

LOCKHEED MARTIN CORPORATION

CORPDOC 2T&M

**GENERAL PROVISIONS FOR TIME AND MATERIALS/LABOR HOUR SUBCONTRACTS/PURCHASE ORDERS FOR
COMMERCIAL ITEM SERVICES UNDER A U.S. GOVERNMENT PRIME CONTRACT (ALL AGENCIES)**

1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

- (a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.
- (b) SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract.
- (c) Unless expressly accepted in writing by LOCKHEED MARTIN, additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment are objected to by LOCKHEED MARTIN and have no effect.
- (d) The headings used in this Contract are inserted for the convenience of the parties and shall not define, limit, or describe the scope or the intent of the provisions of this Contract.

2. APPLICABLE LAWS

- (a) This Contract and any matter arising out of or related to this Contract shall be governed by the laws of the State from which this Contract is issued by LOCKHEED MARTIN, without regard to its conflicts of laws provisions, except that any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulation (FAR); or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or; (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts, boards of contracts appeals, and quasi-judicial agencies of the federal Government.
- (b) SELLER, in the performance of this Contract, shall comply with all applicable local, state, and federal laws, orders, rules, regulations, and ordinances. SELLER shall procure all licenses/permits, pay all fees, and other required charges, and shall comply with all applicable guidelines and directives of any local, state, and/or federal governmental authority.

SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, LOCKHEED MARTIN may proceed as provided for in (c)(2) below.

(2) Upon the occurrence of any of the circumstances, other than withholdings, identified in paragraph (2) above, LOCKHEED MARTIN may make a reduction of corresponding amounts (in whole or in part) in the price of this Contract or any other contract with SELLER, and/or may demand payment (in whole or in part) of the corresponding amounts.

4. CHANGE IN CONTROL OF SELLER

Prior to a potential change of control of SELLER and at least ninety (90) days prior to the proposed effectiveness of such

(b) LOCKHEED MARTIN engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with SELLER's personnel concerning the Work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.

(c) Except as otherwise provided herein, all notices to be furnished by SELLER shall be in writing and sent to the LOCKHEED MARTIN Procurement Representative.

8. COUNTERFEIT WORK

(a) The following definitions apply to this clause:

"Counterfeit Work" means Work that is or contains unlawful or unauthorized reproductions, substitutions, or alterations that have been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used Work represented as new, or the false identification of grade, serial e false idrefd1.3(d)io

(g) In the event that Work delivered under this Contract constitutes or includes Counterfeit Work, SELLER shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, SELLER shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation LOCKHEED MARTIN's costs of removing Counterfeit Work, of installing replacement Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies LOCKHEED MARTIN may have at law, equity or under other provisions of this Contract.

(h) SELLER shall include paragraphs (a) through (f) and this paragraph (h) of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Work to LOCKHEED MARTIN.

9. DEFAULT

(a) LOCKHEED MARTIN, by written notice, may terminate this Contract for default, in whole or in part, if SELLER (i) fails to comply with any of the terms of this Contract; (ii) fails to make progress so as to endanger performance of this Contract; (iii) fails to provide adequate assurance of future performance; (iv) files or has filed against it a petition in bankruptcy; or (v) becomes insolvent or suffers a material adverse change in financial condition. SELLER shall have ten (10) days (or such longer period as LOCKHEED MARTIN may authorize in writing) to cure any such failure after receipt of notice from LOCKHEED MARTIN. Default involving delivery schedule delays, bankruptcy or adverse change in financial condition shall not be subject to the cure provision.

(b) Subject to the terms of this contract, SELLER shall be paid an amount computed under the Payments clause of this Contract, but the "hourly rate" for labor hours expended in furnishing work not delivered to or accepted by LOCKHEED MARTIN shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified in this Contract, the portion of the "hourly rate" attributable to profit shall be ten (10) percent.

(c) In the event of a cancellation or termination under this Contract, SELLER shall be liable to LOCKHEED MARTIN for cover costs, in addition to LOCKHEED MARTIN's other rights and remedies at law or in equity.

