



**GENERAL TERMS AND CONDITIONS OF SOLICITATION/PURCHASE,  
ALL DOMESTIC CONSTRUCTION SOLICITATION/PURCHASES**

**FORM Missiles and Fire Control (MFC) LM Energy-Commercial Construction Terms & Conditions (CCTC)(01/16)**

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### SECTION I.

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

- a. CONTRACTOR's acknowledgment, acceptance of payment, or commencement of performance, shall constitute CONTRACTOR's unqualified acceptance of this Contract.
- b. **Additional or differing terms or conditions proposed by CONTRACTOR or included in CONTRACTOR's acknowledgment are objected to by LOCKHEED MARTIN and have no effect unless expressly accepted in writing by a LOCKHEED MARTIN Procurement Representative.**

#### 2. CONTRACT DEFINITIONS

As used throughout this Contract (Purchase Agreement), the following terms shall have the meanings set forth below unless otherwise indicated:

- a. "LOCKHEED MARTIN" means LOCKHEED MARTIN CORPORATION or, LOCKHEED MARTIN subsidiary placing the order.
- b. "CONTRACTOR" means the individual, partnership, corporation, or association contracting to furnish the described Work.
- c. "Procurement Representative" means a duly authorized LOCKHEED MARTIN Global Supply Chain Management (GSCM) Buyer or Subcontract Administrator.
- d. "Contract" and "Contract Documents" means these General Provisions, Drawings, Specifications, Addenda, and all other documents which are attached hereto and incorporated by reference, and Modifications issued subsequent to the execution of this Contract.
- e. "Change Order," "Amendment," "Notification of Change," or "Modification" shall mean a formal written order describing the change to be made, issued and signed by a LOCKHEED MARTIN Procurement Representative.
- f. "Work" means all of the design and construction which CONTRACTOR is required to perform under the Contract Documents or can be reasonably inferred from the Contract Documents, and shall include all labor, tools, construction means, construction equipment, materials, supplies, facilities, services, scaffolding, appliances, water, heat, air conditioning, utilities, transportation, and everything reasonably necessary or proper to complete the design and construction of the Project, whether temporary or permanent and whether or

not incorporated or to be incorporated in the Work.

- g. "Project" means the total construction required under the Contract Documents.
- h. "Contract Sum" means the total amount payable by LOCKHEED MARTIN to CONTRACTOR for performance of the Work under the Contract Documents and includes all applicable federal, state and local taxes, duties and fees.
- i. "Project Site" means the area of performance of this Contract.
- j. "CLAIM" means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment in a sum certain, the adjustment or interpretation of Contract terms or other allowable relief arising under this Contract. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this Contract. The submission may be converted to a claim under this Contract by complying with any submissions required, if there is a dispute either as to liability or amount.
- k. "Contract Schedule" means the CONTRACTOR shall, prior to commencement of Work, prepare and submit for approval three (3) copies of a practicable schedule, showing the order in which the CONTRACTOR proposes to perform the Work, the dates on which CONTRACTOR will start the several salient features (including procurement of materials, plant and equipment) and the contemplated dates for completing each portion. The Contract Schedule shall be in the form of a progress chart of suitable scale to indicate the percentage of Work scheduled for completion at any time.

#### 3. CONTRACT DOCUMENTS

- a. **Correlation and Interpretation.** The Contract Documents are complementary and what is required by any one shall be binding as if required by all. The intention of the Contract Documents is to include all things necessary for the performance and completion of the Work and the Project. In the event of a conflict, these General Provisions shall take priority over Specifications: the Specifications shall take priority over Drawings. Words or abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- b. **Organization.** The organization of the Specifications into divisions, sections and articles, and the arrangement of the Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
- c. **Ownership and Use of Documents.** All drawings, specifications, addenda, revised specifications, tracings, cost data, means and methods, use of material unique to maintenance of LOCKHEED MARTIN's standards, and reproductions of same are and shall remain the property of LOCKHEED MARTIN and shall be returned to LOCKHEED MARTIN upon completion of the Project or be accounted for to LOCKHEED MARTIN's satisfaction.
- d. MFC EESH Flowdowns: Contractor is responsible for reviewing and complying with all applicable sections of MFC EESH Procedure 1.1 (attached).

#### 4. LOCKHEED MARTIN RESPONSIBILITIES

- a. **Facilities.** Without cost to CONTRACTOR, LOCKHEED MARTIN shall furnish to CONTRACTOR, when required, a survey describing the physical characteristics, legal limits and utility locations for the Project Site.
- b. **Information.** Information or services under LOCKHEED MARTIN's control shall be furnished by LOCKHEED MARTIN within a reasonable time after a written request from CONTRACTOR to avoid delay in the orderly progress of the Work.

- c. **Sole authority** to make changes in or amendments to this Subcontract and to effect deviations from the work herein specified is hereby vested in the authorized Procurement Representative and must be made in writing. Unauthorized changes, alterations or modifications to this Subcontract will not be considered for equitable adjustment. Changes to the Subcontract or its scope shall not be made without the express written authorization of the designated Procurement Representative.
  - d. **Right to Carry out the Work.** If CONTRACTOR defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day (7) period after receipt of written notice from LOCKHEED MARTIN's Procurement Representative to commence and continue correction of such default or neglect with diligence and promptness, LOCKHEED MARTIN may, after such seven-day (7) period, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the CONTRACTOR, the cost of correcting such deficiencies. If payments then or thereafter due CONTRACTOR are not sufficient to cover such amounts, CONTRACTOR shall promptly pay the difference to LOCKHEED MARTIN.
  - e. **Access to Work.** LOCKHEED MARTIN shall at all times have access to the Work and Project Site.
  - f. **Rejection of Work.** LOCKHEED MARTIN may reject Work which does not conform to the requirements of the Contract Documents. LOCKHEED MARTIN may require special inspection or testing of any Work in accordance with the provisions of the Contract Documents whether or not such work is fabricated, installed, or completed. The cost of such special inspection or testing shall be deemed to be included in the Contract Sum unless the test results demonstrate that the Work inspected or tested was performed in accordance with the Contract Documents. Any delay in the overall Construction Schedule caused by LOCKHEED MARTIN's rejection of Work which conforms to the requirements of the Contract Documents shall entitle CONTRACTOR to an extension of the Contract Schedule for such delay.
- 5. CONTRACTOR RESPONSIBILITIES**
- a. **Examination of the Project Site.** CONTRACTOR shall be responsible for having examined the Project Site, including all necessary examination or testing of subsurface conditions, having compared the Project Site with the drawings and specifications, having carefully examined the Contract Documents, and having satisfied itself as to the conditions under which the Work shall be performed before submitting a proposal. No allowances or additional compensation will subsequently be made to CONTRACTOR on account of CONTRACTOR's neglect or failure to acquaint itself fully with all of the conditions of the Project Site, current local jurisdictional requirements, the streets approaching the Project Site or current requirements of all authorities or governmental bodies having jurisdiction.
  - b. **Review of Contract Documents.** CONTRACTOR shall carefully study and compare the Contract Documents. If there is any error, omission, or inconsistency in or between the Contract Documents, CONTRACTOR shall immediately notify LOCKHEED MARTIN, in writing, describing such error, omissions or inconsistency, and shall not proceed with any Work until CONTRACTOR has received instructions from LOCKHEED MARTIN. CONTRACTOR shall perform no portion of the Work at any time without Drawings, Specifications or, where required, approved Shop Drawings (as hereinafter defined) or Samples (as hereinafter defined) for such portion of the Work.
  - c. **Supervision of Construction Procedures.**
    - 1) CONTRACTOR shall supervise and direct the Work, using CONTRACTOR's best skill and attention. CONTRACTOR shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.
    - 2) CONTRACTOR shall be responsible to LOCKHEED MARTIN for the acts and omissions of CONTRACTOR's employees and agents, CONTRACTOR's Subcontractors, and their agents, employees and subcontractors, and all other persons performing any of the Work, except public utility employees.
    - 3) The survey, if any, furnished by LOCKHEED MARTIN will establish the property lines and permanent bench marks. CONTRACTOR shall be responsible for the accuracy of the Project lines and levels. CONTRACTOR shall compare carefully the levels shown on the drawings with existing levels and shall call LOCKHEED MARTIN's attention to any discrepancies before proceeding with the Work. The Work shall be erected plumb, level, true to line and grade, and in the plane and to the elevation and/or sloped to drain as indicated and/or as necessary to drain, within normal construction industry tolerances unless the Contract requires a more stringent tolerance in which case the more stringent tolerance shall apply.
  - d. **Labor and Materials**
    - 1) Except as otherwise specifically provided in the Contract Documents, CONTRACTOR shall provide and pay for all labor, tools, construction means, construction equipment materials, supplies, scaffolding, appliances, facilities, services, water, heat, air conditioning, utilities, transportation, permits and everything reasonably necessary and/or proper to complete the design and construction of the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
    - 2) (A) CONTRACTOR shall at all times enforce strict discipline and good order among CONTRACTOR employees and Subcontractors and shall not employ any unfit person or anyone not skilled in the task assigned to them.
    - (B) CONTRACTOR shall use best efforts to prevent and avoid labor disputes and other labor problems which may affect the work, and CONTRACTOR shall use best efforts to settle all labor disputes and other labor problems which occur in spite of CONTRACTOR's efforts in a manner which will not interrupt interfere with or delay CONTRACTOR's construction of the Work. CONTRACTOR shall not be responsible for general labor strikes over which CONTRACTOR has no control and could not have reasonably foreseen. CONTRACTOR warrants and represents that CONTRACTOR presently knows of no fact, the existence of which might lead to a labor dispute which might affect the Work. Whenever an actual or potential labor dispute is delaying or threatens to delay the performance of this Contract, the CONTRACTOR shall immediately give written notice thereof to LOCKHEED MARTIN. Said notice shall contain all relevant information with respect to such labor dispute.
    - 3) CONTRACTOR shall anticipate the need of materials

and equipment as necessary for the proper and timely performance of the Work and shall take all steps (including, without limitation, the award of subcontracts by CONTRACTOR) necessary to avoid delays in the delivery of materials and/or in the orderly prosecution of the Work.

