjustment in the Contract Price and Contract Construction Schedule or the method proposed for determining them. Such agreement shall be effective immediately and shall be recorded as a Field Change Authorization and/or Contract Modification.
- (d) Pending final determination of adjustments to the Contract Price or Contract Construction Schedule, any amounts not in dispute may be included in progress payment requests. The amount of credit to be allowed by the CONTRACTOR to LOCKHEED MARTIN for a deletion or change which results in a net decrease in the Contract Price shall be actual net costs as confirmed by the LOCKHEED MARTIN Procurement Representative. When both additions and credits covering Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.
  - (e) Minor Changes in the Work. When specifically stated in the Contract, the LOCKHEED MARTIN Procurement Representative will have authority to order minor changes in the Work without adjustment in the Contract Price or extension of the Contract Construction Schedule. The threshold, if any, for no cost changes will be referenced in the Contract. Such changes shall be effected by written order and shall be binding on LOCKHEED MARTIN and CONTRACTOR. The CONTRACTOR shall carry out such written orders promptly.
  - (f) The CONTRACTOR shall submit any Claim under this section within ten (10) days from the date of receipt of the Construction Change Directive, or such time as approved by the LOCKHEED MARTIN Procurement Representative. The LOCKHEED MARTIN Procurement Representative may decide in his sole discretion to receive and act upon a Claim related to a

Construction Change Directive before final payment of the Contract.

- (g) LOCKHEED MARTIN's engineering and technical personnel may from time to time render assistance or give technical advice to, or effect an exchange of information with, CONTRACTOR personnel in a liaison effort concerning the Work to be performed hereunder. However, such exchange of information or advice shall not vest the CONTRACTOR with the authority to change the Work, or provisions of the Contract, the Contract Price, or Contract Construction Schedule, unless incorporated in a properly executed Field Change Authorization or Construction Change Directive.
- (h) Unless expressly stated in the Contract as being excluded from this provision, wherever this Contract provides for submittal of designs, components, processes, or other items for review or approval by LOCKHEED MARTIN, such reviews or approvals shall not be construed as a complete check as to the adequacy of said design or item, nor as an agreement that the design or items will meet the requirements of the Statement of Work, nor as any change to the requirements of the Statement of Work. Such actions shall not be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for a Claim. Such reviews and approvals shall in no way relieve the CONTRACTOR of the responsibility for any error or deficiency which may exist in the submitted design or other items, as the CONTRACTOR shall be solely responsible for meeting all Contract requirements.
- (i) LOCKHEED MARTIN shall have the right to prescribe the manner of the disposition of any property or materials made obsolete or excess by a Field Change Authorization or Construction Change Directive.

## 6. CLAIMS AND DISPUTES

- (a) Responsibility to Substantiate Claims. Responsibility to substantiate Claims shall rest with the Party making the Claim.
- (b) Contractor's Time Limits on Claims. Claims must be made within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days of the date the CONTRACTOR knew or should have known of the Claim.
- (c) Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided elsewhere in the Contract, the CONTRACTOR shall proceed diligently with the performance of the Contract.
- (d) Claims for Concealed or Unknown Conditions (also known as Differing Site Conditions).
  - (1) If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in this Contract, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in this Contract, then Notice by the CONTRACTOR shall be given to the LOCKHEED MARTIN Procurement Representative promptly before conditions are disturbed and in no event later than forty-eight (48) hours after first observance of the conditions.
  - (2) The LOCKHEED MARTIN Procurement Representative will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the CONTRACTOR's cost of, or time required for, performance any part of the Work, will initiate a Field Change Authorization to modify the Contract Price or Contract Construction Schedule, or both. If the LOCKHEED MARTIN Procurement Representative determines that the conditions at the site are not materially

different from those indicated in the Contract and that no change in the terms of the Contract is justified, the LOCKHEED MARTIN Procurement Representative shall so notify the CONTRACTOR in writing, stating the reasons. Claims in opposition to such determination must be made within forty-eight (48) hours after the LOCKHEED MARTIN Procurement Representative has given Notice of the decision.

- (3) If LOCKHEED MARTIN and the CONTRACTOR cannot agree on an adjustment in the Contract Price or Contract Schedule, or both, the adjustment shall be decided pursuant to the Resolution of Claims and Disputes provisions of the Contract.
- (e) Claims for Additional Cost. If the CONTRACTOR wishes to make a Claim for an increase in the Contract Price, Notice as provided herein shall be given before proceeding to execute the Work. If the CONTRACTOR believes additional cost is involved for reasons including, but not limited to, (1) a written interpretation from the LOCKHEED MARTIN Procurement Representative, (2) an order by LOCKHEED MARTIN to Stop Work where the CONTRACTOR was not at fault, or (3) other reasonable grounds, a Claim shall be filed in accordance with the provisions of this section.
- (f) Claims for Additional Contract Construction Schedule Time.
  - (1) If the CONTRACTOR wishes to make a Claim for an increase in the Contract Construction Schedule, Notice as provided herein shall be given. The CONTRACTOR's claim shall include an estimate of cost and of probable effect of delay on progress of the Work.
  - (2) If adverse weather conditions are the basis for a Claim for additional Construction Schedule time, such Claim shall include data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.
- (g) Equitable Adjustments to Unit Prices. If unit prices are stated in the Contract or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Field Change Authorization or Construction Change Directive so that application of such unit prices to quantities with regard to Work proposed will cause substantial inequity to LOCKHEED MARTIN or CONTRACTOR, the applicable unit prices shall be equitably adjusted.
- (h) **Claims for Consequential Damages. The CONTRACTOR hereby waives all Claims against LOCKHEED MARTIN for all consequential damages arising out of or relating to this Contract. This waiver includes, but is not limited to, damages incurred by the CONTRACTOR for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and damages incurred by the CONTRACTOR for principle office expenses including the compensation of personnel stationed there and for loss of profit.**
- (i) Resolution of Claims and Disputes:
  - (1) Decision of the LOCKHEED MARTIN Procurement Representative. Claims, including those alleging an error or omission by the LOCKHEED MARTIN Procurement Representative, shall be referred initially to the LOCKHEED MARTIN Procurement Representative for decision. An initial decision by the LOCKHEED MARTIN Procurement Representative shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between LOCKHEED MARTIN and CONTRACTOR arising prior to the date final payment is due. The LOCKHEED MARTIN Procurement

Representative will not decide disputes between the CONTRACTOR and persons or entities other than LOCKHEED MARTIN.

- (2) The LOCKHEED MARTIN Procurement Representative will review Claims by the CONTRACTOR within thirty (30) days of Notice of the Claim and take one or more of the following actions: (1) request additional supporting data from the CONTRACTOR; (2) reject the Claim in whole or in part; (3) approve the Claim; or (4) suggest a compromise.
- (3) If the LOCKHEED MARTIN Procurement Representative requests the CONTRACTOR to furnish additional supporting data, the CONTRACTOR shall respond within thirty (30) days after receipt of such request, and shall either provide a response on the requested supporting data, advise the LOCKHEED MARTIN Procurement Representative when the response or supporting data will be furnished or advise the LOCKHEED MARTIN Procurement Representative that no supporting data will be furnished.
- (4) The LOCKHEED MARTIN Procurement Representative will approve or reject Claims in writing, which shall notify the CONTRACTOR of any change in the Contract Price or Contract Construction Schedule, or both.
- (5) When a written decision of the LOCKHEED MARTIN Procurement Representative states that: (1) the decision is final but subject to mediation and/or arbitration; and (2) a demand for mediation and/or arbitration of a Claim covered by such a decision must be made within thirty (30) days after the date on which the Party making the demand receives the final written decision, the failure to demand mediation and/or arbitration within said thirty (30) days shall result in the LOCKHEED MARTIN Procurement Representative's decision becoming final and binding.

(j) Mediation

- (1) Any Claim in an aggregate amount of not more than \$10,000 or for not more than ten (10) days of the Contract Construction Schedule, arising out of or related to the Contract, except those waived as provided for herein, shall, after a final decision by the LOCKHEED MARTIN Procurement Representative, be subject to mediation as a condition precedent to arbitration and the institution of legal or equitable proceedings by either Party.
- (2) The Parties shall endeavor to resolve their Claims by mediation which, unless the Parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. A request for mediation shall be filed in writing with the other Party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration, but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceeding which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the Parties or court order.
- (3) The Parties shall share equally the mediator's fee and any filing fees. The mediation shall be held in the place where the Work is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(k) Arbitration.