(d) Upon the occurrence and during the continuation of a default, LOCKHEED MARTIN may exercise any and all rights and remedies available to it under applicable law and equity, including without limitation, cancellation of this Contract. If after termination for default under this Contract, it is determined that SELLER was not in default, such termination shall be deemed a termination for convenience.

(e) SELLER shall continue all Work not terminated or cancelled.

10. DEFINITIONS

The following terms shall have the meanings set forth below:

(a) "Contract" means the instrument of contracting, such as "Purchase Order", "PO", "Subcontract", or other such type designation, including these General Provisions, all referenced documents, exhibits and attachments. If these terms and

conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the Release document for the Work to be performed.

(b) "Direct materials" means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(c) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.

(d) "Hourly rate" means the rate(s) prescribed in this Contract for payment for labor that meets the labor category qualifications of a labor category specified in this Contract that are: (1) performed by SELLER; (2) performed by SELLER's lower tier subcontractors; or (3) transferred between divisions, subsidiaries, or affiliates of SELLER under a common control.



Unverified List or Entity List maintained by the U.S. Commerce Department's Bureau of Industry and Security ("BIS"), or the List of Statutorily Debarred Parties maintained by the U.S. State Department's Directorate of Defense Trade

SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

14. EXTRAS

Work shall not be supplied in excess of quantities specified in this Contract. SELLER shall be liable for handling charges and return shipment costs for any excess quantities.

15. FURNISHED PROPERTY

(a) LOCKHEED MARTIN may, by written authorization, provide to SELLER property owned by either LOCKHEED MARTIN or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.

(b) Title to Furnished Property shall remain in LOCKHEED MARTIN or its customer. SELLER shall clearly mark (if not so marked) all Furnished Property to show its ownership.

(c) Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify LOCKHEED MARTIN of, any loss or damage to Furnished Property. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with applicable law, the requirements of this Contract and good commercial practice.

(d) At LOCKHEED MARTIN's request, and/or upon completion of this Contract, SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by LOCKHEED MARTIN.

(e) The Government Property Clause contained in this Contract shall apply in lieu of paragraphs (a) through (d) above with respect to Government-furnished property, or other property to which the Government has title, or may take title under this Contract.

16. GRATUITIES/KICKBACKS

(a) SELLER shall not offer or give a kickback or gratuity (in the form of entertainment, gifts, or otherwise) for the purpose of obtaining or rewarding favorable treatment as a LOCKHEED MARTIN supplier.

(b) By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

17. INDEMNITY

SELLER shall defend, indemnify, and hold harmless LOCKHEED MARTIN, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

SELLER any increased cost, or deduct such increased cost from any amounts paid or due under this Contract; or (2) terminate this Contract for default.

(f) Notwithstanding paragraphs (d) and (e) above, LOCKHEED MARTIN may at any time require SELLER to remedy by correction or replacement, without cost to LOCKHEED MARTIN, any failure by SELLER to comply with the requirements of this Contract, if the failure is due to--

(i) Fraud, lack of good faith, or willful misconduct on the part of SELLER's managerial personnel; or

(ii) The conduct of one or more of SELLER's employees selected or retained by SELLER after any of SELLER's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

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

(h) SELLER has no obligation or liability under this Contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in this Contract.

(i) Unless otherwise specified in this Contract, SELLER's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

maintained pursuant to this clause shall be considered primary as respects the interest of LOCKHEED MARTIN and is not contributory with any insurance which LOCKHEED MARTIN may carry. "Subcontractor" as used in this clause shall include SELLER's subcontractors at any tier. SELLER's obligations herein for procuring and maintaining insurance coverage are freestanding and are not affected by any other language in this Contract.

