



LOCKHEED MARTIN AERONAUTICS COMPANY

PRIME SUPPLEMENTAL FLOWDOWN DOCUMENT (PSFD)

**ADDITIONAL TERMS AND CONDITIONS FOR SUBCONTRACTS/PURCHASE ORDERS
UNDER**

F-35/JSF LRIP 9
NON-ANNUALIZED SUSTAINMENT
PRIME CONTRACT NUMBERS N00019-14-R-0026

Generated using Lockheed Martin CorpDocs 2014 Version

DATED: 05 May 2014 (ORIGINAL)
29 May 2014 (REVISION 1)
08-Oct. 2014 (REVISION 2)

The Terms and Conditions listed below are incorporated by reference and made a part of this Contract. Unless otherwise limited in this Contract, each document applies in its entirety.

In the event of a conflict between the version or date of a clause set forth in this document and the version or date of a clause set forth in the identified CorpDocs, the version or date of the clauses set forth in this document shall take precedence.

This document includes clauses that flow-down LOCKHEED MARTIN's U.S. Government regulatory and customer obligations. To the extent that any clause included in this PSFD is inapplicable to the performance of this Contract, the parties shall consider such clauses to be self-deleting and shall not impose any obligations upon the SELLER.

PART I. The dates of the following FAR and DFARS clauses are modified as follows and are incorporated into the Contract:

RESERVED

PART II. ADDITIONS: The following FAR, DFARS and other agency clauses are incorporated into this Contract in addition to those set out in the applicable CorpDocs:

DFARS 252.211-7007 Reporting of Government-Furnished Property (AUG 2012)
(Applicable to Seller if Seller is provided Government Furnished Property)

DFARS 252.211-7005 Substitution of Military or Federal Specifications and Standards (NOV 2005)
(The clause is only applicable where a management or manufacturing process has been accepted previously by the Department of Defense under the Single Process Initiative (SPI) for use in lieu of a specific military or Federal specification or standard).

DFARS 252.211-7008 Use of Government-Assigned Serial Numbers (SEP 2010)

(Not applicable to the Seller when Lockheed Martin has expressly assumed responsibility for marking the property itself elsewhere in the Contract; otherwise, the clause obligates the Seller to perform their own markings if Seller will be in possession of Government property for the performance of this contract.)

DFARS 252.225-7028 Exclusionary Policies and Practices of Foreign Governments. (APR 2003)

(Applicable to contracts for non-commercial items only.)

DFARS 252.225-7048 Export-Controlled Items (JUN 2013)

DFARS 252.228-7001 Ground and Flight Risk (JUN 2010)

(In paragraph (a)(1)(i) of the clause, "this contract" shall mean "the prime contract." The following is added at the beginning of the clause: "Communications between Seller and the Government shall be made through Lockheed Martin. Any equitable adjustment provided for this clause shall be implemented in this contract to the extent such adjustment is implemented in the prime contract." Subparagraphs (d)(2)(ii), (d)(3)(ii) and the last sentence of subparagraph (j)(2) of the clause are deleted.)

DFARS 252.234-7004 Alternate I - Cost and Software Data Reporting System (NOV 2010)

(The clause is only applicable to Seller's under contracts in excess of \$50,000,000 for non-commercial items. In paragraph (b) of the clause, "Government" shall mean Lockheed Martin.)

DFARS 252.239-7000 Protection Against Compromising Emanations (JUN 2004)

(Applicable to the Seller where it will perform classified work, unless the requirements of this clause are included in the DD254 provided by Lockheed Martin to the Seller.

"Contracting Officer" shall mean "Lockheed Martin." "Government" shall mean "Lockheed Martin and the Government" in paragraphs (c) and (d).)

DFARS 252.239-7016 Telecommunications Security Equipment, Devices, Techniques, and Services (DEC 1991) (Applicable to the Seller only if the contract involves non-commercial items requiring secure telecommunications.)

