**LOCKHEED MARTIN SPACE**

FPCC -1

|  |
| --- |
| TERMS AND CONDITIONSCOMMERCIAL FIXED-PRICE CONSTRUCTION CONTRACT |

|  |  |
| --- | --- |
| 1. | Acceptance of Contract/Terms and Conditions |
| 2. | Applicable Laws |
| 3. | Assignment |
| 4. | Bonds |
| 5. | Changes |
| 6. | Claims and Disputes |
| 7. | Conflict of Interest |
| 8. | Construction Schedule |
| 9. | Construction Services |
| 10. | Contract Direction |
| 11. | Contractor’s Personnel |
| 12 | Contractor’s Representations |
| 13. | Copyrights; Trademark; Ownership of Work Product |
| 14. | Counterfeit Work |
| 15. | Defective Work |
| 16. | Definitions |
| 17. | Drug Free Workplace |
| 18. | Ethical Business Practices |
| 19. | Export Control |
| 20. | Force Majeure |
| 21. | Gratuities/Kickbacks |
| 22. | Hazardous Environmental Conditions and Hazardous Materials |
| 23. | Illegal Aliens |
| 24. | Independent Contractor Relationship |
| 25. | Inspections, Tests, Acceptance, Quality Control |
| 26. | Insurance/Indemnity/Risk of Loss |
| 27. | Liens |
| 28. | Lockheed Martin-Furnished Property |
| 29. | Material and Workmanship |
| 30. | Nondiscrimination |
| 31. | Notice of Labor Disputes |
| 32. | Operations, Storage Areas and Temporary Construction Facilities |
| 33. | Payment/Retainage |
| 34. | Protection of Materials and Work Performed |
| 35. | Records |
| 36. | Release of Information |
| 37. | Removal of Equipment and Cleanup |
| 38. | Safety and Accident Preventions |
| 39. | Separate Contractors |
| 40. | Site Investigation |
| 41. | Specifications and Drawings/Submittals |
| 42. | Subcontractors |
| 43. | Substantial Completion/Punch List/Final Completion |
| 44. | Substitutions |
| 45. | Superintendence |
| 46. | Survivability |
| 47. | Suspension of Work |
| 48. | Taxes |
| 49. | Termination for Convenience |
| 50. | Termination for Default |
| 51. | Use of the Work Before Acceptance |
| 52. | Waiver, Approval, and Remedies |
| 53. | Warranty and Correction of Defects |
|  |  |

# Acceptance Of Contract/Terms And Conditions

## The Contract integrates, merges and supersedes any prior offers, negotiations and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.

## The Contract shall not be construed to create a contractual relationship of any kind (i) between LOCKHEED MARTIN and a Subcontractor or Sub-subcontractor, or (ii) between any persons or entities other than LOCKHEED MARTIN and the CONTRACTOR.

## The CONTRACTOR’S acknowledgment, acceptance of payment or commencement of performance of the Work shall constitute the CONTRACTOR’S unqualified acceptance of the Contract.

## Additional or differing terms or conditions proposed by the CONTRACTOR or included in the CONTRACTOR’S acknowledgment hereof are rejected by LOCKHEED MARTIN and have no effect unless expressly included in the Contract.

## The headings in the Contract are inserted for convenience of reference and in no way define or limit the scope or intent of the Contract. Where the context requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The Contract shall be construed reasonably to carry out its intent, without presumption against or in favor of either Party.

# Applicable Laws

## The CONTRACTOR represents that each chemical substance contained in Work that is transferred to LOCKHEED MARTIN under the Contract 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 B.SC. Sec. 2601, et seq.), as amended.

## The CONTRACTOR shall maintain on the Site with each delivery any Safety Data Sheets (“SDS”) applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 (“OSHA”) and its regulations, or its state-approved counterpart.

## The CONTRACTOR shall comply with all requirements and obligations relating to its employees under all local, state, and federal laws and regulations, including, but not limited to employer’s obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer’s liability insurance; worker’s compensation; veteran’s rights; and all other employment, labor, or benefits related laws.

## The CONTRACTOR shall perform the Work in accordance with all Laws. The CONTRACTOR shall notify LOCKHEED MARTIN promptly in writing if a charge of noncompliance with any Laws has been filed against the CONTRACTOR in connection with the Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by the CONTRACTOR, and the CONTRACTOR shall fully indemnify, defend and hold harmless the Indemnitees from all loss, damage, and expense, including attorneys’ fees, resulting from any such violation.

# Assignment

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

## LOCKHEED MARTIN shall have the right to assign the Contract to any successor, purchaser, subsidiary or affiliate.

# Bonds

## Payment Bond – The CONTRACTOR shall furnish a Payment Bond with a surety or sureties approved by LOCKHEED MARTIN for the protection of persons furnishing material and/or labor in connection with the performance of the Work. The amount of such Payment Bond shall be 100% of the Contract Price.

## Performance Bonds - The CONTRACTOR shall furnish a Performance Bond with a surety or sureties approved by LOCKHEED MARTIN in connection with the performance of the Work. The amount of such Performance Bond shall be 100% of the Contract Price.

## Date of Bonds – Bonds shall be dated before or as of the same date as the Contract and shall be furnished by the CONTRACTOR to LOCKHEED MARTIN no later than the time of execution of the Contract.

## Additional Bond Security - If any surety upon any Bond furnished in connection with the Contract becomes unacceptable to LOCKHEED MARTIN, or if the surety fails to furnish reports as to its financial condition when requested by LOCKHEED MARTIN, the CONTRACTOR shall promptly furnish additional security as shall be required to protect the interests of LOCKHEED MARTIN and of persons supplying labor or materials in the performance of the Work.

## The obligation to secure the required Bonds and any Bond Riders shall be solely upon the CONTRACTOR.

## All Bonds shall contain a provision to the effect that if the CONTRACTOR fails to give the surety notice of changes, alterations, modifications, or amendments to the Contract, the surety shall not be released of liability under the existing Bonds or any Bond Riders issued thereto. LOCKHEED MARTIN shall have the right to withhold any payments due the CONTRACTOR until such time as the CONTRACTOR secures the required Bonds or Bond Riders, and the same have been approved by LOCKHEED MARTIN.

## All Bonds shall meet all statutory requirements, and without limitation, comply with the following requirements:

### Lockheed Martin shall be named as a dual obligee on all Bonds;

### Bonds shall be executed by a responsible surety licensed in the state where the project is located and named in the current listing by the Department of Treasury of Approved Sureties (Department Circular 570) and shall remain in effect until expiration of any period for correction of Defective Work set forth in this Contract or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer;

### The CONTRACTOR shall require the attorney in fact who executes the required Bonds on behalf of the surety to affix thereto a certified and current copy of his or her power of attorney indicating the monetary limit of such power; and

### Any Bond supplied pursuant to this Section must display the surety’s bond number. A rider, including the following provisions, shall be attached to each Bond:

#### The surety hereby consents to and waives notice of any addition, alteration, omission, change, or other modification of this Contract. Any addition, alteration, change, extension of time, or other modification of this Contract or a forbearance on the part of either LOCKHEED MARTIN or the CONTRACTOR to the other, shall not release the surety of its obligations, and notice to the surety of such matters is waived; and

#### The surety agrees that it is obligated under the Bonds to any successor, grantee or assignee of LOCKHEED MARTIN.

# Changes

##  LOCKHEED MARTIN may at any time, by written notice, make Changes within the general scope of the CONTRACT, including additions, deletions and/or revisions to the Work.

### Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Construction Change Directive or Change Order only. Oral changes shall have no effect. Nothing contained in this Section shall excuse the CONTRACTOR from proceeding without delay in the performance of the Work as changed unless otherwise directed in the Change Order or Construction Change Directive.

### A Change Order shall be based upon agreement by and between LOCKHEED MARTIN and the CONTRACTOR and may be initiated by either Party. A Construction Change Directive may come solely from the LOCKHEED MARTIN Procurement Representative.

### Changes in the Work shall be performed under applicable provisions of the Contract, and the CONTRACTOR shall proceed promptly unless otherwise provided in the Change Order or Construction Change Directive.

## Change Orders. A Change Order is a written instrument prepared by LOCKHEED MARTIN and signed by the LOCKHEED MARTIN Procurement Representative and the CONTRACTOR stating their agreement upon the following:

### A Change in the Work;

### The amount of the adjustment, if any, in the Contract Price wherein the adjustment will be based on a negotiated fixed price, which shall include overhead and profit subject to the Section of the Contract entitled “Limitation of Overhead and Profit on Changed Work”, with the CONTRACTOR providing properly itemized data to permit evaluation by LOCKHEED MARTIN.

### The extent of the adjustment, if any, to the Contract Time.

## From time to time at the discretion of LOCKHEED MARTIN, the Parties shall restate or create a conformed Contract to incorporate all of the previously executed Change Orders.

## By executing a Change Order, the CONTRACTOR irrevocably waives, renounces and releases (and shall cause any affected Subcontractor to similarly waive, renounce, and release) any and all other Claims of any kind or nature concerning, arising from or relating to the Work that are the subject of the Change Order, including any Claim for compensation, additional time, delay damages, or breach of contract.

## Construction Change Directives.

### A Construction Change Directive is a written order prepared by LOCKHEED MARTIN and signed by the LOCKHEED MARTIN Procurement Representative directing a Change in the Work prior to agreement on the adjustment, if any, in the Contract Price and/or the Contract Time, and stating a proposed basis for adjustment, if any, in the Contract Price and/or Contract Time. A Construction Change Directive must be signed by the LOCKHEED MARTIN PROCUREMENT REPRESENTATIVE and may also be signed by the CONTRACTOR, however, a Construction Change Directive not signed by the CONTRACTOR is valid and enforceable against both Parties. LOCKHEED MARTIN may by Construction Change Directive, without invalidating the Contract, order Changes in the Work within the general scope of the Contract consisting of additions, deletions or revisions, the Contract Price and/or the Contract Time being adjusted accordingly.

### A Construction Change Directive shall be used in the absence of total agreement between the Parties on the terms of a Change Order. A Construction Change Directive shall include authorization to proceed with a certain scope of work, a period of performance, a not to exceed price, a statement that LOCKHEED MARTIN shall not be obligated to pay more than the not to exceed price for the authorized scope, and the method for determining an adjustment to the Contract Price, if applicable, and to the Contract Time, if applicable.

### If the Construction Change Directive provides for an adjustment to the Contract Price, the adjustment shall be based on one of the following methods:

#### A fixed price, which shall include all overhead and profit subject to the Section of the Contract entitled “Limitation of Overhead and Profit on Changed Work”, wherein the adjustment will be based on price negotiations between the Parties, with the CONTRACTOR providing properly itemized data to permit evaluation by LOCKHEED MARTIN;

#### Unit prices as stated in the Contract Documents or subsequently agreed upon; or

#### The cost of labor and materials (“Time and Materials Costs”) with a not to exceed price and subject to the Section of the Contract entitled “Limitation of Overhead and Profit on Changed Work”, provided LOCKHEED MARTIN consents in writing to this method before the changed Work is performed and the CONTRACTOR complies with the requirements below. For labor charges, the hourly rates in Exhibit \_\_ shall apply.

### For purposes of documenting Time and Material Costs associated with Work performed under a Construction Change Directive, the CONTRACTOR shall furnish the LOCKHEED MARTIN Procurement Representative on a daily basis with the following information for labor for the preceding day:

#### Name, classification, hours worked, hourly rate, and extension for the CONTRACTOR’S personnel;

#### Name, classification, hours worked, hourly rate, and extension for Subcontractor’s personnel;

#### For Material used, other than small tools (whether rented or supplied by CONTRACTOR or a Subcontractor), the type of Material, user, hours operated, total hours, rental rate, and extension;

#### Quantities and prices of Materials used by the CONTRACTOR and each Subcontractor; and

#### Charges for transportation of Materials paid by the CONTRACTOR and each Subcontractor.

### In the absence of an hourly rate, the CONTRACTOR shall provide statements reflecting actual wages for each hour that the CONTRACTOR’S personnel are actually engaged, plus the actual costs paid to, or on behalf of such personnel by reason of subsistence and travel allowances, health, welfare benefits, pension fund benefits, or other benefits, when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the Work. Statements for payments of such items shall be accompanied by original receipted invoices for Materials used and transportation charges. If, however, the Materials are not specifically purchased for such Work but are taken from the CONTRACTOR'S stock, then in lieu of the original invoices, the statements shall certify that such Materials were taken from the CONTRACTOR’S stock, that the quantity claimed was actually used and that the price and transportation of the Materials claimed represent actual cost.

### Once Work performed pursuant to a Construction Change Directive is completed under Time and Materials Costs, the CONTRACTOR shall submit such costs to Lockheed Martin, and if the Parties are in agreement, such costs shall be incorporated into a Change Order to be executed by the Parties. If the Parties cannot agree on the terms of a Change Order, either Party may submit a Claim.

### Upon receipt of a Construction Change Directive, the CONTRACTOR shall proceed with the Change in the Work as directed and, within ten (10) calendar days, advise the LOCKHEED MARTIN Procurement Representative of the CONTRACTOR’S agreement or disagreement with the method, if any, proposed in the Construction Change Directive for adjustment in the Contract Price and/or Contract Time.

### A Construction Change Directive signed by the CONTRACTOR indicates the agreement of the CONTRACTOR therewith, including any adjustment in the Contract Price and/or Contract Time or the method proposed for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

## If the CONTRACTOR does not agree with the Contract Price adjustment and/or the Contract Time adjustment in a Construction Change Directive, the CONTRACTOR shall submit a Claim within ten (10) calendar days from the date of receipt of the Construction Change Directive, or within such time as approved by the LOCKHEED MARTIN Procurement Representative. The LOCKHEED MARTIN Procurement Representative may decide in his or her sole discretion to receive and act upon a Claim related to a Construction Change Directive before final payment of the Contract. Any unresolved Claim will be resolved in accordance with Section 6.

## Pending final determination of adjustments to the Contract Price and/or Contract Time, any amounts not in dispute may be included in the CONTRACTOR’S Applications for Payment. The amount of credit to be given by the CONTRACTOR to LOCKHEED MARTIN for a Change which results in a net decrease in the Contract Price shall be the actual net cost. When both additions and credits are involved in a Change, the allowance for overhead and profit shall be calculated on the basis of net increase or decrease with respect to that Change.

## Minor Changes in the Work. The LOCKHEED MARTIN Procurement Representative shall have authority to order minor Changes in the Work that do not impact the Contract Price or the Contract Time. Such Changes shall be made by written order and shall be binding on the CONTRACTOR. The CONTRACTOR shall carry out such written orders promptly.

## LOCKHEED MARTIN’S engineering and technical personnel may from time to time render assistance or give technical advice to, or effect an exchange of information with, the CONTRACTOR’S personnel in a liaison effort concerning the Work. However, such exchange of information or advice shall not vest the CONTRACTOR with the authority to modify the Work, the provisions of the Contract, the Contract Price or the Contract Time, unless incorporated in a Change Order or Construction Change Directive signed by the LOCKHEED MARTIN Procurement Representative.

## Wherever the Contract provides for submittal of designs or other items for review or approval by LOCKHEED MARTIN, such reviews or approvals shall not be construed as verification as to the adequacy of such design or item, nor as an agreement that the design or item will meet the requirements of the Contract Documents, nor as any Change to the requirements of the Contract Document. Such actions shall not be deemed to be a Change under this Section and shall not be the basis for a Claim. Such reviews and approvals shall in no way relieve the CONTRACTOR of the responsibility for any error or deficiency which may exist in the submitted design, as the CONTRACTOR shall be solely responsible for meeting all requirements in the Contract Documents.

## No course of conduct between the Parties, nor express or implied acceptance of alternations or additions to the Work, and no claim that LOCKHEED MARTIN has been unjustly enriched by any Changes to the Work shall be the basis for any Claim to an increase in the Contract Price or an extension of the Contract Time.

## LOCKHEED MARTIN shall have the sole right to prescribe the manner of the disposition of any property or materials made obsolete or excess by a Change Order or Construction Change Directive.

# Claims And Disputes

## Responsibility to Substantiate Claims. The responsibility to substantiate a Claim shall rest with the Party making the Claim. Claims not filed in accordance with this Section shall be deemed waived.

## The CONTRACTOR’S Time Limits on Claims. Unless a different time period is specified in another part of the Contract, Claims must be made in writing within twenty-one (21) calendar days after the occurrence of the event giving rise to the Claim or within twenty-one (21) calendar days of the date the CONTRACTOR first knew or should have known of the Claim. The Parties acknowledge that LOCKHEED MARTIN will be prejudiced if Contractor fails to provide the notice required under this Section and agree that such requirement is an express condition precedent for an adjustment in the Contract Price and/or Contract Time, or any other Modification to any other obligation of the CONTRACTOR under the Contract. Oral or constructive notice, shortness of time, or LOCKHEED MARTIN’S actual knowledge of a particular circumstance shall not waive, satisfy, discharge or otherwise excuse CONTRACTOR’S strict compliance with this Section.

## Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided elsewhere in the Contract, the CONTRACTOR shall proceed diligently with the performance of the Work.

## Claims for Concealed or Unknown Conditions (also known as Differing Site Conditions).

### If conditions are encountered at the Site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the CONTRACTOR shall be given to the LOCKHEED MARTIN Procurement Representative before such conditions are disturbed and in no event later than forty-eight (48) hours after first observance of the conditions.

### The LOCKHEED MARTIN Procurement Representative will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the CONTRACTOR’S cost of, or time required for, performance any part of the Work, will initiate a Change Order to modify the Contract Price and/or the Contract Time. If the LOCKHEED MARTIN Procurement Representative determines that the conditions at the Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the LOCKHEED MARTIN Procurement Representative shall notify the CONTRACTOR in writing, stating the reasons. Claims in opposition to such determination must be made within forty-eight (48) hours after the LOCKHEED MARTIN Procurement Representative has given notice of his or her decision.

### If LOCKHEED MARTIN and the CONTRACTOR cannot agree on an adjustment in the Contract Price and/or Contract Time, the adjustment shall be decided pursuant to the Resolution of Claims and Disputes provisions below.

## Claims for Additional Cost. If the CONTRACTOR wishes to make a Claim for an increase in the Contract Price, notice as provided above shall be given before proceeding to execute the Work. If the CONTRACTOR believes additional cost is involved for reasons including, but not limited to (i) a written interpretation from the LOCKHEED MARTIN Procurement Representative, (ii) an order by LOCKHEED MARTIN to Stop Work where the CONTRACTOR was not at fault, or (iii) other grounds, a Claim shall be filed in accordance with the provisions of this Section.

## Claims to Extend the Contract Time

### If the CONTRACTOR wishes to make a Claim for an increase in the Contract Time, notice as provided above shall be given. The CONTRACTOR’S Claim shall include an estimate of any additional cost and of the effect of delay on the critical path of the Work. The impact of a Change Order or a Construction Change Directive on the Contract Time shall be the actual time impact on the critical path determined by an analysis of the then current Project Schedule.

### If adverse weather conditions are the basis for a Claim for additional time, such Claim shall include data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

## Claims for Consequential Damages. The CONTRACTOR waives all Claims against LOCKHEED MARTIN for all consequential or indirect damages arising out of or relating to the Contract or the Work. This waiver includes, but is not limited to, damages incurred by the CONTRACTOR for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons.