- 4) No substitutions or variations from the Contract Documents shall be permitted without the express prior written authorization of such substitution or variation by LOCKHEED MARTIN as provided for in the Contract Documents.
  - 5) CONTRACTOR will acknowledge receipt of materials and equipment purchased or provided by LOCKHEED MARTIN for installation under the Contract Documents and will provide storage and protection for such materials and equipment.
- e. **Warranty.** CONTRACTOR warrants to LOCKHEED MARTIN that all materials and equipment furnished under the Contract Documents will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by LOCKHEED MARTIN, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of material and equipment being used in the Work. This warranty shall in no way be limited by the provisions of Paragraph "13.e.1" or "13.e.2" hereof and shall be assignable by LOCKHEED MARTIN as provided by the Contract.
- f. **Taxes.** CONTRACTOR shall pay all federal, state and local taxes in effect on the date of the Agreement with respect to the Work, including, without limitation, sales, consumer, use and other similar taxes required by law or local authority having jurisdiction.
- g. **Permits and Fees.**
- 1) CONTRACTOR shall secure and pay for the building permit and other permits, governmental fees, royalties, licenses and inspections necessary for the proper execution and completion of the Work.
  - 2) In the construction of the Work, CONTRACTOR shall comply with all permits issued for the Work or Project Site, all federal, state and local building codes or other ordinances, all federal, state and local sanitary laws, rules and regulations, all requirements of federal, state and local authorities which are applicable to the Project or the Work, including but not limited to those dealing with taxation, Worker's Compensation, equal employment and safety, and all orders and interpretations of such ordinances, requirements, laws, rules and regulations by all governing public authorities having jurisdiction. CONTRACTOR shall carefully review the Contract Documents and if CONTRACTOR observes that any of the Contract Documents are at variance therewith in any respect, CONTRACTOR shall promptly notify LOCKHEED MARTIN in writing. CONTRACTOR shall be liable to LOCKHEED MARTIN for costs incurred by LOCKHEED MARTIN with respect to any such variance which CONTRACTOR could have observed and pointed out to LOCKHEED MARTIN but did not.
- h. **Supervisor.** CONTRACTOR shall employ a competent supervisor and necessary assistants who shall be in attendance at the Project Site during the performance of the project. The Supervisor and their assistants shall represent

CONTRACTOR and all communications given to the Supervisor and their assistants shall be as binding as if given to CONTRACTOR. The Supervisor and their assistants and their contact information (including phone numbers and / or pager) shall be identified in writing to the Procurement Representative prior to commencement of work.

- i. **CONTRACTOR's Employees.** Upon receipt of written or oral notice (such oral notice to be followed promptly in writing) from LOCKHEED MARTIN, the CONTRACTOR will remove from the Project any employee of CONTRACTOR or Subcontractor.
- j. **Documents and Samples.**
  - 1) CONTRACTOR shall maintain at CONTRACTOR's home office, records of all contracts and documents which arise out of the Contract Documents or the construction of the Project, including, without limitation, the following: shop drawings; samples; subcontracts; materials and equipment orders; governmental, commercial and technical standards and specifications; and any other related documents and revisions thereto which arise out of the Contract Documents or the construction of the Project. During the progress of the Work and prior to final payment, CONTRACTOR shall deliver to LOCKHEED MARTIN, at no additional cost, duplicates of any such documents that may be requested by LOCKHEED MARTIN or as may be required by the technical trade specifications or other Contract Documents.
  - 2) CONTRACTOR shall keep accurate and detailed written records of the progress of the Project during all stages of construction and submit monthly Contract Schedule updates.
  - 3) CONTRACTOR shall maintain a daily detailed log of all events occurring on the Project Site or connected with the progress of the Project.
  - 4) CONTRACTOR shall maintain at the Project Site a current marked set of working drawing prints and specifications to facilitate the preparation of record drawings. Upon completion of the Work, CONTRACTOR will forward to LOCKHEED MARTIN, at no additional cost, one complete set of marked up redlined drawings.
  - 5) CONTRACTOR shall preserve records and documents pertaining to the Project for a period of three (3) years after final payment under the Contract Documents. From time to time and at any time after the execution of the Contract, LOCKHEED MARTIN shall have access to and the right to examine and audit any pertinent books, documents, papers and records of CONTRACTOR pertaining to the Project. At the expiration of such three (3) year period, CONTRACTOR, if requested by LOCKHEED MARTIN, shall turn over such records to the custody of LOCKHEED MARTIN, and LOCKHEED MARTIN may preserve such records for such further period of time as LOCKHEED MARTIN may elect.
- k. **Samples and Shop Drawings.**
  - 1) As used in the Contract Documents, the terms "Samples" and "Shop Drawings" shall be defined as follows:
    - (A) "Samples" are physical examples prepared for submission by CONTRACTOR to illustrate materials, equipment or workmanship, and to establish standards by which the Work will be judged as complying with the requirements of the Contract Documents: and
    - (B) "Shop Drawings" are drawings, diagrams, illus-

- trations, schedules, performance charts, manufacturer's data sheets, brochures and other data which are prepared for submission by CONTRACTOR to illustrate in detail some portion of the Work.
- 2) The following provisions shall be applicable to Samples and Shop Drawings:
    - (A) Provisions in this paragraph "k" are mandatory procedures for preparing and submitting Samples and Shop Drawings.
    - (B) Submissions shall be in an orderly sequenced and timed sufficiently in advance to cause no delay in Work or in the work of any separate contractor on the Project.
    - (C) Delays occasioned by the requirement of resubmission of Samples and Shop Drawings not in accord with Contract Documents, are CONTRACTOR's responsibility and will not be considered valid justification for extension of the Contract Schedule.
    - (D) CONTRACTOR shall not allow any Subcontractor to commence any portion of the Work requiring Sample or Shop Drawing submissions until such submission has been approved by LOCKHEED MARTIN. All such portions of the Work shall be in accord with approved Samples and Shop Drawings.
    - (E) CONTRACTOR is responsible for obtaining and distributing drawings after as well as before final approval to all who are concerned with coordination of the Work.
  - 3) Samples shall be prepared in size, shape, finish, and quantity as may be specified by LOCKHEED MARTIN. At the option of LOCKHEED MARTIN, Samples will be subject to testing, and in such event such additional samples as may be reasonably necessary shall be supplied by CONTRACTOR at no additional cost to LOCKHEED MARTIN.
  - 4) CONTRACTOR shall be responsible for the following review procedures:
    - (A) CONTRACTOR shall review, approve before submission all Samples and Shop Drawings specified by the Contract Documents or as covered by Modifications. Shop Drawings and Samples shall be submitted only by CONTRACTOR. By approving and submitting Shop Drawings and Samples, CONTRACTOR thereby represents that CONTRACTOR has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data and that CONTRACTOR has checked and coordinated each Shop Drawing and Sample with the requirements of the Contract Documents.
    - (B) CONTRACTOR shall be responsible for the following verifications for all items furnished for the Work:
      - (i) Dimensions shall be checked against field measurements.
      - (ii) Items specified to have mechanical utilities shall be coordinated with those services as to location and character.
      - (iii) Items specified to have electric service shall be coordinated with those services as to volts, phase, hertz, feeders and ampere protection at panel.
  - 5) Submissions made without CONTRACTOR's approval indicated thereon will be returned for compliance with this requirement before being reviewed by LOCKHEED MARTIN.
  - 6) The following provisions shall be applicable to LOCKHEED MARTIN's review of Samples and Shop Drawings:
    - (A) LOCKHEED MARTIN will review Samples and Shop Drawings with reasonable promptness so as to cause no delay in the Work.
    - (B) LOCKHEED MARTIN's approvals are only for conformance with the design concepts of the Project and with information in Contract Documents. Approval of a separate item does not constitute approval of an assembly in which the item functions.
    - (C) Review of Shop Drawings and Samples by LOCKHEED MARTIN shall not relieve CONTRACTOR of responsibility for deviations and/or omissions from the Contract Documents. LOCKHEED MARTIN's approvals shall not relieve CONTRACTOR of responsibility for errors and/or omissions of any kind in Shop Drawings and Samples. When CONTRACTOR does call such deviations and/or omissions to the attention of LOCKHEED MARTIN, CONTRACTOR shall state in CONTRACTOR's letter whether or not such deviations and/or omissions involve any change in cost or Contract Schedule. All Samples and Shop Drawings shall be submitted through the Procurement Representative or the Project Manager.
    - (D) Samples and Shop Drawings will be returned to CONTRACTOR noted for action as follows:
      - (i) **"Returned for Correction"** indicates that the submission is unacceptable and requires re-submission. CONTRACTOR shall make corrections as noted and resubmit.
      - (ii) **"Approved as Noted"** indicates that the submission is approved subject to the corrections indicated. CONTRACTOR shall make the corrections indicated on the returned submittal and resubmit.
      - (iii) **"Approved"** indicates that the submittal is approved for field use. Fabrication may begin on all items. All submittals shall be approved by the Procurement Representative or its designated representative before they are issued for field use.
    - (E) Where only one Sample is called for, approval will be by letter only; where two or more Samples are called for, one Sample will be returned with LOCKHEED MARTIN's approval stamp and signature or initials.
    - (F) One set of approved Shop Drawings (CD format is acceptable) will be returned, including an opaque print, with LOCKHEED MARTIN's approval signature or initials. CONTRACTOR shall confine operations at the Project Site to geographic areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Project Site with any materials or equipment. No use will be made of the Project Site unless directly related to the Project.
  1. **Cutting and Patching of Work.**
    - 1) CONTRACTOR shall be responsible for all cutting, fitting or patching that may be required to complete the Project or to make the Project's several parts fit together

properly.