DFARS 252.243-7002 Requests for Equitable Adjustment (DEC 2012)

(Applicable only to contracts for non-commercial items in excess of \$150,000. "Government" shall mean "Lockheed Martin.")

DFARS 252.245-7001 Tagging, Labeling, and Marking of Government-Furnished Property (APR 2012)

(Applicable to the Seller in contracts where the items furnished by the contractor will be subject to serialized tracking, should the Statement of Work or another document in the solicitation identify such items subject to serialized tracking.)

DFARS 252.225-7027 Restriction on Contingent Fees for Foreign Military Sales (APR 2003)

(The reference to the clause in paragraph (a) means FAR 52.203-5. The blank in paragraph (b)(1) shall be deemed to be completed with "any Government." Subparagraph (b)(2) of the clause is deleted.)

DFARS 252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System (MAY 2014) Paragraph (6) is modified: "Contracting Officer" shall mean "Lockheed Martin".

FAR 52.204-2 Security Requirements (AUG 1996)

FAR 52.215-23 Alternate I - Limitations on Pass-Through Charges (OCT 2009)

(Applicable to the Seller under both cost-reimbursement subcontracts and fixed-price subcontracts, except those identified in 15.408(n)(2)(i)(B)(2), that exceed \$700,000. As prescribed in 15.408(n)(2)(iii), substitute the following paragraph (b) for paragraph (b) of the basic clause: "(b) General. The Government will not pay excessive pass-through charges. The Contracting Officer has determined that there will be no excessive pass-through charges, provided the Contractor performs the disclosed value-added functions." Insert "or LOCKHEED MARTIN" after "Government" throughout this clause. Insert "and LOCKHEED MARTIN" after "Contracting Officer", throughout the clause.)

FAR 52.222-17 NONDISPLACEMENT OF QUALIFIED WORKERS (JAN 2013) – (The clause shall only apply to contracts for services, as defined by paragraph (a) of the clause, in excess of \$150,000.)

FAR 52.222-42 Statement of Equivalent Rates for Federal Hires (MAY 1989)

Applies if this subcontract is subject to [FAR 52.222-41](#) and if the information contained in the blanks of this clause is specified elsewhere in this contract.

FAR 52.222-44 Fair Labor Standards and Service Contract Act – Price Adjustment (SEP 2009)

(Applies if FAR 52.222-41 applies to this contract. "Contracting Officer" means "Lockheed Martin and the Contracting Officer" except in paragraph (e) where it means "Lockheed Martin." The notice period in paragraph (e) is changed to twenty (20) days. Adjustments made to this contract shall not be made unless or until the Contracting Officer make appropriate adjustments to Lockheed Martin's prime contract.)

FAR 52.228-3 Workers' Compensation Insurance (Defense Base Act) (APR 1984)

(Applies to the Seller if it will perform work subject to the Defense Base Act 42 U.S.C. 1651 et seq.)

FAR 52.228-4 Workers' Compensation and War-Hazard Insurance Overseas (APR 1984)

(Applies to the Seller if it will perform work subject to the Defense Base Act 42 U.S.C. 1651 et seq., unless Lockheed Martin specifies greater minimum insurance coverages than specified in this clause or Lockheed Martin has obtained a waiver that has been flowed down to the Seller elsewhere in the contract.)

FAR 52.245-9 Use and Charges (APR 2012)

(Applicable to contracts involving non-commercial items where Government furnished property shall be provided through Lockheed Martin to the Seller. Communications with the Government under this clause shall be made by the Seller through Lockheed Martin.)

FAR 52.246-2 Inspection of Supplies Fixed-Price (ALT I) (JUL 1985)

("Government" in the clause shall mean "Lockheed Martin and the Government" except in paragraphs (f), (j), and (l) where it shall mean "Lockheed Martin." "Contracting Officer" shall mean "Lockheed Martin.")