## Resolution of Claims and Disputes

### Decision of the LOCKHEED MARTIN Procurement Representative. Claims, including those alleging an error or omission by the CONTRACTOR or LOCKHEED MARTIN, shall be referred initially to the LOCKHEED MARTIN Procurement Representative for decision. An initial decision by the LOCKHEED MARTIN Procurement Representative shall be required as a condition precedent to mediation or arbitration of any Claims between LOCKHEED MARTIN and the CONTRACTOR. The LOCKHEED MARTIN Procurement Representative will not decide disputes between the CONTRACTOR and persons or entities other than LOCKHEED MARTIN.

### The LOCKHEED MARTIN Procurement Representative shall review Claims by the CONTRACTOR within thirty (30) calendar days of receipt of notice of the Claim and shall take one or more of the following actions: (1) request additional supporting data from the CONTRACTOR; (2) reject the Claim in whole or in part; (3) approve the Claim; or (4) suggest a compromise.

### If the LOCKHEED MARTIN Procurement Representative requests that the CONTRACTOR furnish additional supporting data, the CONTRACTOR shall respond within twenty (20) calendar days after receipt of such request and shall either provide a response on the requested supporting data, advise the LOCKHEED MARTIN Procurement Representative when the response or supporting data will be furnished or advise the LOCKHEED MARTIN Procurement Representative that no supporting data will be furnished. The LOCKHEED MARTIN Procurement Representative will respond within thirty (30) calendar days of receipt of the additional supporting data.

### The LOCKHEED MARTIN Procurement Representative will approve or reject Claims in writing, and shall notify the CONTRACTOR of any change in the Contract Price and/or Contract Time.

### When a written decision of the LOCKHEED MARTIN Procurement Representative states that: (1) the decision is final but subject to mediation and/or arbitration; and (2) notice that the CONTRACTOR intends to proceed with mediation and arbitration of a Claim covered by such a decision must be given within thirty (30) calendar days after the date on which the Party making the demand receives the final written decision. The failure to give such notice within the thirty (30) day period shall result in the LOCKHEED MARTIN Procurement Representative’s decision becoming final and binding on the CONTRACTOR.

### Notwithstanding Subsection v. above, only one mediation and one arbitration of all disputed Claims shall be held at the completion of the Work. Multiple mediations and arbitrations are not permitted.

## Mediation

### Any Claim arising out of or related to the Contract or the Work, except those waived as provided for herein, shall, after a final decision by the LOCKHEED MARTIN Procurement Representative, be subject to non-binding mediation as a condition precedent to arbitration.

### The Parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be filed in writing with the other Party and with the entity or person administering the mediation. The request may be made concurrently with the filing of a demand for arbitration, but, in such event, mediation shall proceed in advance of arbitration, which shall be stayed pending completion of mediation.

### The Parties shall share equally the mediator’s fee and any filing fees. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

## Arbitration

### All disputes under the Contract that are not resolved by agreement or mediation may be decided by arbitration.

### The laws of the place where the Project is located shall apply to any dispute under the Contract or arising out of the Work.

### Claims subject to arbitration shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in effect at the time of the Claim. The demand for arbitration shall be filed in writing with the other Party to the Contract and with the American Arbitration Association. The arbitration shall be held in the place where the Project is located.

## Notice that a Party wants to arbitrate a Claim shall be made within the time limit specified in Subsection (h)(v) above, and in no event shall be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by any applicable statutes of limitation.

## The Party filing a notice of demand for arbitration must assert in the demand all Claims then known to that Party on which arbitration is demanded. Any known Claims not included in the demand for arbitration are waived. The other Party must assert all counterclaims known to that Party. Any known counterclaims not asserted are waived.

## The award rendered by the arbitrator or arbitrators shall include rationales for each decision of each Claim separately, shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

## Attorneys’ Fees. The prevailing Party in any arbitration shall be entitled to an award of its reasonable attorneys’ fees and costs.

# Conflict Of Interest

## Conflict of interest means that because of other activities or relationships with other persons or entities: (i) a person or entity is unable to render impartial assistance or advice to LOCKHEED MARTIN; (ii) the person’s or entity’s objectivity in performing the Work is or might be otherwise impaired; or (iii) the person or entity has, or attempts to create, an unfair competitive advantage. The CONTRACTOR affirmatively represents that it will not have a conflict of interest in performing the Work. Further, the CONTRACTOR agrees not to: (i) engage in activities; or (ii) initiate or maintain relationships with persons or entities where such activities or relationships create a conflict of interest. The CONTRACTOR shall use its best efforts to identify and prevent potential Subcontractor conflicts of interest. The CONTRACTOR shall inform LOCKHEED MARTIN of any activity or relationship that the CONTRACTOR has reason to believe may create a conflict of interest. The CONTRACTOR shall not engage in any activity, engage any person or accept any employment, interest or contribution that would reasonably appear to compromise the CONTRACTOR’S judgment with respect to the Project or conflict with the interests of LOCKHEED MARTIN. The CONTRACTOR shall immediately notify LOCKHEED MARTIN of any change of status regarding any representation provided herein, furnishing the details regarding any actual or potential conflict of interest the CONTRACTOR or its Subcontractors may have. The CONTRACTOR further agrees to include this Section in all Subcontracts. Violation of this Section by the CONTRACTOR shall be considered a non-curable breach whereby LOCKHEED MARTIN may immediately terminate the Contract for cause.

## Except as otherwise agreed to in writing by the Parties, the CONTRACTOR shall competitively bid any trade Work that the CONTRACTOR wishes to perform with its own forces, or through an Affiliate, and shall obtain no less than two (2) responsive bids from responsible Subcontractors acceptable to LOCKHEED MARTIN. The CONTRACTOR, or an Affiliate, shall be permitted to perform such trade Work only if (i) LOCKHEED MARTIN consents in writing after full disclosure in writing by the CONTRACTOR of the relationship of the CONTRACTOR to the Affiliate, (ii) LOCKHEED MARTIN approves in writing any Subcontract, purchase order, agreement or other arrangement between the CONTRACTOR and such Affiliate; and (iii) the CONTRACTOR has given due consideration to any applicable minority business enterprise, women owned business enterprise and equal employment opportunity requirements. Any trade Work performed by CONTRACTOR’S own forces or by an Affiliate shall be covered in a separate agreement between LOCKHEED MARTIN and the CONTRACTOR or Affiliate. Such agreement shall, without limitation, satisfy all requirements for Subcontracts.

## The CONTRACTOR represents that it is not a party to any existing agreement which would prevent it from entering into and performing the Contract.

# Construction Schedule

## The CONTRACTOR’S construction schedule shall provide for completing all of the Work no later than the Substantial Completion Date (“Project Schedule”). The Project Schedule shall reflect the performance of all construction Work on weekdays and non-holidays. The Project Schedule shall be in a detailed critical path method (“CPM”) format acceptable to LOCKHEED MARTIN. Compliance with the requirements of this Section shall be a condition precedent to payment to the CONTRACTOR, and failure to strictly comply with such requirements shall constitute a default under the Contract. The Project Schedule shall include the Substantial Completion Date and any milestone dates.

## Review and acceptance of the Project Schedule by LOCKHEED MARTIN shall be a condition precedent to the making of any payments to CONTRACTOR. Acceptance of CONTRACTOR’S Project Schedule by LOCKHEED MARTIN, however, shall not relieve the CONTRACTOR of its sole responsibility for the accuracy or feasibility of the Project Schedule, or of the CONTRACTOR’S sole responsibility to complete the Work in accordance with the Contract Documents, nor does such acceptance by LOCKHEED MARTIN warrant, acknowledge or admit the reasonableness, durations, sequence or logic of the Project Schedule.

## The CONTRACTOR shall provide LOCKHEED MARTIN with an update to the Project Schedule no less than monthly after commencement of the Work with each Application for Payment (or more frequently at LOCKHEED MARTIN’S request), including fourteen (14) calendar day and twenty-eight (28) calendar day “look ahead schedules,” project variances per event category and per Subcontractor, identification of all variances and calculation of the number of days difference between the as-built critical path and the as-planned critical path. The Project Schedule, as updated, shall specify any authorized changes resulting from Change Orders or Construction Change Directives and shall show the progress of each segment of the Work and the new projected completion dates for each segment of Work.

## In the event LOCKHEED MARTIN determines that the performance of the Work has not progressed or reached the level of completion required by the Project Schedule, LOCKHEED MARTIN shall have the right to order the CONTRACTOR to take corrective measures necessary to expedite the progress of construction, including, without limitation (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (referred to collectively as “Recovery Measures”). Such Recovery Measures shall continue until the progress of the Work complies with the stage of completion required by the Project Schedule. LOCKHEED MARTIN’S right to require Recovery Measures is solely for the purpose of ensuring the CONTRACTOR’S compliance with the Project Schedule. Recovery Measures, if made necessary by the CONTRACTOR’S or a Subcontractor’s negligence or failure to comply with the requirements of the Contract Documents, shall be undertaken at the CONTRACTOR’S sole expense, and the CONTRACTOR shall not be entitled to an adjustment in the Contract Price or the Contract Time. LOCKHEED MARTIN may exercise the rights furnished LOCKHEED MARTIN under this Section as frequently as LOCKHEED MARTIN deems necessary to ensure that the CONTRACTOR’S performance of the Work will comply with the Project Schedule.

## Even if the performance of the Work is progressing in accordance with the Project Schedule, LOCKHEED MARTIN may, at any time pursuant to a Constructive Change Directive, direct the CONTRACTOR to accelerate the Work by, among other things, establishing additional shifts, paying or authorizing overtime or providing additional Material. The CONTRACTOR shall provide LOCKHEED MARTIN with an estimate of the costs to be incurred as a result of any directed acceleration. Such costs may include any shift differential, premium, or overtime payments to workers or field supervisors and other employees of the CONTRACTOR dedicated to the Work on a full-time basis, actually incurred over and above the CONTRACTOR’S normal rates, overtime charges for Material and other costs agreed upon by the CONTRACTOR and LOCKHEED MARTIN in writing. Any adjustment to the Contract Price resulting from LOCKHEED MARTIN’S directive to accelerate the Work shall be authorized by Change Order.

## LOCKHEED MARTIN shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with LOCKHEED MARTIN’S operations. Any postponement or rescheduling of the Work under this Section may be grounds for an extension of Contract Time, including the Substantial Completion Date, and an adjustment in the Contract Price if (i) the performance of the Work was properly scheduled by Contractor in compliance with the requirements of the Contract Documents, (ii) such rescheduling or postponement is required solely for the convenience of LOCKHEED MARTIN, and (iii) such rescheduling or postponement in fact has an impact on the Contract Price and/or the Contract Time.

# Construction Services

## The CONTRACTOR shall

### Construct the Work in strict conformity with the Contract Documents, and render the Project and all its components operational and functional and legally usable for their intended purpose;

### Provide all labor, supervision, Materials, supplies, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of the Work;

### Provide all necessary building permits and other permits required for the construction and occupancy of the Work;

### Attend construction progress meetings at a date, time and location to be agreed upon with LOCKHEED MARTIN;

### Prepare Daily Site Reports;

### Prepare detailed Record Drawings and Specifications depicting on a current basis all changes, selections and Modifications made during construction. The CONTRACTOR shall mark these Drawings and Specifications to reflect any changes, including changes in the dimension, the location of all runs, conduits, traps, footing depths or any other information not already shown on the Drawings or Specifications or differing therefrom. These marked-up Drawings and Specifications shall be made available to LOCKHEED MARTIN at the Site at any time during the performance of the Work. These Record Drawings and Specifications shall also include the "as-built" drawings of Subcontractors;

### Procure insurance and surety bonds as required by the Contract;

### Furnish all product warranties, manuals, test results and user guides required by the Contract Documents or as otherwise reasonably available to the CONTRACTOR;

### Furnish all administrative, engineering, procurement, transportation, quality control, inspection, supervision, management, documentation, maintenance, demonstration, testing and other services and things required by the Contract Documents;

### Correct all incomplete and/or Defective Work and perform all warranty Work;

### Furnish all performance testing, commissioning, and training except that specified to be performed by LOCKHEED MARTIN;

### Supervise and direct the Work using the CONTRACTOR’S best skill and attention. The CONTRACTOR shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract Documents, unless the Contract Documents give other specific instructions concerning these matters.

### Until Final Payment, the CONTRACTOR assumes the risk of loss of the entirety of the Work. Because LOCKHEED MARTIN cannot control how the CONTRACTOR performs the Work, the responsibility for safety and proper use shall be solely the CONTRACTOR’S. Until the entirety of the Work is completed, the CONTRACTOR may perform Work that changes or modifies Work previously done, and even though at any given time, a portion of Work might be acceptable in quality, the responsibility for keeping it in good condition until all of the Work is complete is the sole responsibility of the CONTRACTOR.

### Be responsible to LOCKHEED MARTIN for acts and omissions of its employees, Subcontractors, Sub-subcontractors and their agents and employees, and all other persons performing portions of the Work. The CONTRACTOR shall enforce strict discipline and good order among its employees, Subcontractors, Sub-subcontractors and all other persons performing the Work. The CONTRACTOR shall remove unfit persons or persons not skilled in the tasks assigned to them;

### Be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work;

### Give all notices and comply with all Laws at its own cost. The CONTRACTOR shall be liable to LOCKHEED MARTIN for losses, costs and expenses attributable to any acts or omissions by the CONTRACTOR, Subcontractors, Sub-subcontractors and their agents and employees resulting from the failure to comply with Laws, including, fines, penalties and corrective measures; and

### Maintain at the Site a complete set of current updated Record Documents.

# Contract Direction

## Only the LOCKHEED MARTIN Procurement Representative has the authority to issue Construction Change Directives, execute Change Orders or modify the Contract on behalf of LOCKHEED MARTIN. All such Modifications must be in writing. Modifications not authorized by the LOCKHEED MARTIN Procurement Representative will not be considered.

## LOCKHEED MARTIN engineering and technical personnel may from time to time offer assistance or give technical advice or discuss or effect an exchange of information with the CONTRACTOR’S personnel concerning the Work. Such actions shall not be deemed to be a change under the “Changes” section of the Contract and shall not be the basis for a Claim. The Contractor may accept or reject such assistance or technical advice in its sole discretion. No reimbursement shall be made for any extra Work or materials unless such extra Work or materials has been ordered in writing by the LOCKHEED MARTIN Procurement Representative.

## All notices to be furnished by the CONTRACTOR to LOCKHEED MARTIN shall be in writing and delivered to the LOCKHEED MARTIN Procurement Representative.

## All notices to be furnished by LOCKHEED MARTIN to the CONTRACTOR shall be in writing and delivered to the CONTRACTOR’S Representative identified in the Contract.

# Contractor's Personnel

## The CONTRACTOR shall ensure that its personnel performing the Work (i) do not bring weapons of any kind onto the Site; (ii) do not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages while on the Site; (iii) do not possess hazardous materials of any kind on the Site without LOCKHEED MARTIN’S written 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 the Site; (vi) do not send or receive non-LOCKHEED MARTIN related mail through LOCKHEED MARTIN’S mail systems; (vii) do not sell, advertise or market any products or memberships, distribute printed, written or graphic materials at the Site without LOCKHEED MARTIN’S written permission or as permitted by law; and (viii) shall comply with all security regulations established by the United States Government and/or LOCKHEED MARTIN.

## All persons, property, and vehicles entering or leaving the Site are subject to search. Certain areas of LOCKHEED MARTIN’S plant are restricted areas. These areas are marked and must be avoided. Unauthorized tours are prohibited, and violators shall be removed from the Site at LOCKHEED MARTIN’S request.

## The CONTRACTOR shall be responsible for requiring each individual on the Site who is not an officer or employee of LOCKHEED MARTIN to display identification as may be approved and directed by LOCKHEED MARTIN. All prescribed identification shall immediately be delivered to LOCKHEED MARTIN, for cancellation, when an individual is no longer engaged on the Work.

## The CONTRACTOR 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’S intellectual or physical assets, and any physical altercations, assaults or harassment.

## Prior to commencing the Work, the CONTRACTOR shall coordinate with LOCKHEED MARTIN to gain access to the Site. The CONTRACTOR shall provide information 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. The CONTRACTOR shall comply with all rules and Private Requirements promulgated by LOCKHEED MARTIN in connection with the use and occupancy of the Site. The CONTRACTOR shall also comply with all insurance requirements and collective bargaining agreements applicable to beneficial use and occupancy of the Site. Only Material that is to be used directly in the Work shall be brought to and stored on the Site. After Material is no longer required for the Work, it shall be promptly removed from the Site. Protection of Materials and Material stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of the CONTRACTOR. The CONTRACTOR shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the Site and all adjacent areas. The Work shall be performed, to the fullest extent possible, in such a manner that areas adjacent to the Site shall be free from all debris, and Material.

## The CONTRACTOR’S personnel: (i) shall not remove any of LOCKHEED MARTIN’S assets from the Site without LOCKHEED MARTIN’S written authorization; (ii) shall use LOCKHEED MARTIN’S assets only for purposes of the Contract and with LOCKHEED MARTIN’S written authorization; (iii) shall only connect with, interact with or use computer resources, networks, programs, tools or routines that LOCKHEED MARTIN agrees in writing are needed to provide services in connection with the Work; and (iv) shall not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers with anyone. LOCKHEED MARTIN may from time to time audit any of the CONTRACTOR’S data residing on LOCKHEED MARTIN’S information assets.

## LOCKHEED MARTIN may, in its sole discretion, require the CONTRACTOR to remove from the Site any employee of the CONTRACTOR, Subcontractors and/or Sub-subcontractors and may request that such person not be reassigned. Such action by LOCKHEED MARTIN shall not be a basis for a change in the Contract Price and/or the Contract Time.

## Violation of this Section may result in termination of the Contract for cause in addition to any other remedy available to LOCKHEED MARTIN at law or in equity. The CONTRACTOR shall reimburse LOCKHEED MARTIN for any unauthorized use of LOCKHEED MARTIN’S assets.

## The CONTRACTOR shall indemnify, defend and hold harmless the Indemnitees from and against any actual or alleged losses, costs and causes of action which they may sustain or incur as a consequence of (i) the CONTRACTOR’S failure to pay any employee for the Work, or (ii) any claims made by the CONTRACTOR’S personnel, Subcontractors and/or Sub-subcontractors against LOCKHEED MARTIN.

# Contractor's Representations

## In addition to other representations set forth in the Contract Documents, the CONTRACTOR makes the following representations to LOCKHEED MARTIN:

### The CONTRACTOR is fully qualified to act as the contractor for the Work and shall remain licensed as a general contractor by all public entities having jurisdiction over the Work.

### The CONTRACTOR shall maintain at its cost all necessary licenses, permits or other authorizations necessary to act as the CONTRACTOR for the Work until its obligations under the Contract have been fully satisfied and the Work has been completed.

### The CONTRACTOR has the expertise, experience, and knowledge as well as the necessary facilities, personnel and financial capability to perform the Work in accordance with the Contract Documents.

### The CONTRACTOR accepts the relationship of trust and confidence established between the CONTRACTOR and LOCKHEED MARTIN by the Contract and agrees (1) to furnish its best skill and judgment in furthering the interests of LOCKHEED MARTIN; (2) to furnish efficient business administration and supervision; (3) to use its best efforts to furnish at all times an adequate supply of skilled workers and Materials; and (4) to perform the Work in the most expeditious and economical manner consistent with the interests and expectations of LOCKHEED MARTIN.

### The CONTRACTOR shall perform its obligations with integrity, ensuring at a minimum that it: (1) avoids conflicts of interest and discloses promptly any conflicts of interest to LOCKHEED MARTIN, and (2) warrants that it has not and shall not pay or receive any contingent fees, kickbacks or gratuities to or from LOCKHEED MARTIN or any person in order to obtain preferential treatment.

