

**LOCKHEED MARTIN AERONAUTICS COMPANY**  
**PRIME SUPPLEMENTAL FLOWDOWN DOCUMENT (PSFD)**  
**ADDITIONAL TERMS AND CONDITIONS**  
**FOR SUBCONTRACTS/PURCHASE ORDERS UNDER**  
**F-35 TRAINING SYS. SIMULATION (TSS) IDIQ, Contract N00019-22-R-0106**

**Generated using Lockheed Martin CorpDocs 2023 Version**

**Original: November 9, 2023**

**Revision 1: July 11, 2024**

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.

To the extent that any clause included in this document is inapplicable to the performance of this Contract, the parties shall consider such clauses to be self-deleting and they shall not impose any obligations upon SELLER.

**PART I. DELETIONS:** The following clauses are deleted in their entirety from the applicable CorpDocs incorporated into this Contract:

RESERVED

**PART II. MODIFICATIONS:** The dates or versions of the following FAR, DFARS, and other agency clauses are modified as follows and are incorporated into the Contract:

RESERVED

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

**FAR 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009. (JUN 2010)** (Applicable to all subcontracts funded in whole or in part with Recovery Act funds.)

**FAR 52.203-16 Preventing Personal Conflicts of Interest. (JUN 2020)** (Applies if this Contract exceeds the simplified acquisition threshold in FAR 2.101. Not applicable to Commercial Items as defined in FAR Part 2.101.)

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**FAR 52.204-27 Prohibition on a ByteDance Covered Application. (JUN 2023)**

**FAR 52.215-21 Alternate I - Requirements for Certified Cost or Pricing Data or Information Other Than Certified Cost or Pricing Data--Modifications (OCT 2010)** ("Contracting Officer" means "Lockheed Martin" in paragraphs (a)(1) and (b).)

**FAR 52.216-16 Incentive Price Revision - Firm Target. (JAN 2022)** (Applicable to incentive type subcontracts. "Contracting Officer," "contract administrative office" and "Government" mean "Lockheed Martin." Paragraph (i) is deleted. The blanks in the clause are completed with the amounts specified in the contract. Not applicable to Commercial Items as defined in FAR 2.101.)

**FAR 52.219-9 Alternate III - Small Business Subcontracting Plan. (JUN 2020)** (Applies if this contract exceeds the threshold at FAR 19.702(a). Does not apply if Seller is a small business concern. "Contracting Officer" means "Lockheed Martin" in paragraph (c). Seller's subcontracting plan is incorporated herein by reference. Not applicable to Commercial Items as defined in FAR 2.101.)

**FAR 52.227-22 Major System -- Minimum Rights. (JUN 1987)** (Applicable to any subcontract which requires the delivery of technical data. Not applicable to Commercial Items as defined in FAR 2.101.)

**FAR 52.232-16 Progress Payments. (NOV 2021)** (Applies to SELLER only if LOCKHEED MARTIN concurs with SELLER's request to be paid by means of progress payments in non-commercial Contracts. "Contracting Officer" shall mean "Lockheed Martin" except in paragraph (g) of the clause where it shall mean "Lockheed Martin or Contracting Officer." "Government" shall mean "Lockheed Martin" except: (1) in paragraphs (d), (e) and (j)(5) of the clause where the term is unchanged and (2) in paragraphs (g) and (i) of the clause where it means "Lockheed Martin and the Government." Alternate I applies if SELLER is a small business concern.)

**FAR 52.232-17 Interest. (MAY 2014)** (Applicable to fixed price incentive subcontracts containing FAR 52.216-16 or FAR 52.216-17. "Government" means "Lockheed Martin." Not applicable to Commercial Items as defined in FAR 2.101.)

**FAR 52.232-39 Unenforceability of Unauthorized Obligations. (JUN 2013)**

**FAR 52.234-4 Earned Value Management System. (NOV 2016)** (Applicable to subcontractors identified by name in subsection (g) of the clause. Subsection (g) is completed as follows TBD. Not applicable to Commercial Items as defined in FAR 2.101. The terms "Contracting Officer" and "Government" include Lockheed Martin.)

**FAR 52.245-9 Use and Charges. (APR 2012)** (Applicable to subcontracts where government property will be provided. Communications with the Government under this clause will be made through Lockheed Martin.)

**FAR 52.246-2 Alternate I - Inspection of Supplies Fixed-Price. (JUL 1985)** ("Government" means "Lockheed Martin and the Government" except in paragraphs (f), (j), and (l) where it means "Lockheed Martin." "Contracting Officer" means "Lockheed Martin.")

**FAR 52.246-7 Inspection of Research and Development Fixed-Price. (AUG 1996)** ("Government" means "Lockheed Martin and the Government " in paragraphs (a), (b) and (c). "Government" means "Lockheed Martin" in paragraphs (d), (e), and (f). "Contracting Officer" means "Lockheed Martin." Not applicable to Commercial Items as defined in FAR 2.101.)

**FAR 52.246-8 Inspection of Research and Development Cost-Reimbursement. (MAY 2001)** ("Government" means "Lockheed Martin" except (1) in paragraphs (b), (c) and (d) where it means "Lockheed Martin and the Government." and (2) in paragraph (k) where the term is unchanged. Not applicable to Commercial Items as defined in FAR 2.101.)

**FAR 52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form). (APR 1984)** ("Contracting Officer" and "Government" mean "Lockheed Martin.")

**DFARS 252.204-7004 Antiterrorism Awareness Training for Contractors. (Formerly: Alternate A, System for Award Management (JAN 2023)** (Applicable to all subcontracts where performance requires routine physical access to a Federally-controlled facility or military installation.)