- 2) CONTRACTOR shall not damage or endanger any portion of the Work or the work of LOCKHEED MARTIN or any separate contractor by cutting, patching or otherwise altering any work, or by excavation. CONTRACTOR shall not cut or otherwise alter the work of LOCKHEED MARTIN or any separate contractor except with the written consent of LOCKHEED MARTIN. CONTRACTOR shall not unreasonably withhold from LOCKHEED MARTIN, CONTRACTOR's consent to cutting or otherwise altering the Work.

m. **Cleaning Up.**

- 1) CONTRACTOR at all times shall keep the Project reasonably free from any accumulation of waste materials or rubbish caused by CONTRACTOR's operations. On substantial completion and acceptance or first occupancy of the Project by LOCKHEED MARTIN, or LOCKHEED MARTIN's lessees or assigns, CONTRACTOR shall also remove broken, cracked, scratched, or otherwise remove paint drippings, spots, stains, dyes, product adhesives, sealants, smudge and scuff marks; and clean, reasonably free of dust and dirt, decorative finished surfaces, light fixtures, hardware, glass, plumbing fixtures and accessories, floors, and like work and leave in acceptable condition for LOCKHEED MARTIN's use. Outside cleanup work, within the Project Site limit lines shown on the drawings, shall be completed prior to time of seasonal landscaping work whether or not included as part of the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials and rubbish from and about the Project (per direction of LM) together with CONTRACTOR's tools, construction equipment, and machinery and surplus materials.
- 2) If CONTRACTOR fails to clean up at the completion of the Work, LOCKHEED MARTIN or LOCKHEED MARTIN's lessees or assigns may do so as provided in paragraph "4.e" and the cost thereof shall be charged to CONTRACTOR and may be deducted from the final payment.

n. **Maintenance and Operating Manuals.**

- 1) If requested by LOCKHEED MARTIN, CONTRACTOR shall procure and/or prepare and furnish to LOCKHEED MARTIN, three (3) copies of schematic diagrams covering installations of all electrical, mechanical and pneumatic controls, if any, operating instructions and maintenance recommendations for all Work installed in the Project: including without limitation, a printed parts list for all items which might be subject to replacement, if such parts list is provided by manufacturer. These manuals shall be prepared and transmitted to LOCKHEED MARTIN not less than twenty (20) days prior to the completion date of the Work. The Work covered by such manuals shall not be reviewed or accepted for final payment until LOCKHEED MARTIN has reviewed those manuals. The CONTRACTOR shall also provide a list of all Subcontractors and shall update this list monthly until completion of the Project.
- 2) LOCKHEED MARTIN's designated personnel shall be given instructions by CONTRACTOR in the care, use, cleaning, and maintenance and operation procedures for each item. This shall be done in accordance with, and in addition to, the manual required in paragraph "n.1" above.

o. **Collection of Warranties.** Warranties, guarantees, and cer-

tificates issued by the manufacturers of machinery, equipment and materials purchased by CONTRACTOR and Subcontractors for use in the Project shall be collected by CONTRACTOR and delivered to LOCKHEED MARTIN or LOCKHEED MARTIN's assigns. All such warranties, guarantees and certificates, if not issued directly to LOCKHEED MARTIN, shall by their terms be assignable to LOCKHEED MARTIN or LOCKHEED MARTIN's assigns and shall be transferred and assigned by CONTRACTOR and Subcontractors to LOCKHEED MARTIN or LOCKHEED MARTIN's assigns.

- p. **Start-Up.** CONTRACTOR shall be responsible for start-up of all systems and equipment specified in the Contract Documents and has included in the Contract Sum sufficient allowances to cover contingencies which may arise in connection with the start-up of individual systems, equipment and the total facility. Full compliance with each manufacturer's specifications and instructions shall be observed. Equipment which has been specified to be furnished with manufacturer's supervision of start-up shall be placed in operation only under the supervision of manufacturer's representative at no additional cost to LOCKHEED MARTIN.

q. **Contract Schedule.**

- 1) The initial Contract Schedule shall be submitted by CONTRACTOR for approval within three (3) days of the award of the Project Work to the Procurement Representative as well as to the Project Manager, and shall clearly identify the early and late start and finish dates of each activity and the activities interrelationship to other activities. The critical path shall be identified separately and float time shown. Once approved by LOCKHEED MARTIN, the CONTRACTOR shall be responsible for maintaining, monitoring and submit proposed revisions to the Contract Schedule due to changes made during the performance of the Work as approved by LOCKHEED MARTIN. All initial information presented will be updated and maintained current. There shall be no change in Contract Schedule without prior written LOCKHEED MARTIN approval. Costs associated with maintaining satisfactory updated Contract Schedule is the CONTRACTOR's responsibility.
- 2) Acceleration of the Contract Schedule may be requested in writing by LOCKHEED MARTIN. In such event, a separate summary of the accelerated areas and cost of each, similar in format to those parts of the Contract Documents, is due from the CONTRACTOR if requested by LOCKHEED MARTIN. Float time used by LOCKHEED MARTIN is not acceleration or delay. Demands by LOCKHEED MARTIN that the CONTRACTOR complies with the Contract Schedule (as adjusted under the terms of the Contract Documents) do not constitute an acceleration.

- r. **Design.** If required by the Contract Documents, the CONTRACTOR is responsible for the preparation, by a licensed architect, of drawings setting forth in detail the requirements for the construction of the Work and Project, based upon all applicable codes, laws or regulations which have been enacted as of the date of this Contract. Construction of the Work and Project by CONTRACTOR shall be in accordance with these drawings and the specifications. Any approval by LOCKHEED MARTIN of the drawings shall be binding for layout and aesthetics and shall not relieve CONTRACTOR from CONTRACTOR's professional responsibility for the design and architectural integrity and function of the Work and Project.

- s. **Licensed Personnel.** Any design, engineering, architectural, or other professional services incorporated as part of this

Contract, which is to be performed by the CONTRACTOR, and which requires the employment of licensed personnel, will be performed only by licensed personnel. The CONTRACTOR will be held to the same degree of responsibility and liability that a licensed person would be responsible and liable. The CONTRACTOR will not be liable for any greater or lesser degree of care, skill or responsibility for such licensed services than would be imposed on licensed personnel had they dealt directly with LOCKHEED MARTIN.

t. **Waiver of Liens.** In addition to any waiver or release of lien otherwise provided for in the Contract Documents, CONTRACTOR hereby irrevocably waives and releases, and agrees to require an identical waiver and release from all subcontractors, any right to claim, assert or pursue any lien or attachment of any nature whatsoever upon any equipment or property owned, leased or used by, or under the control of LOCKHEED MARTIN.

u. **Relationship.** CONTRACTOR accepts the relationship of trust and confidence established between CONTRACTOR and LOCKHEED MARTIN under the Contract Documents. CONTRACTOR covenants and agrees with LOCKHEED MARTIN to furnish CONTRACTOR's best skill and judgment and to cooperate with LOCKHEED MARTIN. CONTRACTOR further agrees to furnish efficient business administration and project management, and to perform the Work in the best and most sound way and in the most expeditious and economical manner and consistent with the interests of LOCKHEED MARTIN. CONTRACTOR's relationship to LOCKHEED MARTIN is that of an independent contractor.

v. **Release of Information.**

1) No release of any information, or confirmation or denial of same, with respect to this Contract or other LOCKHEED MARTIN projects, obtained in the performance of this Contract, will be made without the prior coordination and express written approval of the LOCKHEED MARTIN Procurement Representative or designee. This includes but is not limited to advertisements, brochures, news releases (including photographs, films, public announcements or denial or confirmation of the same, or interviews with news media representatives) and the like, but does not include the release of information necessary to enable CONTRACTOR to successfully perform the contractual obligations. This provision shall apply equally to Subcontractors and CONTRACTOR shall include the substance of this provision, including this sentence, in all Subcontracts. This provision does not apply to information which is reportable to the U.S. Government pursuant to public laws or regulations.

2) CONTRACTOR hereby agrees not to disclose at any time except as CONTRACTOR's duties under this Contract may be required, either during or subsequent to performance of this Contract, the terms of this Contract, any information, knowledge, or data of LOCKHEED MARTIN which CONTRACTOR may receive during the course of this Contract, relating to business, technical, financial, or other information which are of a proprietary or trade secret nature.

w. **Reproduction of Information.**

1) LOCKHEED MARTIN shall be under no obligation to restrict disclosure or use of any information provided, either directly or indirectly, by CONTRACTOR unless and until a Proprietary Information Agreement is executed in writing by LOCKHEED MARTIN. In the absence of a Proprietary Information Agreement,

LOCKHEED MARTIN shall have the unrestricted right to use and disclose all such information notwithstanding any specific legend or statement associated therewith.

2) If the Work, or parts thereof, contracted for hereunder is to designs furnished by LOCKHEED MARTIN, the CONTRACTOR shall not, except to the extent required to perform hereunder, reproduce, or use for it or for others, any such designs without LOCKHEED MARTIN's prior written consent.

x. **Escorting Employees**

CONTRACTOR shall consult with on-site Lockheed Martin Security and comply with all site-specific or facility-specific Lockheed Martin requirements.

y. **Gratuities and Improper Influences.**

1) LOCKHEED MARTIN may, by written notice to the CONTRACTOR, terminate the right of the CONTRACTOR to proceed under this Contract if LOCKHEED MARTIN has reasonable cause to believe that gratuities (in the form of entertainment, gifts, kickbacks, or otherwise), were offered or given by the CONTRACTOR, or an agent or representative of the CONTRACTOR, to an officer or employee of LOCKHEED MARTIN with a view toward securing a Contract or securing favorable treatment with respect to the awarding or amendment of a Contract, or the making of any determination with respect to the performance of such Contract.

2) In the event this Contract is terminated, as provided in paragraph "1" above, LOCKHEED MARTIN shall be entitled to pursue the same remedies against the CONTRACTOR as LOCKHEED MARTIN could pursue in the event of a breach of the Contract by the CONTRACTOR.

3) The rights and remedies of LOCKHEED MARTIN provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

z. **Notification of Debarments/Suspension Status.** The CONTRACTOR shall provide immediate notice to the LOCKHEED MARTIN Procurement Representative in the event of the CONTRACTOR or a Subcontractor being suspended, debarred, proposed for debarment or declared ineligible for the award of contracts by any Federal Agency, during the performance of this Contract.

aa. **Tests.**

1) If the Contract Documents, laws, ordinances, rules, regulations or orders of any authority having jurisdiction require any Work to be inspected, tested or approved, CONTRACTOR shall give LOCKHEED MARTIN timely notice of CONTRACTOR's readiness and of the date arranged so LOCKHEED MARTIN may observe such inspection, testing or approval. CONTRACTOR shall bear all costs of such inspections, test or approvals conducted at the direction of authorities having jurisdiction.

2) If after commencement of the Work, LOCKHEED MARTIN determines that any Work requires special inspection, testing or approval which paragraph "aa.1" above does not include, CONTRACTOR shall perform such testing upon the written request of LOCKHEED MARTIN. If such special inspection or testing reveals the failure of the Work to comply with the requirements of the Contract Documents, all costs thereof, including compensation for LOCKHEED MARTIN's additional

services made necessary by such failure, shall be borne by CONTRACTOR and those costs shall be deemed to be included within the Contract Sum, otherwise LOCKHEED MARTIN shall bear such cost and an appropriate Change Order shall be issued.

