**LOCKHEED MARTIN SPACE**

**TMDC-1**

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| TERMS AND CONDITIONSTime and material DESIGN CONTRACT |

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# Acceptance Of Contract

## 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 Subconsultant or Sub-subconsultant, or (ii) between any persons or entities other than LOCKHEED MARTIN and the DESIGNER.

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

## Additional or differing terms or conditions proposed by the DESIGNER or included in the DESIGNER’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 DESIGNER 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 DESIGNER shall perform the Services in accordance with all Laws. The DESIGNER shall notify LOCKHEED MARTIN promptly in writing if a charge of noncompliance with any Laws has been filed against the DESIGNER in connection with the Services. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by the DESIGNER, and the DESIGNER shall 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 DESIGNER’S rights or obligations under the Contract shall be void, unless prior written consent is given by LOCKHEED MARTIN. However, the DESIGNER 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 DESIGNER. LOCKHEED MARTIN shall have the right to make settlements and/or adjustments in the Contract Price with the DESIGNER without notice to the assignee.

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

# Changes

## Changes.

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

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

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

### Changes in the Services shall be performed under applicable provisions of the Contract, and the DESIGNER shall proceed promptly unless otherwise provided in the Change Order or 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 DESIGNER stating their agreement upon the following:

### A Change in the Services;

### 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 in the Contract entitled “Limitation on Overhead and Profit on Changed Work”, with the DESIGNER 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 DESIGNER irrevocably waives, renounces and releases (and shall cause any affected Subconsultant to similarly waive, renounce and release) any and all other Claims of any kind or nature concerning, arising from or relating to the Services that are the subject of the Change Order, including any Claim for additional compensation, additional time, delay damages or breach of contract.

## Change Directives.

### A Change Directive is a written order prepared by LOCKHEED MARTIN and signed by the LOCKHEED MARTIN Procurement Representative directing a Change in the Services prior to agreement on 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 Change Directive must be signed by the LOCKHEED MARTIN Procurement Representative and may also be signed by the DESIGNER, however, a Change Directive not signed by the DESIGNER is valid and enforceable against both Parties. LOCKHEED MARTIN may by Change Directive, without invalidating the Contract, order Changes in the Services 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 Change Directive shall be used in the absence of total agreement between the Parties on the terms of a Change Order. A Change Directive shall include authorization to proceed with a certain scope of Services, 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 and/or Contract Time, if applicable.

### If the 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 on Overhead and Profit on Changed Work”, wherein the adjustment will be based on price negotiations between the Parties, with DESIGNER providing properly itemized data to permit evaluation by LOCKHEED MARTIN; 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 on Overhead and Profit on Changed Work”, provided LOCKHEED MARTIN consents in writing to this method before the changed Services are performed and the DESIGNER 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 Services performed under a Change Directive, the DESIGNER 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 DESIGNER’S personnel; and

#### Name, classification, hours worked, hourly rate, and extension for Subconsultants’ personnel.

### In the absence of an hourly rate, the DESIGNER shall provide statements reflecting actual wages for each hour the DESIGNER’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 Services.

### Once Services performed pursuant to a Change Directive are completed under Time and Material Costs, the DESIGNER shall submit such costs to the LOCKHEED MARTIN Procurement Representative, 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 Change Directive, the DESIGNER shall proceed with the Change in the Services as directed and, within ten (10) calendar days, advise the LOCKHEED MARTIN Procurement Representative of the DESIGNER’S agreement or disagreement with the method, if any, proposed in the Change Directive for adjustment in the Contract Price and/or Contract Time.

### A Change Directive signed by the DESIGNER indicates the agreement of the DESIGNER 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 DESIGNER does not agree with the adjustment to the Contract Price and/or the Contract Time in a Change Directive, the DESIGNER shall submit a Claim within ten (10) calendar days from the date of receipt of the 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 Change Directive before final payment of the Contract. Any unresolved Claim will be resolved in accordance with Section 5.

## Pending final determination of adjustments to the Contract Price and/or Contract Time, any amounts not in dispute may be included in the DESIGNER’S invoices. The amount of credit to be given by the DESIGNER 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.

## 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 DESIGNER’S personnel in a liaison effort concerning the Services. However, such exchange of information or advice shall not vest the DESIGNER with the authority to modify the Services, any of the provisions of the Contract, the Contract Price or the Contract Time, unless incorporated in a Change Order or Change Directive signed by the LOCKHEED MARTIN Procurement Representative.

## Whenever 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. 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 DESIGNER of its sole responsibility for any error or deficiency which may exist in the submitted design, as the DESIGNER shall be solely responsible for meeting all requirements applicable to the design.

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

# 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 DESIGNER’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 DESIGNER first knew or should have known of the Claim. The Parties acknowledge that LOCKHEED MARTIN will be prejudiced if the DESIGNER 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 DESIGNER 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 DESIGNER’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 DESIGNER shall proceed diligently with the performance of the Services.

## Claims for Additional Cost. If the DESIGNER wishes to make a Claim for an increase in the Contract Price, notice as provided above shall be given before proceeding to execute the Services.