- (1) Any Claim in an aggregate amount of less than \$100,000 or for less than one hundred (100) days of Contract Construction Schedule, and arising out of or related to the Contract, except Claims subject to mediation as provided for herein, and except Claims waived as provided for herein, shall, after decision by the LOCKHEED MARTIN Procurement Representative, be subject to arbitration.
- (2) Claims subject to and not resolved by mediation shall be decided by arbitration which, unless the Parties mutually agree otherwise, shall be in accordance with the Large Complex Construction Rules, Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other Party to the Contract and with the American Arbitration Association. The arbitration shall be held in the state from which this Contract was issued.
- (3) A demand for arbitration shall be made within the time limit specified herein, and in no event shall be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by any applicable statute of limitations.
- (4) The Party filing a notice of demand for arbitration must assert in the demand all Claims then known to that Party on which arbitration is permitted to be demanded. Any known Claims not included in the notice of demand for arbitration are waived.
- (5) The award rendered by the arbitrator or arbitrators shall include rationales for each decision of each claim separately, and shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

- (l) Litigation. Any Claim in an aggregate amount of \$100,000 or more, or for one hundred (100) days or more of Contract Construction Schedule, and arising out of or relating to the Contract, except Claims waived or provided for herein, shall, after decision by the LOCKHEED MARTIN Procurement Representative, be subject to any available action at law or equity. The Parties hereto agree that venue shall be proper only in the state from which this Contract was issued.
- (m) Attorneys' Fees. The prevailing Party in any dispute under this section that is decided by arbitration or litigation shall be entitled to an award of its reasonable attorneys' fees.

## 7. CONSTRUCTION SCHEDULE

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

in any form must first be coordinated with and approved by the LOCKHEED MARTIN Procurement Representative.

## 8. CONTRACT DIRECTION

- (a) Only the LOCKHEED MARTIN Procurement Representative has authority to modify this Contract. Such modifications 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 CONTRACTOR'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 a Claim. No reimbursement shall be made for any extra work or material unless the same has been ordered in writing by the authorized LOCKHEED MARTIN Procurement Representative.
- (c) All Notices to be furnished by the CONTRACTOR to LOCKHEED MARTIN shall be in writing and delivered to and acknowledged in writing by the LOCKHEED MARTIN Procurement Representative.
- (d) All Notices to be furnished by LOCKHEED MARTIN to the CONTRACTOR shall be in writing and delivered to the CONTRACTOR'S Superintendent.

## 9. DEFINITIONS

- (a) "Claim" is a demand or assertion by LOCKHEED MARTIN or CONTRACTOR seeking, as a matter of right, adjustment or interpretation of the Contract, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between LOCKHEED MARTIN and CONTRACTOR rising out of or relating to the Contract. Claims must be made by Notice in the manner provided herein.
- (b) "Contract" means the instrument of contracting, such as "PO", "Purchase Order", or other such type designation, including all referenced documents, exhibits and attachments, and Modifications issued after execution of the Contract. Unless specifically enumerated, the Contract does not include other documents, including but not limited to, bidding requirements, advertisement or invitation to bid, instructions to bidders, sample forms, the CONTRACTOR's bid or portions of addenda relating to bidding requirements.
- (c) "CONTRACTOR" means the Party identified on the face of the Contract with whom LOCKHEED MARTIN is contracting.
- (d) "LOCKHEED MARTIN" means LOCKHEED MARTIN CORPORATION, acting through its companies, or business units, as expressly identified as a party to the Contract. If a subsidiary or affiliate of LOCKHEED MARTIN CORPORATION is identified on the face of the Contract then "LOCKHEED MARTIN" means that subsidiary, or affiliate.
- (e) "LOCKHEED MARTIN Procurement Representative" means the person authorized by LOCKHEED MARTIN's cognizant procurement organization to administer this Contract. Maybe referred to as Materiel Representative in some Exhibits.
- (f) "Modification" is (1) a written amendment to the initial Contract signed by both Parties, or (2) a Field Change Authorization or Construction Change Directive incorporated into the Contract.
- (g) "Site" shall mean the physical place or places where the construction work called for in this Contract will remain when work on it has been completed. It includes other adjacent or nearby property used by the CONTRACTOR or subcontractors in such construction, which can reasonably be said to be included in the "site".

- (h) "Subcontract" means all contracts placed by the CONTRACTOR or lower tier subcontractors for the specific purpose of performing any portion of the Work under this Contract, and includes but is not limited to purchase orders and changes, or modifications thereto.
- (i) "Subcontractor" means those having a direct contract with the CONTRACTOR for the performance of any part of the Work called for hereunder. The term shall also include one who merely furnishes material.
- (j) "Sub-subcontractor" is a person or an entity that has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site. The term Sub-subcontractor is referred to throughout the Contract as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.
- (k) "Work" means the construction and services required by the Contract whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by CONTRACTOR to fulfill the CONTRACTOR's obligations.

## 10. DRUG FREE WORKPLACE

Pursuant to the Drug Free Workplace Act of 1998 LOCKHEED MARTIN does not allow the presence of illegal drugs, or any person under the influence of such illegal drugs or alcohol, on its premises. All persons, vehicles and materials on LOCKHEED MARTIN premises are subject to search and testing. The CONTRACTOR shall implement its own system to both preclude the presence and influence of alcohol and illegal drugs on LOCKHEED MARTIN premises and to report any violation thereof with corrective action, to the LOCKHEED MARTIN Procurement Representative in writing within 30 days of such violations. Failure to comply with these provisions, including failure of any of CONTRACTOR's employees or Subcontractor's employees to consent to a blood test or urinalysis test when requested, based on reasonable suspicion, will result in removal of the CONTRACTOR's employee or Subcontractor's employee from performance on this Contract. CONTRACTOR shall insert the substance of this clause in all Subcontracts.

## 11. GRATUITIES/KICKBACKS

No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by CONTRACTOR, to any employee of LOCKHEED MARTIN with a view toward securing favorable treatment in connection with the Contract. CONTRACTOR hereby warrants that it has not offered or given kickbacks to LOCKHEED MARTIN with a view toward securing favorable treatment in connection with the Contract.

## 12. HAZARDOUS MATERIALS NOTIFICATION

- (a) Prior to bringing any hazardous material or chemical (as determined by OSHA regulations at 29 C.F.R. Section 1910.1200(d)) onto LOCKHEED MARTIN property or Work sites, the CONTRACTOR shall provide Notice to LOCKHEED MARTIN and receive written permission therefore. At the time of Notice, the CONTRACTOR shall provide a "Material Safety Data Sheet" for each such material or chemical to the Occupational Safety and Health Department of LOCKHEED MARTIN. The form of the Material Safety Data Sheet shall be OSHA Form 20 or equivalent, containing all of the information required by 29 C.F.R. Section 1910.1200(g).
- (b) LOCKHEED MARTIN facilities have hazardous materials, including asbestos, lead paint and PCBs. It is the responsibility of the CONTRACTOR to notify all site workers, including Subcontractors and Sub-subcontractors, of this paragraph and notify LOCKHEED MARTIN prior to disturbance, if potential hazardous materials are encountered.

### 13. INDEPENDENT CONTRACTOR RELATIONSHIP

- (a) CONTRACTOR is an Independent Contractor in all its operations and activities hereunder. The employees used by CONTRACTOR to perform Work under this Contract shall be CONTRACTOR's employees exclusively without any relation whatsoever to LOCKHEED MARTIN.
- (b) CONTRACTOR 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 CONTRACTOR, its officers, employees, agents, suppliers, Subcontractors or Sub-subcontractors, in the performance of any of its obligations under this Contract.