**DFARS 252.209-7010 Critical Safety Items. (AUG 2011)** (Applies in all solicitations for subcontracts for items containing Critical Safety Items.)

**DFARS 252.211-7007 Reporting of Government-Furnished Property. (MAR 2022)** (Applies if Seller will be in possession of Government property for the performance of this contract.)

**DFARS 252.211-7008 Use of Government-Assigned Serial Numbers (SEP 2010)** (Applies if Seller will be in possession of Government property for the performance of this contract.)

**DFARS 252.215-7997 (DEVIATION 2020-O0020) REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA - MODIFICATIONS - SECTION 890 PILOT PROGRAM (AUG 2020)** (Applies if the contract exceeds the simplified acquisition threshold. Paragraph (b) is deleted.)

**DFARS 252.219-7004 Small Business Subcontracting Plan (Test Program) (DEC 2022)** (Applicable to participants in the DoD Test Program for the Negotiation of Comprehensive Small Business. Not applicable to Commercial Items as defined in FAR 2.101.)

**DFARS 252.223-7006 Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials. (SEP 2014)** (Applicable to subcontracts that require, may require, or permit the subcontractor to treat or dispose of non-DoD-owned toxic or hazardous materials as defined in the clause. "Government" means "Lockheed Martin and Government." Not applicable to Commercial Items as defined in FAR 2.101.)

**DFARS 252.225-7015 Restriction on Acquisition of Hand or Measuring Tools. (JUN 2005)** (Applicable to any subcontract that requires the delivery of hand or measuring tools.)

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**DFARS 252.225-7028 Exclusionary Policies and Practices of Foreign Governments. (APR 2003)** (Not applicable to Commercial Items as defined in FAR 2.101.)

**DFARS 252.225-7038 Restriction on Acquisition of Air Circuit Breakers. (DEC 2018)**  
(Applicable to all subcontracts where air circuit breakers for naval vessels are to be supplied. Not applicable to Commercial Items as defined in FAR 2.101.)

**DFARS 252.225-7040 Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States. (OCT 2015)** (Applies if Seller will deploy persons or otherwise provide support in the theater of operations to U.S. military forces deployed outside the United States. Communications with the Contracting Officer shall be made through Lockheed Martin.)

**DFARS 252.225-7053 Representation Regarding Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation. (AUG 2021)**

**DFARS 252.225-7054 Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation. (JAN 2023)**

**DFARS 252.225-7055 Representation Regarding Business Operations with the Maduro Regime. (MAY 2022)**

**DFARS 252.225-7059 Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region-Certification. (DEC 2022)**

**DFARS 252.225-7061 Restriction on the Acquisition of Personal Protective Equipment and Certain Other Items from Non-Allied Foreign Nations. (JAN 2023)**

**DFARS 252.225-7972 (DEVIATION 2020-O0015) Prohibition on the Procurement of Foreign-Made Unmanned Aircraft Systems. (MAY 2020)**

**DFARS 252.225-7973 (DEVIATION 2020-O0015) Prohibition on the Procurement of Foreign-Made Unmanned Aircraft Systems-Representation. (MAY 2020)**

**DFARS 252.225-7993 (DEVIATION 2020-O0022) Prohibition on Providing Funds to the Enemy. (MAY 2020)**

**DFARS 252.227-7017 Identification and Assertion of Use, Release, or Disclosure Restrictions. (JAN 2023)** (Contracting Officer" means "Lockheed Martin or Contracting Officer." In paragraphs (a) and (b) the references to the SBIR data rights clause are deleted.)

**DFARS 252.228-7001 Ground and Flight Risk. (MAR 2023)** (In paragraph (a)(1) "this contract" means "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." The provisions of this clause relating to assumption of risk by the Government are not applicable to Seller unless this contract

includes language stating the Government has agreed to assume such risk of loss. Subparagraph (f) is not applicable to Commercial Items as defined in FAR 2.101.)”

**DFARS 252.229-7006 Value Added Tax Exclusion (United Kingdom) (DEC 2011)** (Applicable to subcontracts with United Kingdom suppliers. Not applicable to Commercial Items as defined in FAR 2.101. "This contract" means "the prime contract.")

**DFARS 252.229-7011 Reporting of Foreign Taxes - U.S. Assistance Programs. (DEC 2011)** (Applicable to all subcontracts for commodities that exceed \$500. Not applicable to Commercial Items as defined in FAR 2.101. Copies of all notifications made pursuant to this clause shall be made to Lockheed Martin.)

**DFARS 252.234-7002A (DEVIATION 2015-O0017) Earned Value Management System. (SEP 2015)** ("Government" means "Lockheed Martin and Government." Paragraphs (i) and (j) are deleted.)

**DFARS 252.234-7002 Earned Value Management System. (MAY 2011)** ("Government" means "Lockheed Martin and Government." Paragraphs (i) and (j) are deleted. Not applicable to Commercial Items as defined in FAR 2.101. Paragraph (k) is completed as follows: TBD)

**DFARS 252.234-7004 Cost and Software Data Reporting System. (NOV 2014)** (Applicable to subcontracts at any tier in excess of \$50,000,000. Not applicable to Commercial Items as defined in FAR 2.101. In paragraph (b), "Government" means Lockheed Martin.)

**DFARS 252.239-7001 Information Assurance Contractor Training and Certification. (JAN 2008)** (Applicable if subcontractor personnel will access DoD information systems in performance of this Contract.)