## Claims to Extend the Contract Time.

### If the DESIGNER wishes to make a Claim for an extension of the Contract Time, notice as provided above shall be given. The DESIGNER’S Claim shall include an estimate of the probable effect of any delay on the performance of the Services. The impact of a Change Order or a Change Directive on the Contract Time shall be the actual time impact to the then current Design Schedule.

## Claims for Consequential Damages. The DESIGNER waives all Claims against LOCKHEED MARTIN for all consequential or indirect damages arising out of or relating to the Contract or the Services. This waiver includes, but is not limited to, damages incurred by the DESIGNER 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 DESIGNER 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 DESIGNER. The LOCKHEED MARTIN Procurement Representative will not decide disputes between the DESIGNER and persons or entities other than LOCKHEED MARTIN.

### The LOCKHEED MARTIN Procurement Representative shall review Claims by the DESIGNER 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 DESIGNER; (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 DESIGNER furnish additional supporting data, the DESIGNER 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 DESIGNER of any change in the Contract Price and/or Contract Time.

### When a written decision of the LOCKHEED MARTIN Procurement Representative states that: the decision is final but subject to mediation and/or arbitration; and the DESIGNER intends to proceed with mediation and arbitration of a Claim covered by such a decision, notice 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 DESIGNER.

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

## Mediation

### Any Claim arising out of or related to the Contract or the Services, 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 Services.

### 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 (g)(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 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 Services is or might be otherwise impaired; or (iii) the person or entity has, or attempts to create, an unfair competitive advantage. The DESIGNER affirmatively represents that it will not have a conflict of interest in performing the Services. Further, the DESIGNER 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 DESIGNER shall use its best efforts to identify and prevent potential Subconsultant conflicts of interest. The DESIGNER shall inform LOCKHEED MARTIN of any activity or relationship that the DESIGNER has reason to believe may create a conflict of interest. The DESIGNER shall not engage in any activity, engage any person or accept any employment, interest or contribution that would reasonably appear to compromise the DESIGNER’S judgment with respect to the Services or conflict with the interests of LOCKHEED MARTIN. The DESIGNER 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 DESIGNER or its Subconsultants may have. The DESIGNER further agrees to include this Section in all contracts with Subconsultants. Violation of this Section by the DESIGNER shall be considered a non-curable breach whereby LOCKHEED MARTIN may immediately terminate the Contract for cause.

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

# Contract Direction

## Only the LOCKHEED MARTIN Procurement Representative has authority to issue 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 Representatives 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 DESIGNER concerning the Services. 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 DESIGNER may accept or reject such assistance or technical advice in its sole discretion. No reimbursement shall be made for any extra Services unless such extra Services have been ordered in writing by the LOCKHEED MARTIN Procurement Representative.

## All notices to be furnished by the DESIGNER 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 DESIGNER shall be in writing and delivered to the DESIGNER’S Representative identified in 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 DESIGNER in connection with the performance of the Services 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 the DESIGNER or a third party is deemed to be the author for copyright purposes of any Work Product, the DESIGNER automatically assigns and hereby agrees to cause such third party to assign the sole and exclusive copyright in and to such materials to LOCKHEED MARTIN. The DESIGNER agrees to indemnify, defend and hold harmless the Indemnitees from any damages, claims and liability, including reasonable attorneys’ fees and costs, arising out of any claims that infringe 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 to the Contract. The DESIGNER 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 DESIGNER 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 under this Section. The DESIGNER 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 DESIGNER. 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 DESIGNER from and against any and all liabilities, damages, losses and expenses arising out of any such use on other projects, for additions to the Project not designed by the DESIGNER or for the completion of the Project in which the DESIGNER is not otherwise involved.

## During the performance of the Services, the DESIGNER, its Subconsultants and Sub-subconsultants, as well as LOCKHEED MARTIN, shall have the right to use and reproduce applicable portions of the Work Product in hard copy or electronic format. 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 DESIGNER 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 DESIGNER, Subconsultants or Sub-subconsultants in connection with the Services. In the event any suit, claim, temporary restraining order or preliminary injunction is granted, the DESIGNER 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 Services, the Project or any part, combination or process thereof, is held to constitute an infringement and its use is preliminarily or permanently enjoined, the DESIGNER shall promptly use its best efforts to secure LOCKHEED MARTIN a license, at no cost to LOCKHEED MARTIN, authorizing continued use of the infringing Services. If the DESIGNER is unable to secure such a license within a reasonable time, the DESIGNER shall, at its own expense, redesign the Project, in whole or part, with non-infringing components or parts or modify the affected Services so that they become non-infringing. The DESIGNER 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 DESIGNER 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 Services, the DESIGNER shall furnish to LOCKHEED MARTIN all evidence and information in possession of the DESIGNER pertaining to such suit or claim.

## In the event the Contract is terminated by LOCKHEED MARTIN for convenience or cause, the DESIGNER shall cooperate fully with LOCKHEED MARTIN by immediately turning over possession and control to LOCKHEED MARTIN of all 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 DESIGNER shall obtain from any Subconsultant or Sub-subconsultant rights that correspond to the rights given by the DESIGNER to LOCKHEED MARTIN in this Section, and upon request, the DESIGNER shall provide evidence to LOCKHEED MARTIN that such rights have been obtained.