### 14. INSPECTIONS, TESTS, AND ACCEPTANCE

- (a) The CONTRACTOR shall provide and maintain its inspection system in accordance with sound business practices and in compliance with any governmental regulations, and as may be otherwise provided in this Contract. The CONTRACTOR shall keep records of all inspections complete and available to LOCKHEED MARTIN during the performance of this Contract and for seven (7) years after final payment.
- (b) All material and workmanship furnished by the CONTRACTOR, its Subcontractors and Sub-subcontractors shall be subject to inspection, examination and testing by LOCKHEED MARTIN during manufacture or construction and at any and all places where such manufacture or construction is carried on. LOCKHEED MARTIN may also inspect the plant or plants of the CONTRACTOR or of any of its Subcontractors, Sub-subcontractors and Suppliers engaged in the performance of this Contract. The CONTRACTOR and its Subcontractors and Sub-subcontractors, without additional charge, shall provide promptly all data, facilities, labor, materials, and assistance for LOCKHEED MARTIN's inspectors' performance of their duties. The CONTRACTOR shall be charged with any additional cost of inspection when materials and workmanship are not ready at the time specified for inspection. No inspection or test shall relieve the CONTRACTOR from responsibility for defects or other failure to meet the requirements of this Contract.
- (c)
  - (1) Tests, inspections and approvals of portions of the Work required by the Contract or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the CONTRACTOR shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to LOCKHEED MARTIN or with the appropriate public authority. The CONTRACTOR shall be responsible for all costs of tests, inspections, approvals and related items. The CONTRACTOR shall give LOCKHEED MARTIN twenty-four (24) hours Notice of when and where tests and inspections are to be made so that LOCKHEED MARTIN may be present for such procedures.
  - (2) If LOCKHEED MARTIN or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval, LOCKHEED MARTIN will instruct the CONTRACTOR to make arrangements for such additional testing, inspection or approval, and the CONTRACTOR shall give twenty-four (24) hours Notice to LOCKHEED MARTIN of when and where tests and inspections are to be made, so that LOCKHEED MARTIN may be present for such tests and inspections.
  - (3) If testing, inspection or approval, as provided for herein, reveal that portions of the Work fail to comply with requirements established by the Contract or by applicable codes or regulations, all costs made necessary by such failure shall be at the CONTRACTOR's expense. Required certificates of testing, inspection or approval

shall, unless otherwise required by the Contract, be secured by the CONTRACTOR and promptly delivered to LOCKHEED MARTIN.

- (4) Tests or inspections conducted pursuant to the Contract shall be made in a timely manner to avoid unreasonable delay in the Work.
- (d) Should it be considered necessary or advisable by LOCKHEED MARTIN at any time before final acceptance of the entire Work to make an examination of Work already completed, by removing or tearing out same, the CONTRACTOR shall upon request promptly furnish all necessary facilities, labor and material. If such Work is found to be defective or nonconforming in any material respect, the CONTRACTOR shall defray all the expenses of such examination and of satisfactory reconstruction.
- (e) LOCKHEED MARTIN shall have the right to reject defective material and workmanship or to require its replacement or correction. Rejected workmanship shall immediately be corrected and rejected material shall immediately be replaced with proper workmanship and/or proper material at CONTRACTOR's sole expense. The CONTRACTOR shall promptly segregate and remove the rejected material from the premises. If the CONTRACTOR fails to proceed at once with the replacement of rejected material or the correction of defective workmanship, LOCKHEED MARTIN may, at its sole discretion and without further Notice, (i) by contract or otherwise, replace such material or correct such workmanship and charge to the CONTRACTOR the cost incurred by LOCKHEED MARTIN in such replacement or correction; (ii) terminate this Contract for default, in accordance with the clause hereof titled "Termination for Default"; and/or (iii) require a reduction in price.
- (f) When CONTRACTOR deems the Work finally complete, CONTRACTOR shall give LOCKHEED MARTIN Notice as specified herein. After receipt of Notice, LOCKHEED MARTIN will determine if the Work has been completed according to the terms of the Contract and, if so, will issue a Certificate of Conformance to the CONTRACTOR indicating acceptance thereof as provided below. If the Work is incomplete, LOCKHEED MARTIN will give Notice to CONTRACTOR of the defects and/or omissions, and CONTRACTOR shall repeat the procedure stated herein until the Work has been accepted by LOCKHEED MARTIN.
- (g) Final acceptance of the Work will be confirmed by Certificate of Conformance issued by LOCKHEED MARTIN promptly after being satisfied that all requirements of the Contract have been met, and presentation of a complete and executed Supplier Release and Assignment and Lien Waivers from CONTRACTOR and all Subcontractors, Sub-subcontractors and material Suppliers.
- (h) Nothing contained in this clause shall in any way restrict LOCKHEED MARTIN's rights under the clause hereof entitled "Warranty and Correction of Defects".

## 15. INSURANCE

- (a) The CONTRACTOR shall purchase from and maintain in a company or companies lawfully authorized to do business in the state from which this Contract is issued, such insurance as will protect the CONTRACTOR from claims as set forth below, which may arise out of or result from the CONTRACTOR's operations under the Contract and for which the CONTRACTOR may be legally liable, whether such operations be by the CONTRACTOR or by a Subcontractor, Sub-subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable:
  - (1) Claims under worker's compensation, disability benefit and other similar benefit acts that are applicable to the Work to be performed;
  - (2) Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONTRACTOR's employees;
  - (3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONTRACTOR's employees; and
  - (4) Claims for damages insured by personal injury liability coverage, general liability, and builder's risk insurance.
- (b) CONTRACTOR shall provide a "Certificate of Insurance" to the LOCKHEED MARTIN Procurement Representative showing compliance with all insurance requirements prior to beginning Work on the Site. CONTRACTOR shall name LOCKHEED MARTIN as an additional insured for the duration of this contract. This Certificate shall contain a provision that coverages afforded under the policies will not be cancelled unless at least thirty (30) days prior Notice has been given to LOCKHEED MARTIN.
- (c) CONTRACTOR shall indemnify and hold harmless LOCKHEED MARTIN, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or personal injury to any person caused in whole or in part by the actions or omissions of CONTRACTOR, its officers, employees, agents, suppliers, and its Subcontractors or Sub-subcontractors and their officers, employees, agents and suppliers.
- (d) General Liability Coverage. The CONTRACTOR shall procure and maintain, at the CONTRACTOR's own expense, for the duration of the Work, liability insurance as hereinafter specified:
  - (1) CONTRACTOR's General Public Liability and Property Damage insurance, including vehicle coverage issued to the CONTRACTOR and protecting the CONTRACTOR from all claims for personal injury, including death, and all claims for destruction of or damage to property arising out of or in connection with any operations under the Contract, whether such operations be by the CONTRACTOR or by any Subcontractor or Sub-subcontractor. Insurance shall be written with a limit of liability of not less than \$1,000,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; and a limit of liability of not less than \$3,000,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$500,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than \$1,500,000 aggregate for any such damage sustained by two or more persons in any one accident.
  - (2) The CONTRACTOR shall acquire and maintain, if applicable, Fire and Extended Coverage insurance upon the Work to the full insurable value thereof for the benefit of

LOCKHEED MARTIN, the CONTRACTOR, and Subcontractors and Sub-subcontractors as their interest may appear. This provision shall in no way release the CONTRACTOR or CONTRACTOR's surety from obligations under the Contract to fully complete the Work.

- (e) Workmen's Compensation. The CONTRACTOR shall procure and maintain, at the CONTRACTOR's own expense, during the time for performing the Work, in accordance with the provisions of the laws of the State from which the Contract is issued Workmen's Compensation Insurance, including occupational disease provisions, for all of the CONTRACTOR's employees, at the Site and in case any Work is sublet, the CONTRACTOR shall require such Subcontractors and Sub-subcontractors similarly to provide Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous work under this Contract at the Site of the Work is not protected under the Workmen's Compensation statutes, the CONTRACTOR shall provide, and shall cause each Subcontractor and Sub-subcontractor to provide, adequate and suitable insurance of the protection of its employees not otherwise protected.
- (f) Builder's Risk Insurance. The CONTRACTOR shall secure "ALL RISK" type Builder's Risk Insurance for the Work. Unless specifically authorized by LOCKHEED MARTIN, the amount of such insurance shall not be less than the Contract Price. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind collapse, riot, aircraft, and smoke during the Contract period of performance, and until the Work is accepted by LOCKHEED MARTIN as provided herein. The policy shall name as the insured the CONTRACTOR and LOCKHEED MARTIN.
- (g) The CONTRACTOR shall also require its Subcontractors and Sub-subcontractors to comply with the foregoing insurance coverage, limits and certification requirements in the foregoing clauses (a) through (e), prior to entering the Site and/or performing Work.