- 3) Required certificates of inspection, testing or approval shall be secured by CONTRACTOR and promptly delivered to LOCKHEED MARTIN.
- 4) None of the observations of LOCKHEED MARTIN nor inspections or tests by LOCKHEED MARTIN or any other person shall relieve CONTRACTOR from CONTRACTOR's obligations to perform the Work in accordance with the Contract Documents.

## 6. BOND

- a. If this Contract exceeds \$25,000 the following provisions may (at the discretion of the Procurement Representative) apply:
  - 1) **Payment Bonds.** The CONTRACTOR shall furnish a payment bond with good and sufficient surety or sureties in a form acceptable to LOCKHEED MARTIN 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 one hundred (100) percent of the Contract price.
  - 2) **Performance Bond.** The CONTRACTOR shall furnish a performance bond with good and sufficient surety or sureties in a form acceptable to LOCKHEED MARTIN in connection with the performance the Contract Work. The penal sum of such payment bond shall be one hundred (100) percent of the Contract price.
  - 3) **Date of Bonds.** Bonds required hereunder shall be dated as of the same date as the Contract and shall be furnished by the CONTRACTOR to LOCKHEED MARTIN at the same time of execution of the Contract and prior to beginning any Work.
  - 4) **Additional Bond Security.** If any surety upon any bond furnished in connection with this Contract is unacceptable to LOCKHEED MARTIN, the CONTRACTOR shall promptly furnish such other security as shall be acceptable to LOCKHEED MARTIN to protect the interests of LOCKHEED MARTIN and of persons applying labor or materials in the prosecution of the Work contemplated by this Contract.
  - 5) **Surety Obligation.** Any surety, furnishing a bond hereunder, shall be bound by the terms of the Contract Documents.
- b. If this Contract is \$25,000 or less or the bond is specifically waived by LOCKHEED MARTIN, the following provision applies:

In consideration of the waiver of the bond requirement, CONTRACTOR for itself and CONTRACTOR's Subcontractors, hereby expressly waives the right to file any lien or claim against the Project Site; further, that if in violation thereof, there shall be any lien, or other claim for monies due or to become due for which if established, LOCKHEED MARTIN might be liable, and which would be chargeable to the CONTRACTOR, CONTRACTOR shall immediately satisfy or bond the same, or LOCKHEED MARTIN shall have the right to bond said lien or claim or otherwise discharge the same and to retain out of any payment then due or thereafter to become due an amount sufficient to completely indemnify LOCKHEED MARTIN against such lien or other claim, with interest, together with the expense incident to discharging such lien or claim or defending suit

to enforce such lien or other claim, including any premiums charged for a bond and any attorney's fees and disbursement all of which the CONTRACTOR agrees to pay.

## 7. SUBCONTRACTORS

- a. **Definition of Subcontractor.** "Subcontractor" means any person or organization that has a direct contract with CONTRACTOR to perform any of the Work at the Project Site, and the term includes any person or entity that has a direct or indirect contract to perform any Work or provide any materials, supplies or services at the Project Site. Nothing contained in the Contract Documents shall create any contractual relationship between LOCKHEED MARTIN and any Subcontractor at any tier. A review by LOCKHEED MARTIN of any Subcontractor or any subcontract shall be for informational purposes only and shall not relieve CONTRACTOR of any of CONTRACTOR's responsibilities under the Contract Documents.
- b. **Award of Subcontracts.** CONTRACTOR shall not contract with any Subcontractor or any person or organization (including those who are to furnish materials or equipment fabricated to a special design) against whom LOCKHEED MARTIN has a reasonable objection. When required by Contract Documents, CONTRACTOR shall utilize the Subcontractors identified therein.
- c. **Subcontractor Relations.**
  - 1) The CONTRACTOR warrants that to the best of CONTRACTOR's knowledge, the Subcontractors proposed by CONTRACTOR are reputable, skilled, reliable, competent, and qualified in the trade field in which the Subcontractors are to perform on the Project.
  - 2) CONTRACTOR shall be responsible for providing all Subcontractors with sufficient drawings, specifications, addenda, and other documents necessary to inform Subcontractors fully of the requirements of the Contract Documents which pertain to or which might otherwise affect Subcontractor's work.
  - 3) CONTRACTOR shall remove personnel of Subcontractors from the Project upon written direction of the LOCKHEED MARTIN Procurement Representative. The CONTRACTOR shall be responsible for requiring each employee engaged on the Project Site to display such identification as may be approved and directed by LOCKHEED MARTIN. All prescribed identification shall immediately be delivered to LOCKHEED MARTIN for cancellation, upon the release of any employee. When required by LOCKHEED MARTIN, the CONTRACTOR shall obtain and submit fingerprints of all persons employed or to be employed on the Project. LOCKHEED MARTIN reserves the right to reject any of CONTRACTOR's employees or have CONTRACTOR reject any subcontractor's employees whose conduct is unacceptable to LOCKHEED MARTIN or for any other just cause.

## 8. WORK BY LOCKHEED MARTIN OR BY SEPARATE CONTRACTORS

- a. **Right to Perform and to Award Separate Contracts.**
  - 1) LOCKHEED MARTIN reserves the right to perform or allow the performance of Work related to the Project Site with LOCKHEED MARTIN's own forces and to award separate contracts in connection with other portions of the Project or other Work on the Project Site under these or similar General Conditions. If



CONTRACTOR claims that delay or additional cost is involved because of such action by LOCKHEED MARTIN, CONTRACTOR shall make such claim as provided elsewhere in the Contract Documents.

- 2) When separate contracts are awarded for different portions of the Project or other Work on the Project Site, the term CONTRACTOR in the Contract Documents in each case shall mean the CONTRACTOR who executes each separate LOCKHEED MARTIN-CONTRACTOR contract.
- 3) LOCKHEED MARTIN will provide for the coordination of the Work of LOCKHEED MARTIN's own forces and of each separate contractor with the Work of CONTRACTOR, who shall cooperate therewith as provided in paragraph "b" below.

b. **Mutual Responsibility.**

- 1) CONTRACTOR shall afford LOCKHEED MARTIN and separate contractor's reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate CONTRACTOR's Work with LOCKHEED MARTIN and separate Contractors as required by the Contract Documents.
- 2) If any part of CONTRACTOR's Work depends, for proper execution or results, upon the work of LOCKHEED MARTIN, or any separate contractor, CONTRACTOR shall, prior to proceeding with the Work, promptly report to LOCKHEED MARTIN any apparent discrepancies or defects in such other work that render the Work unsuitable for such proper execution and results. Failure of CONTRACTOR to report shall constitute an acceptance of LOCKHEED MARTIN's or separate contractor's work as fit and proper to receive CONTRACTOR's Work.
- 3) Any costs caused by defective or ill-timed CONTRACTOR's Work shall be borne by the party responsible therefore.
- 4) Should CONTRACTOR cause damage to the Work, equipment or property of LOCKHEED MARTIN or to other work on the Project Site, CONTRACTOR shall promptly remedy such damage.
- 5) Should CONTRACTOR cause damage to the work or property of any separate contractor, CONTRACTOR shall, upon due notice, promptly attempt to settle with such other contractor by agreement or otherwise to resolve the dispute. If such separate contractor sues or initiates legal action or proceedings against LOCKHEED MARTIN on account of any damage alleged to have been caused by CONTRACTOR, LOCKHEED MARTIN shall notify CONTRACTOR who shall defend such proceedings at the CONTRACTOR's expense and if any judgment or award against LOCKHEED MARTIN arises from damage caused by the CONTRACTOR, CONTRACTOR shall pay or satisfy such judgment or award in addition to LOCKHEED MARTIN's cost and attorney's fees to defend such action.
- 6) Should CONTRACTOR's Work or property be damaged by any separate contractor or LOCKHEED MARTIN, CONTRACTOR will be reimbursed for the reasonable cost to repair the damaged Work or for the actual damages to CONTRACTOR's property.

c. **Right to Clean Up.** If a dispute arises between CONTRACTOR and separate contractors as to their respective responsibility for cleaning up as required by paragraph

"5.m," LOCKHEED MARTIN may clean up and LOCKHEED MARTIN may charge the cost thereof to the CONTRACTOR or separate contractor as LOCKHEED MARTIN shall determine to be just.

9. **TIME**

a. **Time, Delays, and Extensions.**

- 1) Time is of the essence in the performance of the Work by CONTRACTOR and CONTRACTOR's Subcontractors. CONTRACTOR shall commence performance of the Work immediately upon receipt from LOCKHEED MARTIN of a separate written instruction to proceed and shall diligently and continuously pursue the Work so as to achieve Substantial Completion of the Work within the Contract Schedule. It is expressly understood and agreed that the time allotted for construction and completion of the Work is reasonable, taking into consideration the five (5) year average climatic conditions as reported at the nearest national weather station and industrial conditions (including, without limitation, labor conditions and availability) prevailing in the locale of the Project and the type of construction planned. In the event CONTRACTOR fails to complete the Work within the Contract Schedule (as that date may be adjusted under the terms of the Contract Documents), CONTRACTOR agrees to reimburse LOCKHEED MARTIN all damages and expenses incurred by LOCKHEED MARTIN due to CONTRACTOR's failure to complete the Work by such time.
- 2) The date of Substantial Completion of the Work is the date when the construction is sufficiently complete, in accordance with the Contract Documents, such that LOCKHEED MARTIN or LOCKHEED MARTIN's lessees or assigns can fully occupy or utilize the Work and the Project as intended.
- 3) Should CONTRACTOR, except for excusable delays as hereinafter provided, fail to maintain progress according to the Contract Schedule or cause delay or interruption to another contractor or subcontractor connected with the Project, CONTRACTOR shall furnish such additional labor and services or work such overtime at CONTRACTOR's expense as may be necessary to bring operations current to the Contract Schedule.
- 4) CONTRACTOR shall not be held responsible for delays occasioned by any act of neglect of LOCKHEED MARTIN, or separate contractor, or by any employee of them, or by changes ordered in the Work. Neither shall CONTRACTOR be held responsible for delays occasioned by fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties or any other causes beyond CONTRACTOR's control which are not reasonably anticipatable (such causes hereinafter referred to as "Force Majeure" causes) and which do not exceed fifteen (15) days. CONTRACTOR shall within SEVEN (7) days from the beginning of any delay notify LOCKHEED MARTIN Procurement Representative in writing of the cause or causes of such delay. An extension of time for the completion of the Work shall be granted CONTRACTOR in the event of any such Force Majeure does not exceed fifteen (15) days and the Contract Schedule shall be adjusted accordingly by a Change Order. All adjustments shall be demonstrated using the Contract Schedule, clearly identifying the requested extension as the delay affects the critical path or paths. Requests for time extensions which do not affect the critical path shall not be allowed. Only the Contract Schedule shall be adjusted on account of any such delay. In the

event that CONTRACTOR experiences delays occasioned by Force Majeure exceeding fifteen (15) days, LOCKHEED MARTIN reserves the right to terminate the Agreement provided in Clause "15."