23. INTELLECTUAL PROPERTY

(a) SELLER warrants that the Work performed or delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. SELLER shall defend, indemnify, and hold harmless LOCKHEED MARTIN, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising

(2) For labor hours (including any subcontractor hours reimbursed at the hourly rate in this Contract), when timecards are required as substantiation for payment: the original timecards (paper-based or electronic); SELLER's timekeeping procedures; SELLER records that show the distribution of labor between jobs or contracts; and employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.

(3) For material and subcontract costs that are reimbursed on the basis of actual cost: any invoices or subcontract agreements substantiating material costs; and any documents supporting payment of those invoices.

(e) Overpayments/Underpayments. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by LOCKHEED MARTIN not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. SELLER shall promptly pay any such reduction within thirty (30) days unless the parties agree otherwise. LOCKHEED MARTIN within thirty (30) days will pay any such increases, unless the parties agree otherwise. SELLER's payment will be made by check. If SELLER becomes aware of a duplicate invoice payment or that LOCKHEED MARTIN has otherwise overpaid on an invoice payment, SELLER shall--

(1) Remit the overpayment amount to the payment office cited in this Contract along with a description of the

(d) As used herein, "FLOSS" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source, publicly available, or "free" software, library or documentation, or (2) software that is licensed under a FLOSS License, or (3) software provided under a license that (a) subjects the delivered software to any FLOSS License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates LOCKHEED MARTIN to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.

(e) SELLER shall defend, indemnify, and hold harmless LOCKHEED MARTIN, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorney's fees, relating to use in connection with this Contract or the delivery of FLOSS. No other provision in this Contract, including but not limited to the Indemnity clause, shall be construed to limit the liabilities or remedies of the parties for the use of FLOSS in connection with this Contract or for the delivery of FLOSS under this Contract.

41. WAIVERS, APPROVALS, AND REMEDIES

(a) Failure by either party to enforce any of the provisions of this Contract or applicable law shall not constitute a waiver of the requirements of such provisions or law, or as a waiver of the right of a party thereafter to enforce such provision or law.

(b) LOCKHEED MARTIN's approval of documents shall not relieve SELLER of its obligation to comply with the requirements of this Contract.

(c) The rights and remedies of either party in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

42. WORK ON LOCKHEED MARTIN AND THIRD PARTY PREMISES

(a) "Premises" as used in this clause means premises of LOCKHEED MARTIN, its customers, or other third parties where Work is being performed.

(b) SELLER shall ensure that SELLER personnel working on Premises comply with any on-premises policies and: (i) do not bring weapons of any kind onto Premises; (ii) do not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages while on Premises; (iii) do not possess hazardous materials of any kind on Premises without LOCKHEED MARTIN's authorization; (iv) remain in authorized areas only; (v) do not conduct any non-LOCKHEED MARTIN related business activities (such as interviews, hirings, dismissals or personal solicitations) on Premises, (vi) do not send or receive non-LOCKHEED MARTIN related mail through LOCKHEED MARTIN's or third party's mail systems; (vii) do not sell, advertise or market any products or memberships, distribute printed, written or graphic materials on Premises without LOCKHEED MARTIN's written permission or as permitted by law; and (viii) follow instruction from LOCKHEED MARTIN in the event of an actual or imminent safety or environmental hazard on Premises.

(c) All persons, property, and vehicles entering or leaving Premises are subject to search.

(d) SELLER shall promptly notify LOCKHEED MARTIN and provide a report of any accidents or security incidents involving loss of or misuse or damage to LOCKHEED MARTIN, customer, or third party intellectual or physical assets, and all physical altercations, assaults, or harassment.

(e)(1) Prior to entry on Premises, SELLER shall coordinate with LOCKHEED MARTIN to gain access. SELLER shall provide information reasonably required by LOCKHEED MARTIN to ensure proper identification of personnel, including, but not limited to verification of citizenship, lawful permanent resident status, protected individual or other status.

(2) SELLER personnel requiring unescorted access to Premises shall, prior to entry, be screened by SELLER at no charge to LOCKHEED MARTIN through the LOCKHEED MARTIN Contractor Screen Program, or otherwise bepDt 26(e)-9(p)3.1AHELLR n