### In the event architectural, engineering, surveying, or other professional Work is required of the CONTRACTOR, such Work shall be procured from licensed, independent professionals retained by the CONTRACTOR or furnished by licensed employees of the CONTRACTOR.

### The CONTRACTOR shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of the construction of the Work and shall assume full responsibility to LOCKHEED MARTIN for the acts and omissions of its employees, Subcontractors, Sub-subcontractors and others employed or retained by the CONTRACTOR to the same extent as if such acts or omissions were performed by the CONTRACTOR.

### Prior to entering into the Contract, the CONTRACTOR has (1) analyzed the Exhibits attached to the Contract concerning the requirements of the Work, (2) become familiar with the local conditions under which the Work is to be constructed and operated, including the availability of labor and Materials, and performed such inspections, tests, and reviews as are reasonably necessary to determine the conditions under which the Work will be performed; (3) provided LOCKHEED MARTIN with its understanding and analysis of the Exhibits attached to the Contract, and (4) identified any design, construction, scheduling, budgetary, operational, or other problems which may result from such requirements, together with the CONTRACTOR’S proposed solutions, including design alternatives, if appropriate, addressing each identified problem.

### The CONTRACTOR represents that the Contract Price, as may be adjusted by Change Order shall be the limit of the obligation or liability LOCKHEED MARTIN will have under the Contract, and the total of all payments to the CONTRACTOR, Subcontractors, Sub-subcontractors and Material suppliers. Should additional amounts be required to be expended over and above the Contract Price to achieve completion of the Work, liability for and payment of such additional amounts shall be the responsibility of the CONTRACTOR, and LOCKHEED MARTIN shall not be liable for such amounts. Any term or provision of the Contract or of any Subcontract executed in furtherance of the Work shall not be construed or deemed to alter or waive this absolute condition. Likewise, CONTRACTOR’S absolute responsibility for the completion of the Work in strict accordance with the Contract Documents and within the Contract Price, as well as CONTRACTOR’S agreement to bear all costs in excess of the Contract Price without recourse to LOCKHEED MARTIN, if such excess costs are necessary for the completion of the Work, shall be incontrovertible and undisputable, and shall take precedence over all other terms and provisions of the Contract, no part of which shall be deemed to alter, diminish or waive such obligations.

## The CONTRACTOR recognizes and agrees that LOCKHEED MARTIN is relying on these representations in entering into the Contract.

# Copyrights; Trademark; Ownership Of Work Product

## All written or fixed media material, discoveries, inventions and designs (whether or not patentable), including reports, Drawings, Specifications, and technical data, developed, conceived or reduced to practice by or on behalf of the CONTRACTOR in connection with the performance of the Work including, but not limited to any design services provided by the CONTRACTOR to LOCKHEED MARTIN, and all digital forms thereof exclusive of any software used to produce them (collectively, “Work Product”), shall be promptly delivered to LOCKHEED MARTIN, shall become the sole and exclusive property of LOCKHEED MARTIN throughout the world, and shall constitute "works made for hire" under federal copyright laws. In the event that the Work Product is not works-made-for-hire or in the event that the CONTRACTOR or a third party is deemed to be the author for copyright purposes of any Work Product, the CONTRACTOR does hereby automatically assign and hereby agrees to cause such third party to assign the sole and exclusive copyright in and to such materials to LOCKHEED MARTIN. The CONTRACTOR agrees to indemnify, defend and hold LOCKHEED MARTIN and its officers, employees and assigns harmless from any damages, claims and liability including reasonable attorneys’ fees and costs arising out of any claims that infringes upon any third party rights.

## LOCKHEED MARTIN shall be under no obligation to restrict disclosure or use, or hold in confidence any data or information which is furnished, delivered, or disclosed under or in connection with the Contract, or as a result hereof, either directly or indirectly, unless and until an agreement to hold such data or information in confidence or restrict disclosure or use is accepted in writing by the LOCKHEED MARTIN Procurement Representative. In the absence of a written agreement, LOCKHEED MARTIN may ignore and disregard any restrictive legend on any such data or information, which shall be void and of no effect whatsoever. Acceptance by LOCKHEED MARTIN of data or information with a restrictive legend not in full compliance with the terms of the Contract shall in no way imply or create a waiver of such terms, unless first authorized by the LOCKHEED MARTIN Procurement Representative by written amendment of the Contract. The CONTRACTOR agrees not to deliver or furnish any data or information subject to limited use or reproduction unless otherwise agreed as specified above.

## If any data, information, standards, Drawings, Specifications or designs are furnished by LOCKHEED MARTIN, the CONTRACTOR shall not reproduce, use or disclose to others any such information without LOCKHEED MARTIN’S written consent.

## LOCKHEED MARTIN shall have the right, at its own expense, to obtain and to hold in its own name patents, copyrights or such other protection as may be appropriate for any inventions that become the property of LOCKHEED MARTIN hereunder. The CONTRACTOR shall, upon request, cooperate and execute all papers necessary to assign any copyrights to LOCKHEED MARTIN or to perfect LOCKHEED MARTIN’S rights to own, use and protect LOCKHEED MARTIN’S proprietary rights under this Section, including patent applications and assignments thereof. The decision whether to file and/or prosecute applications for patents or copyright registrations and/or to maintain patents or other proprietary rights shall be made solely by LOCKHEED MARTIN.

## LOCKHEED MARTIN’S rights under this Section shall not be affected in any way by the suspension, termination or breach of the Contract by LOCKHEED MARTIN or any dispute between LOCKHEED MARTIN and the CONTRACTOR. LOCKHEED MARTIN may use the Work Product for future additions or alterations to the Project or for the completion of the Project by others; provided, however, that LOCKHEED MARTIN shall indemnify and hold harmless the CONTRACTOR from and against any and all liabilities, damages, losses, costs and expenses (including reasonable attorneys’ fees) arising out of any such use on other projects, for additions to the Project not performed by the CONTRACTOR or for the completion of the Project in which the CONTRACTOR is not otherwise involved.

## During the performance of the Work, the CONTRACTOR, its Subcontractors, Sub-subcontractors and Material suppliers, as well as LOCKHEED MARTIN and its Separate Contractors, if any, shall have the right to use and reproduce applicable portions of the Work Product in hard copy or electronic format appropriate to and for use in their execution of the Work. Submission or distribution of the Work Product to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights of LOCKHEED MARTIN.

## The CONTRACTOR shall indemnify, defend and hold harmless the Indemnitees from any claims to the extent arising from or relating to the actual or alleged infringement of any domestic or foreign patents, copyrights, trademarks, trade secrets, or other intellectual property rights that may be attributable to the CONTRACTOR or Subcontractors in connection with the Work. In the event any suit, claim, temporary restraining order or preliminary injunction is granted, the CONTRACTOR shall, in addition to its obligations above, make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraining order. If, in any such suit or claim, the Work, the Project or any part, combination or process thereof, is held to constitute an infringement and its use is preliminarily or permanently enjoined, the CONTRACTOR shall promptly use its best efforts to secure LOCKHEED MARTIN a license, at no cost to LOCKHEED MARTIN, authorizing continued use of the infringing Work. If the CONTRACTOR is unable to secure such a license within a reasonable time, the CONTRACTOR shall, at its own expense and without impairing performance requirements, either replace the affected Work, in whole or part, with non-infringing components or parts or modify the affected Work so that it becomes non-infringing. CONTRACTOR shall report to LOCKHEED MARTIN promptly and in reasonable written detail, each notice or claim of infringement based on the performance of the Contract of which the CONTRACTOR has knowledge. In the event of any suit against LOCKHEED MARTIN, or any claim against LOCKHEED MARTIN made before suit has been instituted, on account of any alleged infringement arising out of the performance of the Contract or the Work, the CONTRACTOR shall furnish to LOCKHEED MARTIN all evidence and information in possession of the CONTRACTOR pertaining to such suit or claim.

## In the event the Contract is terminated by LOCKHEED MARTIN for convenience or cause, the CONTRACTOR shall cooperate fully with LOCKHEED MARTIN by immediately turning over possession and control to LOCKHEED MARTIN of digital and reproducible copies of all Work Product either stored for use on computers or in any other type of media. No charges shall be imposed or required as a condition of turning over possession and control of all Work Product related to the Project.

## The CONTRACTOR shall obtain from any licensed professionals rights that correspond to the rights given by the CONTRACTOR to LOCKHEED MARTIN in this Section, and upon request, the CONTRACTOR shall provide evidence to LOCKHEED MARTIN that such rights have been obtained.

## The CONTRACTOR shall not use LOCKHEED MARTIN’S trade name, logo, trademark or service marks in any context in connection with any product, equipment, promotion or publication without the prior written consent of LOCKHEED MARTIN. The CONTRACTOR agrees to comply with LOCKHEED MARTIN’S instructions regarding the trade dress, packaging, trade names, trademarks, service marks or other indicia of origin which shall appear on any items to be delivered under the Contract Documents. The CONTRACTOR further agrees that, after delivery of such items to LOCKHEED MARTIN, LOCKHEED MARTIN may modify the trade dress or packaging thereof, and/or replace, modify, or supplement any indicia of origin appearing thereon, to identify LOCKHEED MARTIN as the sources of such items.

# Counterfeit Work

## The following definitions apply to this section:

### “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 number, lot number, date code, or performance characteristics.

### “Suspect Counterfeit Work” means Work for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the Work part is authentic.

### The CONTRACTOR shall not deliver Counterfeit Work or Suspect Counterfeit Work to LOCKHEED MARTIN under the Contract.

## The CONTRACTOR shall only purchase products to be delivered or incorporated as Work to LOCKHEED MARTIN directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. The CONTRACTOR may use another source only if (i) the foregoing sources are unavailable, (ii) the CONTRACTOR’S inspection and other counterfeit risk mitigation processes will be employed to ensure the authenticity of the Work, and (iii) the CONTRACTOR obtains the advance written approval of LOCKHEED MARTIN.

## The CONTRACTOR shall maintain counterfeit risk mitigation processes in accordance with recognized industry standards and with any other specific requirements identified in the Contract Documents.

## The CONTRACTOR shall immediately notify LOCKHEED MARTIN with the pertinent facts if the CONTRACTOR becomes aware that it has delivered Counterfeit Work or Suspect Counterfeit Work. When requested by LOCKHEED MARTIN, the CONTRACTOR shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM. The CONTRACTOR, at its sole expense, shall provide reasonable cooperation to LOCKHEED MARTIN in conducting any investigation regarding the delivery of Counterfeit Work or Suspect Counterfeit Work under the Contract Documents.

## This Section applies in addition to and is not altered, changed or superseded by any quality provision, specification, regulatory flow down or other provision included in the Contract Documents addressing the authenticity of the Work.

## In the event Work delivered under the Contract constitutes or includes Counterfeit Work, the CONTRACTOR shall, at its sole expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of the Contract Documents. Notwithstanding any other provision in the Contract, the CONTRACTOR 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 replaced. The remedies contained in this Section are in addition to any remedies LOCKHEED MARTIN may have at law, equity or under other provisions of the Contract.

## The CONTRACTOR shall include this Section or equivalent provisions in all Subcontracts for the delivery of items that will be included in or furnished as part of the Work.

# Defective Work

## LOCKHEED MARTIN shall have the right to inspect the Work at all times while the Work is in progress and reject nonconforming or Defective Work or Material. Rejected Work shall promptly be corrected and rejected Material shall promptly be replaced with proper workmanship and/or proper Material at the CONTRACTOR’S sole expense. The CONTRACTOR shall promptly segregate and remove the rejected Material from the Site. If the CONTRACTOR fails to replace the rejected Material or correct defective workmanship, LOCKHEED MARTIN may, in its sole discretion and without further notice to the CONTRACTOR (i) replace the Material or correct the workmanship and charge the CONTRACTOR the cost incurred by LOCKHEED MARTIN; (ii) terminate the Contract for cause; or (iii) require a reduction in the Contract Price.

## If the CONTRACTOR fails to correct Work which is not in accordance with the requirements of the Contract Documents or persistently fails to carry out Work in accordance with the Contract Documents, LOCKHEED MARTIN may give the CONTRACTOR a notice to stop the Work, or any portion thereof, until the cause 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 this right for the benefit of the CONTRACTOR or any other person or entity.

## If the CONTRACTOR fails to carry out the Work in accordance with the Contract Documents and fails within seven (7) calendar days after receipt of written notice from LOCKHEED MARTIN to commence and continue correction of nonconforming or Defective Work with diligence and promptness, LOCKHEED MARTIN may, without prejudice to any other remedy LOCKHEED MARTIN may have, make good such deficiencies. In such case, a Change Order shall be issued deducting from amounts then or thereafter due the CONTRACTOR the costs incurred by LOCKHEED MARTIN to correct such deficiencies. If amounts then or thereafter due from the CONTRACTOR are not sufficient to cover such amount, the CONTRACTOR shall pay the difference to LOCKHEED MARTIN upon demand.

# Definitions

## “Affiliate” means any entity related to or affiliated with the CONTRACTOR or in which the CONTRACTOR has direct or indirect control, including, without limitation, (i) any entity owned in whole or in part by the CONTRACTOR; (ii) any entity with more than a ten percent (10%) interest in the CONTRACTOR; or (iii) any entity in which any officer, director, employee, partner or shareholder of the CONTRACTOR or any Affiliate, has a direct or indirect interest.

## “Applications for Payment” are the applications submitted by the CONTRACTOR for payment for Work performed during a pay period.

## “Changes in the Work” or “Changes” means Work that (i) is not reasonably inferable from the Contract by a contractor of similar skill, experience and expertise as necessary for the proper, timely, and orderly completion of the Work; and/or (ii) is an alteration in the scope, quantity, quality, programmatic requirements, or other substantial deviation from or Modification of the Work.

## “Change Order” is a written document signed by LOCKHEED MARTIN and the CONTRACTOR after execution of the Contract, indicating changes in the scope of the Work, Contract Price, and/or Contract Time.

## “Claim” is a demand or assertion by LOCKHEED MARTIN or the CONTRACTOR seeking, as a matter of right, an adjustment or interpretation of the Contract, the payment of money, an extension of time or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question between LOCKHEED MARTIN and the CONTRACTOR rising out of or relating to the Contract or the Work. Claims must be made by written notice in the manner provided herein.

## “Conditional Lien Release” means the form executed by the CONTRACTOR, Subcontractors, Sub-subcontractors, Material suppliers by which each of them certifies to LOCKHEED MARTIN that upon payment for the Work covered by the release, each of them waives all right to file or assert any lien or claim against LOCKHEED MARTIN or the Site in connection with the Work completed through the date of the release. The form of the Conditional Lien Release shall be subject to prior approval by LOCKHEED MARTIN and shall comply with all applicable statutes in the jurisdiction in which the Project is located.

## “Construction Change Directive” is a written order issued by LOCKHEED MARTIN after execution of the Contract directing the CONTRACTOR to commence with a Change in the Work prior to LOCKHEED MARTIN and the CONTRACTOR reaching agreement on any adjustments to the Contract Price and/or Contract Time.

## "Contract" means the agreement between the CONTRACTOR and LOCKHEED MARTIN, which incorporates the terms contained within this document, all exhibits and Modifications issued after execution of the Contract.

## “Contract Documents” consist of those documents identified in the Contract as such.

## “Contract Price” means the price set forth in the Contract for which the CONTRACTOR agrees to perform the Work.

## “Contract Time” means the period from commencement of the Contract to the Substantial Completion Date.

## “CONTRACTOR” means the Party identified on the face of the Contract with whom LOCKHEED MARTIN is contracting.

## “Counterfeit Work” means Work as described in the Section titled the same.

## “Defective Work” is any Work not in conformance with the requirements of the Contract Documents.

## “Drawings” are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, diagrams, and notes, also sometimes referred to as the “plans.” The Drawings may contain Specifications, and the Specifications may contain Drawings.

## “Final Completion” means the completion of the entirety of the Work whereby (i) the CONTRACTOR shall have completed the Punch List; (ii) operation and maintenance manuals, warranties, keys, control devices and Record Documents required by the Contract have been delivered to LOCKHEED MARTIN; (iii) certification by the CONTRACTOR, signed by LOCKHEED MARTIN, that training of LOCKHEED MARTIN personnel is complete; (iv) debris, waste and excess Materials have been removed from the Site; and (v) all trailers, portable toilets, and other construction vehicles, equipment and material have been removed from the Site so that all areas are presentable.

## “Final Payment” is the payment of all outstanding balances due, including Retainage, if any, following Final Completion.

## “Furnished Property” means property owned by LOCKHEED MARTIN and furnished to CONTRACTOR in connection with the Work.

## “Indemnitees” means LOCKHEED MARTIN and its subsidiaries and related companies, and each of their respective successors, assigns, officers, directors, employees, representatives, licensees, and contractors, now existing or which may hereafter exist.

## “Laws” means all federal, state and local laws, statutes, ordinances, codes, rules and regulations applicable to the Work, including environmental laws, OSHA, laws pertaining to the procurement and payment of all required licenses, permits, use and occupancy certificates and fees and Private Requirements, with which the CONTRACTOR must comply.

## “LOCKHEED MARTIN" means LOCKHEED MARTIN CORPORATION, acting through its companies, or business units, as expressly identified as a party to the Contract. If a subsidiary or affiliate of LOCKHEED MARTIN CORPORATION is identified on the face of the Contract, then “LOCKHEED MARTIN” means that subsidiary or affiliate.

## "LOCKHEED MARTIN Procurement Representative" means the person authorized by LOCKHEED MARTIN’S procurement organization to administer the Contract.

## “Material(s)” means all components, articles, appliances, devices, substances, supplies, and miscellaneous items specified or required to be incorporated into the construction of the Work.

## “Modification” is (i) a written amendment to the Contract signed by both Parties, or (ii) a Change Order or a Construction Change Directive incorporated into the Contract.

## “Private Requirements” means all covenants, conditions, restrictions, easements, agreements, building rules, policies and leases affecting the Work at the Project Site that LOCKHEED MARTIN provides to CONTRACTOR.

## “Project” is defined in the Contract.

## “Project Schedule” means the critical path construction schedule prepared and maintained by the CONTRACTOR for the Work.

## “Punch List” is the list of Work items that must be corrected or completed prior to LOCKHEED MARTIN granting Final Completion and making Final Payment.

## “Record Documents” are Drawings, Specifications, Modifications, or other documents maintained by the CONTRACTOR during the course of construction to show differing conditions and changes made to the original Contract Documents.

## “Site” means the physical place or places where the construction work called for in the Contract will remain when the Work has been completed. It includes other adjacent or nearby property used by the CONTRACTOR, Subcontractors and Sub-subcontractors in such construction, which can reasonably be said to be included in the Site.

## “Specifications” are that portion of the Contract Documents consisting of the written requirements for Materials, Equipment, construction, systems, standards, and workmanship for the Work, and performance of related Work. Organization of the Specifications into divisions, sections, and articles shall not control the CONTRACTOR in dividing the Work among Subcontractors or in establishing the extent of Work to per performed by any trade. The Specifications may contain Drawings, and the Drawings may contain Specifications.

## “Subcontract” means all contracts entered into by the CONTRACTOR for the specific purpose of performing any portion of the Work under the Contract, and includes but is not limited to purchase orders and changes or modifications thereto.

## “Subcontractor” means a person or entity having a direct contract with the CONTRACTOR for the performance of a part of the Work. The term shall also include one who furnishes Material.