**DFARS 252.239-7010 Cloud Computing Services. (JAN 2023)**

**DFARS 252.239-7016 Telecommunications Security Equipment, Devices, Techniques, and Services. (DEC 1991)** (Applies if this contract requires securing telecommunications. Not applicable to Commercial Items as defined in FAR 2.101.)

**DFARS 252.243-7002 Requests for Equitable Adjustment. (DEC 2022)** (Applicable to subcontracts in excess of \$150,000. "Government" means "Lockheed Martin." Not applicable to Commercial Items as defined in FAR 2.101.)

**DFARS 252.245-7001 Tagging, Labeling, and Marking of Government-Furnished Property. (APR 2012)** (Applicable to subcontracts where the items furnished by the subcontractor will be subject to serialized tracking.)

**DFARS 252.245-7004 (DEVIATION 2022-O0006) Reporting, Reutilization, and Disposal (NOV 2021)**

**DFARS 252.245-7004 Reporting, Reutilization, and Disposal. (DEC 2017)**  
 (Applicable if subcontractor will possess government property in performance of this Contract. "Contracting Officer" means Lockheed Martin.)

**DFARS 252.245-7005 Management and Reporting of Government Property. (JAN 2024)**

**DFARS 252.247-7023 Alternate I Transportation of Supplies by Sea. (JAN 2023)** (In paragraph (g) "Government" and "Contracting Officer" mean "Lockheed Martin" and the words "of the Prompt Payment clause" are deleted. If this contract is less than \$150,000 only paragraphs (a) through (e) and paragraph (h) of the clause applies.)

**NAVAIR 5252.204-9505 SYSTEM AUTHORIZATION ACCESS REQUEST NAVY (SAAR-N) REQUIREMENTS FOR INFORMATION TECHNOLOGY (IT) (SEP 2012)**

("Applicable if this subcontract requires access to Government IT systems.  
 (a) Contractor personnel assigned to perform work under this contract may require access to Navy Information Technology (IT) resources (e.g., computers, laptops, personal electronic devices/personal digital assistants (PEDs/PDAs), NMCI, RDT&E networks, websites such as MyNAVAIR, and Navy Web servers requiring Common Access Card (CAC) Public Key Infrastructure (PKI)). Contractor personnel (prime, subcontractor, consultants, and temporary employees) requiring access to Navy IT resources (including those personnel who previously signed SAAR DD Form 2875) shall submit a completed System Authorization Access Request Navy (SAAR-N), OPNAV 5239/14 (Jul 2008) form or latest version thereof, and have initiated the requisite background investigation (or provide proof of a current background investigation) prior to accessing any Navy IT resources. Instructions for processing the SAAR-N forms are available at: NAVAIR Contractor Forms.

(b) SAAR-N forms will be submitted to the Government Sponsor or Technical Point of Contact (TPOC) via the contractor's Facility Security Officer (FSO). The designated SAAR-N Government Sponsor or TPOC for contractor employees requiring IT access, [to be filled in at time of award] shall be responsible for signing and processing the SAAR-N forms. For those contractors that do not have a FSO, SAAR-N forms shall be submitted directly to the designated SAAR-N Government Sponsor or TPOC. Copies of the approved SAAR-N forms may be obtained through the designated SAAR-N Government Sponsor or TPOC. Requests for access should be routed through the NAVAIR\_SAAR.fct@navy.mil mailbox.

(c) In order to maintain access to Navy IT resources, the contractor shall ensure completion of initial and annual IA training, monitor expiration of requisite background investigations, and initiate re-investigations as required. If requested, the contractor shall provide to the designated SAAR-N Government Sponsor or TPOC documentation

sufficient to prove that it is monitoring/tracking the SAAR-N requirements for its employees who are accessing Navy IT resources. For those contractor personnel not in compliance with the requirements of this clause, access to Navy IT resources will be denied/revoked.

(d) The SAAR-N form remains valid throughout contractual performance, inclusive of performance extensions and option exercises where the contract number does not change. Contractor personnel are required to submit a new SAAR-N form only when they begin work on a new or different contract.

(End of clause)"

**NAVAIR 5252.211-9510 CONTRACTOR EMPLOYEES (MAY 2011)**

**NAVAIR 5252.227-9507 NOTICE REGARDING THE DISSEMINATION OF EXPORT-CONTROLLED TECHNICAL DATA (OCT 2005)** ("Not applicable to Commercial Items as defined in FAR 2.101. Clause Text: (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 contractor, 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) The Government shall not be liable for any unauthorized use or release of export-controlled information, technical data or specifications in this contract.

(d) The contractor shall include the provisions or paragraphs (a) through (c) above in any subcontracts awarded under this contract.

(End of clause ")

**NAVAIR 5252.227-9509 APR 2022 SUMMARY RELIABILITY ASSURANCE/BURN-IN TESTS REPORTS (NAVAIR) (OCT 2005)** ("Applicable to all subcontracts in excess of \$500,000. Not applicable to Commercial Items as defined in FAR 2.101. Clause Text: (a) If reliability assurance/burn-in tests are required for supplies procured hereunder, the contractor shall maintain and submit summary reliability assurance/burn-in test reports in accordance with DI-R-7040.

(b) The contractor shall provide and maintain procedures to enable his full participation in the failure experience data interchange of the Government Industry Data Exchange Program (GIDEP), in accordance with the latest revision of MIL-STD-1556. Compliance with this clause shall not relieve the contractor from complying with any other provision of the contract. The contractor shall maintain status of GIDEP failure experience reports and shall provide GIDEP Annual Progress Report in accordance with DI-QCIC-80121, paragraph 10.2.