## 16. LIMITATION OF OVERHEAD AND PROFIT

As a basis for negotiation of claims under the provisions hereof entitled "Changes" and "Suspension of Work", the following limitations of overhead and profit shall apply:

- (a) On labor performed by the CONTRACTOR, CONTRACTOR's combined overhead and profit shall not exceed 15.5% of the negotiated direct labor cost (including payroll additives) of these changes, plus a bonding charge, as applicable, not to exceed 1%.
- (b) On labor performed by the CONTRACTOR's Subcontractor, the combined overhead and profit to the CONTRACTOR and his Subcontractor and Sub-subcontractors together shall not exceed 21.3% of the negotiated direct labor cost (including payroll additives) of these changes, plus a bonding charge, as applicable, not to exceed 1%.
- (c) On material furnished by the CONTRACTOR, CONTRACTOR's combined overhead and profit shall not exceed 15.5% of the actual material cost, plus a bonding charge, as applicable, not to exceed 1%.
- (d) On material furnished by the CONTRACTOR's Subcontractor, the combined overhead and profit to the CONTRACTOR and his Subcontractor and Sub-subcontractors together shall not exceed 21.3% of the actual material cost of these changes, plus a bonding charge, as applicable, not to exceed 1%.

## 17. LOCKHEED MARTIN PROPERTY

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

- (a) LOCKHEED MARTIN Furnished Property.
  - (1) LOCKHEED MARTIN shall deliver to the CONTRACTOR, for use in connection with and under the terms of this Contract, the LOCKHEED MARTIN Furnished Property described in the Contract or Specifications together with any related data and information that the CONTRACTOR may request and is reasonably required for the intended use of the property (hereinafter referred to as "LOCKHEED MARTIN Furnished Property").
  - (2) If LOCKHEED MARTIN Furnished Property is received by the CONTRACTOR in a condition not suitable for the intended use, the CONTRACTOR shall, upon receipt of it, notify LOCKHEED MARTIN detailing the facts, and, as directed by the LOCKHEED MARTIN Procurement Representative and at LOCKHEED MARTIN's expense, either repair, modify, return, or otherwise dispose of the property. This provision does not apply to property furnished "as is".
  - (3) If LOCKHEED MARTIN Furnished Property is not delivered to the CONTRACTOR by the required time, LOCKHEED MARTIN shall, upon the CONTRACTOR's timely written request, make a determination of the delay, if any, caused the CONTRACTOR and shall make an equitable adjustment in the Contract Construction Schedule.
- (b) Changes in LOCKHEED MARTIN Furnished Property.

LOCKHEED MARTIN may, by written Notice, (i) decrease the LOCKHEED MARTIN Furnished Property provided or to be provided under this Contract, or (ii) substitute other LOCKHEED MARTIN Furnished Property for the property to be provided by LOCKHEED MARTIN or to be acquired by the CONTRACTOR for LOCKHEED MARTIN, under this Contract. The CONTRACTOR shall promptly take such action as LOCKHEED MARTIN may direct regarding the removal, shipment, or disposal of the property covered by such Notice.
- (c) Title in LOCKHEED MARTIN Furnished Property.
  - (1) LOCKHEED MARTIN shall retain title to all LOCKHEED MARTIN Furnished Property.
  - (2) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the CONTRACTOR for LOCKHEED MARTIN under this Contract shall pass to and vest in LOCKHEED MARTIN when its use in performing this Contract commences or when LOCKHEED MARTIN has paid for it, whichever is earlier, whether or not title previously vested in LOCKHEED MARTIN.
  - (3) If this Contract contains a provision directing the CONTRACTOR to purchase material for which LOCKHEED MARTIN will reimburse the CONTRACTOR as a direct item of cost under this Contract -
    - (i) Title to material purchased from a vendor shall pass to and vest in LOCKHEED MARTIN upon the vendor's delivery of such material; and
    - (ii) Title to all other material shall pass to and vest in LOCKHEED MARTIN upon -
      - (A) Issuance of the material for use in Contract performance;



- (B) Commencement of processing of the material or its use in Contract performance; or
  - (C) Reimbursement of the cost of the material by LOCKHEED MARTIN, whichever occurs first.
- (d) Use of LOCKHEED MARTIN property. LOCKHEED MARTIN property shall be used only for performing this Contract, unless otherwise provided in this Contract or approved by LOCKHEED MARTIN.
- (e) Property administration.
- (1) The CONTRACTOR shall be responsible and accountable for all LOCKHEED MARTIN property provided under this Contract.
  - (2) The CONTRACTOR shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of LOCKHEED MARTIN property.
- (f) Access. LOCKHEED MARTIN and its designees shall have access at all reasonable times to the premises in which any LOCKHEED MARTIN property is located for the purpose of inspecting the LOCKHEED MARTIN property.
- (g) Risk of loss. Unless otherwise provided in this Contract, the CONTRACTOR assumes the risk of and shall be responsible for, any loss or destruction of, or damage to, LOCKHEED MARTIN Furnished Property upon its delivery to the CONTRACTOR or upon passage of title to LOCKHEED MARTIN under paragraph (c) of this clause and for any other direct, indirect, special, incidental or consequential damages caused to LOCKHEED MARTIN on account of such loss, destruction or damage. However, the CONTRACTOR is not responsible for reasonable wear and tear to LOCKHEED MARTIN property or for LOCKHEED MARTIN property properly consumed in performing this Contract.
- (h) LOCKHEED MARTIN shall not be liable for breach of contract or otherwise for -
- (1) Any delay in delivery of LOCKHEED MARTIN Furnished Property;
  - (2) Delivery of LOCKHEED MARTIN Furnished Property in a condition not suitable for its intended use;
  - (3) A decrease in or substitution of LOCKHEED MARTIN Furnished Property; or
  - (4) Failure to repair or replace LOCKHEED MARTIN Furnished Property for which LOCKHEED MARTIN is responsible.
- (i) Final accounting and disposition of LOCKHEED MARTIN-Furnished Property. Upon completing this Contract, or at such earlier dates as may be fixed by LOCKHEED MARTIN, the CONTRACTOR shall submit, in a form acceptable to LOCKHEED MARTIN, inventory schedules covering all items of LOCKHEED MARTIN property (including any resulting scrap) not consumed in performing this Contract or delivered to LOCKHEED MARTIN. The CONTRACTOR shall prepare for shipment, delivery f.o.b. origin, or dispose of the LOCKHEED MARTIN property as may be directed or authorized by LOCKHEED MARTIN. The net proceeds of any such disposal shall be credited to the Contract price or shall be paid to LOCKHEED MARTIN as LOCKHEED MARTIN directs.
- (j) Abandonment and restoration of CONTRACTOR's premises. Unless otherwise provided herein, LOCKHEED MARTIN:
- (1) May abandon any LOCKHEED MARTIN property in place, at which time all obligations of LOCKHEED MARTIN regarding such abandoned property shall cease; and

- (2) Have no obligation to restore or rehabilitate the CONTRACTOR's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon Contract completion).

**18. MATERIAL AND WORKMANSHIP**

- (a) The CONTRACTOR warrants that the title to all materials, equipment and supplies employed by the CONTRACTOR in the performance of the Work hereunder shall be clear of all encumbrances of any nature whatsoever.
- (b) Unless otherwise specifically provided in the Contract, all equipment, material, and articles incorporated in the Work covered by the Contract are to be new and of the best or highest grade available for the purpose intended.
- (c) In the sole discretion of LOCKHEED MARTIN, substitution of like material may be permitted. Any requests for substitution shall be submitted for approval prior to award of the Contract. Unless expressly specified in the Construction Schedules, no substitution will be permitted, and the CONTRACTOR will be deemed to have agreed to furnish only the items specified. Approvals of substitutions will not relieve the CONTRACTOR of responsibility for fulfillment of various parts of the Work, or from specified guarantees, warranties and maintenance standards.
- (d) No materials, equipment or supplies to be incorporated in the Work shall be purchased by the CONTRACTOR, or by any Subcontractor or Sub-subcontractor working under CONTRACTOR, that are subject to any chattel mortgage or lien, or that are under a conditional sale or other agreement in which any interest whatsoever is retained by any other entity or individual.
- (e) All work under this Contract shall be performed in a skillful and workmanlike manner. The LOCKHEED MARTIN Procurement Representative may require the CONTRACTOR to remove from the Site any employee of the CONTRACTOR, its Subcontractors, or its Sub-subcontractors, that LOCKHEED MARTIN in its sole discretion deems incompetent, careless, or otherwise objectionable, or who violates the Drug Free Workplace clause in this Contract. The CONTRACTOR shall additionally be responsible for requiring each individual on the Site who is not an officer or employee of LOCKHEED MARTIN to display such identification as may be approved and directed by LOCKHEED MARTIN. All prescribed identification shall immediately be delivered to LOCKHEED MARTIN, for cancellation, when such an individual is no longer engaged on the Site. When required by LOCKHEED MARTIN, the CONTRACTOR shall also obtain and submit fingerprints of all persons employed or to be employed on the Work.