## “Substantial Completion” means that state in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents so that LOCKHEED MARTIN can occupy and use the Work for its intended use and all appropriate inspections and testing have been satisfactorily completed.

## “Substantial Completion Date” means the date set forth in the Contract by which Substantial Completion of the Work is required to have occurred.

## “Sub-subcontractor” is a person or an entity that has a contract with a Subcontractor to perform a portion of the Work. The term Sub-subcontractor is referred to throughout the Contract as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

## “Unconditional Lien Release” means the form executed by the CONTRACTOR, Subcontractors, Material suppliers by which each of them certifies to LOCKHEED MARTIN that all costs for labor and material have been fully paid and by which each of them waives all right to file or assert any lien or Claim against LOCKHEED MARTIN or the Site in connection with the Work. The form of the Unconditional Lien Release shall be subject to prior approval by LOCKHEED MARTIN and shall comply with all applicable statutes in the jurisdiction in which the Project is located.

## “Work” means the construction and other services required by the Contract whether completed or partially completed, and includes all labor, Materials, supervision and other services provided or to be provided by the CONTRACTOR to fulfill the CONTRACTOR’S obligations under the Contract Documents.

Other capitalized terms not defined in this Section have the meanings ascribed to them in the applicable provisions of the Contract.

# Drug Free Workplace

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

# Ethical Business Practices

## The CONTRACTOR represents that it is familiar with all applicable ethics law requirements, including without limitation the obligations stated in the section titled “Gratuities/Kickbacks,” and certifies that it is in compliance with such requirements. The CONTRACTOR further agrees it shall not, with respect to:

### Gifts. The CONTRACTOR agrees that it shall neither solicit nor accept any gifts from a vendor, Subcontractor or any other person or entity for the purpose of securing favorable treatment with regard to award or performance of any Subcontract or contract issued in connection with the Contract.

### Personnel. The CONTRACTOR agrees that it shall not (1) employ the services of any LOCKHEED MARTIN employee, his/her spouse or other member of a LOCKHEED MARTIN employee’s immediate family as a consultant, Subcontractor, or otherwise, in connection with the performance of the Contract, or (2) purchase any Material or services required to perform the Work from any entity owned or controlled (including a substantial financial interest) by any LOCKHEED MARTIN employee, his/her spouse or other member of any LOCKHEED MARTIN employee’s immediate family.

# Export Control

## The CONTRACTOR shall comply with all applicable U.S. export control laws, rules and regulations, specifically including but not limited to, the International Traffic in Arms Regulation (“ITAR”), 22 C.F.R. 120 et seq.; the Export Control Reform Act of 2018; the Export Administration Regulations (“EAR”), 15 C.F.R. 730-774, and the Foreign Assets Control Regulations, 31 C.F.R. 500-598 (collectively, “Trade Control Laws”). Without limiting the foregoing, the CONTRACTOR shall not transfer any export controlled item or data, including transfers to dual/third country nationals employed by or associated with, or under contract to the CONTRACTOR or the CONTRACTOR’S Subcontractor’s, Sub-subcontractors or lower tier suppliers, unless authorized in advance by an export license agreement (e.g. Technical Assistance Agreement (TAA) or Manufacturing Licensing Agreement (MLA)), license exception or license exemption as required under Trade Control Laws (collectively, “Export Authorization”).

## The CONTRACTOR represents that neither the CONTRACTOR nor any parent, subsidiary or Affiliate of the CONTRACTOR is included on any of the restricted party lists maintained by the U.S. Government, including the Specially Designated Nationals List administered by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”), Denied Parties List, 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 Controls, or the consolidated list of asset freeze targets designated by the United Nations, European Union, and United Kingdom (collectively, “Restricted Party Lists”). The CONTRACTOR shall immediately notify the LOCKHEED MARTIN Procurement Representative if the CONTRACTOR or any parent, subsidiary or Affiliate of the CONTRACTOR is, or becomes, listed on any Restricted Party List or if the CONTRACTOR’S export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. or non-U.S. government entity or agency, or by any entity or agency of the CONTRACTOR’S own country.

## The CONTRACTOR 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 the CONTRACTOR, its officers, employees, agents, suppliers, or Subcontractors at any tier, in the performance of any of its obligations under this section.

# Force Majeure

The right of the CONTRACTOR to proceed shall not be terminated, nor shall the CONTRACTOR be charged with damages under this Section, if a delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR (“Force Majeure”). Examples of Force Majeure events include acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; freight embargoes; and delays of Subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, its Subcontractors, Sub-subcontractors or suppliers. In the event of a Force Majeure event, the CONTRACTOR shall be entitled to an extension of the Contract Time. The CONTRACTOR shall not be entitled to additional compensation.

# Gratuities/Kickbacks

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

# Hazardous Environmental Conditions And Hazardous Materials

## “Hazardous Environmental Conditions” means the presence of any existing Hazardous Materials on, in or under the Site that are present in such quantities or concentrations that may present an imminent or substantial safety or health threat to LOCKHEED MARTIN, the CONTRACTOR, Subcontractors, Sub-subcontractors, employees, agents, or representatives, the general public, the environment and/or the Project.

## “Hazardous Materials” are any materials, waste, substances and chemicals deemed currently or during the time of the Contract to be hazardous under applicable Laws.

## The CONTRACTOR shall, after execution of the Contract, undertake such testing, inspections and investigations as are necessary to perform its obligations under the Contract Documents, which may include additional Hazardous Materials studies and/or testing. All reports and analyses generated by the CONTRACTOR’S additional testing, inspections and investigations shall be furnished to LOCKHEED MARTIN promptly.

## Where LOCKHEED MARTIN has advised the CONTRACTOR of known existing Hazardous Materials or Hazardous Environmental Conditions at the Site and LOCKHEED MARTIN desires CONTRACTOR to take such actions as are necessary to remediate or render harmless such Hazardous Materials or Hazardous Environmental Conditions, LOCKHEED MARTIN shall provide CONTRACTOR with a plan to remediate or render harmless all such Hazardous Materials and Hazardous Environmental Conditions, and all actions taken by CONTRACTOR to remediate or render harmless such Hazardous Materials or Hazardous Environmental Conditions shall be part of the Work and the costs thereof included in the Contract Price. In remediating or rendering harmless any Hazardous Environmental Conditions or Hazardous Materials, CONTRACTOR shall be solely responsible for managing, scheduling, coordinating, treating, handling, storing, monitoring, removing, transporting and/or disposing of any such Hazardous Environmental Conditions and/or Hazardous Materials.

## If the CONTRACTOR encounters any unknown existing Hazardous Environmental Conditions or Hazardous Materials at the Site during construction, it shall stop Work immediately in the affected area to the extent required to avoid any safety or health hazard until it has taken such action as is necessary, in accordance with applicable laws, to protect the interest of any affected party. The CONTRACTOR shall, immediately upon encountering any unknown existing Hazardous Environmental Conditions or Hazardous Materials notify LOCKHEED MARTIN and, if required by Laws, assist LOCKHEED MARTIN in providing notifications to all governmental agencies having jurisdiction over the Project or the Site.

## The CONTRACTOR shall, as may be directed by LOCKHEED MARTIN and prior to proceeding with further Work: (i) obtain all environmental site assessments of the affected property; (ii) obtain on LOCKHEED MARTIN’S behalf all applicable governmental approvals to implement LOCKHEED MARTIN’S remediation plan, and regulatory approval/closure of the remediation; and (iii) perform the remediation Work as directed by LOCKHEED MARTIN. During the period of any investigation and/or remediation efforts the CONTRACTOR shall take all necessary measures to isolate and contain such Hazardous Environmental Conditions and Hazardous Materials from unaffected parts of the Work and shall continue the Work to the maximum extent possible on unaffected parts of the Work.

## The CONTRACTOR shall be entitled to an adjustment to the Contract Price and/or the Contract Time to the extent the CONTRACTOR’S cost and/or time of performance of the Work has been increased by the presence, removal or remediation of unknown existing Hazardous Environmental Conditions or Hazardous Materials discovered during construction.

## Each Party shall indemnify, defend and hold harmless the other Party and/or anyone for whom it is responsible under the Contract from and against all claims, losses, damages, liabilities and expenses, including attorneys’ fees and expenses, arising out of the discovery, investigation and remediation of such Hazardous Material or Hazardous Environmental Condition for which that Party is responsible.

## Notwithstanding anything to the contrary herein, the CONTRACTOR shall be solely responsible for the handling, treatment, storage, removal, remediation, avoidance or other appropriate action (if any), with respect to: (i) any Hazardous Material or Hazardous Environmental Condition present at, on, in or under, or migrating and/or emanating to or from the Site, to the extent brought or caused to be brought to the Site by any act or omission of the CONTRACTOR or anyone for whom it is responsible; (ii) Hazardous Materials or Hazardous Environmental Conditions that are expressly identified in the Contract Documents as being part of the Work; or (iii) the creation or exacerbation of any Hazardous Environmental Condition due to the breach of contract, negligence, recklessness or willful misconduct of the CONTRACTOR or anyone for whom it is responsible. The CONTRACTOR shall indemnify, defend and hold harmless the Indemnitees from and against all claims, losses, damages, liabilities and expenses, including attorneys’ fees and expenses, arising out of or resulting from items (i), (ii) and/or (iii) above.

## In the event of a sudden release of any Hazardous Material, the CONTRACTOR shall take all reasonable actions necessary to stabilize and contain the release and shall promptly notify LOCKHEED MARTIN in writing of the release and its location.

## The CONTRACTOR shall be solely responsible for complying with all environmental and safety Laws and all Laws relating to the performance of the Work including remediation or rendering harmless of Hazardous Environmental Conditions or Hazardous Materials and shall not take any actions that could impair any claims of LOCKHEED MARTIN for indemnity or contribution from others.

## Hazardous Materials will be disposed of in accordance with any and all applicable Laws. The CONTRACTOR shall promptly submit copies of the disposal manifests to LOCKHEED MARTIN’S Technical Representative to demonstrate proper disposal of all Hazardous Materials.

## SDS as required by Laws and pertaining to Materials or substances used or consumed in the performance of the Work, whether obtained by the CONTRACTOR, Subcontractors, Sub-subcontractors, LOCKHEED MARTIN or others, shall be maintained at the Site by the CONTRACTOR, and copies shall be submitted to LOCKHEED MARTIN upon receipt.

# Illegal Aliens – For Projects performed in Colorado, Section A applies. For Projects performed in California, Section B applies. For Projects performed in any State other than Colorado or California, Section C applies. Section D and E apply to all Projects regardless of location

## The CONTRACTOR shall by signature on the Contract certify to the following:

### The CONTRACTOR, as of the date of the Contract, shall not knowingly employ or contract with an illegal alien who will perform Work under the Contract;

### The CONTRACTOR shall participate in either the Employment Verification Program (E-Verify Program) created in Public Law 104-208, as amended and expanded in Public Law 108-156, as amended, and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program, or the Department Program, which is the employment verification program established by the Colorado Department of Labor and Employment (the “Department”) pursuant to C.R.S. §§ 8-17.5-102(5)(c) in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Contract;

### The CONTRACTOR has confirmed the employment eligibility of all employees who are newly hired for employment to perform the Work under the Contract through participation in either the E-Verify Program or the Department Program;

### The CONTRACTOR shall not enter into a Subcontract with a Subcontractor that fails to certify to the CONTRACTOR that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform Work under the Contract;

### The CONTRACTOR shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while the Contract is being performed; and

### If The CONTRACTOR obtains actual knowledge that a Subcontractor performing Work under the Contract employs or contracts with an illegal alien, the CONTRACTOR shall:

#### Notify Subcontractor and LOCKHEED MARTIN within three (3) calendar days that the CONTRACTOR has actual knowledge that the Subcontractor is employing or contracting with an illegal alien; and

#### Terminate the subcontract with the Subcontractor if within three (3) calendar days of receiving the notice required pursuant to this Section, the Subcontractor does not stop employing or contracting with the illegal alien; except that the CONTRACTOR shall not terminate the subcontract with the Subcontractor if during such three- (3) day period the Subcontractor provides information to establish that the Subcontractor has not knowingly employed or contracted with an illegal alien.

1. The CONTRACTOR shall, by signature on the Contract, certify to the following:
	1. The CONTRACTOR, as of the date of the Contract, shall not knowingly employ or contract with an illegal alien who will perform Services under the Contract;
	2. The CONTRACTOR, except as required by federal law or as a condition of receiving federal funds, shall not participate in the Employment Verification Program (the “E-Verify Program”) created in Public Law 104-208, as amended and expanded in Public Law 108-156, as amended, and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program, in order to check the employment authorization status of an existing employee or an applicant who has not been offered employment at a time or in a manner not required under subsection (b) of Section 1324a of Title 8 of the United States Code or not authorized under any federal agency memorandum of understanding governing the use of a federal electronic employment verification system, pursuant to Section 2814 of Article 2.5 of Chapter 2 of Division 3 of the California Labor Code;
	3. The CONTRACTOR has confirmed the employment eligibility of all employees who are newly hired for employment to perform the Services under the Contract through participation in the E-Verify Program;
	4. The CONTRACTOR shall not enter into a Subcontract with a Subconsultant that fails to certify to the CONTRACTOR that the Subconsultant shall not knowingly employ or contract with an illegal alien to perform Services under the Contract;
	5. The CONTRACTOR shall not use the E-Verify Program to undertake pre-employment screening of job applicants while the Contract is being performed;
	6. If the CONTRACTOR obtains actual knowledge that a Subconsultant performing Services under the Contract employs or contracts with an illegal alien, the CONTRACTOR shall:
		1. Notify Subconsultant and LOCKHEED MARTIN within three (3) calendar days that the CONTRACTOR has actual knowledge that the Subconsultant is employing or contracting with an illegal alien; and
		2. Terminate the subcontract with the Subconsultant if within three (3) calendar days of receiving the notice required pursuant to this Section, the Subconsultant does not stop employing or contracting with the illegal alien; except that the CONTRACTOR shall not terminate the subcontract with the Subconsultant if, during the three (3) day period, the Subconsultant provides information to establish that the Subconsultant has not knowingly employed or contracted with an illegal alien.

##  (c)               The CONTRACTOR shall by signature on the Contract certify to the following:

### i.                    The CONTRACTOR, as of the date of the Contract, shall not knowingly employ or contract with an unauthorized alien who will perform Work under the Contract;

### ii.                  The CONTRACTOR shall participate in either the Employment Verification Program (E-Verify Program) created in Public Law 104-208, as amended and expanded in Public Law 108-156, as amended, and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program, to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Contract;

### iii.                The CONTRACTOR has confirmed the employment eligibility of all employees who are newly hired for employment to perform the Work under the Contract through participation in the E-Verify Program;

### iv.                The CONTRACTOR shall not enter into a Subcontract with a Subcontractor that fails to certify to the CONTRACTOR that the Subcontractor shall not knowingly employ or contract with an unauthorized alien to perform Work under the Contract;

### v.                  The CONTRACTOR shall not use either the E-Verify Program to undertake pre-employment screening of job applicants while the Contract is being performed; and

### vi.                If The CONTRACTOR obtains actual knowledge that a Subcontractor performing Work under the Contract employs or contracts with an unauthorized alien, the CONTRACTOR shall:

#### (1)               Notify Subcontractor and LOCKHEED MARTIN within three (3) calendar days that the CONTRACTOR has actual knowledge that the Subcontractor is employing or contracting with an unauthorized alien; and

#### (2)               Terminate the subcontract with the Subcontractor if within three (3) calendar days of receiving the notice required pursuant to this Section, the Subcontractor does not stop employing or contracting with the unauthorized alien; except that the CONTRACTOR shall not terminate the subcontract with the Subcontractor if during such three- (3) day period the Subcontractor provides information to establish that the Subcontractor has not knowingly employed or contracted with an unauthorized alien.

## The CONTRACTOR shall comply with any reasonable request by the applicable Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to its applicable authority.

## If the CONTRACTOR violates any provision of this certification, LOCKHEED MARTIN may terminate the Contract for cause. Notwithstanding any provision to the contrary, if the Contract is so terminated, the CONTRACTOR shall be liable for any actual and consequential damages suffered by LOCKHEED MARTIN, notwithstanding anything to the contrary in the Contract.

# Independent Contractor Relationship

## The CONTRACTOR’S relationship to LOCKHEED MARTIN shall be that of an independent contractor. The employees used by the CONTRACTOR to perform Work under the Contract shall be the CONTRACTOR’S employees exclusively without any relation whatsoever to LOCKHEED MARTIN.

## The Contract does not create an agency, partnership, or joint venture relationship between LOCKHEED MARTIN and the CONTRACTOR or LOCKHEED MARTIN and the CONTRACTOR’S personnel and/or Subcontractors. Personnel supplied by the CONTRACTOR shall not for any purposes be considered employees or agents of LOCKHEED MARTIN. The CONTRACTOR assumes full responsibility for the actions and supervision of its personnel and Subcontractors. LOCKHEED MARTIN assumes no liability for personnel of the CONTRACTOR and/or its Subcontractors or Sub-subcontractors.

## The CONTRACTOR shall be responsible for any costs or expenses, including attorneys’ fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of the CONTRACTOR, its officers, employees, agents, suppliers, Subcontractors or sub-subcontractors, in the performance of any of its obligations under the Contract or the Work.

## The CONTRACTOR shall inform LOCKHEED MARTIN if a former employee of LOCKHEED MARTIN or any Affiliate will be assigned to the Work, and any such assignment shall be subject to LOCKHEED Martin’s written approval.

## Nothing contained in the Contract shall be construed as granting to the CONTRACTOR or any personnel of CONTRACTOR rights under any LOCKHEED MARTIN benefit plans.

# InspectionS, Tests, Acceptance, Quality Control

## The CONTRACTOR shall provide a quality control (“QC”) program to perform inspections, tests and retesting in the event of failure of items of Work, including that of Subcontractors and Sub-subcontractors, to ensure compliance with the Contract Documents. QC will be established for all Work. The QC program will specifically include, but not be limited to, the inspections and tests required by the scope of Work, Drawings and the technical provisions of the Specifications and shall cover all construction operations, including both onsite and offsite fabrication and Materials.

## The CONTRACTOR shall designate a QC representative, supplemented as necessary by additional personnel, who shall be on the Site at all times during performance of the Work, with complete authority to take all actions necessary to ensure compliance with the Contract Documents. The QC representative shall be appointed by a letter addressed to him/her and signed by an officer of the CONTRACTOR. This letter shall detail the QC representative’s authority and responsibility to act for the CONTRACTOR. The QC representative shall report directly to an officer of the CONTRACTOR and shall not be the same individual as, nor be subordinate to, the Superintendent.

## The CONTRACTOR shall submit a QC plan to LOCKHEED MARTIN prior to commencement of the Work. The QC plan shall detail the types, frequency and duration of tests to be used to ensure compliance with the Contract Documents. The plan shall include, at a minimum: (i) a copy of the letter appointing the QC representative, signed by an officer of the CONTRACTOR, outlining the QC representative’s duties, responsibilities, and authority which must include the authority to direct removal and replacement of any Defective Work; (ii) a description of the services the CONTRACTOR will have provided by outside organizations such as testing laboratories, architects, and consulting engineers; and (iii) a test and inspection schedule, keyed to the Project Schedule and following the order of the Specifications technical sections, indicating all inspections and tests, and the time schedule for each inspection and test.