FAR 52.247-64 Alternate I - Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003)

(The Government has provided Lockheed Martin in its prime contract an earlier version of this clause than what has been published and included in the CorpDocs. The April 2003 version shall govern instead.)

Applicable to all contracts for non-commercial items. Applicable to commercial item contracts only if paragraph (e)(4) of the clause applies.)

NAVAIR 5252.204-9501 National Stock Numbers (MAR 2007)

(The clause is applicable to non-commercial item contracts only; however, the clause is not applicable to items that will be incorporated into higher level assemblies where the item is not separately purchasable (such as for spares) and where the item loses its individual identity in the higher level assembly. The clause is also not applicable to contracts where the item(s) purchased will not be delivered to the Government. "Contracting Officer" shall mean "Lockheed Martin.")

NAVAIR 5252.227-9511 DISCLOSURE, USE AND PROTECTION OF PROPRIETARY INFORMATION (FEB 2009)

(The clause is applicable in the event Seller's proprietary information may be required by a government support contractor, or an "ISC". The term "prime contractor" shall mean "Seller.")

NAVAIR 5252.247-9508 PROHIBITED PACKING MATERIALS (JUN 1998)

(Applicable to the Seller if it is shipping non-commercial items directly to U.S. Government, with Lockheed Martin's authorization.)

NAVAIR 5252.247-9509 PRESERVATION, PACKAGING, PACKING AND MARKING (JUL 1998)

(Applicable to the Seller if it is shipping non-commercial items directly to U.S. Government, with Lockheed Martin's authorization. In subparagraph (b), "Contract Number" shall mean "Lockheed Martin's prime contract number and the number assigned to this contract.")

NAVAIR 5252.247-9510 PRESERVATION, PACKAGING, PACKING AND MARKING FOR FOREIGN MILITARY SALES (FMS) REQUIREMENTS (OCT 2005)

(Applicable to the Seller if it is shipping non-commercial items directly to U.S. Government, with Lockheed Martin's authorization.)

PART III. SECTION H –PRIME CONTRACT SPECIAL PROVISIONS

For purposes of this Part III, Section H, "Government" shall mean the United States Government and the "Contracting Officer" shall mean the Government's Contracting Officer. The following Section H clauses are incorporated into the Contract in full-text:

H-2 WORK SHARE AGREEMENTS

The Seller shall not enter into any new F-35 program LRIP 9 work share agreements with any of its subcontractors that specify that a subcontractor will receive a certain amount of business based solely on a dollar amount or percentage of contract or program cost unless it has been determined to be best value to the F-35 Program by the Contracting Officer who, through LOCKHEED MARTIN, has provided written consent pursuant to FAR 52.244-2, Subcontracts (OCT 2010). The Contracting Officer, through LOCKHEED MARTIN, shall provide written response to the notice of work share agreement within 14 working (i.e. – exclusive of federal holidays, Saturdays and Sundays) days after receipt of the work share notification; if a written response is not provided within 14 working days by the Government, through LOCKHEED MARTIN, the Seller may proceed with the entering into the agreement.

H-5 5252.245-9500 GOVERNMENT PROPERTY FOR THE PERFORMANCE OF THIS CONTRACT (NAVAIR) (MAY 2012)

(a) Authorization is granted to use the Government property identified below without rental charge in the performance of this contract and subcontracts of any tier issued hereunder (see FAR 45.201(a) for further information regarding identification requirements):

(1) Government property currently accountable and managed under the following contracts:

Contract Number
N00019-97-C-0038
N00019-02-C-3002
N00019-06-C-0291
N00019-07-C-0097
N00019-08-C-0028
N00019-09-C-0010
N00019-10-C-0002
N00019-11-C-0083
N00019-12-C-0004
N00019-13-R-0078

(2) Government furnished property to be provided under this contract:

Nomenclature/ Description	Part/ Model Number and National Stock Number	Mfg	Serial Number (Unique Item Identifier)	Quantity/ Unit of Issue	As Is: Yes/No	Unit Acq Cost
N/A						

(3) Government furnished material, as defined in FAR 45.101, to be provided under this contract:

Nomenclature/ Description	Part Number	Mfg	Unit of Issue	Quantity	As Is: Yes/No	Unit Acq Cost
N/A						

(4) If authority has been granted in accordance with FAR 51.102, Seller access to Government supply sources is authorized for the following items. Paragraph (b) does not apply to purchases under the NMCI/CoSC contract.