## The DESIGNER shall not use LOCKHEED MARTIN’S trade name, logo, trademark or service marks in any context without the prior written consent of LOCKHEED MARTIN. The DESIGNER 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. The DESIGNER 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.

# Definitions

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

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

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

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

## “Claim” is a demand or assertion by LOCKHEED MARTIN or the DESIGNER 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 DESIGNER rising out of or relating to the Contract or the Services. Claims must be made by written notice in the manner provided herein.

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

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

## “Contract Time” means the period from commencement of the Services to substantial completion of the Services.

## “Defective Services” are any Services not in conformance with the requirements of the Contract Documents.

## “Design Schedule” means the schedule prepared by the DESIGNER for the performance of the Services.

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

##  “Drawings” are the graphic drawings or plans, wherever located and whenever issued, showing the design, location and dimensions of the construction 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 Payment” is the payment of all outstanding balances due following completion of the Services.

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

## “Invoices” are the invoices submitted by the DESIGNER for payment for Services performed during a pay period.

## “Laws” means all federal, state and local laws, statutes, ordinances, codes, rules and regulations applicable to the Services, including environmental laws, with which DESIGNER 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.

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

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

## “Project” is defined in the Contract.

## “Services” means the design and other services required by the Contract, whether completed or partially completed, and includes all labor and other services provided or to be provided by the DESIGNER to fulfill the DESIGNER’S obligations under the Contract.

## "Site" means the physical place or places where the Project will be constructed.

## “Specifications” are the written requirements for materials, equipment, construction, systems, standards, and workmanship for the construction work, and performance of related work. The Specifications may contain Drawings, and the Drawings may contain Specifications.

## "Subconsultant" means a person or entity having a direct contract with the DESIGNER for the performance of a part of the Services.

## "Subcontract" means all contracts entered into by the DESIGNER for the specific purpose of performing any portion of the Services, and includes but is not limited to purchase orders and changes or modifications thereto.

## “Sub-Subconsultant” is a person or an entity that has a contract with a Subconsultant to perform a portion of the Services.

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

# DESIGN Schedule

## DESIGNER shall prepare a Design Schedule which shall provide for completing all of the Services no later than the date set forth in the Contract. The Design Schedule shall reflect the performance of all Services on weekdays and non-holidays.

## Review and acceptance of the Design Schedule by LOCKHEED MARTIN shall be a condition precedent to the making of any payments to DESIGNER under the Contract. Acceptance of the DESIGNER’S Design Schedule by LOCKHEED MARTIN, however, shall not relieve the DESIGNER of its sole responsibility for the accuracy or feasibility of the Design Schedule, or of the DESIGNER’S sole responsibility to complete the Services by the completion date in the Contract, nor does such acceptance by LOCKHEED MARTIN warrant, acknowledge or admit the reasonableness or durations of the Design Schedule.

## The DESIGNER shall provide LOCKHEED MARTIN with an update to the Design Schedule no less than monthly after commencement of the Services with each invoice for payment (or more frequently at LOCKHEED MARTIN’S request), including fourteen (14) calendar day and twenty-eight (28) calendar day “look ahead schedules.” The Design Schedule, as updated, shall specify any authorized Changes resulting from Change Orders or Change Directives and shall show the progress of each portion of the Services and the new projected completion date(s) for each portion of the Services.

## In the event LOCKHEED MARTIN determines that the performance of the Services has not progressed or reached the level of completion required by the Design Schedule, LOCKHEED MARTIN shall have the right to order the DESIGNER to take corrective measures necessary to expedite the progress, including, without limitation (i) working overtime, (ii) supplying additional manpower, and (iii) other similar measures (referred to collectively as “Recovery Measures”). Such Recovery Measures shall continue until the progress of the Services complies with the stage of completion required by the Design Schedule. LOCKHEED MARTIN’S right to require Recovery Measures is solely for the purpose of ensuring the DESIGNER’S compliance with the Design Schedule. Recovery Measures, if made necessary by the DESIGNER’S or a Subconsultant’s negligence or failure to comply with the requirements of the Contract, shall be undertaken at the DESIGNER’S sole expense, and the DESIGNER shall not be entitled to an adjustment in the Contract Price or 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 DESIGNER’S performance of the Services will comply with the Design Schedule.

## Even if the performance of the Services is progressing in accordance with the Design Schedule, LOCKHEED MARTIN may, at any time pursuant to a Change Directive, direct the DESIGNER to accelerate the Services by, among other things, adding personnel or paying or authorizing overtime. The DESIGNER 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 premium or overtime payments to employees of the DESIGNER dedicated to the Services on a full-time basis, actually incurred over and above the DESIGNER’S normal rates, and other costs agreed upon by the DESIGNER and LOCKHEED MARTIN in writing. Any adjustment to the Contract Price resulting from LOCKHEED MARTIN’S directive to accelerate the Services 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 Services that may interfere with LOCKHEED MARTIN’S operations. Any postponement or rescheduling of the Services under this Section may be grounds for an extension of Contract Time and an adjustment in the Contract Price if (i) the performance of the Services was properly scheduled by the DESIGNER, (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.