(c) The contractor shall prepare GIDEP ALERTS in accordance with DI-QCIC- 80126, paragraph 10.1, for material discrepancies which have adversely impacted or have the potential to adversely impact spare/repair parts reliability.

(d) Appropriate action, as deemed necessary by the contractor, shall be taken in response to GIDEP ALERTS received which may impact materials procured hereunder.

(e) The contractor agrees to insert paragraphs (b), (c) and (d) of this clause in any subcontract hereunder exceeding \$500,000. When so inserted, the word ""contractor"" shall be changed to ""subcontractor.""

(End of clause)"

**NAVAIR 5252.227-9511 DISCLOSURE, USE AND PROTECTION OF PROPRIETARY INFORMATION (NAVAIR) (FEB 2009)** (Applicable in the event subcontractor proprietary information may be accessed by government support contractors. The term "prime contractor" means "Seller.")

**NAVAIR 5252.228-9501 LIABILITY INSURANCE (MAR 1999)** ("Applies if Seller will be performing work on a Government installation. The blanks in the clause are completed as follows: \_\_\_\_\_ . Not applicable to Commercial Items as defined in FAR 2.101. Clause

Text: The following types of insurance are required in accordance with the clause entitled, \_\_\_\_\_ [insert either "FAR 52.228-5, "Insurance--Work on a Government Installation"" or "52.228-7, "Insurance--Liability to Third Persons""] and shall be maintained in the minimum amounts shown:

(a) Comprehensive General Liability: \$ \_\_\_\_\_ [insert either \$200,000 or other appropriate amount] per person and \$ \_\_\_\_\_ [insert either \$500,000 or other appropriate amount] per accident for bodily injury.

(b) Automobile Insurance: \$ \_\_\_\_\_ [insert either \$200,000 or other appropriate amount] per person and \$ \_\_\_\_\_ [insert either \$500,000 or other appropriate amount] per accident for bodily injury and \$ \_\_\_\_\_ [insert either \$500,000 or other appropriate amount] 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: \$\_\_\_\_\_ [insert either \$200,000 or other appropriate amount] per person and \$[insert either \$500,000 or other appropriate amount] per occurrence for bodily injury, other than passenger liability; \$\_\_\_\_\_ [insert either \$200,000 or other appropriate amount] per occurrence for property damage. Passenger bodily injury liability limits of \$\_\_\_\_\_ [insert either \$200,000 or other appropriate amount] per passenger, multiplied by the number of seats or number of passengers, whichever is greater.

(End of clause)"

**NAVAIR 5252.232-9509 TRAVEL APPROVAL AND REIMBURSEMENT**

**PROCEDURES (NAVAIR) (OCT 2013)** ("Applicable to all subcontracts that will provide for reimbursement of travel and other costs covered by this clause. Not applicable to Commercial Items as defined in FAR 2.101.

Clause Text: (a) General. Performance under this contract may require travel by Contractor personnel. If travel, domestic or overseas, is required, the Contractor is responsible for making all necessary arrangements for its personnel. These include but are not limited to: medical examinations, immunizations, passports/visas/etc., and security clearances.

(b) Travel Approval Process. Prior approval is required for all travel under this contract. Travel shall be reviewed and approved/disapproved as follows:

(1) The Contractor shall provide the [Insert Procuring Contracting Officer (PCO) or Contracting Officer's Representative (COR)] a written request for authorization to travel at least 30 days in advance of the required travel date, when possible. The request should include: purpose of travel, location, travel dates, number of individuals traveling, and all estimated costs associated with the travel (e.g., lodging, meals, transportation costs, incidental expenses, etc.).

(2) The [Insert PCO or COR] will review the travel request and provide, in writing, an approval or disapproval of the travel request to the Contractor [Insert ""and the Procuring Contracting Officer."" if the COR is reviewing and approving the request.]

(c) Travel Policy.

(1) Travel arrangements shall be planned in accordance with the Federal Travel regulations, prescribed by the General Services Administration for travel in the conterminous 48 United States, (hereinafter the FTR) and the Joint Travel Regulation, Volume 2, DoD Civilian Personnel, Appendix A, prescribed by the Department of Defense (hereinafter the JTR).

(2) The Government will reimburse the Contractor for allowable travel costs incurred by the Contractor in performance of the contract in accordance with FAR Subpart 31.2.

(3) For purposes of reimbursement of travel expenses, the Contractor's official station is defined as within 50 miles of the Contractor's regular work site. (If Contractor has more than one regular work site, the official station is defined as within 50 miles of each of its regular work sites.)

(4) The Contractor's documentation for the reimbursement of travel costs (e.g., receipts) shall be governed as set forth in FAR Subpart 31.2, the FTR, and the JTR.

(5) Car Rental for a team on temporary duty (TDY) at one site will be allowed provided that only one car is rented for every four (4) members of the TDY team. In the event that less than four (4) persons comprise the TDY team, car rental will be allowed if necessary to complete the mission required.

(6) Whenever work assignments require TDY aboard a Government ship, the Contractor will be reimbursed at the per diem identified in the JTR.

(End of clause)."

**NAVAIR 5252.247-9508 PROHIBITED PACKING MATERIALS (AUG 2019)** ("Applies if Seller will make shipments under this contract directly to the Government.)

**NAVAIR 5252.247-9510 PRESERVATION, PACKAGING, PACKING AND MARKING FOR FOREIGN MILITARY SALES (FMS) REQUIREMENTS (OCT 2005)** ("Applies if Seller will make shipments under this contract directly to the Government.