5) The term "day" as used in the Contract Documents shall mean calendar day unless specifically designated otherwise.

- b. **Beneficial Occupancy.** Should the Project or any portion thereof not be completed within the Contract Schedule (as adjusted under the terms of the Contract Documents), LOCKHEED MARTIN or LOCKHEED MARTIN's lessees or assigns shall have the right to occupy any portion of the Project not so completed. In such event, CONTRACTOR shall not be entitled to any extra compensation on account of said occupancy by LOCKHEED MARTIN, or LOCKHEED MARTIN's lessees or assigns or normal full use of the Project, nor shall CONTRACTOR by LOCKHEED MARTIN's, or LOCKHEED MARTIN's lessee's or assign's interfere in any way with said use of the Project, or be relieved of any of CONTRACTOR's responsibilities under the Contract Documents, including, without limitation, CONTRACTOR's obligation to complete the Project in accordance with the Contract Documents and the Contract Schedule.

## 10. PAYMENTS AND COMPLETION

The Contract Sum as stated in this Contract and, including authorized modifications thereto, is the total amount payable by LOCKHEED MARTIN to the CONTRACTOR for the performance of the Work under the Contract Documents. CONTRACTOR hereby acknowledges that sufficient, valid, and specific consideration is contained within the total Contract consideration.

- a. **Schedule of Values.** Before the first Invoice for Payment and if otherwise required by the Contract Documents, the CONTRACTOR shall submit to LOCKHEED MARTIN a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate such schedule's accuracy as LOCKHEED MARTIN may require. This schedule, unless objected to by LOCKHEED MARTIN, shall be used only as a basis for the CONTRACTOR's Invoice for Payment.

b. **Invoice for Payment.**

- 1) CONTRACTOR may submit to LOCKHEED MARTIN on a monthly basis or more frequently as provided in writing by the Procurement Representative, a certified itemized Invoice for Payment, supported by such data substantiating the CONTRACTOR's right to payment as LOCKHEED MARTIN may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents.
- 2) Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the Project Site and, if approved in advance by LOCKHEED MARTIN, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing by the LOCKHEED MARTIN Procurement Representative. Payments for materials or equipment stored on or off the Project Site shall be conditioned upon submission by the CONTRACTOR of bills of sale or such other documentation satisfactory to LOCKHEED MARTIN's Procurement Representative to establish LOCKHEED MARTIN's title to such materials or equipment or otherwise protect LOCKHEED MARTIN's interest, including applicable insurance and transportation to the Project Site for those materials and equipment stored off the Project

Site.

- 3) The CONTRACTOR warrants that title to all Work, materials and equipment covered by an Invoice for Payment will pass to LOCKHEED MARTIN or LOCKHEED MARTIN's assigns either by incorporation in the construction or upon the receipt of payment by the CONTRACTOR, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Clause "10" as "liens;" and that no Work, materials or equipment covered by an Invoice for Payment will have been acquired by the CONTRACTOR, or by any other person performing Work at the Project Site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the CONTRACTOR or such other person, which would survive payment to the CONTRACTOR.

c. **Authorization for Payment.**

- 1) LOCKHEED MARTIN will, within forty-five (45) days after the receipt of the CONTRACTOR's Invoice for Payment, authorize payment for such amount LOCKHEED MARTIN determines is properly due, or notify the CONTRACTOR in writing LOCKHEED MARTIN's reason for withholding payment as provided in paragraph "e.1."
- 2) By issuing an authorization of payment, LOCKHEED MARTIN shall not thereby be deemed to represent that LOCKHEED MARTIN has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that LOCKHEED MARTIN has made any examination to ascertain how or for what purpose the CONTRACTOR has used the moneys previously paid on account of the Contract Sum.

d. **Progress Payments.**

- 1) After LOCKHEED MARTIN has authorized payment, LOCKHEED MARTIN shall make payment within forty-five (45) days thereafter or such other time provided in the Contract Documents.
- 2) The CONTRACTOR shall promptly pay each Subcontractor, upon receipt of payment from LOCKHEED MARTIN, out of the amount paid to CONTRACTOR on account of such Subcontractor's work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the CONTRACTOR on account of such Subcontractor's work. CONTRACTOR shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to their subcontractors in similar manner. Subcontractor's monthly lien releases must accompany monthly requests for payments to LOCKHEED MARTIN.
- 3) LOCKHEED MARTIN may, on request and at LOCKHEED MARTIN's discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the CONTRACTOR and the action taken thereon by LOCKHEED MARTIN on account of work done by such Subcontractor.
- 4) LOCKHEED MARTIN shall have no obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law. LOCKHEED MARTIN may, at LOCKHEED MARTIN's sole discretion, make direct payments to CONTRACTOR's subcontractors for amounts owed by CONTRACTOR to subcontractors and deduct the

amount of these payments from the Contract Sum.

- 5) No Invoice or authorization for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by LOCKHEED MARTIN or LOCKHEED MARTIN's lessees or assigns, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

e. **Payments Withheld.**

- 1) LOCKHEED MARTIN's Procurement Representative may decline to authorize payment and may withhold LOCKHEED MARTIN's authorization in whole or in part, to the extent necessary to reasonably protect LOCKHEED MARTIN, if, in LOCKHEED MARTIN's Procurement Representative's determination, CONTRACTOR is unable to make representations to LOCKHEED MARTIN as provided in paragraph "c.2)" and to authorize payment in the amount of the Invoice, LOCKHEED MARTIN will notify CONTRACTOR as provided in paragraph "c.1)." If CONTRACTOR and LOCKHEED MARTIN cannot agree on a revised amount, the LOCKHEED MARTIN Procurement Representative may issue an Authorization for Payment for the amount for which the LOCKHEED MARTIN Procurement Representative determines is payable to CONTRACTOR. LOCKHEED MARTIN may also decline to make payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or any part of any Authorization for Payment previously issued, to such extent as necessary in LOCKHEED MARTIN's Procurement Representative's determination to protect LOCKHEED MARTIN from loss because of:

- (A) Defective work not remedied;
- (B) Third party claims filed or reasonable evidence indicating probable filing of such claims;
- (C) Failure of the CONTRACTOR to make payments properly to Subcontractors for labor, materials or equipment;
- (D) Reasonable evidence that the Work cannot be completed by the CONTRACTOR for the unpaid balance of the Contract Sum;
- (E) Damage to LOCKHEED MARTIN or another contractor;
- (F) Reasonable evidence that the Work will not be completed within the Contract Schedule as such schedule may be modified as provided herein; or
- (G) Failure to carry out the Work in accordance with the Contract Documents.

- 2) When the above grounds in paragraph "e.1)" are removed, payment shall be made for amounts withheld because of noncompliance.
- 3) LOCKHEED MARTIN shall be entitled at all times and without notice to any surety, set-off any amount owing at any time from CONTRACTOR to LOCKHEED MARTIN against any amounts payable at any time by LOCKHEED MARTIN.

- f. **Failure of Payment.** If the LOCKHEED MARTIN Procurement Representative does not authorize payment or notify CONTRACTOR in writing of LOCKHEED MARTIN's reason for withholding approval, through no fault of CONTRACTOR, within forty-five (45) days after receipt of the CONTRACTOR's Invoice for Payment, OR if LOCKHEED MARTIN does not pay CONTRACTOR within fifty (50) days after the date any amount was authorized by the LOCKHEED MARTIN Procurement Representative, the

CONTRACTOR may, upon ten (10) additional days written notice to the LOCKHEED MARTIN Procurement Representative, stop the Work until payment of the amount owed has been received.

- g. **Retainage.** In making such progress payments there shall be retained ten (10) percent of the invoiced amount until final completion and acceptance of all work covered by the Contract; provided, however, that LOCKHEED MARTIN, at any time after fifty (50) percent of the Work has been completed, if LOCKHEED MARTIN finds that satisfactory progress is being made, may reduce the amount of retainage or make any of the remaining partial payments in full; and, providing further, that on completion and acceptance of each milestone, or other division of the Contract, on which the price is stated separately in the Schedule of Values, if applicable, payment may be made in full, including retained percentage thereon, less authorized deductions for incomplete or defective Work.

h. **Substantial Completion.**

- 1) When the CONTRACTOR considers that the Work, or a designated portion thereof which is acceptable to LOCKHEED MARTIN and is substantially complete as defined herein, the CONTRACTOR shall prepare for submission to LOCKHEED MARTIN a list of items to be completed or corrected. The failure to include any item on such list does not alter the responsibility of the CONTRACTOR to complete all Work in accordance with the Contract Documents. When LOCKHEED MARTIN on the basis of inspection determines that the Work or designated portion thereof is substantially complete, LOCKHEED MARTIN will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of LOCKHEED MARTIN and the CONTRACTOR for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the CONTRACTOR shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to CONTRACTOR for CONTRACTOR's written acceptance of the responsibilities assigned to CONTRACTOR in such Certificate.

- 2) Upon Substantial Completion of the Work or designated portion thereof and upon application and certification by the CONTRACTOR, LOCKHEED MARTIN shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents.

i. **Final Completion and Final Payment.**

- 1) Upon receipt of written notice from CONTRACTOR that the Work is ready for final inspection and acceptance, LOCKHEED MARTIN shall promptly make such inspection. Final payment shall be due and payable forty-five (45) days after final inspection and final acceptance and receipt of final Invoice for Payment by LOCKHEED MARTIN.