## The CONTRACTOR shall provide and maintain its inspection system in accordance with sound business practices and in compliance with any governmental regulations, and as may be otherwise provided in the Contract Documents. The CONTRACTOR shall keep complete records of all inspections and make them available to LOCKHEED MARTIN during the performance of the Contract and for eight (8) years after Final Payment.

## All Material and workmanship furnished by the CONTRACTOR, its Subcontractors and Sub-subcontractors shall be subject to inspection, examination and testing by LOCKHEED MARTIN during manufacture or construction and at any and all places where such manufacture or construction is carried on. The CONTRACTOR, Subcontractors and Sub-subcontractors, without additional charge, shall promptly provide all data, facilities, labor, Materials, and assistance for LOCKHEED MARTIN’S inspectors' performance of their obligations. The CONTRACTOR shall be charged with any additional cost of inspection when Materials and workmanship are not ready at the time specified for inspection. No inspection or test shall relieve the CONTRACTOR from responsibility for defects or other failures to meet the requirements of the Contract Documents.

## Tests, inspections and approvals of portions of the Work required by the Contract or by Laws shall be made at the appropriate time. Unless otherwise provided, the CONTRACTOR shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to LOCKHEED MARTIN or with the appropriate public authority. The CONTRACTOR shall submit the name and qualifications of each testing laboratory to LOCKHEED MARTIN for approval no less than thirty (30) calendar days prior to the date the testing laboratory is to be used. The CONTRACTOR shall be responsible for all costs of tests, inspections, approvals and related items. The CONTRACTOR shall give LOCKHEED MARTIN twenty-four (24) hours’ notice of when and where tests and inspections are to be made so that LOCKHEED MARTIN may be present for such tests and/or inspections.

### If LOCKHEED MARTIN or public authorities having jurisdiction over the Work or the Project determine that portions of the Work require additional testing, inspection or approval, LOCKHEED MARTIN will instruct the CONTRACTOR to make arrangements for such additional testing, inspection or approval, and the CONTRACTOR shall give twenty-four (24) hours’ notice to LOCKHEED MARTIN of when and where tests and inspections are to be made, so that LOCKHEED MARTIN may be present for such tests and/or inspections.

### If testing, inspection or approval, as provided for herein, reveals that portions of the Work fail to comply with requirements established by the Contract Documents or by applicable Laws, all costs made necessary by such failure shall be at the CONTRACTOR’S sole expense. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract, be secured by the CONTRACTOR and promptly delivered to LOCKHEED MARTIN.

### Tests or inspections shall be made in a timely manner to avoid delay in the Work.

## Should it be considered necessary or advisable by LOCKHEED MARTIN at any time before final acceptance of the entire Work to make an examination of Work already completed, by removing or tearing out same, the CONTRACTOR shall upon request promptly furnish all necessary facilities, labor and Material. If such Work is found to be defective or nonconforming in any respect, the CONTRACTOR shall pay all expenses of such examination and of satisfactory reconstruction.

## When the CONTRACTOR deems the Work finally complete, the CONTRACTOR shall give LOCKHEED MARTIN notice as specified herein. After receipt of notice, LOCKHEED MARTIN will determine if the Work has been completed according to the terms of the Contract Documents and, if so in its judgment, will issue a document to the CONTRACTOR indicating its acceptance thereof as provided below. If the Work is incomplete, LOCKHEED MARTIN will give notice to the CONTRACTOR of the defects and/or omissions, and the CONTRACTOR shall repeat the procedure stated herein until the Work has been accepted by LOCKHEED MARTIN.

## Final acceptance of the Work will be confirmed by a document issued by LOCKHEED MARTIN promptly after being satisfied that all requirements of the Contract Documents have been met, and presentation of a complete and executed releases and lien waivers from the CONTRACTOR, all Subcontractors, Sub-subcontractors and Material suppliers.

## Nothing contained in this Section shall in any way restrict LOCKHEED MARTIN’S rights under the section entitled "Warranty and Correction of Defects."

# INSURANCE/INDEMNITY/RISK OF LOSS, for projects under $2M, section a applies, for all other projects, section b applies.

## Before commencement of the Work and as a condition precedent to payment, the CONTRACTOR shall procure and maintain the insurance coverages in the minimum limits set forth below:

## General Liability Coverage. The CONTRACTOR shall procure and maintain, at the CONTRACTOR’S own expense, for the duration of the Work, liability insurance as hereinafter specified:

The CONTRACTOR’S General Liability insurance in the minimum amount of $1,000,000 per occurrence, $2,000,000 aggregate and shall include coverage protecting against bodily injury, property damage, and personal injury claims arising from the exposures of (i) premises-operations; (ii) products and completed operations including Materials designed, furnished, and/or modified in any way by the CONTRACTOR; (iii) Subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Contract; and (v) where applicable, XCU coverage including liability resulting from explosion, collapse or underground exposures. Additional insured on CONTRACTOR’s CGL policy per the Certificate of Insurance Requirements section.

## Automobile Liability Insurance. The CONTRACTOR shall procure and maintain, at the CONTRACTOR’S own expense, for the duration of the Work automobile liability insurance with combined minimum single limits for bodily injury and property damage in a minimum amount of $2 million per occurrence. This insurance will insure against bodily injury and/or property damage arising out of CONTRACTOR’s operations, maintenance, use, loading or unloading of any auto, including owned, non-owned, hired, and employee autos. Additional insured on CONTRACTOR’s automobile policy per Certificate of Insurance Requirements section below.

## Excess/Umbrella Liability Insurance. The CONTRACTOR shall procure and maintain, at the CONTRACTOR’S own expense, for the duration of the Work excess or umbrella liability insurance with minimum limits of $5,000,000 per occurrence following form.

## Workmen’s Compensation. The CONTRACTOR shall procure and maintain, at the CONTRACTOR’S own expense for the duration of the Work, Workmen’s Compensation Insurance as required by the Labor Code of the State of where the work is being performed and Employer’s Liability Insurance in the minimum amount of $1,000,000. Evidence of qualified self-insured status may be substituted. The CONTRACTOR shall require such Subcontractors and Sub-subcontractors at any tier to provide Workmen’s Compensation Insurance, unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous work under the Contract at the Site is not protected under the Workmen’s Compensation statutes, the CONTRACTOR shall provide, and shall cause each Subcontractor and Sub-subcontractor to provide, adequate and suitable insurance of the protection of its employees not otherwise protected.

## Builder’s Risk.

### The CONTRACTOR shall procure and obtain a Builder’s Risk insurance policy to cover its risk of loss obligations for the Work, and the work of CONTRACTOR’s Subcontractors or Sub-subcontractors, including without limitation, its risk of loss obligations for the first $1,000,000 of damage to the Work, and the work of CONTRACTOR’s Subcontractors or Sub-subcontractors resulting from each occurrence.

### Builder’s Risk coverage to cover the Work, and the work of CONTRACTOR’s Subcontractors or Sub-subcontractors, shall be on an All Risks basis with no co-insurance. This policy is meant to cover LOCKHEED MARTIN’s deductible rather than the completed value of the Work. The Builder’s Risk policy shall name LOCKHEED MARTIN, the CONTRACTOR, Subcontractors, Sub-subcontractors, and Material suppliers, as named insureds or named loss payees.

### This policy shall provide a waiver of subrogation in favor of LOCKHEED MARTIN and CONTRACTOR, Subcontractor or Sub-subcontractor at any tier. LOCKHEED MARTIN and CONTRACTOR waive all rights against each other and any of their Subcontractors, Sub-subcontractors for damages to the extent covered by property insurance except such rights as they have to proceeds of such insurance.

### This insurance shall remain in effect until Final Payment has been made or until no person or entity other than LOCKHEED MARTIN has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until LOCKHEED MARTIN has secured the consent of the insurance company or companies providing such coverage.

### Before commencing the Work, the CONTRACTOR shall provide a certificate of insurance with the Builder’s Risk policy to LOCKHEED MARTIN. Upon execution of this Contract, if requested, LOCKHEED MARTIN will provide CONTRACTOR a certificate of insurance evidencing Property, including Builder’s Risk, insurance coverage provided by LOCKHEED MARTIN.

### LOCKHEED MARTIN will provide an All Risks Property – Builder’s Risk policy for the completed work above $1,000,000. Such insurance shall cover all materials that will become part of the Work once such materials arrive at the Project Site. LOCKHEED MARTIN, CONTRACTOR, Subcontractors, Sub-subcontractors at any tier shall be additional named insureds or as loss payees. This policy shall provide for a waiver of subrogation in favor of LOCKHEED MARTIN, CONTRACTOR, Subcontractors, Sub-subcontractors at any tier. LOCKHEED MARTIN and CONTRATOR waive all rights against each other and any of their Subcontractors, Sub-subcontractors, for damages to the extent covered by property insurance except such rights as they have to proceeds of such insurance.

## Property, Transit and Marine Insurance. The CONTRACTOR shall procure and maintain at CONTRACTOR’s own expense for the duration of the work property, transit and marine insurance to provide coverage for, but not limited to all property described in Risk of Physical Loss or Damage above on an All Risk basis. Transit insurance to be provided by CONTRACTOR or its subcontractors/suppliers to cover shipment of materials to the Project Site.

## The CONTRACTOR shall require its Subcontractors and Sub-subcontractors to maintain insurance as required by LOCKHEED MARTIN for Workers Compensation, Commercial General Liability and Automobile liability insurance prior to entering the Site and/or performing Work.

## Certificate of Insurance Requirements. The CONTRACTOR shall provide a “Certificate of Insurance” to the LOCKHEED MARTIN Procurement Representative showing compliance with all insurance requirements prior to beginning Work on the Site. The CONTRACTOR shall name LOCKHEED MARTIN as an additional insured on all liability policies for the duration of the Contract. This Certificate shall contain a provision that coverages afforded under the policies will not be cancelled without prior notice given to LOCKHEED MARTIN. All policies shall be primary, non-contributory, and shall (i) contain cross-liability and severability of interest endorsements, (ii) contain a waiver of subrogation in favor of LOCKHEED MARTIN, and (iii) be purchased from insurance companies of good reputation with a rating of “A-” or better by A.M. Best Company. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the CONTRACTOR’S final Application for Payment and thereafter upon renewal or replacement of such coverage until expiration of the completed operations period.

## Failure on the part of the CONTRACTOR to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a material breach of this Contract upon which LOCKHEED MARTIN may immediately terminate this Contract for default. Alternatively, at LOCKHEED MARTIN’S discretion, LOCKHEED MARTIN may procure, or renew any such policy, or any extended reporting period, and may pay any and all premiums in connection therewith, and all monies paid by LOCKHEED MARTIN shall be repaid by the CONTRACTOR upon demand, or LOCKHEED MARTIN may offset the cost of such premiums against any amounts then or thereafter due to the CONTRACTOR. The CONTRACTOR shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Contract by reason of its failure to procure and maintain insurance in required amounts, durations or types.

## To the fullest extent permitted by Law, the CONTRACTOR shall indemnify, defend and hold harmless the Indemnitees from and against all liability, claims, judgments, suits, demands for damages to persons or property which arise out of, result from, or are in any manner connected with the Work to be performed under this Contract, to the extent such injury, loss, or damage is caused by the negligent acts, errors or omissions of CONTRACTOR, any officer, employee, or agent of CONTRACTOR, any Subcontractor, Sub-subcontractor, any design professional, or anyone else employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

## To the fullest extent permitted by law, CONTRACTOR shall defend any and all such claims or suits which may be brought or threatened against the Indemnitees and shall pay on behalf of the Indemnitees any expenses incurred by reason of such claims including, but not limited to, court costs and reasonable attorneys’ fees incurred in defending or investigating such claims. Such payments on behalf of the Indemnitees shall be in addition to any and all other legal remedies available to LOCKHEED MARTIN and shall not be considered the Indemnitees’ exclusive remedy.

## The CONTRACTOR’S duty to indemnify the Indemnitees shall arise at the time written notice of a claim is first provided to LOCKHEED MARTIN regardless of whether the claimant has filed suit on the claim. CONTRACTOR’S indemnification obligations shall include, but not be limited to, any claim made against an Indemnitee by: (i) the CONTRACTOR’S employees, Subcontractors, Sub-subcontractors, or Material Suppliers, or design professionals who have been injured on property owned by LOCKHEED MARTIN; or (ii) any third parties claiming patent, copyright or trademark infringement.

## The CONTRACTOR’S indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR, any Subcontractor, any design professional, or anyone else employed directly or indirectly by any of them or anyone for whose acts any of them may be liable under workers’ compensation acts, disability benefit acts or other employee benefit acts.

## Risk of loss or damage shall remain with CONTRACTOR until Final Payment.

# B.

## Before commencement of the Work and as a condition precedent to payment, the CONTRACTOR shall procure and maintain the insurance coverages in the minimum limits set forth below:

## General Liability Coverage. The CONTRACTOR shall procure and maintain, at the CONTRACTOR’S own expense, for the duration of the Work, liability insurance as hereinafter specified:

The CONTRACTOR’S General Liability insurance in the minimum amount of $2,000,000 per occurrence, $4,000,000 aggregate and shall include coverage protecting against bodily injury, property damage, and personal injury claims arising from the exposures of (i) premises-operations; (ii) products and completed operations including Materials designed, furnished, and/or modified in any way by the CONTRACTOR; (iii) Subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Contract; and (v) where applicable, XCU coverage including liability resulting from explosion, collapse or underground exposures. Additional insured on CONTRACTOR’s CGL policy per the Certificate of Insurance Requirements section.

## Automobile Liability Insurance. The CONTRACTOR shall procure and maintain, at the CONTRACTOR’S own expense, for the duration of the Work automobile liability insurance with combined minimum single limits for bodily injury and property damage in a minimum amount of $2 million per occurrence. This insurance will insure against bodily injury and/or property damage arising out of CONTRACTOR’s operations, maintenance, use, loading or unloading of any auto, including owned, non-owned, hired, and employee autos. Additional insured on CONTRACTOR’s automobile policy per Certificate of Insurance Requirements section below.

## Excess/Umbrella Liability Insurance. The CONTRACTOR shall procure and maintain, at the CONTRACTOR’S own expense, for the duration of the Work excess or umbrella liability insurance with minimum limits of $25,000,000 per occurrence following form.

## Workmen’s Compensation. The CONTRACTOR shall procure and maintain, at the CONTRACTOR’S own expense for the duration of the Work, Workmen’s Compensation Insurance as required by the Labor Code of the State of where the work is being performed and Employer’s Liability Insurance in the minimum amount of $1,000,000. Evidence of qualified self-insured status may be substituted. The CONTRACTOR shall require such Subcontractors and Sub-subcontractors at any tier to provide Workmen’s Compensation Insurance, unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous work under the Contract at the Site is not protected under the Workmen’s Compensation statutes, the CONTRACTOR shall provide, and shall cause each Subcontractor and Sub-subcontractor to provide, adequate and suitable insurance of the protection of its employees not otherwise protected.

## Builder’s Risk.

### The CONTRACTOR shall procure and obtain a Builder’s Risk insurance policy to cover its risk of loss obligations for the Work, and the work of CONTRACTOR’s Subcontractors or Sub-subcontractors, including without limitation, its risk of loss obligations for the first $1,000,000 of damage to the Work, and the work of CONTRACTOR’s Subcontractors or Sub-subcontractors resulting from each occurrence.

### Builder’s Risk coverage to cover the Work, and the work of CONTRACTOR’s Subcontractors or Sub-subcontractors, shall be on an All Risks basis with no co-insurance. This policy is meant to cover LOCKHEED MARTIN’s deductible rather than the completed value of the Work. The Builder’s Risk policy shall name LOCKHEED MARTIN, the CONTRACTOR, Subcontractors, Sub-subcontractors, and Material suppliers, as named insureds or named loss payees.

### This policy shall provide a waiver of subrogation in favor of LOCKHEED MARTIN and CONTRACTOR, Subcontractor or Sub-subcontractor at any tier. LOCKHEED MARTIN and CONTRACTOR waive all rights against each other and any of their Subcontractors, Sub-subcontractors for damages to the extent covered by property insurance except such rights as they have to proceeds of such insurance.

### This insurance shall remain in effect until Final Payment has been made or until no person or entity other than LOCKHEED MARTIN has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until LOCKHEED MARTIN has secured the consent of the insurance company or companies providing such coverage.

### Before commencing the Work, the CONTRACTOR shall provide a certificate of insurance with the Builder’s Risk policy to LOCKHEED MARTIN. Upon execution of this Contract, if requested, LOCKHEED MARTIN will provide CONTRACTOR a certificate of insurance evidencing Property, including Builder’s Risk, insurance coverage provided by LOCKHEED MARTIN.

### LOCKHEED MARTIN will provide an All Risks Property – Builder’s Risk policy for the completed work above $1,000,000. Such insurance shall cover all materials that will become part of the Work once such materials arrive at the Project Site. LOCKHEED MARTIN, CONTRACTOR, Subcontractors, Sub-subcontractors at any tier shall be additional named insureds or as loss payees. This policy shall provide for a waiver of subrogation in favor of LOCKHEED MARTIN, CONTRACTOR, Subcontractors, Sub-subcontractors at any tier. LOCKHEED MARTIN and CONTRATOR waive all rights against each other and any of their Subcontractors, Sub-subcontractors, for damages to the extent covered by property insurance except such rights as they have to proceeds of such insurance.

## Property, Transit and Marine Insurance. The CONTRACTOR shall procure and maintain at CONTRACTOR’s own expense for the duration of the work property, transit and marine insurance to provide coverage for, but not limited to all property described in Risk of Physical Loss or Damage above on an All Risk basis. Transit insurance to be provided by CONTRACTOR or its subcontractors/suppliers to cover shipment of materials to the Project Site.

## The CONTRACTOR shall require its Subcontractors and Sub-subcontractors to maintain insurance as required by LOCKHEED MARTIN prior to entering the Site and/or performing Work.

## Certificate of Insurance Requirements. The CONTRACTOR shall provide a “Certificate of Insurance” to the LOCKHEED MARTIN Procurement Representative showing compliance with all insurance requirements prior to beginning Work on the Site. The CONTRACTOR shall name LOCKHEED MARTIN as an additional insured on all liability policies for the duration of the Contract. This Certificate shall contain a provision that coverages afforded under the policies will not be cancelled without prior notice given to LOCKHEED MARTIN. All policies shall be primary, non-contributory, and shall (i) contain cross-liability and severability of interest endorsements, (ii) contain a waiver of subrogation in favor of LOCKHEED MARTIN, and (iii) be purchased from insurance companies of good reputation with a rating of “A-VII” or better by A.M. Best Company. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the CONTRACTOR’S final Application for Payment and thereafter upon renewal or replacement of such coverage until expiration of the completed operations period.

## Failure on the part of the CONTRACTOR to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a material breach of this Contract upon which LOCKHEED MARTIN may immediately terminate this Contract for default. Alternatively, at LOCKHEED MARTIN’S discretion, LOCKHEED MARTIN may procure, or renew any such policy, or any extended reporting period, and may pay any and all premiums in connection therewith, and all monies paid by LOCKHEED MARTIN shall be repaid by the CONTRACTOR upon demand, or LOCKHEED MARTIN may offset the cost of such premiums against any amounts then or thereafter due to the CONTRACTOR. The CONTRACTOR shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Contract by reason of its failure to procure and maintain insurance in required amounts, durations or types.