Clause Text: (a) Unless specified elsewhere in the contract, packing and packaging shall comply with MIL-STD-129. Packing and packaging materials shall provide protection from abuse during handling and from environmental, magnetic, and electrical damage during handling and subsequent future storage, possibly under less than desirable conditions.

(b) Marking: All unit and exterior containers/packs shall as a minimum be marked as follows:

(1) FMS Case Number.

(2) Part Number (with CAGE Code).

(3) For - the organization/address the material is shipped to.

(4) The applicable MILSTRIP number (identified separately for each line item of the contract/delivery order)

(5) Project Code number.

(6) Project Directive Line Item (PDLI) Number.

(7) Requisition Serial Number (RSN).

(8) Quantity.

(9) From - the contractor's address shipped from.

(10) Ship to - the shipping address provided in the contract.

(11) Transportation Priority

(12) Required Delivery Date

(c) The contractor shall affix labels to the outside of each external pack warning all handlers that fragile, delicate, etc., equipment is contained within and to warn against particular improper handling and storage procedures/conditions as may be applicable to the item(s) ordered.

(End of clause)"

#### **Part IV. SECTION H –PRIME CONTRACT SPECIAL PROVISIONS**

For purposes of this Section H, "Government" means the United States Government. The following Section H clauses are incorporated into the Contract in full-text:

#### **H-01 PRESERVATION OF RIGHTS FOR TECHNICAL DATA, COMPUTER SOFTWARE, AND COMPUTER SOFTWARE DOCUMENTATION ACCESSED, DELIVERED, OR PROVIDED ELECTRONICALLY**

Information, whether:

1. delivered under any CDRL or contractor equivalent form in a delivery order under this contract, or
2. in response to any delivery order statement of work, provided via:
  - a. the JSF Virtual Enterprise,
  - b. the Joint Data Library (JDL), or

c. any other electronic distribution, that would be deemed Technical Data under DFARS 252.227- 7013, "Rights In Technical Data—Noncommercial Items," or Software and Software Documentation under DFARS 252.227-7014, "Rights in Noncommercial Software and Noncommercial Software Documentation," if it were delivered in written form, shall not lose its status as technical data, software or software documentation solely because access by the Government or delivery by the Contractor is by electronic means. The rights of the parties shall be as specified in DFARS 252.227-7013 and DFARS 252.227-7014.

## **H-02 BASE SUPPORT**

### **(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. Incidental Government Property is Government property that is incidental to the place of performance, when the contract requires contractor personnel to be located on a Government site or installation, and when the property used by the contractor 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.

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 Contractor in accordance with this clause. Failure by the Contractor 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. If warranted, and if the Contractor has complied with the requirements of this clause, an equitable adjustment may be made if the Government fails to provide base support by the date(s) required.

(2) The Government shall provide base support to the Contractor on a rent-free basis for performance of this contract and the value shall be a part of the Government's contract consideration.

(3) During contract performance, the Contractor agrees to immediately report inadequacies, defects, or nonavailability of support stipulated by the contract schedule in writing to the contracting officer representative (COR) with a copy of the letter provided to the contracting officer. The contractor 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 contractor. The Contracting Officer, with the advice of the COR, will provide written determination (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 the Contractor a minimum of 90 days prior to termination of the service or support, so the Contractor may make alternate arrangements or put work around procedures in place. Facilities shall not be purchased under this clause. Additionally, the Contractor (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 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 Contractor 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 . Only the prior written approval of the Contracting Officer can relieve the Contractor from this restriction.

(c) Use of Incidental Government property.

(1) The Contractor shall use Incidental Government property provided as base support only for performing this contract, unless otherwise provided for in this contract or approved by 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 the Contracting Officer.

(3) The Contractor shall not cannibalize Incidental Government property provided as base support unless otherwise provided for in this contract or approved by the Contracting Officer.

(d) Incidental Government property.

(1) The Government shall deliver to the Contractor the Incidental Government property described as base support in the incidental property list. 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 Contractor as contractor-acquired property and subsequently transferred to another contract with this Contractor.

(2)

(i) The Contracting Officer 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 Contractor for the Government under this contract; or

(C) Withdraw authority to use property.

(ii) Upon completion of any action(s) under paragraph (d)(2)(i) of this clause, and the Contractor's timely written request, the Contracting Officer shall consider an equitable adjustment under this contract.

(e) Contractor Liability for Incidental Government Property.

(1) Unless otherwise provided for in the contract, the Contractor 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 Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with 31.205-19.

(ii) Loss of Incidental Government property that is the result of willful misconduct.

(2) The Contractor shall take all reasonable actions necessary to protect the Incidental Government property from further loss. The Contractor 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 Contractor 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 the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government 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 Government 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. Standard Form 1428

### **H-03 USE OF DATA OR SOFTWARE WITH LESS THAN GOVERNMENT PURPOSE RIGHTS**

(a) Definitions. For the purposes of this clause, "noncommercial technical data," "noncommercial computer software," "noncommercial computer software documentation," and "government purpose rights" shall be defined in accordance with in DFARS 252.227-7013, Rights in Technical Data—Noncommercial Items (FEB 2014), and DFARS 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (FEB 2014).

(b) The Contractor shall not incorporate any Lockheed Martin noncommercial technical data, noncommercial computer software, or noncommercial computer software documentation into the Block 4 design at the Tactical Software Application Level (above middleware) with less than government purpose rights without first requesting and obtaining the written approval of the Procuring Contracting Officer.