- 2) Neither inspection by LOCKHEED MARTIN, or by any of LOCKHEED MARTIN's duly authorized representatives; nor any order, measurement, or certificate by LOCKHEED MARTIN; nor any order by LOCKHEED MARTIN for the payment of money; nor final payment hereunder; nor acceptance of any Work or any extension of time; nor any possession taken by LOCKHEED

MARTIN or LOCKHEED MARTIN's lessees or assigns, shall operate as a waiver of any provision of the Contract Documents of any right of LOCKHEED MARTIN or others as specified there under or of any right to damages under the Contract Documents or under law. Any waiver by LOCKHEED MARTIN or LOCKHEED MARTIN's lessees or assigns of any breach of the Contract Documents shall not be held to be a waiver of any other or subsequent breach, and any waiver by LOCKHEED MARTIN of any right to terminate the Agreement shall not be held to be a waiver or any breach of the Contract Documents, but LOCKHEED MARTIN and LOCKHEED MARTIN's lessees or assigns retain all of their rights to recover damages there-fore.

- 3) As a condition precedent to final payment under the Contract Documents, LOCKHEED MARTIN will require CONTRACTOR; (A) to execute a release of all claims and liens against LOCKHEED MARTIN, the Project, the land upon which the Project is situated and any property or equipment owned by LOCKHEED MARTIN, arising under or by virtue of the Contract Documents, including in the event of any termination as permitted by the Contract Documents, claims or liens arising under or by virtue of such termination; (B) to furnish written releases and waivers of all rights to claim or file liens properly executed by any and all Subcontractors, suppliers or others furnishing work, labor, materials, machinery or fixtures for the performance of Work; (C) to furnish LOCKHEED MARTIN with a Certificate of Occupancy issued by the appropriate governmental body having authority over the Work or such other written evidence as LOCKHEED MARTIN may require which demonstrates that all necessary inspections and approvals by or from any municipal or other governmental body having authority over any portion of the Work have been obtained; and (D) to furnish such other data as may be reasonable requested by LOCKHEED MARTIN to establish payment or satisfaction of all payrolls, materials bills, and other indebtedness connected with the Work.
- 4) Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by LOCKHEED MARTIN to the CONTRACTOR when the Work has been completed, the Contract fully performed, a final Certificate for Payment has been issued by LOCKHEED MARTIN, receipt of a properly executed Final Waiver of Lien and Release issued by CONTRACTOR and Subcontractors and governmental authorities having jurisdiction over the Work have issued necessary completion approvals for which the CONTRACTOR is capable of obtaining. Final payment shall be due forty-five (45) days after LOCKHEED MARTIN's receipt of the foregoing documents and any other documents required under the Contract Documents.

## 11. INDEMNIFICATION AND INSURANCE

### a. Indemnification.

- 1) CONTRACTOR shall indemnify LOCKHEED MARTIN and hold harmless LOCKHEED MARTIN, which includes LOCKHEED MARTIN's agents, consultants, officers and employees ("Indemnified Parties") from and against all liability, claims, damages, demands, losses, expenses and costs (including but not limited to court costs and reasonable attorneys' fees) of every kind and nature, arising out of or in connection with the CONTRACTOR's performance of the Work (including but

not limited to CONTRACTOR's failure to comply with the terms of the Contract Documents and any contamination of or adverse effects on the environment), which occurs as a result of or partially as a result of any negligent act or omission of CONTRACTOR, Subcontractors, or anyone directly or indirectly employed by or associated with any of them while performing the Work or delivering materials to the Project Site. CONTRACTOR shall not be required to indemnify the Indemnified Parties for damages caused solely by such Indemnified Parties negligent acts or omissions.

- 2) In the event of any liability, claims, damages, losses, expenses and costs (including but not limited to court costs and attorneys' fees) arising out of or in connection with CONTRACTOR's performance of the Work (including but not limited to CONTRACTOR's failure to comply with the terms of the Contract Documents) which occurs partially as a result of any negligent act or omission of CONTRACTOR, Subcontractors, or anyone directly or indirectly employed by or associated with any of them and partially as a result of any negligent act or omission of any Indemnified Party, CONTRACTOR shall indemnify and hold harmless the Indemnified Parties (including but not limited to court costs and reasonable attorneys' fees).
  - 3) As an additional and independent covenant of the Contract Documents, CONTRACTOR shall procure, as additional protection to the Indemnified Parties, an independent indemnification and hold harmless agreement from each Subcontractor, providing for the protection set forth in clause "11.a.1" and "2" above for the acts or omissions of such Subcontractor.
  - 4) In any and all claims against any Indemnified Party by any employee of CONTRACTOR, Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, the indemnification obligation of CONTRACTOR and any Subcontractor under clause "11.a.1" and "2" shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for them under Workmen's Compensation Acts, Disability Benefit Acts or other employee benefit acts.
- b. **CONTRACTOR's Liability Insurance Requirements.**
- 1) The CONTRACTOR and its subcontractors shall at their own expense maintain for the performance of this Contract workers compensation, commercial general liability (CGL) and automobile liability (AL) (third party bodily injury and property damage liability) insurance with a minimum of \$1,000,000 per occurrence limit and such other insurance as LOCKHEED MARTIN may require to protect the CONTRACTOR from the claims set forth below that may arise out of or result from the CONTRACTOR's operations under this Contract whether such operations be by the CONTRACTOR or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and which shall name LOCKHEED MARTIN as an additional insured.
  - 2) CONTRACTOR's Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy.
- c. **Property Insurance.**
- 1) The CONTRACTOR shall, at its own expense, provide and maintain during the entire performance period of this contract, property insurance upon

CONTRACTOR's own property and any property CONTRACTOR is contractually obligated to insure for the period from commencement of construction until final completion for the full cost of replacement at the time of any loss. This insurance shall include LOCKHEED MARTIN as a "loss payee" or "additional insured. Unless waived in writing by Lockheed Martin, the CONTRACTOR and Subcontractors shall insure against loss from All Risks (Special Form) and shall include "Builder's Risk" insurance for physical loss or damage for any materials or equipment to be used or incorporated in the Project including, without duplication of coverage, endorsed to include at least theft, vandalism, malicious mischief, transit, collapse, flood, hurricane, earthquake, sinkhole collapse, testing, and damage resulting from defective workmanship or material.

d. **Waiver of Subrogation.**

1) The CONTRACTOR's insurers shall issue a waiver of subrogation in favor of Lockheed Martin.

e. **Maintenance of Insurance Requirements**

1) The foregoing policies shall contain a provision that coverage afforded under the policies will not be canceled or not renewed until at least sixty (30) days' prior written notice has been given to the LOCKHEED MARTIN. All insurance purchased by CONTRACTOR shall be carried with companies with an A.M. Best rating of "A-" or better. Certificates of Insurance showing such coverage shall be provided to LOCKHEED MARTIN prior to commencement of on-site work and made a part of the Contract Document by this reference.

2) Should at any time Contractor not maintain the insurance coverages required herein, LOCKHEED MARTIN may terminate the Contract.

f. **Infringement of Intellectual Property Rights.** If any Work performed under this Contract, except Work in accordance with a detailed design furnished by LOCKHEED MARTIN, infringes any third party intellectual property rights, including, but not limited to, patents, copyrights, mask works, trademarks and trade secrets, under the laws of any country, CONTRACTOR shall indemnify LOCKHEED MARTIN and LOCKHEED MARTIN's customers against any claims made by the holder of such rights and hold them harmless from any resulting loss or damage, including attorney fees and costs.

## 12. CHANGES IN THE WORK

a. **Changes**

1) Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract and without notice to sureties, by Change Order subject to the limitations stated in this clause "12" and elsewhere in the Contract Documents.

2) Changes may be made by LOCKHEED MARTIN in the period of performance, designs, method or manner of performance of Work, drawings, change in the LOCKHEED MARTIN furnished facilities, equipment, materials, services or Project Site or directing the acceleration of Work or specifications of this Contract or otherwise within the general scope of this Contract.

3) Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the CONTRACTOR shall proceed promptly, unless otherwise provided in the Change Order.

b. **Equitable Adjustment.** If changes under paragraph "a" above increase or decrease the cost of or time required for

performing the Work, the LOCKHEED MARTIN Procurement Representative shall make an equitable adjustment upon the CONTRACTOR submitting a claim for adjustment as provided in paragraph "d" below.

c. **Change Orders**

1) A Change Order is a written instrument prepared and signed by LOCKHEED MARTIN Procurement Representative stating one or more of the following:

(A) A change in the period of performance, Work, drawing(s), designs, method or manner of performance of the Work, LOCKHEED MARTIN furnished facilities, equipment, materials, services, Project Site or LOCKHEED MARTIN directing the acceleration of Work and/or specifications;

(B) The amount of the adjustment in the Contract Sum, if any; and

(C) The extent of the adjustment in the Contract Schedule, if any.

d. **Claims for Additions to the Contract Sum or the Contract Schedule.**

Any claim by CONTRACTOR for an adjustment to the Contract Sum or the Contract Schedule must be asserted to LOCKHEED MARTIN in writing within seven (7) days from the date of the event or occurrence giving rise to such claim and before the commencement of any portion of the Work directly impacted by the change, except in an emergency situation endangering life or property in which case the CONTRACTOR shall act to prevent such injury or damage. Any adjustment to the Contract Sum or Contract Schedule shall be made only by a Change Order issued in accordance with this clause "12."

e. **Waiver of Equitable Adjustment.** No proposal by the CONTRACTOR for an equitable adjustment under this clause shall be allowed if asserted after final payment under this Contract.

f. **Dispute for Failure to Agree.** Failure of CONTRACTOR and LOCKHEED MARTIN to agree to any equitable adjustment shall be a dispute under the Disputes Clause, paragraph "16j."

g. **Prosecution of Work.** Nothing provided in this clause shall excuse the CONTRACTOR from diligently proceeding with the prosecution of the Work so changed.

## 13. UNCOVERING AND CORRECTION OF WORK

a. **Uncovering of Work**

1) If any Work is covered contrary to the request of LOCKHEED MARTIN or the express requirements of the Contract Documents, the Work shall be uncovered for observation and replaced at CONTRACTOR's expense.