## To the fullest extent permitted by Law, the CONTRACTOR shall indemnify, defend and hold harmless the Indemnitees from and against all liability, claims, judgments, suits, demands for damages to persons or property which arise out of, result from, or are in any manner connected with the Work to be performed under this Contract, to the extent such injury, loss, or damage is caused by the negligent acts, errors or omissions of CONTRACTOR, any officer, employee, or agent of CONTRACTOR, any Subcontractor, Sub-subcontractor, any design professional, or anyone else employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

## To the fullest extent permitted by law, CONTRACTOR shall defend any and all such claims or suits which may be brought or threatened against the Indemnitees and shall pay on behalf of the Indemnitees any expenses incurred by reason of such claims including, but not limited to, court costs and reasonable attorneys’ fees incurred in defending or investigating such claims. Such payments on behalf of the Indemnitees shall be in addition to any and all other legal remedies available to LOCKHEED MARTIN and shall not be considered the Indemnitees’ exclusive remedy.

## The CONTRACTOR’S duty to indemnify the Indemnitees shall arise at the time written notice of a claim is first provided to LOCKHEED MARTIN regardless of whether the claimant has filed suit on the claim. CONTRACTOR’S indemnification obligations shall include, but not be limited to, any claim made against an Indemnitee by: (i) the CONTRACTOR’S employees, Subcontractors, Sub-subcontractors, or Material Suppliers, or design professionals who have been injured on property owned by LOCKHEED MARTIN; or (ii) any third parties claiming patent, copyright or trademark infringement.

## The CONTRACTOR’S indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR, any Subcontractor, any design professional, or anyone else employed directly or indirectly by any of them or anyone for whose acts any of them may be liable under workers’ compensation acts, disability benefit acts or other employee benefit acts.

## Risk of loss or damage shall remain with CONTRACTOR until Final Payment.

# LIENS

## The CONTRACTOR shall keep LOCKHEED MARTIN and LOCKHEED MARTIN’S property or leased premises free from all liens whatsoever arising out of the Work.

## In the event any lien is filed or noticed by anyone performing Work by, through or under the CONTRACTOR, the CONTRACTOR shall remove and discharge the lien at its sole expense within ten (10) calendar days of the filing or notice. If the CONTRACTOR fails to timely remove or discharge the lien, the CONTRACTOR shall reimburse LOCKHEED MARTIN and hold the Indemnitees harmless against all claims or actions, losses, costs and expenses, including but not limited to reasonable and necessary attorneys’ fees related thereto.

## LOCKHEED MARTIN may also, but shall not be required to, remove and discharge the lien, and the CONTRACTOR shall reimburse LOCKHEED MARTIN’S costs in doing so, including reasonable attorneys’ fees and costs, or LOCKHEED MARTIN may deduct the same from the next payment to the CONTRACTOR without prejudice to any damages to which LOCKHEED MARTIN may be entitled.

# LOCKHEED MARTIN-FURNISHED PROPERTY

## LOCKHEED MARTIN may provide Furnished Property to the CONTRACTOR. FURNISHED PROPERTY shall be used only for the performance of the Contract. The CONTRACTOR shall use and manage the Furnished Property with due care.

## Title to Furnished Property shall remain in LOCKHEED MARTIN. The CONTRACTOR shall clearly mark (if not so marked) all Furnished Property to show LOCKHEED MARTIN’S ownership.

## Except for reasonable wear and tear, the CONTRACTOR shall be responsible for, and shall promptly notify LOCKHEED MARTIN of, any loss or damage to Furnished Property. Without additional charge, the CONTRACTOR shall manage, maintain and preserve Furnished Property in accordance with applicable Laws, the requirements of the Contract Documents, and good commercial practices.

## At LOCKHEED MARTIN’S request, and/or upon completion of the Contract, the CONTRACTOR shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or dispose of such Furnished Property as may be directed by LOCKHEED MARTIN.

# MATERIAL AND WORKMANSHIP

## The CONTRACTOR warrants that title to all Materials and supplies incorporated in the Work shall pass to LOCKHEED MARTIN upon payment therefor and shall be clear of all encumbrances of any nature whatsoever, including mechanic’s liens.

## Unless otherwise specifically provided in the Contract, all Material, and articles incorporated in the Work covered by the Contract shall be new and of the best or highest grade available for the purpose intended.

## In the sole discretion of LOCKHEED MARTIN, substitution of like Material may be permitted. Any requests for substitution shall be submitted for approval. Approvals of substitutions will not relieve the CONTRACTOR of its responsibility for fulfillment of various parts of the Work, or from specified guarantees, warranties and maintenance standards.

## No Materials or supplies to be incorporated in the Work shall be purchased by the CONTRACTOR, or by any Subcontractor or Sub-subcontractor, that are subject to any chattel mortgage or lien, or that are under a conditional sale or other agreement in which any interest whatsoever is retained by any other entity or individual.

## All Work shall be performed in a skillful and workmanlike manner.

# NONDISCRIMINATION

The CONTRACTOR agrees that it will take affirmative action to ensure that applicants and employees are treated fairly without regard to their race, color, religion, sex, disability, veteran status or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates or pay or other forms of compensation, and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Section.

# NOTICE OF LABOR DISPUTES

## If the CONTRACTOR becomes aware of any actual or potential labor dispute that may delay or threaten to delay the performance of the Work, the CONTRACTOR shall immediately give written notice thereof, including all relevant information with respect thereto, to the LOCKHEED MARTIN Procurement Representative.

## Each Subcontract and Sub-subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor and/or Sub-subcontractor shall immediately notify the CONTRACTOR and the LOCKHEED MARTIN Procurement Representative in writing of all relevant information concerning such dispute.

## The CONTRACTOR shall insert the substance of this Section in all Subcontracts.

## The CONTRACTOR shall furnish labor that can and will at all times work in harmony with other elements of labor employed or to be employed at the Site in a manner that shall not cause delay to the progress of the Work.

# OPERATIONS, STORAGE AREAS AND TEMPORARY CONSTRUCTION FACILITIES

## All operations of the CONTRACTOR (including storage of Materials) upon the Site or LOCKHEED MARTIN premises shall be confined to areas authorized or approved in advance in writing by LOCKHEED MARTIN. No unauthorized or unwarranted entry upon or passage through, or storage or disposal of Materials shall be made upon LOCKHEED MARTIN premises. Premises adjacent to the Site may be made available for use by the CONTRACTOR without cost whenever such use will not interfere with LOCKHEED MARTIN’S or other contractors’ uses or purposes. The CONTRACTOR shall be liable for any and all damages caused by the CONTRACTOR to LOCKHEED MARTIN premises. The CONTRACTOR, Subcontractors and Sub-subcontractors shall indemnify, defend and hold harmless the Indemnitees from liability of any nature or kind arising from any use, trespass or damages occasioned by its operations on premises of third parties.

## Temporary buildings (storage sheds, shops, offices, etc.) may be erected by the CONTRACTOR only with the advance written approval of LOCKHEED MARTIN and shall be built with labor and Materials furnished by the CONTRACTOR without expense to LOCKHEED MARTIN. Such temporary buildings and/or utilities shall remain the property of the CONTRACTOR and will be removed by the CONTRACTOR at its sole expense upon the completion of the Work.

## The CONTRACTOR shall use only established roadways or construct and use such temporary roadways as may be authorized in advance by LOCKHEED MARTIN. When it is necessary to cross curbing or sidewalks, the CONTRACTOR shall provide protection against damage. Any roads, curbings, or sidewalks damaged by CONTRACTOR, Subcontractors, or Sub-subcontractors shall be repaired by and at the expense of the CONTRACTOR, to LOCKHEED MARTIN’S satisfaction.

## The CONTRACTOR shall furnish adequate toilet facilities for its employees, Subcontractors and anyone else performing the Work. Toilet facilities shall conform to all applicable federal, state and local sanitary regulations and shall be located as approved in advance by LOCKHEED MARTIN.

## The Work shall be done without interference with the ordinary use of streets, easements and passages and the CONTRACTOR shall cooperate with LOCKHEED MARTIN’S Separate Contractors and LOCKHEED MARTIN employees as may be required by LOCKHEED MARTIN. The CONTRACTOR shall not commit or permit any act which will interfere with the performance of work by any Separate Contractors or LOCKHEED MARTIN employees, whether at the Site or not.

## No welding by arc or gas methods, or flame cutting by torch, will be performed by the CONTRACTOR without prior written approval of the LOCKHEED MARTIN Technical Representative. It shall be the sole responsibility of the CONTRACTOR to provide and properly install any required welding protection for LOCKHEED MARTIN’S property, equipment, material and personnel.

# PAYMENT/RETAINAGE, for contracts that identify progress payments, section a applies. for contracts that identify milestone payments, section b applies.

# A.

 (a) LOCKHEED MARTIN shall pay the Contract price as provided in this Contract.

 (b) LOCKHEED MARTIN will make progress payments monthly as the Work progresses, based on estimates of acceptable Work accomplished submitted by the CONTRACTOR and approved by LOCKHEED MARTIN. If requested by LOCKHEED MARTIN, the CONTRACTOR shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In preparing estimates of Work accomplished, the material delivered on the Site and preparatory work completed may be taken into consideration. Such payments shall be made on submission of itemized requests by the CONTRACTOR and shall be subject to reduction for overpayments or increase for underpayments on preceding payments to the CONTRACTOR.

 (c) In making such progress payments there shall be retained ten (10) percent of the approved estimated amount until final completion and acceptance of all Work covered by the Contract; provided, that upon completion and acceptance of each building, or other division of the Contract, on which the price is stated separately in the Contract, payment may be made in full, including retained percentage thereon, less authorized deductions.

 (d) All material and Work covered by progress payments made shall thereupon become the sole property of LOCKHEED MARTIN but this provision shall not be construed as relieving the CONTRACTOR from the sole responsibility for all materials and Work upon which payments have been made or the restoration of any damaged Work, or as a waiver of the right of LOCKHEED MARTIN to require the fulfillment of all of the terms of the Contract.

 (e) Upon completion and final acceptance of all Work required hereunder as provided in the clause herein entitled "Inspection, Test, and Acceptance", the amount due the CONTRACTOR

under this Contract will be paid upon the presentation of a properly executed and duly certified voucher therefor and presentation of release of all Claims against LOCKHEED MARTIN arising by virtue of this Contract, other than Claims, in stated amounts, that the CONTRACTOR has specifically excepted from the operation of the release. If the CONTRACTOR's Claim to amounts payable under the Contract has been assigned, a release may be required of the assignee at the option of LOCKHEED MARTIN.

 (f) Neither the final payment nor any part of the retained percentage shall become due until the CONTRACTOR delivers to LOCKHEED MARTIN complete releases from itself and each of its Subcontractors and Sub-subcontractors of all liens arising out of this Contract, or receipts in full in lieu thereof, and, an affidavit that so far as it has knowledge or information the release includes all the labor and material for which a lien could be filed; but the CONTRACTOR may, if any Subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to

LOCKHEED MARTIN, to indemnify LOCKHEED MARTIN against any lien. If any lien remains unsatisfied after all payments are made, the CONTRACTOR shall refund to LOCKHEED MARTIN all monies that the latter may be compelled to pay in discharging such a lien, including all costs and reasonable attorneys' fees.

 (g) The obligation of LOCKHEED MARTIN to make the payments required under the provisions of this Contract shall, in the discretion of LOCKHEED MARTIN, be subject to (1) reasonable deductions on account of defects in material or workmanship, and (2) any Claims which LOCKHEED MARTIN may have against the CONTRACTOR under or in connection with this Contract. Any overpayments to the CONTRACTOR shall, unless otherwise adjusted, be repaid to LOCKHEED MARTIN upon demand.

## The CONTRACTOR shall furnish with each Application for Payment:

### An updated Schedule of Values showing the amount included for each principal category of the Work, in detail as requested, to provide a basis for determining the amount of each Application for Payment;

### A list all Change Orders and Construction Change Directives through the date of the Application for Payment;

### Any anticipated impacts on the critical path of the Project Schedule;

### Properly executed (1) Unconditional Lien Releases for the pay period two (2) months prior from the CONTRACTOR and each Subcontractor and Sub-subcontractor that performed Work or supplied Materials for which the CONTRACTOR seeks payment, except in the case where money has been withheld, and (2) Conditional Lien Releases for the current Application for Payment;

### A statement as to whether the Work is on schedule and, if not, the CONTRACTOR’S Recovery Measures;

### Copies of all Material and Subcontractor invoices;

### Certified payrolls; and

### Petty cash accounts.

## In each Application for Payment, the CONTRACTOR shall include the following certification:

The undersigned Contractor certifies that to the best of the Contractor’s knowledge, information and belief the Work covered by this application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Contractor certifies to Lockheed Martin that to the best of its knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

## LOCKHEED MARTIN may withhold all or a portion of any Application for Payment for:

### Defective Work not remedied;

### Third-party claims provided the CONTRACTOR has been paid for the Work that is the basis for the claim;

### Failure of the CONTRACTOR to make payments to Subcontractors or Material suppliers;

### Reasonable evidence the Work cannot be completed by the Substantial Completion Date;

### Damages to LOCKHEED MARTIN or a Separate Contractor; or

### Repeated failure to carry out the Work in accordance with the Contract Documents.

## By signing an Application for Payment, the CONTRACTOR represents and warrants that:

### The CONTRACTOR has no notice of any vendor’s, materialman’s, mechanic’s, supplier’s, or other similar lien rights or rights to liens, chattel mortgages, or conditional sales contracts pertaining to the Work covered by the Application for Payment;

### All Claims against LOCKHEED MARTIN for extensions of time or adjustments to the Contract Price based on events or circumstances more than forty-five (45) calendar days prior to the subject Application for Payment are waived, except as specifically stated in the Application for Payment or as previously set forth in a separate written notice to LOCKHEED MARTIN (both complying with the requirements of the Contract relating to Claims);

### The Work covered by the Application for Payment has been completed in accordance with the Contract Documents;

### The Work performed to date as shown on the Application for Payment represents the actual value of the Work completed under the Contract (and all approved Change Orders);

### The current amount shown in the Application for Payment is now due and owing;

### The CONTRACTOR has complied with and paid all amounts due under applicable Laws;

### All amounts previously due have been received and, except as set forth in the current Application for Payment, no additional amounts are due;

### The Work is proceeding in accordance with the Project Schedule;

### The CONTRACTOR has paid all Material suppliers and Subcontractors for which it has previously been paid; and

### Upon payment as requested, all of the right, title and interest in and to Materials are transferred to LOCKHEED MARTIN.

## The CONTRACTOR shall include a similar provision in each of its Subcontracts providing that by submitting an invoice, the Subcontractor represents and warrants to both the CONTRACTOR and to LOCKHEED MARTIN each of the statements and conditions set forth above.

## No payment or approval for payment issued or made, no payment made to the CONTRACTOR nor any inspection or investigation by LOCKHEED MARTIN or any third party, nor partial or entire occupancy of the Work by LOCKHEED MARTIN shall constitute acceptance of any Work that is not in strict conformity with the requirements of the Contract Documents or is otherwise defective.

## At the time Final Completion of the entire Work has occurred in accordance with the Contract Documents, the CONTRACTOR shall submit to the LOCKHEED MARTIN Procurement Representative the following documents and information before Final Payment becomes due and payable:

### Complete and accurate Record Drawings and Specifications and any other records and related data;

### All permits, licenses approvals, certificates and authorizations required by any authority having jurisdiction over the Work or the Project;

### All documentation required by the Contract Documents regarding the operation and recommended maintenance programs relating to the various elements of the Work;

### A certificate evidencing that the insurance required by the Contract to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days’ prior written notice has been given to LOCKHEED MARTIN, and a written statement that the CONTRACTOR knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract;

### Conditional final lien releases from the CONTRACTOR, Subcontractors, Sub-subcontractors, and Material suppliers. Unconditional final lien releases shall be provided after Final Payment;

### A list of all unsettled Claims;

### A PDF containing complete installation, operation and maintenance manuals including all manufacturers’ literature, for all Materials used in the Work;

### A PDF containing all inspection, testing and commissioning reports, permits, and temporary and final certificates of occupancy and licenses necessary for occupancy of the Project;

### Written assignment of all warranties and guarantees for all Work performed on the Project and labor, Materials and other services incorporated into the Work, including all warranties provided by equipment warranties (which warranties and guarantees shall be validly assigned to the LOCKHEED MARTIN), including the date the same became effective; and

### Any and all other information required of the CONTRACTOR as a condition to Final Payment.

## Final Payment shall not become due until the CONTRACTOR has completed the Punch List for the entirety of the Work.

## Final Payment shall not become due until the CONTRACTOR delivers to LOCKHEED MARTIN releases from itself and each Subcontractor and Sub-subcontractor of all liens arising out of the Contract, or receipts in full in lieu of the releases, and, an affidavit that so far as it has knowledge or information the release includes all the labor and Materials for which a lien could be filed. The CONTRACTOR shall, if any Subcontractor or Sub-subcontractor refuses to furnish a release or receipt, furnish a bond satisfactory to LOCKHEED MARTIN to indemnify LOCKHEED MARTIN against any lien. If any lien remains unsatisfied after all payments are made, the CONTRACTOR shall refund to LOCKHEED MARTIN all monies that LOCKHEED MARTIN may be compelled to pay in discharging such a lien, including all costs and reasonable attorneys’ fees.

## LOCKHEED MARTIN will make payments following submittal of Application for Payment by the CONTRACTOR from time to time upon completion of a milestone as described in the milestone payment schedule made a part of this Contract. The amount payable with respect to a milestone shall be such amount as is determined for the milestone as is set forth in that schedule with respect to the milestone and not actual costs incurred.

## Ten percent (10%) of each payment shall be retained by LOCKHEED MARTIN as retainage, which shall be payable upon Substantial Completion of the Work, less an amount equal to one hundred and fifty percent (150%) of the cost to complete or correct any remaining, incomplete or nonconforming Work.

## All Material and Work covered by a milestone payment shall become the sole property of LOCKHEED MARTIN, but this provision shall not be construed as relieving the CONTRACTOR from the sole responsibility for all Materials and Work upon which payments have been made or the restoration of any damaged Work, or as a waiver of the right of LOCKHEED MARTIN to require the fulfillment of all requirements of the Contract Documents.

## Upon completion and final acceptance of all Work as provided in the section entitled “Inspections, Tests, Acceptance, Quality Control,” the amount due the CONTRACTOR under the Contract will be paid upon the presentation of a final Application for Payment and presentation of releases of all Claims against LOCKHEED MARTIN arising out of the Contract, other than Claims in stated amounts that the CONTRACTOR has specifically excepted from the operation of the release. If the CONTRACTOR’S Claim to amounts payable under the Contract has been assigned, a release shall be required of the assignee.

## Final Payment shall not become due until the CONTRACTOR delivers to LOCKHEED MARTIN complete releases from itself and each Subcontractor and Sub-subcontractor of all liens arising out of the Contract and, an affidavit that so far as it has knowledge or information the release includes all the labor and Material for which a lien could be filed; but the CONTRACTOR may, if any Subcontractor or Sub-subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to LOCKHEED MARTIN to indemnify LOCKHEED MARTIN against any lien. If any lien remains unsatisfied after all payments are made, the CONTRACTOR shall refund to LOCKHEED MARTIN all monies that LOCKHEED MARTIN may be compelled to pay in discharging such a lien, including all costs and reasonable attorneys' fees.

## The obligation of LOCKHEED MARTIN to make the payments required under the provisions of the Contract shall, in the discretion of LOCKHEED MARTIN, be subject to (i) reasonable deductions on account of defects in Material and/or workmanship, and (ii) any Claims which LOCKHEED MARTIN may have against the CONTRACTOR. Any overpayments to the CONTRACTOR shall, unless otherwise adjusted, be repaid to LOCKHEED MARTIN upon demand.

