

**LOCKHEED MARTIN CORPORATION**

**CORPDOC 1EDU**

**GENERAL PROVISIONS**

**COMMERCIAL SUBCONTRACTS/PURCHASE ORDERS PLACED WITH A  
COLLEGE, UNIVERSITY OR OTHER EDUCATIONAL INSTITUTION**

**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. SELLER, in the performance of this Contract, agrees to 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.

(b) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to LOCKHEED MARTIN hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.

(c) SELLER shall provide to LOCKHEED MARTIN with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its State approved counterpart.

**3. ASSIGNMENT**

Any assignment of SELLER's Contract rights or delegation of SELLER's duties shall be void, unless prior written consent is given by LOCKHEED MARTIN. Nevertheless, SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if LOCKHEED MARTIN is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned shall be subject to setoff or recoupment for any present or future claims of LOCKHEED

MARTIN against SELLER. LOCKHEED MARTIN shall have the right to make settlements and/or adjustments in price without notice to any assignee financing institution.

#### **4. CHANGES**

(a) The LOCKHEED MARTIN Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery; and (iv) delivery schedule.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, LOCKHEED MARTIN shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify this Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.

(c) SELLER must assert its right to an equitable adjustment under this clause within thirty (30) days from the date of receipt of the written change order from LOCKHEED MARTIN. If SELLER's proposed equitable adjustment includes the cost of property made obsolete or excess by the change, LOCKHEED MARTIN shall have the right to prescribe the manner of disposition of the property.

(d) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse SELLER from proceeding without delay in the performance of this Contract as changed.

#### **5. CONTRACT DIRECTION**

(a) Only the LOCKHEED MARTIN Procurement Representative has authority on behalf of LOCKHEED MARTIN to make changes to this Contract. All amendments must be identified as such in writing and executed by the parties.

(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.

#### **6. 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) Following a termination for default of this Contract, SELLER shall be compensated only for Work actually delivered and accepted. LOCKHEED MARTIN may require SELLER to deliver to LOCKHEED MARTIN any supplies and materials, manufacturing materials, and manufacturing drawings that SELLER has specifically produced or acquired for the terminated portion of this Contract. LOCKHEED MARTIN and SELLER shall agree on the amount of payment for these other deliverables.

(c) 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.

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

## 7. 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) "LOCKHEED MARTIN" means LOCKHEED MARTIN CORPORATION, acting through its companies or business units, as identified on the face of this Contract. If a subsidiary or affiliate of LOCKHEED MARTIN CORPORATION is identified on the face of this Contract, then "LOCKHEED MARTIN" means that subsidiary or affiliate.

(c) "LOCKHEED MARTIN Procurement Representative" means a person authorized by LOCKHEED MARTIN's cognizant procurement organization to administer and/or execute this Contract.

(d) "SELLER" means the party identified on the face of this Contract with whom LOCKHEED MARTIN is contracting.

(e) "Work" means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

## 8. DISPUTES

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

## 9. ELECTRONIC CONTRACTING

The parties agree that if this Contract is transmitted electronically neither party shall contest the validity of this Contract, or any acknowledgement thereof, on the basis that this Contract or acknowledgement contains an electronic signature.

## 10. EXPORT CONTROL

(a) SELLER agrees to comply, and will ensure that its employees, faculty, graduate assistants, and students comply, with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of Arms Export Control Act, 22 U.S.C.2751-2794, the International Traffic in Arms Regulations (ITAR), 22 C.F.R. 120 et seq., and the Export Administration Regulations, 15 C.F.R. 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, SELLER agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons including its employees, faculty, graduate assistants, and students, or others under contract to SELLER or SELLER's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.

(b) SELLER agrees to notify LOCKHEED MARTIN if any deliverable under this Contract is restricted by export control laws or regulations.

(c) SELLER shall immediately notify the LOCKHEED MARTIN Procurement Representative if SELLER is, or becomes, listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

(d) If SELLER is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, SELLER represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.

(e) Where SELLER is a signatory under a LOCKHEED MARTIN export license or export agreement (e.g., TAA, MLA), SELLER shall provide prompt notification to the LOCKHEED MARTIN Procurement Representative in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR, and the initiation or existence of a U.S. Government investigation, that could affect SELLER's performance under this Contract.