2) If any other Work has been covered which LOCKHEED MARTIN has not specifically requested to observe prior to being covered, LOCKHEED MARTIN may request to see such Work and the Work shall be uncovered by CONTRACTOR. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to LOCKHEED MARTIN. If such Work is found not to be in accordance with the Contract Documents, CONTRACTOR shall pay such costs to uncover and replacement to comply with Contract Documents.

b. **Obligation to Correct.** CONTRACTOR shall promptly remove and cause CONTRACTOR's Subcontractors to remove from the premises all Work condemned by LOCKHEED MARTIN as defective, whether incorporated or not, and CONTRACTOR shall promptly replace and cause CONTRACTOR's Subcontractors to replace and re-execute such

Work in accordance with the Contract Documents and without expense to LOCKHEED MARTIN. CONTRACTOR shall also bear the expense of repairing and/or replacing all other Work damaged or destroyed by such replacement and re-execution of such condemned Work. In addition to other expenses to be borne by CONTRACTOR hereunder, CONTRACTOR shall bear the cost of compensation paid for LOCKHEED MARTIN's additional services made necessary by CONTRACTOR's nonconforming Work.

- c. **Failure to Correct.** If CONTRACTOR does not cause such condemned Work to be removed within a reasonable time, as fixed by written notice, LOCKHEED MARTIN may remove same and store the material at the expense of CONTRACTOR. If CONTRACTOR does not pay the expenses of such a removal within thirty (30) days time thereafter, LOCKHEED MARTIN may, upon seven (7) days written notice, sell such materials at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by CONTRACTOR.
- d. **Acceptance of Defective or Nonconforming Work.** If LOCKHEED MARTIN prefers to accept defective or nonconforming Work, LOCKHEED MARTIN may do so instead of requiring the Works removal and correction, in which case a Change Order will be issued to reflect an appropriate reduction in the Contract Sum, or, if the amount is determined after final payment, that amount shall be immediately paid to LOCKHEED MARTIN by CONTRACTOR.
- e. **Correction of Work After Final Payment.**
  - 1) **Correction.** CONTRACTOR warrants to LOCKHEED MARTIN and LOCKHEED MARTIN's assigns that CONTRACTOR shall promptly remedy, at CONTRACTOR's own expense (or cause CONTRACTOR's Subcontractors to so remedy), any defects due to faulty materials or workmanship and shall pay for any damage to other Work resulting there from, which shall appear within a period of one (1) year from the date of final payment or within such longer time as may otherwise be prescribed by law or by the terms of any special warranties or guarantees required by the Contract Documents.
  - 2) **No Limitation.** Nothing contained in clause "13.e.1" above shall be construed to establish a period of limitation with respect to any other obligation which CONTRACTOR has under the Contract Documents, including, without limitation, paragraph "5.e" hereof or under law. The establishment of the time period of one (1) year after the date of final payment or such longer period of time as may be prescribed by law or by the terms of any warranty or guaranty required by the Contract Documents relates only to the specific obligation of CONTRACTOR to correct the Work, and has no relationship to the time within which CONTRACTOR's obligation to comply with the Contract Documents or applicable provisions of law may be sought to be enforced, nor to the time within which proceedings may be commenced to establish CONTRACTOR's liability with respect to CONTRACTOR's obligations other than specifically to correct the Work.

#### 14. CESSATION OF WORK

- a. **Right to Stop the Work.** If CONTRACTOR fails to correct Work which is not in accordance with the requirements of the Contract Documents or fails to carry out Work in accordance with the Contract Documents, LOCKHEED MARTIN, by written order, signed by the Procurement Representative, may order CONTRACTOR to stop the Work, or any portion

thereof, until the cause for such order has been eliminated; however, the right of LOCKHEED MARTIN to stop the Work shall not give rise to a duty on the part of LOCKHEED MARTIN to exercise the right for the benefit of CONTRACTOR or any other person or entity.

#### b. **Right to Suspend the Work.**

- 1) LOCKHEED MARTIN's Procurement Representative may order the CONTRACTOR, in writing, to suspend, delay, or interrupt all or any part of the Work of this Contract for the period of time that LOCKHEED MARTIN determines necessary and appropriate.
- 2) If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted beyond the period of time stated in Suspension of Work order because of LOCKHEED MARTIN's failure to act within the time specified, an adjustment shall be made for any increase in the cost of performance of this Contract, excluding profit, necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract shall be modified in writing accordingly. LOCKHEED MARTIN will not be considered unreasonably suspending, delaying, or interrupting the performance of this Contract if the suspension, delay, or interruption is at the direction of the Federal, State or local government. Additionally, no equitable adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the CONTRACTOR, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract.
- 3) An equitable adjustment or claim under this clause shall NOT be allowed: (A) for any costs incurred more than twenty (20) days before the CONTRACTOR shall have notified LOCKHEED MARTIN, in writing, of the act or failure involved (but this requirement shall not apply as to a claim resulting from the suspension order), and (B) unless the claim, in an amount stated, is asserted in writing as soon as possible after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Contract.

- c. **Continued Performance of Work.** Nothing provided in this clause shall excuse the CONTRACTOR from diligently continuing with performance of Work not suspended, delayed, or interrupted.

#### 15. TERMINATION

##### a. **Termination by LOCKHEED MARTIN for Default.**

- 1) LOCKHEED MARTIN may, by written notice, without prejudice to any other rights or remedies and without notice to sureties, terminate all or a portion of the Contract if the CONTRACTOR:
  - (A) Refuses or fails to supply enough properly skilled workers or proper materials;
  - (B) Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the CONTRACTOR and the Subcontractors;
  - (C) Disregards laws, ordinances, rules, regulations or orders of a public authority having proper jurisdiction;
  - (D) Otherwise is guilty of breach of any provision of Contract Documents;
  - (E) Refuses or fails to prosecute the Work, or any sep-

arable part thereof, or to perform other requirements under this Contract, with such diligence as will insure Projects completion within the time specified in this Contract, or any extension thereof; or

- (F) Fails to complete the Work within the time set forth in the Contract Schedule;

In such event LOCKHEED MARTIN may take over the Work and prosecute the same to completion, by contract or otherwise and LOCKHEED MARTIN may take possession of and use any materials, appliances, and plant on the Project Site necessary for completing the Work and the CONTRACTOR and CONTRACTOR's sureties shall be liable to LOCKHEED MARTIN for any excess cost occasioned to LOCKHEED MARTIN thereby, and for liquidated damages for delay, as fixed in the specifications or accompanying documents, until such reasonable time as may be required for the final completion of the Work, or if liquidated damages are not so fixed, actual damages occasioned by such delay.

- 2) No exercise by LOCKHEED MARTIN of LOCKHEED MARTIN's right to take over and terminate the Work, in whole or in part, shall operate as a waiver of any other LOCKHEED MARTIN's rights, or prevent LOCKHEED MARTIN from exercising such rights, and the right of LOCKHEED MARTIN to so act is without prejudice to LOCKHEED MARTIN's rights and without waiver of the liabilities and obligations of CONTRACTOR or any Subcontractors, as the case may be, nor shall such act impair the right of LOCKHEED MARTIN to specific performance, injunction, any other equitable remedy or right to money damages.
- 3) If LOCKHEED MARTIN does NOT terminate the right of the CONTRACTOR to proceed, as provided above, the CONTRACTOR shall continue the Work not terminated, in which event CONTRACTOR's sureties shall be liable to LOCKHEED MARTIN, in the amount set forth in the specifications, or accompanying documents, for fixed, agreed, liquidated damages for each calendar day of delay until the Work is completed or accepted, or if liquidated damages are not so fixed, actual damages occasioned by such delay.
- 4) The right of the CONTRACTOR to proceed shall not be terminated, as provided in paragraph "a" above, nor the CONTRACTOR charged with liquidated or actual damages, as provided in this paragraph because of any delays in the completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including, but not restricted to: (A) acts of God or the public enemy, (B) acts of the Government in the Government's sovereign capacity, (C) acts of another contractor in the performance of a contract with LOCKHEED MARTIN, (D) fires, (E) floods, (F) epidemics, (G) quarantine restrictions, (H) freight embargoes, (I) unusually severe weather, or (J) delays of subcontractors or suppliers due to such specified causes herein; provided, that the CONTRACTOR shall within ten (10) days from the beginning of any such delay, notify LOCKHEED MARTIN Procurement Representative in writing of the specific cause of delay.
- 5) LOCKHEED MARTIN shall ascertain the facts and the extent of the delay. If LOCKHEED MARTIN so determines the facts warrant such action, the time for completing the Work may be extended. The findings of LOCKHEED MARTIN shall be final and conclusive on the parties, but subject to appeal under the Disputes Clause.

b. **Termination by LOCKHEED MARTIN for Convenience.**

- 1) LOCKHEED MARTIN may terminate performance of Work under this Contract in whole or, from time to time, in part if LOCKHEED MARTIN determines that a termination is in LOCKHEED MARTIN's interest. LOCKHEED MARTIN shall terminate by delivering to the CONTRACTOR a "Notice of Termination" specifying the extent of termination and the effective date.
- 2) After receipt of a Notice of Termination, and except as directed by LOCKHEED MARTIN Procurement Representative, the CONTRACTOR shall immediately proceed with the following obligations regardless of any delay, in determining or adjusting any amounts due under this clause:
  - (A) Cease Work as specified in the notice;
  - (B) Place no further Subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the Contract;
  - (C) Terminate all Subcontracts to the extent they relate to the Work terminated;
  - (D) Assign, as directed by the LOCKHEED MARTIN Procurement Representative, all right, title, and interest of the CONTRACTOR under the Subcontracts terminated, in which case LOCKHEED MARTIN shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  - (E) To the extent required by LOCKHEED MARTIN, settle all outstanding liabilities and termination settlement proposals arising from the termination of Subcontracts.
  - (F) As directed by LOCKHEED MARTIN Procurement Representative, transfer title and deliver to LOCKHEED MARTIN (i) the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced by or acquired for the Work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to LOCKHEED MARTIN.
  - (G) Complete performance of the Work not terminated.
  - (H) Take any action that may be necessary, or that LOCKHEED MARTIN Procurement Representative may direct, for the protection and preservation of the property related to this Contract that is in the possession of the CONTRACTOR and in which LOCKHEED MARTIN has or may acquire an interest.
- 3) The CONTRACTOR shall submit to LOCKHEED MARTIN a list, certified as to quantity and quality, of termination inventory.
- 4) After termination, the CONTRACTOR shall submit a final termination settlement proposal to LOCKHEED MARTIN Procurement Representative in the form and with the certification prescribed by LOCKHEED MARTIN. The CONTRACTOR shall submit the proposal promptly, but no later than ninety (90) days from the effective date of termination, unless extended in writing by LOCKHEED MARTIN Procurement Representative upon written request of the CONTRACTOR within this 90 day period. However, if LOCKHEED MARTIN Procurement Representative determines that the facts justify it, a termination settlement proposal may

be received and acted on after the 90 days or any extension. If the CONTRACTOR fails to submit the proposal within the time allowed, LOCKHEED MARTIN's Procurement Representative may determine the basis of settlement on information available, the amount, if any, due the CONTRACTOR because of the termination and shall pay the amount determined.