Schedule/Source	Nomenclature/ Description	Part Number	Mfg	Unit of Issue	Quantity Authorized	Unit Acq Cost
N/A						

(b) The Seller shall prepare for LOCKHEED MARTIN requisition documentation for the items listed in paragraph (a)(4) above in accordance with the "Military Standard Requisitioning and Issue Procedures

(MILSTRIP) for Defense Contractors”, DoD 4000.25-1- M, Chapter 11, which is available at <http://www.dtic.mil/whs/directives> under publications. The Seller shall prepare for LOCKHEED MARTIN all requisitions for material from the supply system to the Material Control Activity specified in Section G of this contract.

(c) Government property provided above (except for special tooling and special test equipment as defined in FAR 2.101) shall not be installed or constructed or otherwise affixed to property not owned by the Government in such a fashion as to be nonseverable unless written authorization has been obtained from the Contracting Officer, through LOCKHEED MARTIN.

(d) The Seller is responsible for scheduling the use of all property covered by this clause and neither the Government nor LOCKHEED MARTIN shall not be responsible for conflicts, delays, or disruptions to any work performed by the contractor due to use of any or all such property, either under this contract or any other contracts under which use of such property is authorized.

H-8 NAVAIR 5252.204-9504 DISCLOSURE OF CONTRACT INFORMATION (JAN 2007) (VARIATION)

(a) The Seller shall not release to anyone outside the Seller’s organization any information (e.g., announcement of contract award), regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any effort directly related to the F-35 Lightning II Joint Strike Fighter (JSF) Program unless—

- (1) The JSFPO has given prior written approval through LOCKHEED MARTIN;
- (2) The information is otherwise in the public domain before the date of release; or
- (3) The information is being released to associate contractors, subcontractors, suppliers, or vendors who require the information for execution of work under an F-35 Lightning II JSF contract.

(b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. “Information” includes, but is not limited to, news releases, articles, manuscripts, brochures, advertisements, still and motion pictures, speeches, trade association meetings, symposia, and professional papers to be published. The Seller shall submit the original and 1 copy of the information proposed for release to LOCKHEED MARTIN.

Where practicable, requests and the specific information may be provided to LOCKHEED MARTIN using an electronic medium appropriate for the security level of the information being transmitted. The Seller shall submit its request to LOCKHEED MARTIN at least 25 working days before the proposed date for release.

(c) RESERVED

(d) The Seller agrees to include a similar requirement in each subcontract or purchase order under this contract. Subcontractors, suppliers, and vendors shall submit requests for authorization to release through LOCKHEED MARTIN to the Government’s Public Affairs Officer.

H-9 PRESERVATION OF RIGHTS FOR TECHNICAL DATA, COMPUTER SOFTWARE, AND COMPUTER SOFTWARE DOCUMENTATION ACCESSED, DELIVERED, OR PROVIDED ELECTRONICALLY

Information, whether delivered pursuant to the Subcontract Data Requirements List (SDRL) or provided in response to any other requirement contained in this contract, which would be deemed “technical data” under DFARS 252.227-7013, Rights in Technical Data–Noncommercial Items (FEB 2014), or “computer

software” and “computer software documentation” under DFARS 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (FEB 2014), if it were delivered in written form, shall not lose its status as technical data, computer software, or computer software documentation solely because access by the Government or LOCKHEED MARTIN, delivery by the Seller, or provision by the Seller is by electronic means. The rights of the parties shall be as specified in DFARS 252.227-7013 and DFARS 252.227-7014.