# DESIGN Services

## The DESIGNER shall:

### Direct and manage the Services using the DESIGNER’S best skill and attention;

### Perform the Services consistent with the professional skill and care ordinarily provided by engineers or architects practicing in the same or similar locality under the same or similar circumstances. The DESIGNER shall perform the Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

### Be responsible to LOCKHEED MARTIN for the acts and omissions of its employees, Subconsultants, Sub-subconsultants and their agents and employees, and all other persons performing the Services;

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

## The DESIGNER’S Services consist of those described in this Section and in the Statement of Work, attached as an exhibit to the Contract, and include the usual and customary structural, mechanical and electrical engineering services.

## The DESIGNER shall consult with LOCKHEED MARTIN, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to LOCKHEED MARTIN.

## The DESIGNER shall coordinate the Services with any services provided by LOCKHEED MARTIN.

## The DESIGNER shall assist LOCKHEED MARTIN in connection with LOCKHEED MARTIN’S responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

## The DESIGNER shall review the Statement of Work and any other information furnished by LOCKHEED MARTIN and shall review all Laws applicable to the Services.

## The DESIGNER shall prepare a preliminary evaluation of LOCKHEED MARTIN’S program, schedule, budget, Site, and the proposed procurement or delivery method, each in terms of the other, to ascertain the requirements of the Project. The DESIGNER shall notify LOCKHEED MARTIN of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed to complete the Services.

## The DESIGNER shall present its preliminary evaluation to LOCKHEED MARTIN and shall discuss with LOCKHEED MARTIN alternative approaches to design and construction of the Project. The DESIGNER shall reach an understanding with LOCKHEED MARTIN regarding the requirements of the Project.

## Based on the Project’s requirements agreed upon with LOCKHEED MARTIN, the DESIGNER shall prepare and present for LOCKHEED MARTIN’S approval a preliminary design illustrating the scale and relationship of the Project components.

## Based on LOCKHEED MARTIN’S approval of the preliminary design, the DESIGNER shall prepare Schematic Design Documents for LOCKHEED MARTIN’S approval. The Schematic design Documents shall consist of Drawings and other documents, including a Site plan, if appropriate, and preliminary building plans, sections and elevations, and may include some combination of study models, perspective sketches or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the Drawings or described in writing.

## Upon the request of LOCKHEED MARTIN, the DESIGNER shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with LOCKHEED MARTIN’S program, schedule and budget.

## The DESIGNER shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with LOCKHEED MARTIN’S program, schedule and budget.

## The DESIGNER shall submit the Schematic Design Documents to LOCKHEED MARTIN for LOCKHEED MARTIN’S approval.

## Based on LOCKHEED MARTIN’S approval of the Schematic Design Documents and on LOCKHEED MARTIN’S authorization of any adjustments in the Project requirements, the DESIGNER shall prepare Design Development Documents for LOCKHEED MARTIN’S approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of Drawings and other documents including plans, sections elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish their quality levels.

## The DESIGNER shall submit the Design Development Documents to LOCKHEED MARTIN for LOCKHEED MARTIN’S approval.

## Based on LOCKHEED MARTIN’S approval of the Design Development Documents and on LOCKHEED MARTIN’S authorization of any adjustments in the Project requirements, the DESIGNER shall prepare Construction Documents for LOCKHEED MARTIN’S approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirement for the construction work. LOCKHEED MARTIN and the DESIGNER acknowledge that in order to construction the Project, the Contractor selected by LOCKHEED MARTIN will provide additional information, including Shop Drawings, Product Date, Samples and other similar submittals, which the DESIGNER shall review and approve.

## The DESIGNER shall incorporate into the Construction Documents the design requirements of all governmental authorities having jurisdiction over the Project.

## The DESIGNER shall submit the Construction Documents to LOCKHEED MARTIN for LOCKHEED MARTIN’S approval.

## The DESIGNER shall be solely responsible for the professional quality, technical accuracy and the coordination of all designs, Drawings, Specifications, and other Services furnished by the DESIGNER under the Contract. The DESIGNER shall, without additional compensation, correct or revise any errors or deficiencies in its designs, Drawings, Specifications, and other Services which LOCKHEED MARTIN determines to be necessary.

## Neither LOCKHEED MARTIN’S review, approval or acceptance of, nor payment for, any of the Services shall be construed as a waiver of any of LOCKHEED MARTIN’S rights under the Contract or of any cause of action arising out of the performance of the Contract, and the DESIGNER shall be and remain liable to LOCKHEED MARTIN for all damages to LOCKHEED MARTIN resulting from the DESIGNER’S performance of any of the Services furnished under the Contract.

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

# DESIGNER's Personnel

## The DESIGNER shall ensure that its personnel performing the Services (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 DESIGNER 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 Services.

## The DESIGNER 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 Services, the DESIGNER shall coordinate with LOCKHEED MARTIN to gain access to the Site. The DESIGNER 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 DESIGNER shall comply with all rules and Private Requirements promulgated by LOCKHEED MARTIN in connection with the use of the Site.

## The DESIGNER’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 the Services; and (iv) shall not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers to anyone. LOCKHEED MARTIN may from time to time audit any of the DESIGNER’S data residing on LOCKHEED MARTIN’S information assets.