- 5) Subject to paragraph "b.4" above, the CONTRACTOR and LOCKHEED MARTIN may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on Work done. However, the agreed amount, whether under this paragraph "b.5" or paragraph "b.6" below may not exceed the total Contract sum as reduced by (i) the amount of payments previously made and (ii) the contract price of Work not terminated. The Contract shall be amended, and the CONTRACTOR paid the agreed amount. Paragraph "b.6" below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- 6) If the CONTRACTOR and LOCKHEED MARTIN fail to agree on the whole amount to be paid the CONTRACTOR because of the termination of Work, LOCKHEED MARTIN shall pay the CONTRACTOR the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph "b.5" above:
  - (A) For Contract Work performed before the effective date of termination, the total (without duplication of any items) of:
    - (i) The cost of this performed Work;
    - (ii) The cost of settling and paying termination settlement proposals under terminated Sub-contracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and
    - (iii) A sum, as profit on (i) above, in effect on the date of this Contract, to be fair and reasonable; however, if it appears that the CONTRACTOR would have sustained a loss on the entire contract had it been completed, LOCKHEED MARTIN shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.
  - (B) The reasonable costs of settlement of the Work terminated; and
  - (C) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- 7) Except to the extent that LOCKHEED MARTIN expressly assumed the risk of loss, LOCKHEED MARTIN shall exclude from the amounts payable to the CONTRACTOR under paragraph "b.6" above, the fair value, as determined by LOCKHEED MARTIN Procurement Representative, of Work that is destroyed, lost, stolen, or damaged so as to become undeliverable to LOCKHEED MARTIN.
- 8) In arriving at the amount due the CONTRACTOR under this clause, there shall be deducted:
  - (A) Payments to the CONTRACTOR under the terminated portion of this Contract;
  - (B) Any claim which LOCKHEED MARTIN has against the CONTRACTOR under this Contract; and

- (C) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the CONTRACTOR or sold under the provisions of this clause and not recovered by or credited to LOCKHEED MARTIN.

- 9) If the termination is partial, the CONTRACTOR may file a proposal, with LOCKHEED MARTIN's Procurement Representative, for an equitable adjustment of the continued portion of the Contract. Any proposal, by the CONTRACTOR for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by LOCKHEED MARTIN Procurement of Representative.
- 10) Unless otherwise provided in this Contract or by statute, the CONTRACTOR shall maintain all records and documents relating to the terminated portion of this Contract and provide a copy to LOCKHEED MARTIN on final settlement. This includes all books and other evidence bearing on the CONTRACTOR's costs and expenses under this Contract. The CONTRACTOR shall make these records and documents available to LOCKHEED MARTIN without charge. Photographs, microphotographs, or other authentic reproductions may be provided instead of original records and documents.

## 16. MISCELLANEOUS PROVISIONS

- a. **Survival of Representations and Warranties.** The representations and warranties made by LOCKHEED MARTIN and CONTRACTOR in the Contract Documents shall survive the consummation of the transaction contemplated therein and continue in full force and effect for the applicable statute(s) of limitation or repose.
- b. **Waivers.** No deviation from the covenants contained in the Contract Documents, for any reason whatsoever and whether authorized or otherwise, shall be deemed to constitute a precedent or waiver with respect to the handling of any subsequent interpretation or application of any of the provisions of the Contract Documents.
- c. **Headings.** The headings contained in the Contract Documents are for reference purposes only and shall not affect in any way the meaning or interpretation of the Contract Documents.
- d. **Governing Law.** The Contract Documents shall be construed, enforced and regulated under and by the laws of the State where the Project Site Work is being performed. The CONTRACTOR consents to the jurisdiction of the courts of the state where the Project Site is being performed with respect to the commencement of any legal action.
- e. **Invalidity.** The invalidity or unenforceability of all or any part of any provision of the Contract Documents shall in no way affect the validity or enforceability of any other provision or the remainder of any such provision.
- f. **Rights and Remedies.** The duties and obligations imposed by the Contract Documents on CONTRACTOR and the rights and remedies available there under to LOCKHEED MARTIN shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed upon by or available under law or in equity.
- g. **Entire Agreement.** The Contract Documents (including such items of the Contract documents which may be issued subsequent to the execution of the Contract) embody the full and complete understanding of the parties and supersede any previous agreements, written or oral, between LOCKHEED MARTIN and CONTRACTOR and may be modified only in writing signed by LOCKHEED MARTIN and CONTRACTOR.
- h. **Terms and Conditions.** No terms or conditions other than



the terms and conditions set forth in this Contract, including terms and conditions in any Contract Document attached to or incorporated by reference in this Contract, shall be binding upon LOCKHEED MARTIN Terms and conditions contained in any acknowledgment of this Contract which are different from or in addition to the terms and conditions of this Contract shall not be binding on LOCKHEED MARTIN whether or not they would materially alter this Contract and LOCKHEED MARTIN hereby objects thereto. CONTRACTOR will be deemed to have assented to all terms and conditions contained herein if CONTRACTOR undertakes performance of this Contract.

- i. **Claims for Damages.** Should CONTRACTOR suffer injury or damage to person or property because of any act or omission of LOCKHEED MARTIN or any of LOCKHEED MARTIN's employees, agents, or others for whose acts LOCKHEED MARTIN may be legally liable, a claim shall be promptly made in writing to LOCKHEED MARTIN by CONTRACTOR.
- j. **Disputes.** The parties hereto agree to negotiate in good faith towards the settlement of any dispute which may arise under this Contract. In the event that the parties are unable to reach a negotiated settlement, the parties reserve the right to commence and pursue litigation in the courts where the Project Site Work is being performed in order to resolve any such dispute. CONTRACTOR agrees NOT to cease performance of CONTRACTOR's obligations under the Contract Documents notwithstanding the existence of any dispute or the commencement of litigation in connection with any dispute and shall comply with LOCKHEED MARTIN's written instruction of continued performance including delivery of items, services, and construction in accordance with the terms and conditions of this Contract.
- k. **Assignment.** CONTRACTOR shall not assign this Contract without prior written consent of LOCKHEED MARTIN; nor shall CONTRACTOR assign any monies due or to become due to CONTRACTOR hereunder without the prior written consent of LOCKHEED MARTIN. LOCKHEED MARTIN reserves the right to assign this Agreement and all benefits, warranties and representations provided or made to LOCKHEED MARTIN under the Contract Documents; however, after assignment LOCKHEED MARTIN is not released from liability for payment.
- l. **Notices.** All notices, requests, demands and other communications under the Contract Documents shall be deemed to have been duly given if (1) delivered in person, (2) if mailed in the United States mail, postage prepaid, and properly addressed (3) if sent by overnight delivery service, delivery prepaid, and properly addressed, (4) if faxed to the correct fax number (and confirmation of fax receipt obtained), or (5) by email if emailed to correct email address and confirmation of email receipt obtained. Important notices, requests, demands or other communications faxed or emailed as above, should also be given using options (1), (2), or (3), to better ensure actual receipt. From time to time either party may designate another person or address for all purposes of the Contract Documents by giving to the other party not less than FIFTEEN (15) days' advance written notice of such change of person or address in accordance with the provisions hereof.
- m. **Binding Effect.** The Contract Documents shall accrue to the benefit of and be binding upon LOCKHEED MARTIN, the successors and assigns of LOCKHEED MARTIN and, to the extent specified therein, to any other party so specified and shall accrue to the benefit of CONTRACTOR, the permitted successors and assigns of CONTRACTOR and shall be binding upon CONTRACTOR and the successors and assigns of CONTRACTOR.

- n. **Counterparts.** This Contract may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- o. **Records.**
  - 1) The CONTRACTOR agrees that LOCKHEED MARTIN shall, until the expiration of three years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the CONTRACTOR involving transactions related to this Contract.
  - 2) CONTRACTOR shall keep all invoices for labor, materials, tools, services, permits, licenses, etc., incurred in connection with this Contract on a current basis and if required by LOCKHEED MARTIN, shall present further evidence that payment therefore has been made.
- p. **Intellectual Property Rights.**
  - 1) As used in this provision, the following terms shall have the meaning set forth below:
    - (A) "**Subject Data**" means all data developed under or resulting from the CONTRACTOR's or its subcontractor's performance of this Contract.
    - (B) "**Subject Invention**" means any invention, whether patentable or not, conceived or first actually reduced to practice in whole or substantial part, in the performance of the Work under this Contract.
    - (C) "**Subject Works**" means any original work or authorship or mask work prepared for or acquired by LOCKHEED MARTIN under this Contract.
  - 2) CONTRACTOR shall make and maintain adequate and current written records of all such Subject Data, Subject Inventions, and Subject Works, in the form of notes, sketches, drawings, and reports relating thereto, which records shall be and remain the property of and available to LOCKHEED MARTIN.
  - 3) CONTRACTOR shall promptly deliver to LOCKHEED MARTIN full disclosures of all Subject Data, Subject Inventions, and Subject Works. Such disclosures shall be made or deemed to have been made with complete and exclusive grant to LOCKHEED MARTIN of all right, title, and interest in and to any such disclosures and the Subject Data, Subject Inventions, and Subject Works disclosed therein.
  - 4) Upon request, CONTRACTOR shall assist LOCKHEED MARTIN, during and subsequent to the terms of this Contract, in every reasonable way, to obtain for LOCKHEED MARTIN, all intellectual property rights relating to the disclosures, Subject Data, Subject Inventions, and Subject Works.

## 16. PRECEDENCE

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) Face of the Purchase Order and/or Task Order, release document, or schedule, (including any continuation sheets), as applicable, including any special terms and conditions; (2) this Construction Terms & Conditions and (3) the Statement of Work.

End of MFC CCTC document