H-12 NOTICE REGARDING THE DISSEMINATION OF EXPORT-CONTROLLED TECHNICAL DATA (NAVAIR 5252.227-9507) (OCT 2005)

(The following clause applies only to contracts where Lockheed Martin is acquiring non-commercial items).

- (a) Export of information contained herein, which includes release to foreign nationals within the United States, without first obtaining approval or license from the Department of State for items controlled by the International Traffic in Arms Regulations (ITARs), or the Department of Commerce for items controlled by the Export Administration Regulations (EAR), may constitute a violation of law.
- (b) For violation of export laws, the Seller, its employees, officials or agents are subject to:
 - (1) Imprisonment and/or imposition of criminal fines; and
 - (2) Suspension or debarment from future Government contracting actions.
- (c) Neither the Government nor LOCKHEED MARTIN shall be liable for any unauthorized use or release of export-controlled information, technical data or specifications in this contract.
- (d) The Seller shall include the provisions or paragraphs (a) through (c) above in any of its subcontracts awarded under this contract.

H-18 CONTRACTOR EMPLOYEES (NAVAIR 5252.211-9510) (MAY 2011 - VARIATION)

(a) In all situations where Seller personnel status is not obvious, Seller’s personnel are required to identify themselves to avoid creating an impression to the public, agency officials, or Congress that such Seller personnel are Government officials. This can occur during meeting attendance, through written (letter or email) correspondence or verbal discussions (in person or telephonic), when making presentations, or in other situations where their contractor status is not obvious to third parties. This list is not exhaustive. Therefore, the Seller’s employee(s) shall:

- (1) Not by word or deed give the impression or appearance of being a Government employee;
- (2) Wear appropriate badges visible above the waist that identify them as Seller’s employees when in Government spaces, at a Government-sponsored event, or an event outside normal work spaces in support of the contract/order;

(3) Clearly identify themselves as Seller's employees in telephone conversations and in all formal and informal written and electronic correspondence. Identification shall include the name of the company for whom they work;

(4) Identify themselves by name, their company name, the name of the prime contractor their company is supporting, as well as the Government office they are supporting when participating in meetings, conferences, and other interactions in which all parties are not in daily contact with the individual contractor employee; and

(5) Be able to provide, when asked, the full number of the contract/order under which they are performing.

(b) If wearing a badge is a risk to safety and/or security, then an alternative means of identification may be utilized if endorsed by the Contracting Officer's Representative and approved by the Contracting Officer, through LOCKHEED MARTIN.

(d) The Contracting Officer, through LOCKHEED MARTIN, will make final determination of compliance with regulations with regard to proper identification of contractor employees.

H-25 LIABILITY INSURANCE (NAVAIR 5252.228-9501) (MAR 1999)

(APPLICABLE TO COST-REIMBURSEMENT, CONTRACT LINE ITEMS. WHERE SELLER WILL BE PERFORMING WORK ON A GOVERNMENT INSTALLATION ONLY)

In addition to any LOCKHEED MARTIN requirements, the following types of insurance are required in accordance with the clause entitled, "FAR 52.228-7, "Insurance--Liability to Third Persons" and shall be maintained in the minimum amounts shown:

(a) Comprehensive General Liability: \$200,000 per person and \$500,000 per accident for bodily injury.

(b) Automobile Insurance: \$200,000 per person and \$500,000 per accident for bodily injury and \$500,000 per accident for property damage.

(c) Standard Workman's Compensation and Employer's Liability Insurance (or, where maritime employment is involved, Longshoremen's and Harbor Worker's Compensation Insurance) in the minimum amount of \$100,000.