(f) SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

#### **11. 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.

#### **12. FOREIGN SOURCES/FOREIGN NATIONALS**

(a) In the event that SELLER anticipates utilizing foreign nationals or sources for any work under this Contract, SELLER shall notify LOCKHEED MARTIN ten (10) working days before either applying for an export license under International Traffic in Arms Regulation (ITAR), or the Export Administration Regulations, or before solicitation of the foreign sources, whichever shall occur first. This notification shall include detailed description of the data/equipment/material to be exported and a copy of the application for an export license, if such application has been made. This notification to LOCKHEED MARTIN shall not be construed as an application for an export license, nor shall it in any way be interpreted to impede the subcontractor's right to apply for an export license. However, if Lockheed Martin disagrees with the application, SELLER will be so notified.

(b) For purposes of this clause, foreign nationals are all persons not citizens of, or immigrant aliens to, the United States. Nothing in this clause is intended to waive or modify any statutory requirement or any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export control.

(c) SELLER acknowledges that equipment/technical data/materials generated or delivered in performance of this Contract may be controlled by the International Traffic in Arms Regulations (ITAR), or by the Export Administration Regulations and may require an export license before assigning any foreign national to perform work under this Contract or before granting access to foreign nationals to any equipment/technical data/materials generated or delivered in performance of this Contract. SELLER agrees to notify LOCKHEED MARTIN ten (10) working days prior to assigning or granting access to a foreign national to any work, equipment, technical data or material generated or delivered in performance of this Contract. This notification will include the name and country of origin of the foreign national, the specific work, equipment, data or material to which the person will have access, and whether the foreign national is cleared to have access to technical data. Such access shall not be granted to any foreign national unless LOCKHEED MARTIN has approved same in writing.

(d) The above requirements shall not be construed as an application for an export license nor shall they in any way be interpreted to impede SELLER's right to apply for an export license. However, if LOCKHEED MARTIN disagrees with the application, SELLER will be so notified.

### **13. FURNISHED PROPERTY**

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

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

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

(d) At LOCKHEED MARTIN's request, and/or upon completion of this Contract, 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.

### **14. GRATUITIES/KICKBACKS**

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.

### **15. INDEPENDENT CONTRACTOR RELATIONSHIP**

SELLER is an independent contractor in all its operations and activities hereunder. The employees used by SELLER to perform Work under this Contract shall be SELLER's employees exclusively without any relation whatsoever to LOCKHEED MARTIN.

### **16. INFORMATION OF LOCKHEED MARTIN**

(a) Information provided by LOCKHEED MARTIN to SELLER remains the property of LOCKHEED MARTIN. SELLER agrees to comply with the terms of any proprietary information agreement with LOCKHEED MARTIN and to comply with all proprietary information markings and restrictive legends applied by LOCKHEED MARTIN to anything provided hereunder to SELLER. SELLER agrees not to use any LOCKHEED MARTIN provided information for any purpose except to perform this Contract and agrees not to disclose such information to third parties without the prior written consent of LOCKHEED MARTIN. SELLER shall maintain data protection processes and systems sufficient to adequately protect LOCKHEED MARTIN provided information and comply with any law or regulation applicable to such information.

(b) If SELLER becomes aware of any compromise of information provided by LOCKHEED MARTIN to SELLER, its officers, employees, agents, suppliers, or subcontractors (an "Incident"), SELLER will take appropriate immediate actions to investigate and contain the Incident and any associated risks, including prompt notification to LOCKHEED MARTIN soon after learning of the Incident. As used in this Section, "compromise" means that any information provided by LOCKHEED MARTIN has been exposed to unauthorized access, inadvertent disclosure, known misuse, loss, destruction, or alteration other than as required to perform the Work. SELLER will additionally provide its reasonable cooperation to LOCKHEED MARTIN in any investigation it may conduct regarding the nature and scope of any Incident. Any costs that may be incurred for remedial actions caused by an Incident shall be borne by SELLER.

(c) Any LOCKHEED MARTIN provided information identified as proprietary or subject to restrictions on public disclosure by law or regulation shall be encrypted (i) if transmitted via the Internet, or (ii) during electronic storage if potentially accessible by the Internet or otherwise by non-authorized users.

(d) The provisions set forth above are in addition to and do not alter, change or supersede any obligations contained in a proprietary information agreement between the parties.

#### **17. INFORMATION OF SELLER**

SELLER shall not provide any proprietary information to LOCKHEED MARTIN without prior execution of a proprietary information agreement by the parties.

#### **18. INSPECTION AND ACCEPTANCE**

(a) LOCKHEED MARTIN and its customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.

(b) No such inspection shall relieve SELLER of its obligations to furnish and warrant all Work in accordance with the requirements of this Contract. LOCKHEED MARTIN's final inspection and acceptance shall be at destination.