(c) Requests for approval to incorporate any Lockheed Martin noncommercial technical data, noncommercial computer software, or noncommercial computer software documentation as designated in paragraph (b) shall be made in accordance with the following process.

1. Requests shall be presented as part of the relevant Air System Requirements Review (SRR). No later than three days prior to the SRR at which the request is presented, the Contractor shall provide the request in writing to the Procuring Contracting Officer.

2. Requests shall include, at a minimum, the following information:

i. The alternative technical data, computer software, and computer software documentation evaluated.

ii. The benefit to the F-35 program for utilizing the specific noncommercial technical data, noncommercial computer software, or noncommercial computer software documentation forming the basis of the request.

iii. The basis for the assertion (as described in DFARS 252.227-7017, Identification and Assertion of Use, Release, or Disclosure Restrictions (JAN 2011)), to include sufficient information to enable the Government to adjudicate the assertion.

iv. A Rough Order of Magnitude (ROM) estimate of the cost of obtaining at least government purpose rights as defined in DFARS 252.227-7013 (Rights in Technical Data – Noncommercial Items) and DFARS 252.227-7014 (Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation in the specific noncommercial technical data, noncommercial computer software, or noncommercial computer software documentation forming the basis of the request.

(d) Within three business days of the SRR or closure of any SRR action items related to this clause, whichever is later, the Contracting Officer will respond to approve or disapprove the Contractor's request.

(e) LM Aero shall continually status the design with respect to government purpose rights at each subsequent SETR event (i.e. SFR, PDR, CDR) as well as TIM/ Risk reductions meetings that occur throughout the continued decomposition and development of the capability in accordance with the processes defined in part (c) above.

(f) The Contractor shall not incorporate any Supplier noncommercial technical data, noncommercial computer software, or noncommercial computer software documentation into the Block 4 design at the Tactical Software Application Level (above middleware) with less than government purpose rights without notification to the Procuring Contracting Officer.

1. Notification shall include, at a minimum, the following information:

i. The alternative technical data, computer software, and computer software documentation evaluated



ii. The benefit to the F-35 program for utilizing the specific noncommercial technical data, noncommercial computer software, or noncommercial computer software documentation forming the basis of the notification.

iii. The basis for the assertion (as described in DFARS 252.227-7017, Identification and Assertion of Use, Release, or Disclosure Restrictions (JAN 2011)), to include sufficient information to enable the Government to adjudicate the assertion.

(g) At any time, the Contractor may submit a written request for approval (c) or notification (f) to the Procuring Contracting Officer for incorporation of noncommercial technical data, noncommercial computer software, and/or noncommercial computer software documentation as designated in paragraph (b). A request for approval, per section (c) shall include the information in paragraph (c)(2). The Government shall respond to the request for approval within five (5) business days acknowledging approval or disapproval, or requesting additional information. If the Contractor does not receive any response from the Government within five (5) business days of the initial request, the Contractor is authorized to use the noncommercial technical data, noncommercial computer software, or noncommercial computer software documentation with less than Government Purpose Rights in the performance of this contract.

(h) This clause shall not apply to technical data and noncommercial software for which data assertions have already been incorporated contractually via the assertions list.

(i) Nothing in this clause shall be interpreted to prevent the Government from challenging data rights assertions in accordance with DFARS 252.227-7019, Validation of Asserted Restrictions – Computer Software (SEP 2016), or 252.227-7037, Validation of Restrictive Markings on Technical Data (SEP 2016).

#### **H-04 USE OF GOVERNMENT OWNED FACILITIES**

(a) As authorization required by FAR 52.245-9, the Contracting Officer recognizes that the Contractor and its subcontractors may use Government Facilities, which are considered Government Furnished Property for purposes of this Contract, pursuant to the following facilities leases, in the performance of this Contract:

AF Plant 4, Ft. Worth TX, Lease F33657-97-L-2018

AF Plant 6, Marietta GA, Lease F33657-97-L-2019

AF Plant 42, Sites 2 and 8, Palmdale CA, Lease F33657-00-L-2039

(b) If any change in the availability of leased facilities due to loss, destruction or damage, or any change in the terms of the facilities leases identified in this Clause, or any successor lease, causes an increase or decrease in the cost of, or the time required

for, performance of any part of the work under this Contract, or both, the Contractor or the Government shall be entitled to an appropriate equitable adjustment under this Contract (including, but not limited to the Changes clause, Government Property clause and Excusable Delay clause).

(c) Notwithstanding the above, the Parties agree that the Contractor shall not be entitled to an adjustment if the Contractor is liable for the loss, destruction or damage that renders the facilities unavailable.

(d) Changes in rental charges in accordance with the aforementioned leases may be prospectively recovered only by rate changes through the forward pricing rate process, to the extent permitted by other clauses of this Contract.

(e) This language does not create rights for either Party that are not already stated in this Contract and/or the facilities leases, but is intended to permit an adjustment under this Contract as a result of an occurrence under one or more of the facilities leases as stated above.