**19. NO DAMAGES FOR DELAY BEYOND CONTRACTOR'S CONTROL**

If CONTRACTOR's performance is delayed by acts or omissions of LOCKHEED MARTIN or by events beyond the CONTRACTOR's control, the CONTRACTOR shall submit a Claim requesting an increase in the Contract Construction Schedule period of performance. The CONTRACTOR shall in no event be entitled to an increase in the Contract Price or to damages by reason of the delay.

**20. NOTICE OF LABOR DISPUTES**

- (a) Whenever the CONTRACTOR has knowledge that any actual or potential labor dispute is delaying or threatens to delay the performance of this Contract, the CONTRACTOR shall immediately give Notice thereof, including all relevant information with respect thereto, to the LOCKHEED MARTIN Procurement Representative.
- (b) Each Subcontract or Sub-Subcontract shall provide that in the event its timely performance is delayed or threatened by delay by

any actual or potential labor dispute, the Subcontractor and/or Sub-subcontractor shall immediately notify the CONTRACTOR and the LOCKHEED MARTIN Procurement Representative, of all relevant information concerning such dispute.

- (c) The CONTRACTOR shall insert the substance of this clause in any Subcontract or Sub-subcontract hereunder for which a labor dispute may delay the timely performance of this Contract.

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

- (a) All operations of the CONTRACTOR (including storage of materials) upon LOCKHEED MARTIN premises shall be confined to areas authorized or approved in advance by LOCKHEED MARTIN. No unauthorized or unwarranted entry upon or passage through, or storage or disposal of materials shall be made upon LOCKHEED MARTIN premises. Premises adjacent to the Site may be made available for use by the CONTRACTOR without cost whenever such use will not interfere with other Contractors' uses or purposes. The CONTRACTOR shall be liable for any and all damages caused by CONTRACTOR to LOCKHEED MARTIN premises. The CONTRACTOR and its Subcontractors and/or Sub-subcontractors shall hold and save harmless LOCKHEED MARTIN, its officers, employees and agents, from liability of any nature or kind arising from any use, trespass or damages occasioned by its operations on premises of third parties.
- (b) Temporary buildings (storage sheds, shops, offices, etc.) may be erected by the CONTRACTOR only with the advance approval of LOCKHEED MARTIN and shall be built with labor and materials furnished by the CONTRACTOR without expense to LOCKHEED MARTIN. Such temporary buildings and/or utilities shall remain the property of the CONTRACTOR and will be removed by the CONTRACTOR at its sole expense upon the completion of the Work.
- (c) The CONTRACTOR shall use only established roadways or construct and use such temporary roadways as may be authorized in advance by LOCKHEED MARTIN. When it is necessary to cross curbing or sidewalks, the CONTRACTOR shall provide protection against damage. Any roads, curbing, or sidewalks damaged by CONTRACTOR, Subcontractors, or Sub-subcontractors shall be repaired by and at the expense of the CONTRACTOR, to LOCKHEED MARTIN's satisfaction.
- (d) The CONTRACTOR shall furnish adequate toilet facilities for its employees. Toilet facilities shall conform to all applicable federal, state and local sanitary regulations and shall be located as approved in advance by LOCKHEED MARTIN.
- (e) The Work shall be done without interference with the ordinary use of streets, easements and passages and the CONTRACTOR shall cooperate with other contractors of LOCKHEED MARTIN and LOCKHEED MARTIN employees as may be required by LOCKHEED MARTIN. The CONTRACTOR shall not commit or permit any act which will interfere with the performance of work by any other Contractors or LOCKHEED MARTIN employees, whether at the Site or not.
- (f) No welding by arc or gas methods, or flame cutting by torch, will be accomplished by the CONTRACTOR without prior coordination with the approval of the LOCKHEED MARTIN Facilities Engineering Representative at the Site. It shall be the sole responsibility of the CONTRACTOR to provide and properly install any required welding protection for LOCKHEED MARTIN's property, equipment, material and personnel.

## **22. PATENT INDEMNITY AND NOTICE OF INFRINGEMENT**

- (a) CONTRACTOR hereby agrees to indemnify and save harmless LOCKHEED MARTIN, its officers, employees, customers, assigns, and others claiming under LOCKHEED MARTIN from liability from any actual or alleged patent, copyright, trademark

or trade secret infringement by reason of any manufacture, use, or sale of any items delivered by CONTRACTOR under this Contract, or for any items manufacturable from reports, drawings, blueprints, data, or technical information delivered by CONTRACTOR under this Contract. Such liability shall include, but is not limited to damages, costs, attorney's fees, and expenses.

- (b) The CONTRACTOR shall report to LOCKHEED MARTIN promptly and in reasonable written detail, each Notice or claim of patent infringement, based on the performance of this Contract, of which the CONTRACTOR has knowledge.
- (c) In the event of any suit against LOCKHEED MARTIN, or any claim against LOCKHEED MARTIN made before suit has been instituted, on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed hereunder, the CONTRACTOR shall furnish to LOCKHEED MARTIN, upon request, all evidence and information in possession of the CONTRACTOR pertaining to such suit or claim.

### 23. PAYMENTS

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

### 24. PRECEDENCE

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

### 25. PRESERVATION OF EXISTING VEGETATION

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

### 26. PROTECTION OF MATERIALS AND WORK PERFORMED

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

### 27. RECORDS

- (a) The CONTRACTOR agrees to maintain and store, at its own expense and for seven (7) years after final payment under the Contract, all books, documents, papers and records of any kind relating to the Contract. The CONTRACTOR agrees that LOCKHEED MARTIN shall, until the expiration of seven (7) years after final payment under the Contract, have access to and the right to examine any books, documents, papers and records of the CONTRACTOR involving transactions related to the Contract.
- (b) The CONTRACTOR shall require the substance of this section to be included in any agreement with Subcontractors and Sub-subcontractors.

**28. RELEASE OF INFORMATION**

- (a) 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 CONTRACTOR without the prior written approval of LOCKHEED MARTIN.
- (b) The CONTRACTOR shall require the substance of this section to be included in any agreements with Subcontractors and Sub-subcontractors.

**29. REMOVAL OF EQUIPMENT AND CLEANUP**

- (a) The CONTRACTOR shall at all times keep the Site, including storage areas, free from accumulations of waste material and rubbish. Prior to completion of the Work, CONTRACTOR shall remove any rubbish from the Site. Upon completion of the construction, the CONTRACTOR shall remove all tools, scaffolding equipment, and materials not the property of LOCKHEED MARTIN and leave the Site in a broom clean, neat condition satisfactory to LOCKHEED MARTIN.
- (b) Should the CONTRACTOR fail to take prompt action to remove its equipment, tools, materials, and other articles from the site, LOCKHEED MARTIN (at its option and without waiver of such other rights as it may have) may, thirty (30) days after Notice to CONTRACTOR, treat such items as abandoned property and thereby take title to, or dispose or use them as it deems appropriate.

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

- (a) For use in performance of this Contract, the CONTRACTOR agrees to and does hereby grant to LOCKHEED MARTIN the right to reproduce, use, and dispose of all or any part of the reports, drawings, blueprints, technical data, computer software, and technical information deliverable or delivered to LOCKHEED MARTIN pursuant to this Contract, and warrants title to same. The CONTRACTOR agrees to indemnify and hold LOCKHEED MARTIN and its officers, employees and assigns harmless from any damages, cost, claims and liability arising out of claims that said reproduction, use, or disposition infringes upon third party rights. LOCKHEED MARTIN shall give the CONTRACTOR prompt Notice of any demand, claim, suit or action alleging such liability.
- (b) LOCKHEED MARTIN shall be under no obligation to restrict disclosure or use, or hold in confidence any data, software, or information which is furnished, delivered, or disclosed under this Contract, or in connection herewith, or as a result hereof, either directly or indirectly, unless and until an agreement to hold same in confidence or restrict disclosure or use is accepted in writing by the LOCKHEED MARTIN Procurement Representative. In the absence of such written agreement, LOCKHEED MARTIN may ignore and disregard any restrictive legend on any such data and software, which shall be void and of no effect whatsoever. Acceptance by LOCKHEED MARTIN of data or software with a restrictive legend not in full compliance with the terms of this Contract shall in no way imply or create a waiver of such terms, unless first authorized by the LOCKHEED MARTIN

Procurement Representative by written amendment of this Contract.