## LOCKHEED MARTIN may, in its sole discretion, require the DESIGNER to remove from the Site any employee of the DESIGNER, a Subconsultant and/or a Sub-subconsultant and may request that such person not be reassigned. Such action by LOCKHEED MARTIN shall not be a basis for an adjustment 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 DESIGNER shall reimburse LOCKHEED MARTIN for any unauthorized use of LOCKHEED MARTIN’S assets.

## The DESIGNER 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 DESIGNER’S failure to pay any employee or Subconsultant for the Services, or (ii) any claims made by the DESIGNER’S personnel, a Subconsultant and/or a Sub-subconsultant against LOCKHEED MARTIN.

# DESIGNER's Representations

## The DESIGNER makes the following representations to LOCKHEED MARTIN:

### The DESIGNER is fully qualified to act as the designer and shall remain licensed by all public entities having jurisdiction over the Services or the Project.

### The DESIGNER shall maintain at its cost all necessary licenses or other authorizations necessary to act as the DESIGNER until its obligations under the Contract have been fully satisfied and the Services have been completed.

### The DESIGNER accepts the relationship of trust and confidence established between the DESIGNER 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 (3) to perform the Services in the most expeditious and economical manner consistent with the interests and expectations of LOCKHEED MARTIN.

### The DESIGNER 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.

### Prior to entering into the Contract, the DESIGNER has (1) analyzed the Exhibits attached to the Contract concerning the requirements of the Services; (2) become familiar with the local conditions under which the Services are to be performed; (3) provided LOCKHEED MARTIN with its understanding and analysis of the Exhibits attached to the Contract; and (4) identified any design problems which may result from such requirements, together with the DESIGNER’S proposed solutions, including design alternatives, if appropriate, addressing each identified problem.

### The DESIGNER represents that the Contract Price, as may be adjusted by Change Directive or 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 DESIGNER and Subconsultants. Should additional amounts be required to be expended over and above the Contract Price to achieve completion of the Services, liability for and payment of such additional amounts shall be the responsibility of the DESIGNER, and LOCKHEED MARTIN shall not be liable for such amounts. Any term or provision of the Contract or of any agreement with a Subconsultant executed in furtherance of the Services shall not be construed or deemed to alter or waive this absolute condition. Likewise, DESIGNER’S absolute responsibility for the completion of the Services in strict accordance with the Contract and for the Contract Price, as well as DESIGNER’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 Services, 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 DESIGNER recognizes and agrees that LOCKHEED MARTIN is relying on these representations in entering into 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 DESIGNER 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 DESIGNER’S employees, Subconsultants’ or Sub-subconsultants’ employees to consent to a blood test or urinalysis test when requested, based on reasonable suspicion, will result in removal of the DESIGNER’S, Subconsultant’s and/or Sub-subconsultant’s employee from the Project. The DESIGNER shall insert the substance of this clause in all Subcontracts.

# Ethical Business Practices

## The DESIGNER 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 DESIGNER further agrees it shall not, with respect to:

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

### Personnel. The DESIGNER 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 designer, Subconsultant or otherwise in connection with the performance of the Contract, or (2) purchase any material or services required to perform the Services 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 DESIGNER 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 DESIGNER 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 DESIGNER or the DESIGNER’S 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 DESIGNER represents that neither the DESIGNER nor any parent, subsidiary or Affiliate of the DESIGNER 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 DESIGNER shall immediately notify the LOCKHEED MARTIN Procurement Representative if the DESIGNER or any parent, subsidiary or Affiliate of the DESIGNER is, or becomes, listed on any Restricted Party List or if the DESIGNER’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 DESIGNER’S own country.

## The DESIGNER 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 DESIGNER, its officers, employees, agents, suppliers, or Subconsultants at any tier, in the performance of any of its obligations under this Section.

# Gratuities/Kickbacks

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

# 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 DESIGNER shall by signature on the Contract certify to the following:

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

### The DESIGNER 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 Services under the Contract;

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

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

### The DESIGNER 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 DESIGNER obtains actual knowledge that a Subconsultant performing Services under the Contract employs or contracts with an illegal alien, the DESIGNER shall:

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

#### 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 DESIGNER shall not terminate the Subcontract with the Subconsultant if during such three- (3) day period the Subconsultant provides information to establish that the Subconsultant has not knowingly employed or contracted with an illegal alien.

1. The DESIGNER shall, by signature on the Contract, certify to the following:
	1. The DESIGNER, 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 DESIGNER, 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 DESIGNER 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 DESIGNER shall not enter into a Subcontract with a Subconsultant that fails to certify to the DESIGNER that the Subconsultant shall not knowingly employ or contract with an illegal alien to perform Services under the Contract;
	5. The DESIGNER shall not use the E-Verify Program to undertake pre-employment screening of job applicants while the Contract is being performed;
	6. If the DESIGNER obtains actual knowledge that a Subconsultant performing Services under the Contract employs or contracts with an illegal alien, the DESIGNER shall:
		1. Notify Subconsultant and LOCKHEED MARTIN within three (3) calendar days that the DESIGNER 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 DESIGNER 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 DESIGNER shall by signature on the Contract certify to the following:

### i.                    The DESIGNER, 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 DESIGNER 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 DESIGNER 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 DESIGNER 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 DESIGNER 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 DESIGNER 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 DESIGNER 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 DESIGNER 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 DESIGNER 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 DESIGNER 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 DESIGNER shall be liable for any actual and consequential damages suffered by LOCKHEED MARTIN.