(d) Aircraft public and passenger liability: \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger liability; \$200,000 per occurrence for property damage. Passenger bodily injury liability of \$200,000 per passenger, multiplied by the number of seats or number of passengers, whichever is greater.

H-26 BASE SUPPORT

(The clause shall not apply to contracts for commercial items)

(a) *Definitions*

“Base support” includes Government-controlled working space, material, equipment, services, and facilities only as identified in the Incidental Government Property List, Section J, Attachment 1E, or as an attachment contained within the solicitation (RFP) provided to the Seller. If such information is not provided to the Seller, then this clause shall have no applicability to the Seller.

Incidental Government Property is Government property that is incidental to the place of performance, when the contract requires Seller personnel to be located on a Government site or installation, and when the property used by the Seller within the location remains accountable to the Government. Items considered to be incidental to the place of performance include, for example, office space, desks, chairs, telephones, computers, and fax machines. This definition of Incidental Government Property shall include such incidental items furnished by LOCKHEED MARTIN.

All other terms in this clause shall have the same meanings as given in FAR 52.245-1 unless otherwise stated.

(b) *Provision of Base Support*

- (1) The Government shall provide base support to the Seller through LOCKHEED MARTIN in accordance with this clause, if LOCKHEED MARTIN has authorized such use by the Seller. Failure by the Seller to comply with the requirements of this clause shall release the Government, without prejudice, from its obligation to provide base support by the date(s) required.
- (2) The Government, through LOCKHEED MARTIN, shall provide base support to the Seller on a rent-free basis for performance of this contract and the value shall be a part of the Government's contract consideration, if LOCKHEED MARTIN has authorized such use by the Seller.
- (3) During contract performance, the Seller agrees to immediately report inadequacies, defects, or non-availability of support stipulated by the contract schedule in writing to LOCKHEED MARTIN, which shall notify the contracting officer representative (COR) with a copy of the letter provided to the contracting officer, as necessary. The Seller shall provide with the letter, a written impact statement denoting the immediate impact associated with the effort to be performed, a recommended workaround plan and the contractor estimated costs impact if the deficient product and/or service will be fulfilled by the Seller. The Contracting Officer, with the advice of the COR, will provide written determination to LOCKHEED MARTIN (within 20 workdays from the receipt of initial deficiency report by the Contracting Officer) of the validity and extent of the involved requirement and the method by which the deficient support shall be fulfilled (e.g., purchase, rental, lease, GFP, etc.). During contract performance, should the Government terminate a service or support, the Government will notify LOCKHEED MARTIN a minimum of 90 days prior to termination of the service or support, so the Seller may make alternate arrangements or put work around procedures in place. Facilities shall not be purchased under this clause. Additionally, the Seller (or authorized representative) shall not purchase, nor incur costs to furnish any base support requirement provided by the clause (or authorize others to do so), without prior written approval of LOCKHEED MARTIN, if it has obtained such approval from the Contracting Officer, regarding the price, terms, and conditions of the proposed purchase, or approval of other arrangements.
- (4) When this contract is a cost, cost-reimbursement, time-and-materials, or labor hour contract, the Seller agrees that in the performance of this contract or any major subcontract no direct or

indirect costs for property will be incurred for any of the items covered under the Incidental Government Property, attachment 1E, or a substantially similar attachment to the contract, if provided. Only the prior written approval of LOCKHEED MARTIN, if such approval was obtained from the Contracting Officer, can relieve the Seller from this restriction.

(c) *Use of Incidental Government property.*

- (1) The Seller shall use Incidental Government property provided as base support only for performing this contract, unless otherwise provided for in this contract or approved by LOCKHEED MARTIN, if such approval was obtained from the Contracting Officer.
- (2) Modifications or alterations of the Incidental Government property provided as base support are prohibited, unless they are—
 - (i) Reasonable and necessary due to the scope of work under this contract or its terms and conditions;
 - (ii) Required for normal maintenance; or
 - (iii) Otherwise authorized by LOCKHEED MARTIN, if such authorization was obtained from the Contracting Officer.
- (3) The Seller shall not cannibalize Incidental Government property provided as base support unless otherwise provided for in this contract or approved by LOCKHEED MARTIN, if such approval was obtained from the Contracting Officer.