- (c) CONTRACTOR agrees not to deliver or furnish any data or software subject to limited use or reproduction unless otherwise agreed as specified above.
- (d) If any services, articles, or parts thereof, contracted for hereunder are performed or made to data, standards, plans, drawings or designs furnished by LOCKHEED MARTIN, the CONTRACTOR shall not reproduce, use, or disclose to others any such information without LOCKHEED MARTIN's written consent, nor without such written consent, supply or disclose any information regarding any such services or articles, or equipment or any material used therein, nor incorporate in other services, products, or articles any special features of design or manufacture peculiar to the services, products or articles contracted for under this Contract.

**31. SAFETY AND ACCIDENT PREVENTION**

- (a) In performing Work under this Contract on LOCKHEED MARTIN property, the CONTRACTOR is responsible for the safety and health of the CONTRACTOR'S, Subcontractors', and Sub-subcontractors' employees, and shall:
  - (1) Conform to all safety requirements contained in this Contract and comply with all local, state and federal health and safety regulations;
  - (2) Comply with the safety rules of LOCKHEED MARTIN that concern related activities not directly addressed in this Contract;
  - (3) Take all reasonable steps and precautions to prevent accidents and preserve the life and health of all individuals performing the Work or in any way coming in contact with the performance of this Contract;
  - (4) Take such additional immediate precautions as LOCKHEED MARTIN may reasonably require for safety and accident prevention purposes; and
  - (5) Be responsible for informing all CONTRACTOR and Subcontractor employees of any hazards associated with the job site.
- (b) The LOCKHEED MARTIN Procurement Representative may, by written order, direct additional safety and accident standards as may be required in the performance of this Contract.
- (c) The CONTRACTOR shall immediately notify LOCKHEED MARTIN of any accident, incident or exposure resulting in fatality, lost-time, occupational injury or occupational disease, or contamination of property, or property loss of \$10,000 or more, arising out of Work performed under this Contract; provided, however, the CONTRACTOR will not be required to include in any report an expression of opinion as to fault or negligence. In addition, the CONTRACTOR shall comply with any illness, incident and injury experience reporting requirements set forth in the Contract. The CONTRACTOR will investigate all such work-related incidents or accidents to the extent necessary to positively determine the cause, and furnish LOCKHEED MARTIN with a report, in such form as LOCKHEED MARTIN may require, of the investigative findings, together with proposed and/or completed corrective actions.
- (d) Any violation of these safety rules and requirements, unless immediately corrected as directed by the LOCKHEED MARTIN Procurement Representative, shall be a material default and shall be grounds for termination of this Contract in accordance with the "Termination for Default" clause of this Contract.

- (e) CONTRACTOR shall be responsible for and hereby agrees to indemnify and save LOCKHEED MARTIN harmless from any and all:
  - (1) damage to the property of LOCKHEED MARTIN, the CONTRACTOR, Subcontractors or Sub-subcontractors; or
  - (2) injury to employees of LOCKHEED MARTIN, the CONTRACTOR, Subcontractors or Sub-subcontracts; or
  - (3) for any liability whatsoever arising out of or in connection with the presence of CONTRACTOR or its Subcontractors or Sub-subcontractors pursuant to the Contract.
- (f) The CONTRACTOR shall cause the substance of this clause including this paragraph (f) and any applicable Contract Provisions to be inserted in Subcontracts and Sub-subcontracts which: (i) amount to \$1,000,000 or more unless LOCKHEED MARTIN makes a written determination that this is not required; (ii) require construction, repair, or alteration in excess of \$10,000; or (iii) the CONTRACTOR, regardless of dollar amount, determines that hazardous materials or operations are involved.

### 32. SITE INVESTIGATIONS AND REPRESENTATIONS

- (a) The CONTRACTOR represents that it has investigated and satisfied itself as to the nature and location of the Work, the general and local conditions, including but not limited to those bearing upon transportation, disposal, handling and storage of materials; the availability of labor, water, electric power, and roads; the uncertainties of weather, river stages, tides, or similar physical conditions at the Site; the conformation and conditions of the ground; the character of equipment and facilities needed preliminary to and during the performance of the Work, and all other matters upon which information is reasonably obtainable and which can in any way affect the Work or the cost thereof under this Contract.
- (b) The CONTRACTOR further represents that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Site, including all exploratory work done by LOCKHEED MARTIN, as well as from information presented by the Specifications and Drawings.
- (c) **LOCKHEED MARTIN expressly disclaims the accuracy and reliability of any subsurface tests and/or representations provided with the Bid Documents. Said materials are provided for illustrative purposes only, and CONTRACTOR is required to make and has made its own independent tests of subsurface conditions.**
- (d) Failure by the CONTRACTOR to acquaint itself with all available information shall not relieve it of responsibility for successfully performing the Work. LOCKHEED MARTIN assumes no responsibility for any conclusions or interpretations made by the CONTRACTOR based on the information made available by LOCKHEED MARTIN or for any understandings reached or representations made by any of its officers, employees or agents prior to the execution of this Contract, unless (1) such understanding or representations are expressly stated in this Contract and (2) this Contract expressly provides that the responsibility therefor is assumed by LOCKHEED MARTIN.
- (e) Where alterations of and/or additions to existing construction are required under this Contract, the CONTRACTOR shall verify all dimensions and determine all existing conditions that may affect its Work and shall be responsible for the accuracy of such dimensions and determinations.

### 33. SPECIFICATIONS AND DRAWINGS

- (a) CONTRACTOR shall comply with all Specifications and Drawings set forth in the Statement of Work hereof. All Work called for in said Specifications and Drawings shall be accomplished in accordance with all applicable national and local codes.
- (b) The CONTRACTOR shall keep on the Site a copy of the Specifications and Drawings and shall at all times provide LOCKHEED MARTIN access thereto. Anything mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both. In case of difference between Specifications and Drawings, the Specifications shall govern. In any case of discrepancy either in the figures, in the Specifications, or in the Drawings, the matter shall be promptly submitted to the LOCKHEED MARTIN Procurement Representative, who shall promptly make a determination in writing. Any adjustment by the CONTRACTOR without this determination shall be at its own risk and expense. LOCKHEED MARTIN shall furnish from time to time such detail Drawings and other information as may be considered necessary, unless otherwise provided.
- (c) Omissions and Misdescriptions. Omissions from the Specifications or Drawings or the misdescription of details of Work which are manifestly necessary to carry out the intent of the Specifications and Drawings, shall not relieve the CONTRACTOR from performing such omitted or misdescribed details of Work, but they shall be performed as if fully and correctly set forth and described in the Specifications and Drawings.
- (d) Checking of Drawings and Dimensions. The CONTRACTOR shall check all drawings furnished it immediately upon their receipt and shall promptly provide Notice to LOCKHEED MARTIN of any discrepancies. Dimensions marked on Drawings shall in general be followed in preference to scale measurements. Large scale detail Drawings shall in general govern small scale Drawings. The CONTRACTOR shall compare all Drawings and verify the figures before laying out the Work and will be responsible for any errors which might have been avoided thereby. When measurements are affected by field conditions, the CONTRACTOR shall take measurements notwithstanding the giving of scale or figure dimensions in the Drawings.
- (e) Deviations. Deviations from the Drawings and the dimensions therein given, whether or not error is believed to exist, shall not be made until written authority is obtained from LOCKHEED MARTIN.
- (f) Base Lines and Grades. The CONTRACTOR shall lay out its work from base lines and grades established by LOCKHEED MARTIN and shall be responsible for all measurements in connection therewith. The CONTRACTOR shall, at its own expense, furnish all stakes, templates, platforms, equipment, and ranges and labor that may be required in setting and cutting, or laying out any part of the Work. The CONTRACTOR will be held responsible for the proper execution of the Work to such lines and grades as may be established or indicated by LOCKHEED MARTIN, and all stakes or other marks thus established shall be preserved by it until their removal is authorized by LOCKHEED MARTIN. LOCKHEED MARTIN will furnish, on request from the CONTRACTOR, all location and limit marks reasonably necessary for the conduct of the Work.
- (g) All Drawings shall become the property of LOCKHEED MARTIN, and LOCKHEED MARTIN shall be entitled, without further payment or liability to the CONTRACTOR and without further permission, to use such drawings and to reproduce them; provided, however, the use of such drawings shall not imply a license to LOCKHEED MARTIN under any patent or shall not be construed as affecting the scope of any license otherwise granted to LOCKHEED MARTIN under any patent.