**H-05 NOTIFICATION OF GOVERNMENT SECURITY ACTIVITY AND VISITOR GROUP SECURITY AGREEMENTS (AFFARS) MAY 2021**

This contract contains a DD Form 254, DOD Contract Security Classification Specification, and requires performance at a government location in the U.S. or overseas. Prior to beginning operations involving classified information on an installation identified on the DD Form 254, the contractor shall take the following actions:

(a) At least thirty days prior to beginning operations, notify the Information Protection Office shown in the distribution block of the DD Form 254 as to:

(1) The name, address, and telephone number of this contract company's representative and designated alternate in the U.S. or overseas area, as appropriate;

(2) The contract number and military contracting command;

(3) The highest classification category of defense information to which contractor employees will have access;

(4) The Air Force installations in the U.S. (in overseas areas, identify only the APO number(s)) where the contract work will be performed;

(5) The date contractor operations will begin on base in the U.S. or in the overseas area; (6) The estimated completion date of operations on base in the U.S. or in the overseas area; and,

(7) Any changes to information previously provided under this clause.

**H-06 ALTERNATIVE DISPUTE RESOLUTION**

The parties entered into an agreement on 28 September 1999 entitled "Memorandum of Understanding between The Joint Strike Fighter Program Office and the JSF Team at LOCKHEED MARTIN CORPORATION, Lockheed Martin Aeronautics Company Concerning Use of Alternative Dispute Resolution Processes." The Agreement affirms the use of Alternative Dispute Resolution as the preferred approach in settling contract disputes. In recognition of the foregoing, the parties confirm the mutual commitment to consider the use of Alternative Dispute Resolution processes in accordance with the principles set forth in the Memorandum of Understanding to avoid/resolve disputes under this contract.

**HTXT.211-9501 EXCESS REPAIR/REPLACEMENT COSTS (NAVAIR) (OCT 1994)**

(a) If the cost to repair or replace any item, as defined in the attached Statement(s) of Work, is in excess of [Insert dollar amount – to be determined and included in applicable delivery orders], the Government will equitably adjust this contract on a Firm-Fixed-Price (FFP) basis to account for those costs which exceed [Insert dollar amount – to be determined and included in applicable delivery orders].

(b) Within five working days of diagnosing a failure, for which the cost will exceed that specified above, the contractor shall prepare and submit an Excess Repair/Replacement Cost Request (RRCR) Form similar to the one attached to this contract. The data to be provided, the procedures for processing, approval and pricing of the effort shall be as set forth in Section H, "Over and Above Work Requirements" of this contract.

**HTXT.216-9512 PAPERLESS CONTRACTING (NAVAIR)(JUN 2009)**

(a) Orders and requests for proposals are hereby authorized to be issued by facsimile or by electronic commerce (including e-mail and paperless methods of delivery). Nothing in this contract should be read to prohibit these types of orders. In the event of a conflict with any other provision of this contract, this clause shall govern.

(b) To the extent the terms "written", "mailed", or "physically delivered" appear in other provisions of this contract, these terms are hereby defined to explicitly include electronic commerce, email, or paperless delivery methods.

**HTXT.227-9511 DISCLOSURE, USE AND PROTECTION OF PROPRIETARY INFORMATION (NAVAIR)(FEB 2009)**

(a) During the performance of this contract, the Government may use an independent services contractor (ISC), who is neither an agent nor employee of the Government. The ISC may be used to conduct reviews, evaluations, or independent verification and validations of technical documents submitted to the Government during performance.

(b) The use of an ISC is solely for the convenience of the Government. The ISC has no obligation to the prime contractor. The prime contractor is required to provide full cooperation, working facilities and access to the ISC for the purposes stated in paragraph (a) above.

(c) Since the ISC is neither an employee nor an agent of the Government, any findings, recommendations, analyses, or conclusions of such a contractor are not those of the Government.

(d) The prime contractor acknowledges that the Government has the right to use ISCs as stated in paragraph (a) above. It is possible that under such an arrangement the ISC may require access to or the use of information (other than restricted cost or pricing data), which is proprietary to the prime contractor.

(e) To protect any such proprietary information from disclosure or use, and to establish the respective rights and duties of both the ISC and prime contractor, the prime contractor agrees to enter into a direct agreement with any ISC as the Government requires. A properly executed copy (per FAR 9.505-4) of the agreement will be provided to the Procuring Contracting Officer.

**HTXT.228-9500 ADDITIONAL DEFINITIONS WITH RESPECT TO "GROUND AND FLIGHT RISK" CLAUSE (NAVAIR) (DEC 1991)**

For the purpose of complying with the "Ground and Flight Risk" clause, the contractor's premises shall be deemed to be [insert whether site, e.g., factory, headquarters, etc.], located at [insert the location of the premises, i.e., address - Insert dollar amount – to be determined and included in applicable delivery orders].

**HTXT.232-9510 PAYMENT OF FIXED FEE (NAVAIR) (OCT 2005)**

(a) The fixed fee, as specified in Section B of this contract, subject to any adjustment required by other provisions of this contract, will be paid in installments. The fixed fee will be paid not more frequently than monthly based on the allowable cost. The amount of each such installment shall be in the same ratio to the total fixed fee as the [insert net direct labor hours expended during the installment period is to direct labor hours specified in the clause entitled "Level of Effort" or the dollars per hour (based on the fixed fee divided by the level of effort in hours) if a level of effort contract; or related provisional payment on account of allowable cost is to the total estimated cost of the contract or order if a completion contract - to be determined and included in applicable delivery orders]. Payment shall be made in accordance with FAR Clauses 52.216-7, "Allowable Cost and Payment," and 52.216-8,

"Fixed Fee."

(b) In the event of termination of the work in accordance with the FAR Clause 52.232-22, "Limitation of Funds," the fixed fee shall be redetermined by mutual agreement equitably to reflect the reduction of the work performed.

The amount by which such fixed fee is less than or exceeds payments previously made on account of fee, shall be paid to (or repaid by) the contractor.