# Independent CONTRACTOR Relationship

## The DESIGNER’S relationship to LOCKHEED MARTIN shall be that of an independent contractor. The employees used by the DESIGNER to perform the Services shall be the DESIGNER’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 DESIGNER or LOCKHEED MARTIN and the DESIGNER’S, Subconsultants and/or Sub-subconsultants. Personnel supplied by the DESIGNER shall not for any purposes be considered employees or agents of LOCKHEED MARTIN. The DESIGNER assumes full responsibility for the actions and supervision of its personnel, Subconsultants and Sub-subconsultants. LOCKHEED MARTIN assumes no liability for personnel of the DESIGNER, its Subconsultants and/or Sub-subconsultants.

## The DESIGNER 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 DESIGNER, its officers, employees, agents, suppliers, Subconsultants or Sub-subconsultants, in the performance of any of its obligations under the Contract or the Services.

## The DESIGNER shall inform LOCKHEED MARTIN if a former employee of LOCKHEED MARTIN or any Affiliate will be assigned to the Services, 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 DESIGNER or any personnel of DESIGNER rights under any LOCKHEED MARTIN benefit plans.

# INSURANCE/INDEMNITY/RISK OF LOSS, for contracts under $2m, section a applies. for contract $2M and above, section b applies.

# A.

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

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

The DESIGNER’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; (iii) Subconsultants; and (iv) contractual liability risk covering the indemnity obligations set forth in this Contract.

## Automobile insurance covering third party bodily injury and property damage with a minimum of $2,000,000 per occurrence limit; and

## Professional Liability Insurance. Each Claim $1,000,000, DESIGNER’S obligation to provide Professional Liability Insurance shall be deemed satisfied if each Design Professional subcontracted by DESIGNER maintains the required insurance.

## Excess/Umbrella Liability Insurance. Excess or umbrella liability insurance with minimum limits of $5,000,000 per occurrence following form.

## Workmen’s Compensation. The DESIGNER shall procure and maintain, at the DESIGNER’S own expense, Workmen’s Compensation Insurance as required by the Labor Code of the State where the Services are to be performed and Employer’s Liability Insurance in the minimum amount of $1,000,000. Evidence of qualified self-insured status may be substituted. The DESIGNER shall require such Subconsultants and Sub-Subconsultants to provide workmen’s Compensation Insurance, unless such employees are covered by the protection afforded by the DESIGNER.

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

## The DESIGNER shall provide a “Certificate of Insurance” and, if requested, certified copies of the required policies and endorsements to the LOCKHEED MARTIN Procurement Representative showing compliance with all insurance requirements prior to beginning the Services. The DESIGNER shall name LOCKHEED MARTIN as an additional insured on all liability policies (except professional liability) 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 to LOCKHEED MARTIN. All policies shall be primary, non-contributory, and shall (i) contain cross-liability and severability of interest endorsements, (ii) except professional liability insurance, 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.

## Failure on the part of the DESIGNER 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 cause. 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 DESIGNER upon demand, or LOCKHEED MARTIN may offset the cost of such premiums against any amounts then or thereafter due to the DESIGNER. The DESIGNER 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 DESIGNER 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 Services, to the extent such injury, loss, or damage is caused by the negligent acts, errors or omissions of DESIGNER, any officer, employee, or agent of DESIGNER, any Subconsultant, 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, DESIGNER 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 DESIGNER’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. DESIGNER’S indemnification obligations shall include, but not be limited to, any claim made against an Indemnitee by: (i) the DESIGNER’S employees, Subconsultants, Sub-Subconsultants, 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 DESIGNER’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 DESIGNER, any Subconsultant, any Sub-subconsultant, 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.

# B.

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

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

The DESIGNER’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; (iii) Subconsultants; and (iv) contractual liability risk covering the indemnity obligations set forth in this Contract.

## Automobile insurance covering third party bodily injury and property damage with a minimum of $2,000,000 per occurrence limit; and

## Professional Liability Insurance. Each Claim $5,000,000, DESIGNER’S obligation to provide Professional Liability Insurance shall be deemed satisfied if each Design Professional subcontracted by DESIGNER maintains the required insurance.

## Excess/Umbrella Liability Insurance. Excess or umbrella liability insurance with minimum limits of $5,000,000 per occurrence following form.

## Workmen’s Compensation. The DESIGNER shall procure and maintain, at the DESIGNER’S own expense, Workmen’s Compensation Insurance as required by the Labor Code of the State where the Services are to be performed and Employer’s Liability Insurance in the minimum amount of $1,000,000. Evidence of qualified self-insured status may be substituted. The DESIGNER shall require such Subconsultants and Sub-Subconsultants to provide workmen’s Compensation Insurance, unless such employees are covered by the protection afforded by the DESIGNER.

## The DESIGNER shall require its Subconsultants and Sub-Subconsultants to maintain insurance as required by LOCKHEED MARTIN prior to entering the Site and/or performing the Services.