(d) *Incidental Government property.*

(1) The Government shall deliver to LOCKHEED MARTIN, for use by the Seller, the Incidental Government property described as base support in the incidental property list, if LOCKHEED MARTIN has authorized such use by the Seller. The Government shall furnish related data and information needed for the intended use of the property. The warranties of suitability of use and timely delivery of Incidental Government property do not apply to property acquired or fabricated by the Seller as contractor-acquired property and subsequently transferred to another contract with LOCKHEED MARTIN.

(2)

- (i) If such direction is obtained by LOCKHEED MARTIN from the Contracting Officer, LOCKHEED MARTIN may by written notice, at any time—
 - (A) Increase or decrease the amount of Incidental Government property under this contract;
 - (B) Substitute other Incidental Government property for the property previously furnished, to be furnished, or to be acquired by the Seller for the Government under this contract; or
 - (C) Withdraw authority to use property.

(e) *Seller Liability for Incidental Government Property.*

- (1) Unless otherwise provided for in the contract, the Seller shall not be liable for loss of Incidental Government property furnished or acquired as base support, except when any one of the following applies—
 - (i) The risk is covered by insurance or the Seller is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with FAR 31.205-19.
 - (ii) Loss of Incidental Government property that is the result of willful misconduct.
- (2) The Seller shall take all reasonable actions necessary to protect the Incidental Government property from further loss. The Seller shall separate the damaged and undamaged property, place

all the affected property in the best possible order, and take such other action as the Government directs.

(3) The Seller shall do nothing to prejudice the Government's rights to recover against third parties for any loss of Incidental Government property.

(4) Upon the request of LOCKHEED MARTIN, if it has received such direction from the Contracting Officer, the Seller shall, furnish to the Government and LOCKHEED MARTIN all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government and LOCKHEED MARTIN in obtaining recovery.

(f) *Equitable adjustment.*

(1) Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. However, the LOCKHEED MARTIN shall not be liable for breach of contract for the following:

- (1) Any delay in delivery of Incidental Government property.
- (2) Delivery of Incidental Government property in a condition not suitable for its intended use.
- (3) An increase, decrease, or substitution of Incidental Government property.
- (4) Failure to repair or replace Incidental Government property for which the Government is responsible.

H-27 PARTNERING WITH MILITARY SERVICE DEPOTS (MSD)

This clause is in accordance with Article 8.2 of the F-35 Lightning II Depot Partnering Agreement and applies to the Seller only if it has a Partnering Agreement under the Program with an MSD and the Seller is performing work for or on behalf of an MSD under this Contract.

1. FAR Non-Applicability. Pursuant to FAR 1.104, FAR Applicability, Partnering Agreements (PA) and Implementing Agreements (IA) between the Seller and Military Service Depots (MSD) are not subject to the FAR or any agency supplements thereto, because the FAR applies to contracts where the Government acts in its capacity as a buyer. No FAR and/or agency supplement flow down clauses shall apply to any PA/IA issued or to any other contractual vehicle placed by the Seller with an MSD providing a supply/service under this prime contract, except as may be expressly included by mutual consent of the Seller and the MSD.

a. Non-Applicability of Advanced Payments. Payments made by the Seller to the MSD, as required by the terms of the PA/IA, shall be considered to be incurred costs under the terms of this contract.

2. TINA Non-Applicability. The Truth in Negotiations Act, 10 USC Section 2306a, as amended, (hereinafter referred to as TINA) and its implementing regulations/clauses, do not apply to any MSD performing under this contract. Accordingly, the Government agrees:

a. The portion of the Seller's contract price that consists of costs relating to work performed by an MSD need not be supported by the submission of certified cost or pricing data and,

b. The absence of such certified data shall not form the basis, directly or indirectly, for a claim by the Government of defective pricing against the Seller.