## The CONTRACTOR shall furnish with each Application for Payment:

### An updated Schedule of Values showing the amount included for each principal category of the Work, in detail as requested, to provide a basis for determining the amount of each Application for Payment;

### A list all Change Orders and Construction Change Directives through the date of the Application for Payment;

### Any anticipated impacts on the critical path of the Project Schedule;

### Properly executed (1) Unconditional Lien Releases for the pay period two (2) months prior from the CONTRACTOR and each Subcontractor and Sub-subcontractor that performed Work or supplied Materials for which the CONTRACTOR seeks payment, except in the case where money has been withheld, and (2) Conditional Lien Releases for the current Application for Payment;

### A statement as to whether the Work is on schedule and, if not, the CONTRACTOR’S Recovery Measures;

### Copies of all Material and Subcontractor invoices;

### Certified payrolls; and

### Petty cash accounts.

## In each Application for Payment, the CONTRACTOR shall include the following certification:

The undersigned Contractor certifies that to the best of the Contractor’s knowledge, information and belief the Work covered by this application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Contractor certifies to Lockheed Martin that to the best of its knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

## LOCKHEED MARTIN may withhold all or a portion of any Application for Payment for:

### Defective Work not remedied;

### Third-party claims provided the CONTRACTOR has been paid for the Work that is the basis for the claim;

### Failure of the CONTRACTOR to make payments to Subcontractors or Material suppliers;

### Reasonable evidence the Work cannot be completed by the Substantial Completion Date;

### Damages to LOCKHEED MARTIN or a Separate Contractor; or

### Repeated failure to carry out the Work in accordance with the Contract Documents.

## By signing an Application for Payment, the CONTRACTOR represents and warrants that:

### The CONTRACTOR has no notice of any vendor’s, materialman’s, mechanic’s, supplier’s, or other similar lien rights or rights to liens, chattel mortgages, or conditional sales contracts pertaining to the Work covered by the Application for Payment;

### All Claims against LOCKHEED MARTIN for extensions of time or adjustments to the Contract Price based on events or circumstances more than forty-five (45) calendar days prior to the subject Application for Payment are waived, except as specifically stated in the Application for Payment or as previously set forth in a separate written notice to LOCKHEED MARTIN (both complying with the requirements of the Contract relating to Claims);

### The Work covered by the Application for Payment has been completed in accordance with the Contract Documents;

### The Work performed to date as shown on the Application for Payment represents the actual value of the Work completed under the Contract (and all approved Change Orders);

### The current amount shown in the Application for Payment is now due and owing;

### The CONTRACTOR has complied with and paid all amounts due under applicable Laws;

### All amounts previously due have been received and, except as set forth in the current Application for Payment, no additional amounts are due;

### The Work is proceeding in accordance with the Project Schedule;

### The CONTRACTOR has paid all Material suppliers and Subcontractors for which it has previously been paid; and

### Upon payment as requested, all of the right, title and interest in and to Materials are transferred to LOCKHEED MARTIN.

## The CONTRACTOR shall include a similar provision in each of its Subcontracts providing that by submitting an invoice, the Subcontractor represents and warrants to both the CONTRACTOR and to LOCKHEED MARTIN each of the statements and conditions set forth above.

## No payment or approval for payment issued or made, no payment made to the CONTRACTOR nor any inspection or investigation by LOCKHEED MARTIN or any third party, nor partial or entire occupancy of the Work by LOCKHEED MARTIN shall constitute acceptance of any Work that is not in strict conformity with the requirements of the Contract Documents or is otherwise defective.

## At the time Final Completion of the entire Work has occurred in accordance with the Contract Documents, the CONTRACTOR shall submit to the LOCKHEED MARTIN Procurement Representative the following documents and information before Final Payment becomes due and payable:

### Complete and accurate Record Drawings and Specifications and any other records and related data;

### All permits, licenses approvals, certificates and authorizations required by any authority having jurisdiction over the Work or the Project;

### All documentation required by the Contract Documents regarding the operation and recommended maintenance programs relating to the various elements of the Work;

### A certificate evidencing that the insurance required by the Contract to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days’ prior written notice has been given to LOCKHEED MARTIN, and a written statement that the CONTRACTOR knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract;

### Conditional final lien releases from the CONTRACTOR, Subcontractors, Sub-subcontractors, and Material suppliers. Unconditional final lien releases shall be provided after Final Payment;

### A list of all unsettled Claims;

### A PDF containing complete installation, operation and maintenance manuals including all manufacturers’ literature, for all Materials used in the Work;

### A PDF containing all inspection, testing and commissioning reports, permits, and temporary and final certificates of occupancy and licenses necessary for occupancy of the Project;

### Written assignment of all warranties and guarantees for all Work performed on the Project and labor, Materials and other services incorporated into the Work, including all warranties provided by equipment warranties (which warranties and guarantees shall be validly assigned to the LOCKHEED MARTIN), including the date the same became effective; and

### Any and all other information required of the CONTRACTOR as a condition to Final Payment.

## Final Payment shall not become due until the CONTRACTOR has completed the Punch List for the entirety of the Work.

## Final Payment shall not become due until the CONTRACTOR delivers to LOCKHEED MARTIN releases from itself and each Subcontractor and Sub-subcontractor of all liens arising out of the Contract, or receipts in full in lieu of the releases, and, an affidavit that so far as it has knowledge or information the release includes all the labor and Materials for which a lien could be filed. The CONTRACTOR shall, if any Subcontractor or Sub-subcontractor refuses to furnish a release or receipt, furnish a bond satisfactory to LOCKHEED MARTIN to indemnify LOCKHEED MARTIN against any lien. If any lien remains unsatisfied after all payments are made, the CONTRACTOR shall refund to LOCKHEED MARTIN all monies that LOCKHEED MARTIN may be compelled to pay in discharging such a lien, including all costs and reasonable attorneys’ fees.

# PROTECTION OF MATERIALS AND WORK PERFORMED

## The CONTRACTOR shall at all times protect and preserve all Materials and supplies of every description (including Furnished Property or property furnished by Separate Contractors) and all Work performed. The CONTRACTOR shall promptly comply with requests of LOCKHEED MARTIN to enclose or specially protect such property. If, as determined by the LOCKHEED MARTIN Procurement Representative, Material, supplies or Work performed are not adequately protected by the CONTRACTOR, LOCKHEED MARTIN may protect such property and the cost thereof shall be charged to the CONTRACTOR or deducted from any payments due the CONTRACTOR.

## Any damage to existing property or Work of any kind or the interruption of a utility service shall be repaired or restored immediately by and at the sole expense of the CONTRACTOR.

## The necessary Materials to be utilized in the performance of the Contract shall be delivered to or by the CONTRACTOR at the Site, and it shall be the CONTRACTOR’S responsibility to unload and safeguard it from all hazards.

## The CONTRACTOR shall protect the Materials and Work from deterioration and damage during construction and shall store and secure flammable Material from fire, remove oily rags, waste, and refuse from buildings each night and during cold weather furnish all heat necessary for the proper conduct of the Work. The CONTRACTOR shall provide and maintain all temporary walkways, roadways, trench covers, barricades, colored lights, danger signals, and other devices necessary to provide for safety and traffic.

# RECORDS

## The CONTRACTOR shall maintain and store, at its own expense and for eight (8) years after Final Payment, all books, documents, papers and records of any kind relating to the Contract and/or the Work. The CONTRACTOR agrees that LOCKHEED MARTIN shall have access to and the right to examine any books, documents, papers and records of the CONTRACTOR involving the Contract and/or the Work during this period.

## The CONTRACTOR shall maintain a thorough up-to-date record of all changes to the Drawings, Specifications, and other Contract Documents made during construction. As a condition precedent to Final Payment, the CONTRACTOR shall file with LOCKHEED MARTIN one (1) complete set of redlined Contract Documents, including Drawings and Specifications, showing all changes and including the CONTRACTOR’S field construction notes neatly and legibly recorded thereon.

## The CONTRACTOR shall require the substance of this Section to be included in all Subcontracts and Sub-subcontracts.

# RELEASE OF INFORMATION

## Except as required by Laws, no public release of any information, or confirmation or denial of same, with respect to the Contract or the Project shall be made by the CONTRACTOR without the prior written authorization of LOCKHEED MARTIN.

## The CONTRACTOR shall require the substance of this Section to be included in all Subcontracts and Sub-subcontracts.

## The CONTRACTOR, Subcontractors and Sub-subcontractors 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.

## LOCKHEED MARTIN shall be under no obligation to restrict disclosure or use, or hold in confidence any Contract information which is furnished, delivered, or disclosed by the CONTRACTOR under the Contract, or as a result of the Work, either directly or indirectly, except insofar as may be provided in a written agreement between the Parties. In the absence of a written agreement, any restriction or limitation on LOCKHEED MARTIN’S use or disclosure of Contract information shall be void and of no effect. The CONTRACTOR agrees not to deliver or furnish any Contract information subject to limited use or reproduction unless otherwise agreed as specified above.

## The CONTRACTOR shall not reproduce, use, or disclose to others any information regarding services, articles, or parts thereof, contracted for or made to data, standards, Drawings, Specifications, or designs, without LOCKHEED MARTIN’S written consent. The CONTRACTOR shall not supply or disclose any information regarding any services or articles, or any Material used in the same, nor incorporate in other services, products, or articles any special features of design or manufacture peculiar to the services, products or articles contracted for under the Contract, without the prior written consent of LOCKHEED MARTIN.

# REMOVAL OF MATERIALAND CLEANUP

## The CONTRACTOR shall at all times keep the Site, including storage areas, free from accumulations of waste material and rubbish. Upon completion of the Work, the CONTRACTOR shall remove any rubbish, tools, scaffolding equipment, and Materials not the property of LOCKHEED MARTIN and shall leave the Site in a broom clean, neat condition satisfactory to LOCKHEED MARTIN.

## Should the CONTRACTOR fail to take prompt action to remove its tools, Materials, and other articles from the Site, LOCKHEED MARTIN (at its option and without waiver of such other rights as it may have) may, fifteen (15) calendar days after written notice to the CONTRACTOR, treat such items as abandoned property and take title to, or dispose or use them as it deems appropriate.

# SAFETY AND ACCIDENT PREVENTION

## In performing Work, the CONTRACTOR shall be solely responsible for the safety and health of the CONTRACTOR’S employees, Subcontractors, Sub-subcontractors and anyone else on the Site and shall:

### Conform to all safety requirements contained in the Contract and comply with all local, state and federal health and safety regulations;

### Comply with the safety rules and any Private Requirements of LOCKHEED MARTIN;

### Take all reasonable steps and precautions to prevent accidents and preserve the life and health of all individuals performing the Work or in any way coming in contact with the performance of the Work;

### Take such additional immediate precautions as LOCKHEED MARTIN may reasonably require for safety and accident prevention purposes; and

### Be responsible for informing all CONTRACTOR, Subcontractor and Sub-subcontractor employees of any hazards associated with the Site or the Work.

## The LOCKHEED MARTIN Procurement Representative may, by written order, direct additional safety and accident standards as may be required in the performance of the Work.

## The CONTRACTOR shall designate an individual who shall act as the CONTRACTOR’S designated safety representative with the duty to prevent accidents. Unless otherwise identified in writing, the designated safety representative shall be the CONTRACTOR’S Superintendent.

## The CONTRACTOR shall immediately notify LOCKHEED MARTIN of any accident, incident or exposure resulting in fatality, lost-time, occupational injury or occupational disease, or contamination of property, or property loss arising out of Work. In addition, the CONTRACTOR shall comply with any illness, incident and injury experience reporting requirements set forth in the Contract. The CONTRACTOR will investigate all such work-related incidents or accidents to the extent necessary to positively determine the cause, and shall furnish LOCKHEED MARTIN with a report, in such form as LOCKHEED MARTIN may require, of the investigative findings, together with proposed and/or completed corrective actions.

## Any violation of safety rules and requirements, unless immediately corrected as directed by the LOCKHEED MARTIN Procurement Representative, shall be a material default and shall be grounds for termination of the Contract for cause.

## The CONTRACTOR shall be responsible for and hereby agrees to defend, indemnify and hold harmless the Indemnitees from any and all:

### damage to the property of LOCKHEED MARTIN, the CONTRACTOR, Subcontractors or Sub-subcontractors;

### injury to employees of LOCKHEED MARTIN, the CONTRACTOR, Subcontractors or Sub-subcontractors; or

### for any liability whatsoever arising out of or in connection with the presence of CONTRACTOR, Subcontractors or Sub-subcontractors on the Site.

## If LOCKHEED MARTIN determines that any part of the Work or the Site is unsafe, LOCKHEED MARTIN, without assuming responsibility for the CONTRACTOR’S safety responsibilities, may require the CONTRACTOR to stop the Work or with or without notice to the CONTRACTOR take corrective measures satisfactory to LOCKHEED MARTIN, or both. If the CONTRACTOR does not promptly institute corrective measures, LOCKHEED MARTIN may perform them. The cost of such corrective measures provided by LOCKHEED MARTIN shall be borne by the CONTRACTOR, and if not paid by the CONTRACTOR on presentation of the bills, such costs may be deducted from any amounts due or that become due to the CONTRACTOR. The performance of such corrective work by LOCKHEED MARTIN shall not relieve the CONTRACTOR of responsibility for any damage which may occur.

## In any emergency affecting the safety of persons or property, the CONTRACTOR shall take all necessary measures to prevent threatened damages, injury or loss. There shall be no change in the Contract Price and/or the Contract Time on account of emergency Work, except as provided in the Contract.

# SEPARATE CONTRACTORS

## LOCKHEED MARTIN may perform construction related to the Project under contracts with Separate Contractors, including another general contractor. If the CONTRACTOR claims a delay or additional cost beyond that reasonably able to be anticipated as the result of a Separate Contractor, the CONTRACTOR may make a Claim as provided herein.

## LOCKHEED MARTIN shall be responsible for coordinating the activities of LOCKHEED MARTIN’S Separate Contractors with the CONTRACTOR. The CONTRACTOR shall cooperate with this effort and shall update the Separate Contractors in the event revisions to the Project Schedule are needed.

## If part of the CONTRACTOR’S Work depends for proper execution or results upon construction or operations by a Separate Contractor, the CONTRACTOR shall, prior to proceeding with that portion of the Work, promptly report to LOCKHEED MARTIN in writing apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the CONTRACTOR to report shall constitute an acknowledgment that LOCKHEED MARTIN’S or its Separate Contractor’s completed or partially completed construction is fit and proper to receive the CONTRACTOR’S Work, except as to defects not then apparent.

## The CONTRACTOR shall reimburse LOCKHEED MARTIN for all costs LOCKHEED MARTIN incurs that are payable to a Separate Contractor because of the CONTRACTOR’S delays, improperly timed activities or defective construction. LOCKHEED MARTIN shall be responsible to the CONTRACTOR for costs the CONTRACTOR incurs because of a Separate Contractor’s delays, improperly timed activities, damage to the Work or defective construction.

## The CONTRACTOR shall promptly remedy damage the CONTRACTOR wrongfully causes to completed or partially completed construction or to property of LOCKHEED MARTIN or its Separate Contractors. LOCKHEED MARTIN shall be responsible to the CONTRACTOR for costs the CONTRACTOR incurs for damage Separate Contractors cause to partially completed construction or to property of the CONTRACTOR, Subcontractors or Sub-subcontractors.

## The CONTRACTOR shall include within its Project Schedule the schedules of all Separate Contractors, and shall make revisions to the Project Schedule deemed necessary after a joint review and upon mutual agreement with LOCKHEED MARTIN and the Separate Contractors. The Project Schedule shall constitute the schedule to be used by the CONTRACTOR and any Separate Contractors until subsequently revised.

# SITE INVESTIGATION

## The CONTRACTOR represents that it has investigated and satisfied itself as to the nature and location of the Work, the general and local conditions, including but not limited to those bearing upon transportation, disposal, handling and storage of Materials; the availability of labor, materials, water, electric power, and roads; the uncertainties of weather, river stages, or similar physical conditions at the Site; the conformation and conditions of the ground; the character of equipment and facilities needed preliminary to and during the performance of the Work, and all other matters upon which information is reasonably obtainable and which can in any way affect the Work or the cost thereof under the Contract. The CONTRACTOR shall prepare, as necessary, surveys and topographic information including aerial photographs needed to establish line and grade of sewers, location of property lines and easements. If applicable, sewer easements, both construction and permanent, shall be referenced to property lines by field surveys, and the Drawings shall include to location of any improvement as it relates to property lines.

## The CONTRACTOR further represents that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Site, including all exploratory work done by LOCKHEED MARTIN, as well as from information presented by LOCKHEED MARTIN, including but not limited to the Specifications and Drawings.

## LOCKHEED MARTIN expressly disclaims the accuracy and reliability of any subsurface tests provided by LOCKHEED MARTIN to the CONTRACTOR. Such tests are provided for illustrative purposes only, and the CONTRACTOR is required to make its own independent tests of any subsurface conditions.

## Failure of the CONTRACTOR to acquaint itself with all available information shall not relieve it of responsibility for successfully performing the Work. LOCKHEED MARTIN assumes no responsibility for any conclusions or interpretations made by the CONTRACTOR based on the information made available by LOCKHEED MARTIN or for any understandings reached or representations made by any of its officers, employees or agents prior to the execution of the Contract, unless (1) such understanding or representations is expressly stated in the Contract and (2) the Contract expressly provides that the responsibility therefor is assumed by LOCKHEED MARTIN.

## Where alterations of and/or additions to existing construction are required under the Contract, the CONTRACTOR shall verify all dimensions and determine all existing conditions that may affect its Work and shall be solely responsible for the accuracy of such dimensions and determinations.

# SPECIFICATIONS AND DRAWINGS/SUBMITTALS

## The CONTRACTOR shall perform the construction in strict conformance with the Specifications and Drawings. All Work called for in the Specifications and Drawings shall be accomplished in accordance with all applicable Laws. In the event of a conflict among the Specifications or Drawings as to the quantity or quality of Work or Materials, the higher quality or greater quantity shall be furnished.

## The CONTRACTOR shall keep at the Site a copy of the Specifications and Drawings and shall at all times provide LOCKHEED MARTIN access to them. Anything mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both. In case of difference between Specifications and Drawings, the Specifications shall govern. In any case of discrepancy either in the figures, in the Specifications, or in the Drawings, the matter shall be promptly submitted to the LOCKHEED MARTIN Procurement Representative, who shall promptly make a determination in writing. Any change by the CONTRACTOR to the Specifications and/or Drawings without such a determination shall be at its own risk and expense.

## Omissions and Mis-descriptions. Omissions from the Specifications or Drawings or the mis-description of details of Work which are necessary to carry out the intent of the Specifications and Drawings, shall not relieve the CONTRACTOR from performing such omitted or mis-described details of Work, but they shall be performed as if fully and correctly set forth and described in the Specifications and Drawings.

## Drawings and Dimensions. Dimensions marked on Drawings shall be followed in preference to scale measurements. Large scale detail Drawings shall govern small scale Drawings. The CONTRACTOR shall compare all Drawings and verify the figures before laying out the Work and will be responsible for any errors which might have been avoided thereby. When measurements are affected by field conditions, the CONTRACTOR shall take measurements notwithstanding the giving of scale or figure dimensions in the Drawings.