## The DESIGNER shall provide a “Certificate of Insurance” and, if requested, certified copies of the required policies and endorsements to the LOCKHEED MARTIN Procurement Representative showing compliance with all insurance requirements prior to beginning the Services. The DESIGNER shall name LOCKHEED MARTIN as an additional insured on all liability policies (except professional liability) 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 to LOCKHEED MARTIN. All policies shall be primary, non-contributory, and shall (i) contain cross-liability and severability of interest endorsements, (ii) except professional liability insurance, 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.

## Failure on the part of the DESIGNER 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 cause. 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 DESIGNER upon demand, or LOCKHEED MARTIN may offset the cost of such premiums against any amounts then or thereafter due to the DESIGNER. The DESIGNER 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 DESIGNER 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 Services, to the extent such injury, loss, or damage is caused by the negligent acts, errors or omissions of DESIGNER, any officer, employee, or agent of DESIGNER, any Subconsultant, 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, DESIGNER 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 DESIGNER’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. DESIGNER’S indemnification obligations shall include, but not be limited to, any claim made against an Indemnitee by: (i) the DESIGNER’S employees, Subconsultants, Sub-Subconsultants, 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 DESIGNER’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 DESIGNER, any Subconsultant, any Sub-subconsultant, 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.

# NONDISCRIMINATION

The DESIGNER 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 DESIGNER agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Section.

# PAYMENT

## LOCKHEED MARTIN will make payments following monthly invoicing by the DESIGNER. All undisputed amounts shall be paid by LOCKHEED MARTIN within thirty (30) calendar days of the receipt of the invoice.

## Final Payment shall not become due until the DESIGNER delivers to LOCKHEED MARTIN complete releases from itself and all Subconsultants and Sub-Subconsultants 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 for which a lien could be filed; but the DESIGNER may, if any Subconsultant or Sub-subconsultant 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 liens remain unsatisfied after Final Payment, the DESIGNER shall refund to LOCKHEED MARTIN all monies LOCKHEED MARTIN may be compelled to pay in discharging such a lien, including all costs and reasonable attorneys' fees.

##  Payment for labor shall be computed by multiplying the appropriate hourly rate(s), set forth in this Contract by the number of direct labor hours performed. Rates shall include wages, overhead, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis.

## LOCKHEED MARTIN may audit invoices and substantiating books and records as LOCKHEED MARTIN deems necessary. Each payment made shall be subject to reduction to the extent of amounts which are found by LOCKHEED MARTIN or SELLER not to have been properly payable, and shall also be subject to reduction for overpayments. SELLER shall promptly notify LOCKHEED MARTIN of any such overpayments and remit the amount of the overpayment except as otherwise directed by LOCKHEED MARTIN.

## 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 errors or omissions in the Services, and (ii) any Claims which LOCKHEED MARTIN may have against the DESIGNER under the Contract. Any overpayments to the DESIGNER shall, unless otherwise adjusted, be repaid to LOCKHEED MARTIN upon demand.

## The DESIGNER shall furnish with each invoice:

### A list all Change Orders and Change Directives through the date of the invoice;

### Any anticipated impacts to the Design Schedule;

### A statement as to whether the Services are on schedule and, if not, the DESIGNER’S Recovery Measures;

### Copies of all Subconsultant invoices;

### Certified payrolls; and

### Petty cash accounts.

## In each invoice, the DESIGNER shall include the following certification:

The undersigned certifies that to the best of its knowledge, information and belief the Services covered by this invoice have been completed in accordance with the Contract Documents, that all amounts have been paid by the Designer for Services for which previous Certificates for Payment were issued and payments received from Lockheed Martin, and that current payment shown herein is now due.

DESIGNER:

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

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

**CERTIFICATE FOR PAYMENT**

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

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

### Errors or omissions in the Services not remedied;

### Third-party claims provided the DESIGNER has been paid for the Services that are the basis for the claim;

### Failure of the DESIGNER to make payments to Subconsultants;

### Reasonable evidence the Services cannot be completed by the date set forth in the Contract;

### Damages to LOCKHEED MARTIN; or

### Repeated failure to carry out the Services in accordance with the requirements of the Contract.

## By submitting an invoice, the DESIGNER represents and warrants that:

### The DESIGNER 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 Services covered by the invoice;

### 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 invoice are waived, except as specifically stated in the invoice 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 Services covered by the invoice have been completed in accordance with the requirements of the Contract Documents;

### The Services performed to date as shown on the invoice represent the actual value of the Services completed under the Contract (and all approved Change Orders);

### The current amount shown in the invoice is now due and owing;

### The DESIGNER 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 invoice, no additional amounts are due;

### The Services are proceeding in accordance with the Design Schedule; and

### The DESIGNER has paid all Subconsultants for which it has previously been paid.

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

## No payment or approval for payment issued or made, nor any payment made to the DESIGNER, shall constitute acceptance of any Services that are not in strict conformity with the requirements of the Contract Documents or are otherwise defective.

# RECORDS

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

## The DESIGNER shall require the substance of this Section to be included in all 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 DESIGNER without the prior written authorization of LOCKHEED MARTIN.