- (h) The CONTRACTOR shall furnish to LOCKHEED MARTIN for all phases of the Work under Specification sections wherein they apply, a sufficient number of submittals so that LOCKHEED MARTIN can retain three (3) copies. Submittals include, but are not limited to, complete sets of certified shop drawings, fabrication and welding procedures, specifications, reports, any applicable standards, and/or catalog data including vendors' delivery dates. This information shall be submitted for approval within ten (10) days, in accordance with the Construction Schedule, after award of the Contract. Submittals will be marked "approved", "approved as noted", or "disapproved". Submittals marked "approved" or "approved as noted" need not be resubmitted. Submittals marked "disapproved" shall be resubmitted within seven (7) calendar days. All submittals shall be "approved" or "approved as noted" before starting fabrication.
- (i) LOCKHEED MARTIN's review and/or approval of submittals shall not relieve the CONTRACTOR from the responsibility of producing completed and installed Work in strict conformance with the Contract requirements. LOCKHEED MARTIN will not assume the responsibility for searching out deviations in the CONTRACTOR's submittals or any Specifications indicated by the CONTRACTOR on submittals. It is understood that the review and/or approval by LOCKHEED MARTIN of the CONTRACTOR's submittals shall not be construed as a complete check as to their adequacy, nor as an agreement that the submittal will meet the requirements of the Contract. Such review and/or approvals shall in no way relieve the CONTRACTOR of responsibility for any error or deficiency which may exist in the submittal, as the CONTRACTOR shall be responsible for meeting all requirements of the Contract.
- (j) In the event the Work set forth in the Specifications and Drawings does not comply with requirements of the applicable national or local codes, the CONTRACTOR shall provide Notice to the LOCKHEED MARTIN Procurement Representative of such fact and LOCKHEED MARTIN may, by issuing a Field Change Authorization or Construction Change Directive in accordance with the provisions of the Changes clause hereof, authorize compliance by the CONTRACTOR with the requirements of the applicable national or local codes.
- (k) The CONTRACTOR shall provide to LOCKHEED MARTIN one (1) set of Drawings that accurately portray "as-built" conditions of all construction items within the Contract. Each of these Drawings shall be neatly and clearly marked-up (in red) to show all variations between the as-built construction and that indicated or specified by the Contract. Where a choice of material, equipment and/or methods is permitted herein, or where variations in the scope or character of the Work from that indicated or specified is permitted by subsequent modification to the Contract, such choices or variations shall be reflected on these Drawings. The as-built Drawings shall include such supplementary notes, legends and details as may be necessary for legibility and clear portrayal of the as-built construction. All of the required as-built Drawings will be delivered to LOCKHEED MARTIN within four (4) weeks after completion of construction.
- (l) The CONTRACTOR acknowledges that the Specifications and Drawings are owned solely by LOCKHEED MARTIN and acknowledges that they contain confidential, proprietary and trade secret information. CONTRACTOR agrees to maintain the confidentiality of these documents so far as is possible within the scope of the Work as provided for in the Contract Documents. CONTRACTOR will not at any time provide any of the Contract documents to any person or entity that is not a Subcontractor or Sub-subcontractor on an employee or officer of a Subcontractor or Sub-subcontractor. CONTRACTOR shall include the substance of this paragraph in all agreements with Subcontractors and Sub-subcontractors.

### 34. SUBCONTRACTORS

- (a) The CONTRACTOR shall at all times select qualified vendors and Subcontractors for performance of all Subcontract work and the furnishing of materials and labor. Nothing noted in any Subcontract hereunder shall create any contractual relation between any Subcontractor or Sub-subcontractor and LOCKHEED MARTIN. The Contract shall not be nullified, in whole or in part, by any Subcontract or Sub-subcontract.
- (b) CONTRACTOR shall keep all invoices for labor, materials, tools, services, etc., incurred in connection with this Contract on a current basis, and if required by LOCKHEED MARTIN, shall present evidence that payment therefor has been made.
- (c) Unless otherwise stated in the Contract or the bidding requirements, the CONTRACTOR, as soon as practicable after award of the Contract, shall furnish in writing to LOCKHEED MARTIN through the LOCKHEED MARTIN Procurement Representative the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The LOCKHEED MARTIN Procurement Representative will promptly reply to the CONTRACTOR stating whether or not LOCKHEED MARTIN has any objection to any such proposed person or entity.
- (d) The CONTRACTOR shall not contract with a proposed person or entity to whom LOCKHEED MARTIN has made objection. The CONTRACTOR shall not change a Subcontractor, person or entity previously selected without LOCKHEED MARTIN Procurement Representative prior approval to such substitution.

### 35. SUPERINTENDENCE

- (a) The CONTRACTOR shall provide a competent Superintendent, with necessary assistants, sufficient and competent management and supervisory personnel on the Site during performance of any Work.
- (b) The Superintendent is subject to acceptance by LOCKHEED MARTIN and subject to the continuing satisfaction of LOCKHEED MARTIN. If such personnel become unacceptable to LOCKHEED MARTIN, at LOCKHEED MARTIN'S sole discretion, the CONTRACTOR shall take immediate steps to replace such person(s). Such superintendence and management shall efficiently supervise the Work and be responsible for all requirements of the Contract.
- (c) The Superintendent shall represent the CONTRACTOR, and communications including Notices, delivered to the Superintendent shall be deemed delivered to the CONTRACTOR.
- (d) CONTRACTOR superintendence and/or management at the Site shall have the authority to commit the CONTRACTOR to Field Change Authorizations and Construction Change Directives. Upon acceptance of the Contract, CONTRACTOR shall provide the LOCKHEED MARTIN Procurement Representative with Notice as to personnel designated under this provision, and such authority shall remain in force until Notice otherwise is received by the LOCKHEED MARTIN Procurement Representative.

### 36. SURVIVABILITY

If this Contract is terminated for default or convenience, or when the Work is complete and finally accepted, CONTRACTOR shall not be relieved of the obligations contained in this Contract, except as expressly provided herein.

### 37. SUSPENSION OF WORK

- (a) The LOCKHEED MARTIN Procurement Representative may order the CONTRACTOR in writing to suspend all or any part of the Work of this Contract for such period of time as LOCKHEED MARTIN may determine to be appropriate for the convenience of LOCKHEED MARTIN. If, without the fault or negligence of the

CONTRACTOR, the performance of all or any part of the Work is suspended for an unreasonable period of time, an adjustment may be made by LOCKHEED MARTIN for any increase in the cost of performance of the Contract (excluding profit) necessarily caused by the unreasonable suspension, and the Contract shall be modified in writing accordingly. No adjustment shall be made to the extent that performance by the CONTRACTOR would have been prevented by other causes even if the Work had not been so suspended. Any Claim must be asserted to the LOCKHEED MARTIN Procurement Representative in writing within twenty-four (24) hours after the termination of the suspension and a proposal for adjustment must be submitted to the LOCKHEED MARTIN Procurement Representative in writing within twenty (20) days after the termination of suspension and must fully set forth the requested adjustment in the Contract Price and/or adjustment in the Contract Construction Schedule, if any. If an adjustment in the Contract Construction Schedule period of performance is requested, the proposal for adjustment shall also separately set forth the time required, including premium time, to maintain the present period of performance.

- (b) In the event the CONTRACTOR is instructed to vacate an area where Work is being performed, the Construction Schedule will be extended by the time lost. If the CONTRACTOR is ordered to vacate for more than one hour at any one time, then the CONTRACTOR will make every reasonable effort to place his labor force in other productive work. If no other work is available, upon receipt of a draft Field Change Authorization indicating a Claim for adjustment acceptable to LOCKHEED MARTIN, LOCKHEED MARTIN will reimburse the CONTRACTOR for the labor cost (without mark-up) of the time lost in excess of one hour per man, but in no event more than fifteen (15) hours per man. If the CONTRACTOR is required to vacate an area for more than sixteen (16) normal working hours the provisions of subparagraph (a) above shall apply in lieu of this paragraph.