## Deviations. Deviations from the Drawings and the dimensions in them, whether or not error is believed to exist, shall not be made until written authority is obtained from LOCKHEED MARTIN.

## Base Lines and Grades. The CONTRACTOR shall lay out the Work from base lines and grades established by LOCKHEED MARTIN and shall be responsible for all measurements in connection therewith. The CONTRACTOR shall, at its own expense, furnish all stakes, templates, platforms, equipment, and ranges and labor that may be required in setting and cutting, or laying out any part of the Work. The CONTRACTOR shall be held responsible for the proper execution of the Work to such lines and grades as may be established or indicated by LOCKHEED MARTIN, and all stakes or other marks thus established shall be preserved by it until their removal is authorized by LOCKHEED MARTIN. LOCKHEED MARTIN will furnish, on request from the CONTRACTOR, all location and limit marks reasonably necessary for the performance of the Work.

## All Drawings are the property of LOCKHEED MARTIN, and LOCKHEED MARTIN shall be entitled, without further payment or liability to the CONTRACTOR and without further permission, to use such Drawings and to reproduce them; provided, however, the use of such Drawings shall not imply a license to LOCKHEED MARTIN under any patent or shall not be construed as affecting the scope of any license otherwise granted to LOCKHEED MARTIN under any patent.

## The CONTRACTOR shall furnish to LOCKHEED MARTIN under Specification sections wherein they apply, a sufficient number of submittals so that LOCKHEED MARTIN can retain three (3) copies. Submittals will be marked "approved," "approved as noted," or "disapproved." Submittals marked "approved" or "approved as noted" need not be resubmitted. Submittals marked "disapproved" shall be resubmitted within seven (7) calendar days. All submittals shall be "approved" or "approved as noted" before starting fabrication.

## Review and/or approval of submittals shall not relieve the CONTRACTOR from the responsibility of producing completed and installed Work in conformance with the Contract Documents. The CONTRACTOR acknowledges that review and/or approval of the CONTRACTOR’S submittals shall not be construed as a complete check as to their adequacy, nor as an agreement that the submittal will meet the requirements of the Contract Documents. Such review and/or approvals shall in no way relieve the CONTRACTOR of responsibility for any error or deficiency which may exist in the submittal, as the CONTRACTOR shall be responsible for meeting all requirements of the Contract Documents.

## No deviation from, substitution for, or other modification from the Contract Documents shall be allowed by the CONTRACTOR in a submittal without the written approval of LOCKHEED MARTIN. The CONTRACTOR shall maintain a submittal log which shall include, at a minimum, the date of each submittal, the date of any re-submittal, the date of any approval or rejection, and the reason for any approval or rejection. The submittal log shall be made available to LOCKHEED MARTIN upon request. The CONTRACTOR shall not perform any portion of the Work as to which LOCKHEED MARTIN has required submittal review until after such submittal has been reviewed and approved. Review of submittals, however, shall be performed so as not to delay the orderly progress of the Work or the Project Schedule and shall not be evidence that Work installed pursuant to approved submittals conforms to the requirements of the Contract Documents nor shall such approvals relieve the CONTRACTOR of any of its responsibilities or warranties under the Contract Documents.

## The CONTRACTOR acknowledges that the Specifications and Drawings contain confidential, proprietary and trade secret information. The CONTRACTOR agrees to maintain the confidentiality of these documents so far as is possible within the scope of the Work as provided for in the Contract Documents. The CONTRACTOR will not at any time provide any of the Contract Documents to any person or entity that is not a Subcontractor or Sub-subcontractor or an employee or officer of a Subcontractor or Sub-subcontractor. The CONTRACTOR shall include the substance of this section in all Subcontracts.

# SUBCONTRACTORS

## The CONTRACTOR shall at all times use only qualified vendors and Subcontractors for performance of all subcontracted Work and the furnishing of materials and labor. Nothing noted in any Subcontract shall create any contractual relation between any Subcontractor or Sub-subcontractor and LOCKHEED MARTIN.

## The CONTRACTOR shall keep all invoices from Subcontractors incurred in connection with the Contract on a current basis, and if requested by LOCKHEED MARTIN, shall present evidence that payment therefor has been made.

## The CONTRACTOR, as soon as practicable after execution of the Contract, shall furnish in writing to the LOCKHEED MARTIN Procurement Representative the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The LOCKHEED MARTIN Procurement Representative will promptly reply to the CONTRACTOR stating whether or not LOCKHEED MARTIN has any objection to any such proposed person or entity.

## The CONTRACTOR shall not subcontract with a proposed person or entity to whom LOCKHEED MARTIN has made objection. The CONTRACTOR shall not change a Subcontractor, person or entity previously selected without the LOCKHEED MARTIN Procurement Representative’s prior written approval to such substitution.

## The CONTRACTOR shall require each Subcontractor to be bound to the CONTRACTOR by the terms of the Contract applicable to the Subcontractor’s Work, and to assume toward the CONTRACTOR all obligations, including the responsibility for safety of Subcontractor’s Work, which the CONTRACTOR assumes toward LOCKHEED MARTIN under the Contract. Each Subcontract shall preserve and protect the rights of LOCKHEED MARTIN under the Contract with respect to that portion of the Work performed by the Subcontractor. The CONTRACTOR shall provide each Subcontractor those portions of the Contract applicable to the Subcontractor’s Work.

# SUBSTANTIAL COMPLETION/PUNCH LIST/FINAL COMPLETION

## The CONTRACTOR shall achieve Substantial Completion of the entire Work by the Substantial Completion Date, as may be adjusted in accordance with the Contract. If the CONTRACTOR fails to achieve Substantial Completion by the specified date, the CONTRACTOR shall be liable to LOCKHEED MARTIN for liquidated damages as set forth in the Contract. When the CONTRACTOR believes that the Work, or a portion thereof which LOCKHEED MARTIN agrees to accept separately, has reached Substantial Completion, the CONTRACTOR shall notify LOCKHEED MARTIN in writing, and the CONTRACTOR and LOCKHEED MARTIN shall perform an inspection of the Work and prepare a “Punch List” of items to be completed or corrected after Substantial Completion but before Final Completion. Failure to include an item on the Punch List does not alter the responsibility of the CONTRACTOR to complete all Work in accordance with the Contract Documents. If the Work is not Substantially Complete, LOCKHEED MARTIN shall give written notice to the CONTRACTOR of the defects and/or omissions, and the CONTRACTOR shall repeat the procedure until the Work has been accepted by LOCKHEED MARTIN as Substantially Complete. Upon verification by LOCKHEED MARTIN that the Work is Substantially Complete and agreement on the items to be included on the Punch List, LOCKHEED MARTIN shall execute a Certificate of Substantial Completion, and the CONTRACTOR shall proceed promptly to complete and/or correct the remaining items on the Punch List in accordance with the Contract. In the event the CONTRACTOR does not correct all of the items on the Punch List within sixty (60) days, upon seven (7) days’ written notice to the CONTRACTOR, LOCKHEED MARTIN may proceed to have any remaining items corrected at the expense of the CONTRACTOR.

## Nothing contained in this Section shall in any way restrict LOCKHEED MARTIN'S warranty rights or otherwise constitute LOCKHEED MARTIN’S acceptance of Work that does not conform to the requirements of the Contract Documents or is otherwise defective unless such Defective Work is expressly accepted in writing by LOCKHEED MARTIN.

# SUBSTITUTIONS

## If the CONTRACTOR desires to propose a substitute product or Material in lieu of what has been specified in the Contract Documents, the CONTRACTOR may do so in writing, setting forth the following:

### Full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other information necessary for a complete evaluation of the substitution;

### Reasons the substitution is advantageous and/or necessary, including the benefits to LOCKHEED MARTIN and the Work in the event the substitution is acceptable;

### The adjustment, if any, in the Contract Price in the event the substitution is acceptable;

### The adjustment, if any, in the Project Schedule and/or the Contract Time in the event the substitution is acceptable; and

### A statement that (1) the proposed substitution conforms and meets all the requirements of the Specifications and the Drawings; and (2) the CONTRACTOR accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by LOCKHEED MARTIN.

## LOCKHEED MARTIN must approve all proposals for substitutions in writing. Substitutions may be rejected by LOCKHEED MARTIN without explanation and will be considered only under one or more of the following conditions:

### Required for compliance with Laws;

### Unavailability of specified products through no fault of the CONTRACTOR;

### Subsequent information discloses the inability of specified products to perform properly or to fit in designated space;

### A manufacturer/fabricator refuses to certify or guarantee performance of a specified product as required; or

### When in the sole judgment of LOCKHEED MARTIN, the substitution would be in the best interest of LOCKHEED MARTIN, in terms of cost, time or other considerations.

## The CONTRACTOR shall not be entitled to any increase in the Contract Price in connection with a proposed substitution unless the substitution is approved by LOCKHEED MARTIN, results in a material benefit to LOCKHEED MARTIN from the standpoint of cost and/or time, and was not initiated as a result of the CONTRACTOR’S failure to comply with any of its obligations under the Contract Documents. The approval of a proposed substitution shall not relieve the CONTRACTOR of its responsibilities under the Contract Documents, including its responsibility for Defective Work.

# SUPERINTENDENCE

## The CONTRACTOR shall provide a competent Superintendent, with necessary assistants, sufficient and competent management and supervisory personnel on the Site at all times during performance of any Work. Such Superintendent shall be able to read, write and speak English fluently. The Superintendent shall represent CONTRACTOR, and communications given to the Superintendent shall be as binding as if given to CONTRACTOR. Important communications shall be confirmed in writing. CONTRACTOR shall provide LOCKHEED MARTIN with written notice as to the person designated as its Superintendent, and such authority shall remain in force until written notice appointing a different Superintendent is received by LOCKHEED MARTIN.

## The Superintendent is subject to acceptance by LOCKHEED MARTIN and subject to the continuing satisfaction of LOCKHEED MARTIN. If the Superintendent becomes unacceptable to LOCKHEED MARTIN, at LOCKHEED MARTIN’S sole discretion, the CONTRACTOR shall take immediate steps to replace such person(s). Such superintendence and management shall efficiently supervise the Work and be responsible for all requirements of the Contract Documents.

# SURVIVABILITY

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

# SUSPENSION OF WORK

The LOCKHEED MARTIN Procurement Representative may order the CONTRACTOR in writing to suspend all or any part of the Work for such period of time as LOCKHEED MARTIN may determine to be appropriate for the convenience of LOCKHEED MARTIN. If, without the fault or negligence of the CONTRACTOR, the performance of all or any part of the Work is suspended for more than sixty (60) calendar days, an adjustment may be made by LOCKHEED MARTIN for any increase in the cost of performance of the Contract (excluding profit) necessarily caused by the suspension, and the Contract shall be modified in writing pursuant to a Change Order accordingly. No adjustment shall be made to the extent that performance by the CONTRACTOR would have been prevented by other causes even if the Work had not been so suspended. Any Claim must be submitted to the LOCKHEED MARTIN Procurement Representative in writing within twenty-one (21) calendar days after the termination of the suspension and must fully set forth the requested adjustment in the Contract Price and/or adjustment in the Contract Time, if any.

# TAXES

Unless otherwise specified, the Contract Price includes all applicable federal, state and local taxes, duties, tariffs, permit costs and similar fees imposed by any governmental authority.

# TERMINATION FOR CONVENIENCE

## LOCKHEED MARTIN may terminate part or all of the Contract for its convenience by written notice to the CONTRACTOR. LOCKHEED MARTIN’S only obligation shall be to pay the CONTRACTOR for the percentage of the Work properly performed prior to the notice of termination, plus any actual costs which have resulted from the termination. The CONTRACTOR shall not be paid for Work not performed, for profit and overhead on Work not performed, or for costs incurred which reasonably could have been avoided.

## In no event shall LOCKHEED MARTIN be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead. CONTRACTOR’S termination claim shall be submitted within thirty (30) calendar days from the effective date of the termination.

## The CONTRACTOR shall continue to perform all Work not terminated.

# TERMINATION FOR DEFAULT

## If the CONTRACTOR refuses or fails (i) to prosecute the Work, or any part thereof, with such diligence as will insure its completion, or any extension thereof, or (ii) fails to perform any other requirement under the Contract, LOCKHEED MARTIN may, by written notice to the CONTRACTOR, terminate the Contract for cause. LOCKHEED MARTIN’S right to terminate the Contract may be exercised if the CONTRACTOR does not cure such failure within ten (10) calendar days (or more if authorized in writing by the LOCKHEED MARTIN Procurement Representative) after receipt of notice from LOCKHEED MARTIN specifying the failure.

## In the event LOCKHEED MARTIN terminates the Contract for cause, LOCKHEED MARTIN may take over and complete the Work and may take possession of and use any Materials on the Site necessary for completing the Work. The CONTRACTOR and its sureties, if any, shall be liable for any damage to LOCKHEED MARTIN resulting from the CONTRACTOR’S refusal or failure to complete the Work within the Contract Time. This liability includes any costs incurred by LOCKHEED MARTIN in completing the Work, and liquidated damages for each calendar day of delay until the Work is finally accepted, the losses, damages, costs and expenses, including reasonable attorneys’ fees and costs, incurred by LOCKHEED MARTIN in connection with the re-procurement and defense of any claims arising from the CONTRACTOR’S default.

## If this Contract is terminated for cause, LOCKHEED MARTIN may require the CONTRACTOR to transfer title and deliver to LOCKHEED MARTIN all completed Work and partially completed Work, Materials, parts, tools, dies, jigs, fixtures, plans, Drawings, Specifications, information and contract rights that the CONTRACTOR has specifically produced or acquired. Upon the discretion of LOCKHEED MARTIN, CONTRACTOR shall also protect and preserve all property in its possession in which LOCKHEED MARTIN has an interest.

## If, after notice of termination of the CONTRACTOR’S right to proceed under the provisions of this Section, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this Section, or that the delay was excusable under the provisions of this Section, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to the Section entitled "Termination for Convenience."

## Failure of LOCKHEED MARTIN to enforce any right under this Section shall not be deemed a waiver of any right hereunder. The rights and remedies of LOCKHEED MARTIN in this Section are in addition to any other rights and remedies provided by law or in equity or under the Contract.

## If the Contract is terminated by LOCKHEED MARTIN for convenience or for cause, each Subcontract shall be assigned by the CONTRACTOR to LOCKHEED MARTIN, provided LOCKHEED MARTIN accepts such assignment by notifying the Subcontractor and CONTRACTOR in writing, and assumes all rights and obligations of the CONTRACTOR under each Subcontract. The CONTRACTOR shall cause all appropriate Subcontractor information, documentation and Subcontracts to be provided to LOCKHEED MARTIN in the event of an assignment. Upon such assignment, LOCKHEED MARTIN may further assign the Subcontract to a successor contractor or other entity.

# USE OF THE WORK BEFORE ACCEPTANCE

## LOCKHEED MARTIN or others approved by LOCKHEED MARTIN may, during the performance of the Work, enter the for the purpose of performing Work or to perform work not connected with the Contract. In doing so, LOCKHEED MARTIN shall endeavor not to interfere with the CONTRACTOR, and the CONTRACTOR shall not interfere with LOCKHEED MARTIN.

## If, prior to completion and final acceptance of the Work, LOCKHEED MARTIN takes possession of any portion of the Work with the intent of retaining possession thereof (as distinguished from temporary possession contemplating return to the CONTRACTOR), then, while LOCKHEED MARTIN is in possession, the CONTRACTOR, notwithstanding any other provision herein, shall be relieved of the responsibility for loss or damage to the Work, other than that resulting from the CONTRACTOR’S fault or negligence. Such taking of possession by LOCKHEED MARTIN shall not relieve the CONTRACTOR from any provisions of the Contract respecting such Work, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such Work.

# WAIVER, APPROVAL, AND REMEDIES

## Failure by LOCKHEED MARTIN to enforce any of the provisions of the Contract shall not be construed as a waiver of the requirements of such provision or provisions, or as a waiver of the right of LOCKHEED MARTIN thereafter to enforce each and every such provision.

## LOCKHEED MARTIN’S approval of the Work shall not relieve the CONTRACTOR of any warranties or of any other requirements of the Contract; nor shall a waiver by LOCKHEED MARTIN of any Drawings or Specification requirements for one or more articles constitute a waiver of such requirements for the remaining articles to be delivered under the Contract. The provisions of this Section shall not limit or affect the rights of LOCKHEED MARTIN under the Section entitled “Inspections, Tests, Acceptance, Quality Control.”

## The rights and remedies of LOCKHEED MARTIN in the Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

# WARRANTY AND CORRECTION OF DEFECTS

## In addition to any other warranties in the Contract Documents, the CONTRACTOR warrants to LOCKHEED MARTIN that Work performed under the Contract conforms to the requirements of the Contract Documents and all applicable Laws and is free of any defects in Material or workmanship performed by the CONTRACTOR or any Subcontractor, Sub-subcontractor, Material supplier. The CONTRACTOR warrants that all Materials furnished under the Contract will meet or exceed the quality conditions specified in the Contract Documents (or if not specified, will be of good quality), and will be merchantable, and new (and not used, reconditioned or remanufactured) unless the Contract requires or permits otherwise. If required by LOCKHEED MARTIN, the CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of Material being used in the Work. This warranty shall be assignable by LOCKHEED MARTIN.

## In addition to providing manufacturer and vendor warranties, the CONTRACTOR shall cause each of its Subcontractors to issue a written warranty to LOCKHEED MARTIN for its own Work, including labor, Materials and services supplied under Subcontracts in substantial conformity to this Section.

## This warranty shall continue for a minimum of two (2) calendar years from the date of final acceptance of the entire Work.

## The CONTRACTOR shall remedy, at the CONTRACTOR’S sole expense, any defect in the Work. In addition, the CONTRACTOR shall remedy, at the CONTRACTOR’S sole expense, any damage to LOCKHEED MARTIN owned or controlled real or personal property, when that damage is the result of:

### The CONTRACTOR’S failure to meet its obligations under the Contract Documents; or

### Any defect in Material or workmanship.

## The CONTRACTOR shall restore any Work damaged in fulfilling the terms and conditions of this Section. The CONTRACTOR’S warranty with respect to work repaired or replaced will run from two (2) calendar years from the date of repair or replacement.

## LOCKHEED MARTIN shall provide written notice to the CONTRACTOR, within a reasonable time after discovery, of any failure, defect or damage.

## If the CONTRACTOR fails to commence repair of any failure, defect or damage within ten (10) calendar days after receipt of notice, LOCKHEED MARTIN shall have the right to replace, repair or otherwise remedy the failure, defect or damage at the CONTRACTOR’S sole expense.

## With respect to all warranties, express or implied, from Subcontractors, Sub-subcontractors, Material suppliers, or manufacturers for Work performed and Materials furnished under the Contract, the CONTRACTOR shall:

### Obtain all warranties that would be given in normal commercial practice;

### Require all warranties to be executed, in writing, for the benefit of LOCKHEED MARTIN (if this is not commercially available, CONTRACTOR shall assign, and cause Subcontractors to assign, all warranties to LOCKHEED MARTIN); and

### Enforce all warranties for the benefit of LOCKHEED MARTIN.

## All Subcontractor, Sub-subcontractor, Material and/or manufacturer warranties shall inure to the benefit of LOCKHEED MARTIN and its assigns.

## This warranty shall not limit LOCKHEED MARTIN’S rights under the Contract with respect to latent defects, mistakes or fraud.

## The remedies provided above shall not be restrictive of, but shall be cumulative and in addition to, all other remedies of LOCKHEED MARTIN.