(c) If SELLER delivers non-conforming Work, LOCKHEED MARTIN may, in addition to any other remedies available at law or at equity: (i) accept all or part of such Work at an equitable price reduction; or (ii) reject such Work; or (iii) require SELLER, at SELLER's cost, to make all repairs, modifications, or replacements at the direction of LOCKHEED MARTIN necessary to enable such Work to comply in all respects with Contract requirements.

(d) SELLER shall not re-tender rejected Work without disclosing the corrective action taken.

#### **19. INTELLECTUAL PROPERTY**

Paragraph (a) is NOT applicable for commercial off-the-shelf Work unless such Work is modified or redesigned pursuant to this Contract.

(a) SELLER agrees that LOCKHEED MARTIN shall be the owner of all inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated in the performance of this Contract by or on behalf of SELLER. SELLER hereby assigns and agrees to assign all right, title, and interest in the foregoing to LOCKHEED MARTIN, including without limitation all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at LOCKHEED MARTIN's request and expense, all documentation necessary to perfect title therein in LOCKHEED MARTIN. SELLER agrees that it will maintain and disclose to LOCKHEED MARTIN written records of, and otherwise provide LOCKHEED MARTIN with full access to, the subject matter covered by this clause and that all such subject matter will be deemed information of LOCKHEED MARTIN and subject to the protection provisions of the clause entitled "Information of Lockheed Martin". SELLER agrees to assist LOCKHEED MARTIN, at LOCKHEED MARTIN's request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this clause.

(b) SELLER warrants that the Work performed or delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. SELLER agrees to defend, indemnify, and hold harmless LOCKHEED MARTIN and its customers from and against any claims, damages, losses, costs, and expenses, including reasonable

attorneys fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.

(c) To the extent that any pre-existing inventions, technology, designs, works of authorship, mask works, technical information, computer software, and other information or materials are used, included, or contained in the Work or deliverable items and not owned by LOCKHEED MARTIN pursuant to this or a previous agreement with SELLER, SELLER grants to LOCKHEED MARTIN an irrevocable, nonexclusive, world-wide, royalty-free license to: (i) make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works based upon, such pre-existing inventions, technology, designs, works of authorship, mask works, technical information, computer software, and other information or materials and derivative works thereof; and (ii) authorize others to do any, some or all of the foregoing.

(d) The tangible medium storing all reports, memoranda or other materials in written form including machine readable form, prepared by SELLER and furnished to LOCKHEED MARTIN pursuant to this Contract shall become the sole property of LOCKHEED MARTIN.

## **20. NEW MATERIALS**

The Work to be delivered hereunder shall consist of new materials, not used, or reconditioned, remanufactured, or of such age as to impair its usefulness or safety.

## **21. OFFSET CREDIT/COOPERATION**

This Contract has been entered into in direct support of LOCKHEED MARTIN's international offset programs. All offset benefit credits resulting from this Contract are the sole property of LOCKHEED MARTIN to be applied to the offset program of its choice. SELLER agrees to assist LOCKHEED MARTIN in securing appropriate offset credits from the respective country government authorities.

## **22. PACKING AND SHIPMENT**

(a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.

(b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the LOCKHEED MARTIN Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.

(c) Unless otherwise specified, delivery shall be FOB Place of Shipment.

## **23. PAYMENTS, TAXES, AND DUTIES**

(a) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (1) LOCKHEED MARTIN's receipt of SELLER's proper invoice; (2) scheduled delivery date of the Work; or (3) actual delivery of the Work.

(b) Each payment made shall be subject to reduction to the extent of amounts which are found by LOCKHEED MARTIN or SELLER not to have been properly payable, and shall also be subject to reduction for overpayments. SELLER shall promptly notify LOCKHEED MARTIN of any such overpayments found by SELLER.

(c) LOCKHEED MARTIN shall have a right to recoup or setoff, as the case may be, against payments due or at issue under this Contract or any other contract between the parties.

(d) Payment shall be deemed to have been made as of the date of mailing LOCKHEED MARTIN's payment or electronic funds transfer.