### 38. TAXES

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

### 39. TERMINATION FOR CONVENIENCE

- (a) (1) LOCKHEED MARTIN may terminate part or all of this Contract for its convenience by Notice to CONTRACTOR. LOCKHEED MARTIN's only obligation shall be to pay CONTRACTOR a percentage of the price reflecting the percentage of the Work performed prior to the Notice of termination, plus reasonable charges that CONTRACTOR can demonstrate to the satisfaction of LOCKHEED MARTIN, using generally accepted accounting principles, which have resulted from the termination. CONTRACTOR shall not be paid for any Work performed or costs incurred which reasonably could have been avoided.
- (2) 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. CONTRACTOR's termination claim shall be submitted within thirty (30) days from the effective date of the termination.
- (b) CONTRACTOR shall continue all Work not terminated.

### 40. TERMINATION FOR DEFAULT

- (a) Time is of the essence of this Contract.
- (b) If the CONTRACTOR refuses or fails (i) to prosecute the Work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Contract, or any

extension thereof, or (ii) fails to complete such Work in said time, or (iii) fails to perform any other requirement under this Contract, LOCKHEED MARTIN may, by Notice to the CONTRACTOR, terminate this Contract in whole or in part. LOCKHEED MARTIN's right to terminate this Contract under subdivisions (b)(i) and (b)(iii) above may be exercised if the CONTRACTOR does not cure such failure within ten (10) days (or more if authorized in writing by the LOCKHEED MARTIN Procurement Representative) after receipt of Notice from LOCKHEED MARTIN specifying the failure. LOCKHEED MARTIN'S right to terminate the Contract under subdivision (b)(ii) is not subject to cure. Any Notice of termination pursuant to subdivision (b)(ii) is effective upon receipt by CONTRACTOR.

- (c) In the event LOCKHEED MARTIN terminates this Contract in whole or in part, LOCKHEED MARTIN may take over the Work and complete it, by contract or otherwise, and may take possession of and use any materials, appliances and plant on the Site necessary for completing the Work. However, the CONTRACTOR shall continue the Work not terminated. The CONTRACTOR and its sureties shall be liable for any damage to LOCKHEED MARTIN resulting from the CONTRACTOR's refusal or failure to complete the Work within the Contract Construction Schedule, whether or not the CONTRACTOR's right to proceed with the Work is terminated. This liability includes any excess costs incurred by LOCKHEED MARTIN in completing the Work; and, if specified in the Construction Schedule of this Contract, liquidated damages for each calendar day of delay until the Work is finally accepted.
- (d) The right of the CONTRACTOR to proceed shall not be terminated, nor the CONTRACTOR charged with damages under this clause, if the delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR. Examples of such causes include acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; freight embargoes; unusually severe weather; and delays of Subcontractors or Suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the CONTRACTOR and such Subcontractors or Suppliers; provided, that the CONTRACTOR shall within ten (10) days from the beginning of any such delay, Notify LOCKHEED MARTIN of the cause of delay.
- (e) If, after Notice of termination of the CONTRACTOR's right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the Parties shall be the same as if the Notice of termination had been issued pursuant to the clause entitled "Termination for Convenience".
- (f) If this Contract is terminated for default, LOCKHEED MARTIN may require the CONTRACTOR to transfer title and deliver to LOCKHEED MARTIN any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights that the CONTRACTOR has specifically produced or acquired for the terminated portion of this Contract. Upon direction of LOCKHEED MARTIN, the CONTRACTOR shall also protect and preserve property in its possession in which LOCKHEED MARTIN has an interest.
- (g) Failure of LOCKHEED MARTIN to enforce any right under this clause shall not be deemed a waiver of any right hereunder. The rights and remedies of LOCKHEED MARTIN in this clause are in addition to any other rights and remedies provided by law or under this Contract.

### 41. USE OF STRUCTURE BEFORE ACCEPTANCE

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

**42. WAIVER, APPROVAL, AND REMEDIES**

- (a) Failure by LOCKHEED MARTIN to enforce any of the provisions of this Contract shall not be construed as a waiver of the requirements of such provision or provisions, or as a waiver of the right of LOCKHEED MARTIN thereafter to enforce each and every such provision.
- (b) LOCKHEED MARTIN's approval of the CONTRACTOR's design or material shall not relieve the CONTRACTOR of any warranties or of any other requirements of this Contract; nor shall waiver by LOCKHEED MARTIN of any drawings or specification requirements for one or more articles constitute a waiver of such requirements for the remaining articles to be delivered under this Contract unless so stated by LOCKHEED MARTIN in writing. The provisions of this clause shall not limit or affect the rights of LOCKHEED MARTIN under the clause entitled "Inspection and Acceptance".
- (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.

**43. WARRANTY AND CORRECTION OF DEFECTS**

- (a) In addition to any other warranties in this Contract, and in addition to the warranties provided in paragraph (h) of this clause, the CONTRACTOR warrants that Work performed under this Contract conforms to the Contract requirements and is free of any defects in equipment, material, or design furnished, or workmanship performed by the CONTRACTOR or any Subcontractor, Sub-subcontractor, material supplier or manufacturer.
- (b) This warranty shall continue for a minimum of two (2) years from the date of final acceptance of the entire Work, unless otherwise stated in the Contract.
- (c) The CONTRACTOR shall remedy, at the CONTRACTOR's expense, any failure to conform or any defect in the Work. In addition, the CONTRACTOR shall remedy, at the CONTRACTOR's expense, any damage to LOCKHEED MARTIN owned or controlled real or personal property, when that damage is the result of:
  - (1) The CONTRACTOR's failure to conform to Contract requirements; or
  - (2) Any defect of equipment, material, workmanship, or design furnished.

- (d) The CONTRACTOR shall restore any Work damaged in fulfilling the terms and conditions of this clause. The CONTRACTOR's warranty with respect to work repaired or replaced will run for two (2) years from the date of repair or replacement.
- (e) LOCKHEED MARTIN shall provide Notice to the CONTRACTOR, within a reasonable time after discovery, of any failure, defect, or damage.
- (f) If the CONTRACTOR fails to remedy any failure, defect, or damage within a reasonable time after receipt of Notice, LOCKHEED MARTIN shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the CONTRACTOR's expense.
- (g) With respect to all warranties, express or implied, from Subcontractors, Sub-subcontractors, material suppliers, or manufacturers for Work performed and materials furnished under this Contract, the CONTRACTOR shall:
  - (1) Obtain all warranties that would be given in normal commercial practice;
  - (2) Require all warranties to be executed, in writing, for the benefit of LOCKHEED MARTIN; and
  - (3) Enforce all warranties for the benefit of LOCKHEED MARTIN.
- (h) All Subcontractor, Sub-subcontractor, material and/or manufacturer warranties shall inure to the benefit of LOCKHEED MARTIN and its assigns.
- (i) This warranty shall not limit LOCKHEED MARTIN's rights under the Contract with respect to latent defects, gross mistakes, or fraud.
- (j) The remedies provided above shall not be restrictive of, but shall be cumulative and in addition to, all other remedies of LOCKHEED MARTIN.

**44. YEAR 2000 COMPLIANCE**

- (a) Year 2000 compliant, as used in this clause, means that with respect to information technology, that the information technology accurately processes date/time data (including but not limited to, calculating, comparing, and sequencing) from, to, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it.
- (b) Any and all products provided hereunder will be Year 2000 compliant at the time of delivery to LOCKHEED MARTIN, including but not limited to accurately inputting, storing, manipulating, comparing, calculating, updating, displaying, outputting, and transferring such dates and data unless otherwise expressly provided herein by LOCKHEED MARTIN.
- (c) This provision takes precedence over all other provisions of this Contract with respect to being Year 2000 compliant. In the event of a discovery of any non-compliance, either before, concurrent with, or subsequent to delivery of a good or service under this Contract, the discovering party shall provide Notice to the other party within five (5) business days. If the defective good or service is being presented for acceptance or has already been delivered, at LOCKHEED MARTIN's option, the defective good or service shall be repaired or replaced within ten (10) business days of such Notice at no cost to LOCKHEED MARTIN.
- (d) Nothing in this provision shall be construed to limit any other rights under this Contract, at law or in equity that LOCKHEED MARTIN may have with respect to Year 2000 compliance.