3. Release of Responsibility. The Government agrees not to hold the Seller responsible, directly or indirectly, for the delay, non-performance, or other non-compliance of work required under this contract to the extent such delay, non-performance, or non-compliance is solely attributable, in accordance with the terms of the PA and IA, to the action or inaction of an MSD performing an IA related to the Seller's performance obligations under this contract.

a. **Equitable Adjustment.** Subject to the provisions of FAR 52.249-14, Excusable Delays, such delay, non-performance, or other non-compliance attributable to the MSD in performing such PA/IA, may be considered to be an excusable delay for the Seller or non-compliance for which an equitable adjustment in the performance period and/or cost/price of this contract may be provided by the Government to the Seller. Further, such delay, non-performance, or non-compliance determined to be solely attributable to the MSD under FAR 52.249-14, Excusable Delays shall not be used by the Government, in whole or in part, as the basis for termination for default or withholding of payments under this contract. Any disagreement with the Contracting Officer's final decision regarding an equitable adjustment is subject to the Disputes clause.

b. **Continued "Good Faith/Duty to Mitigate."** This provision does not excuse the Seller from its requirement to continuously exercise good faith to effectively manage the MSD, if necessary, to perform the affected services itself or find a commercial sub-contractor to perform the services, and to fulfill its responsibilities under this contract and applicable PA/IA. Such efforts include reasonable corrective actions to mitigate the effects of the MSD's non-compliance under this contract's schedule and/or prices.

FAR 52.232-32 PERFORMANCE-BASED PAYMENTS (VARIATION)

APRIL 2012

(Applicable to the Seller in its abbreviated form below only if under a firm-fixed priced contract LOCKHEED MARTIN will be making financing payments to the Seller in the form of performance based payments.)

- (a) Performance-based payments shall form the basis for contract financing payments, if such payments are provided under this contract. The Performance Based Payments schedule set forth in this Contract describes the basis for payment, to include identification of the individual payment events, evidence of completion, and amount of payment due upon completion of each event.
- (b) At no time shall cumulative performance-based payments exceed cumulative contract cost. To ensure compliance with this requirement, the SELLER shall, in addition to providing the information required by FAR 52.232-32 (Performance-Based Payments (APR 2012), submit the required certificate, modified to include Item (6), as set forth below on or in conjunction with each invoice:

"I certify to the best of my knowledge and belief that—

(1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Contractor, in accordance with the contract and the instructions of LOCKHEED MARTIN;

(2) (Except as reported in writing on _____ [insert date if applicable]), all payments to subcontractors and suppliers under this contract have been paid, or will be paid, currently, when due in the ordinary course of business;

- (3) There are no encumbrances (except as reported in writing on _____[insert date if applicable]) against the property acquired or produced for, and allocated or properly chargeable to, the contract which would affect or impair the Government's title;
- (4) There has been no materially adverse change in the financial condition of the Contractor since the submission by the Contractor to LOCKHEED MARTIN of the most recent written information dated _____[insert date if applicable]; and
- (5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitation in the contract, and the amount of all payments under the contract will not exceed any limitation in the contract.
- (6) THE CUMULATIVE PERFORMANCE-BASED PAYMENTS REQUESTED AND PAID TO DATE DO NOT EXCEED CUMULATIVE COST INCURRED UNDER THIS CONTRACT.”

(c) Costs-incurred are determined by the SELLER’s accounting books and records. LOCKHEED MARTIN intends to rely on the SELLER’s submission of cost-incurred information in processing invoices in order to facilitate prompt financing payments.

(d) Verification by LOCKHEED MARTIN of successful performance of each event, according to the criteria outlined in the Performance Based Payments schedule, is required prior to payment.