(e) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

#### **24. 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 CorpDoc; and (3) the Statement of Work.

#### **25. RELEASE OF INFORMATION**

SELLER and its subcontractors shall not, without the prior written consent of LOCKHEED MARTIN, disclose any information of any nature whatsoever relative to this Contract except as may be required to ensure performance or is required by law. SELLER shall not use "Lockheed Martin," "Lockheed Martin Corporation" or any other name, trademark or logo owned by LOCKHEED MARTIN, in whatever shape or form, without the prior written consent of LOCKHEED MARTIN. LOCKHEED MARTIN recognizes that SELLER may wish to publish, for example in a lecture or in a scientific journal, certain of the Contract results and LOCKHEED MARTIN agrees that it will not, after being given the opportunity to examine the relevant draft, prevent such publication in accordance with normal academic custom, provided that: (a) it may be necessary for such publication to be delayed in order not to prejudice the obtaining or validity of intellectual property rights in any country of the world, and (b) such results or information shall not include any information that LOCKHEED MARTIN deems proprietary or confidential. Any delay in publication shall not exceed ninety (90) days from the date LOCKHEED MARTIN receives a copy of the proposed publication.

#### **26. RETENTION OF RECORDS**

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by SELLER or its subcontractors without the prior written approval of LOCKHEED MARTIN. SELLER shall not use "Lockheed Martin," "Lockheed Martin Corporation," or any other trademark or logo owned by LOCKHEED MARTIN, in whatever shape or form, without the prior written consent of LOCKHEED MARTIN.

#### **27. SEVERABILITY**

Each clause, paragraph and subparagraph of this Contract is severable, and if one or more of them are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

#### **28. STOP WORK**

(a) SELLER shall stop Work for up to ninety (90) days in accordance with any written notice received from LOCKHEED MARTIN, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.

(b) Within such period, LOCKHEED MARTIN shall either terminate in accordance with the provisions of this Contract or continue the Work by written notice to SELLER. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after date of notice to continue.

#### **29. SURVIVABILITY**



If this Contract expires, is completed, or is terminated, SELLER shall not be relieved of those obligations contained in the following clauses:

Applicable Laws  
Electronic Contracting  
Export Control  
Independent Contractor Relationship  
Information of Lockheed Martin  
Intellectual Property  
Release of Information  
Retention of Records  
Use of Free, Libre and Open Source Software (FLOSS)  
Warranty

### **30. TERMINATION FOR CONVENIENCE**

(a) LOCKHEED MARTIN reserves the right to terminate this Contract, or any part hereof, for its convenience. LOCKHEED MARTIN shall terminate by delivering to SELLER a Notice of Termination specifying the extent of termination and the effective date. In the event of such termination, SELLER shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Contract, SELLER shall be paid a percentage of the Contract price reflecting the percentage of the Work performed prior to the notice of termination, plus reasonable charges SELLER can demonstrate to the satisfaction of LOCKHEED MARTIN using its standard record keeping system have resulted from the termination. SELLER shall not be paid for any Work performed or costs incurred which reasonably could have been avoided.

(b) In no event shall LOCKHEED MARTIN be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. SELLER's termination claim shall be submitted within ninety (90) days from the effective date of the termination.

(c) SELLER shall continue all Work not terminated.

### **31. TIMELY PERFORMANCE**

(a) SELLER's timely performance is a critical element of this Contract.

(b) If SELLER becomes aware of difficulty in performing the Work, SELLER shall timely notify LOCKHEED MARTIN, in writing, giving pertinent details. This notification shall not change any performance schedule.

### **32. USE OF FREE, LIBRE AND OPEN SOURCE SOFTWARE (FLOSS) SOFTWARE**

(a) This clause only applies to Work that includes the delivery of software (including software residing on hardware).

(b) SELLER shall disclose to LOCKHEED MARTIN in writing any FLOSS that will be used or delivered in connection with this Contract and shall obtain LOCKHEED MARTIN's prior written consent before using or delivering such FLOSS in connection with this Contract. LOCKHEED MARTIN may withhold such consent in its sole discretion.

(c) As used herein, "FLOSS License" means the General Public License ("GPL"), Lesser/Library GPL, (LGPL), the Affero GPL (APL), the Apache license, the Berkeley Software Distribution ("BSD") license, the MIT license, the Artistic License (e.g., PERL), the Mozilla

Public License(MPL), or variations thereof, including without limitation licenses referred to as "Free Software License", "Open Source License", "Public License", or "GPL Compatible License."

(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.

### **33. 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.

### **34. WARRANTY**

SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship. This warranty shall begin upon final acceptance and extend for a period of one (1) year. If any nonconforming Work is identified within the warranty period, SELLER, at LOCKHEED MARTIN's option, shall promptly repair, replace, or reperform the Work. Transportation of replacement Work, return of nonconforming Work, and reperformance of Work shall be at SELLER's expense. If repair, or replacement, or reperformance of Work is not timely, LOCKHEED MARTIN may elect to return, reperform, repair, replace, or reprocur the non-conforming Work at SELLER's expense. All warranties shall run to LOCKHEED MARTIN and its customers.