## The DESIGNER shall require the substance of this Section to be included in all Subcontracts.

## Neither the DESIGNER nor Subconsultants and/or Sub-subconsultants shall 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 information which is furnished, delivered, or disclosed by the DESIGNER under the Contract, or as a result of the Services, 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 such information shall be void and of no effect. The DESIGNER agrees not to deliver or furnish any information subject to limited use or reproduction unless otherwise agreed as specified above.

## The DESIGNER shall not reproduce, use, or disclose to others any information regarding the Services contracted for or made to data, standards, Drawings, Specifications, or designs, without LOCKHEED MARTIN’S written consent. The DESIGNER shall not supply or disclose any information regarding any Services, 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.

# SITE INVESTIGATION

## The DESIGNER represents that it has investigated and satisfied itself as to the nature and location of the Services, local conditions, and all other matters upon which information is reasonably obtainable and which can in any way affect the Services or the cost under the Contract.

## The DESIGNER further represents 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 Services done by LOCKHEED MARTIN, as well as from information provided by LOCKHEED MARTIN.

## LOCKHEED MARTIN expressly disclaims the accuracy and reliability of any subsurface tests provided by LOCKHEED MARTIN. Such tests are provided for illustrative purposes only, and the DESIGNER is required to make and has made its own independent investigation of any subsurface conditions necessary to complete the design.

## Failure by the DESIGNER to acquaint itself with all available information shall not relieve it of responsibility for successfully performing the Services. LOCKHEED MARTIN assumes no responsibility for any conclusions or interpretations made by the DESIGNER based on 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.

# SUBCONSULTANTS

## The DESIGNER shall at all times use only qualified Subconsultants for performance of any subcontracted Services. Nothing noted in any Subcontract shall create any contractual relation between any Subconsultant or Sub-subconsultant and LOCKHEED MARTIN.

## The DESIGNER shall keep all invoices from Subconsultants 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 DESIGNER, 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 who may perform any part of the Services. The LOCKHEED MARTIN Procurement Representative will promptly reply to the DESIGNER stating whether or not LOCKHEED MARTIN has any objection to any such proposed persons or entities.

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

## The DESIGNER shall require each Subconsultant to be bound to the DESIGNER by the terms of the Contract applicable to the Subconsultant’s Services and to assume toward the DESIGNER all obligations which the DESIGNER assumes toward LOCKHEED MARTIN under the Contract. Each written Subcontract shall preserve and protect the rights of LOCKHEED MARTIN under the Contract with respect to that portion of the Services performed by the Subconsultant. The DESIGNER shall provide each Subconsultant those portions of the Contract applicable to the Subconsultant’s Services.

# SURVIVABILITY

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

# SUSPENSION OF SERVICES

The LOCKHEED MARTIN Procurement Representative may order the DESIGNER in writing to suspend all or any part of the Services 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 DESIGNER, the performance of all or any part of the Services 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 caused by the suspension, and the Contract shall be modified in writing accordingly. No adjustment shall be made to the extent performance by the DESIGNER would have been prevented by other causes even if the Services had not been 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 extension of the Contract Time, if any.

# TERMINATION FOR CONVENIENCE

## LOCKHEED MARTIN may terminate part or all of the Contract for its convenience by written notice to the DESIGNER. LOCKHEED MARTIN’S only obligation shall be to pay the DESIGNER for the percentage of the Services properly performed prior to the notice of termination, plus any actual costs which have resulted from the termination. The DESIGNER shall not be paid for any Services not performed, for profit and overhead on Services 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. DESIGNER’S termination claim shall be submitted within thirty (30) calendar days from the effective date of the termination.

## The DESIGNER shall continue to perform all Services not terminated.

# TERMINATION FOR DEFAULT

## If the DESIGNER refuses or fails (i) to perform the Services, or any part thereof, with such diligence as will ensure their completion by the date in the Contract, or any extension thereof, or (ii) fails to perform any other requirement under the Contract, LOCKHEED MARTIN may, by written notice to the DESIGNER, terminate the Contract for cause. LOCKHEED MARTIN’S right to terminate the Contract may be exercised if the DESIGNER 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 Services. The DESIGNER shall be liable for any damage to LOCKHEED MARTIN resulting from the DESIGNER’S refusal or failure to timely complete the Services. This liability includes any costs incurred by LOCKHEED MARTIN in completing the Services, and all 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 DESIGNER’S default.

## If the Contract is terminated for cause, the DESIGNER shall transfer title and deliver to LOCKHEED MARTIN all completed Work Product, Drawings, Specifications, information and contract rights that the DESIGNER has produced or acquired. Upon the discretion of LOCKHEED MARTIN, the DESIGNER shall also protect and preserve all property in its possession in which LOCKHEED MARTIN has an interest.

## If, after notice of termination of the DESIGNER for cause, it is determined for any reason that the DESIGNER 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 under the Contract.

## If the Contract is terminated by LOCKHEED MARTIN for convenience or for cause, each Subcontract shall be assigned by the DESIGNER to LOCKHEED MARTIN, provided LOCKHEED MARTIN accepts such assignment by notifying the Subconsultant and DESIGNER in writing, and assumes all rights and obligations of the DESIGNER under each Subcontract. The DESIGNER shall cause all appropriate Subconsultant 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 designer or other entity.

# 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.

## 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.