(c) The balance of the fixed fee shall be payable in accordance with other clauses of this contract.

(d) For indefinite delivery type contracts the terms of this clause apply to each delivery/task order there under.

**HTXT.232-9516 ALLOTMENT OF FUNDS - INCREMENTALLY FUNDED COST-REIMBURSEMENT CONTRACT OTHER THAN COST-SHARING CONTRACT (NAVAIR) (JUL 1985) – ALT I (OCT 2005)**

For the purposes of paragraph (b) of the "Limitation of Funds" clause of this contract-

(a) The amount available for payment and allotted to this incrementally funded contract is:

Funded Cost \$ [TBD]

Funded Fee \$ [TBD]

TOTAL FUNDS \$ [TBD]

(b) This contract is incrementally funded and the amount currently available for payment is limited to \$[if contract, enter dollar amount - to be determined and included in applicable delivery orders] which includes a fixed fee amount of \$[if contract, enter dollar amount - to be determined and included in applicable delivery orders].

Subject to the provisions of the clause entitled "Limitation of Funds" (FAR 52.232-22) of the General Provisions of the Contract, no legal liability on the part of the Government for payment in excess of the revised total shall arise unless additional funds are made available and incorporated in a contract modification.

(c) the items covered by such amount are Item(s) [insert CLINs - to be determined and included in applicable delivery orders]; and

(d) the period of performance for which it is estimated the allotted amount will cover is [insert the period of performance (calendar date) – to be determined and included in applicable delivery orders] .

**HTXT.232-9524 ALLOTMENT OF FUNDS (NAVAIR) (OCT 2005)**

(a) This contract is incrementally funded with respect to both cost and fee.

(b) The amounts presently available and allotted to this contract for payment of fee, as provided in the Section I clause of this contract entitled "FIXED FEE", are as follows:

ITEM(S) ALLOTTED TO FIXED FEE

[insert CLIN – to be determined and specified in applicable delivery orders] \$[insert dollar amount - Insert dollar amount – to be determined and specified in applicable delivery orders

(c) The amounts presently available and allotted to this contract for payment of cost, subject to the Section I

"LIMITATION OF FUNDS" clause, the items covered thereby and the period of performance which it is estimated the allotted amount will cover are as follows:

PERIOD OF ITEM(S) ALLOTTED TO COST PERFORMANCE

[insert CLIN – to be determined and specified in applicable delivery orders] \$[insert dollar amount - to be determined and specified in applicable delivery orders] [insert period – to be determined and specified in applicable delivery orders]

(d) The parties contemplate that the Government will allot additional amounts to this contract from time to time by unilateral contract modification, and any such modification shall state separately the amounts allotted for cost and for fee, the items covered thereby, and the period of performance the amounts are expected to cover.

**HTXT.239-9504 SYSTEM CONFIGURATION: INFORMATION TECHNOLOGY MAINTENANCE CONTRACTS (NAVAIR) (OCT 2005)**

The Government reserves the right, throughout the performance period, to change equipment/software to be maintained under the contract (1) as a result of upgrades, deletions, or substitutions of equipment/software covered by this contract, or (2) through requirements for additional hardware/software capacity due to resource expansion.

Changes to system configuration will be accomplished as follows:

(a) Additions and deletions of equipment/software identical to Contract Line Items listed in Section B may be effected by a Change Order, and the contract price adjusted by the unit prices listed in Section B.

These additions and deletions to be effected by Change Order shall pertain only to those items specifically make and model version number in Section B.

(b) Additions of equipment/software similar to those listed in Section B shall be effected by a Supplemental Agreement, after negotiation of price for maintenance of the additional equipment/software.

Similar items are defined as those that achieve the same system capability or have the same functionality as the items intended for use in Section B, but may be different model numbers or be manufactured by firms other than those shown in Section B.

**HTXT.243-9505 ENGINEERING CHANGES (NAVAIR)(OCT 2005)**

(a) After contract award, the Contracting Officer may solicit, and the contractor is encouraged to propose independently, engineering changes to the equipment, software specifications or other requirements of this contract.

These changes may be proposed for reasons of economy, improved performance, or to resolve increased data processing requirements. If the proposed changes are acceptable to both parties, the contractor shall submit a price change proposal to the Government for evaluation. Those proposed engineering changes that are acceptable to the Government will be processed as modifications to the contract.

(b) This applies only to those proposed changes identified by the contractor, as a proposal submitted pursuant to the provisions of this clause. As a minimum, the following information shall be submitted by the contractor with each proposal:

(1) A description of the difference between the existing contract requirement and the proposed change, and the comparative advantages and disadvantages of each.

(2) Itemized requirements of the contract that must be changed if the proposal is adopted, and the proposed revision to the contract for each such change.

(3) An estimate of the changes in performance costs, if any, that will result from adoption of the proposal.

(4) An evaluation of the effects the proposed change would have on collateral costs to the Government such as Government-furnished property costs, costs of related items, and costs of maintenance and operation.

(5) A statement of the time by which the change order adopting the proposal must be issued so as to obtain the maximum benefits of the changes during the remainder of this contract. Also, any effect on the contract completion time or delivery schedule shall be identified.

(c) Engineering change proposals submitted to the Contracting Officer shall be processed expeditiously. The Government shall not be liable for proposal preparation costs or any delay in acting upon any proposal submitted pursuant to this clause. The contractor has the right to withdraw, in whole or in part, any engineering change proposal not accepted by the Government within the period specified in the engineering change proposal. The decision of the Contracting Officer as to the acceptance of any such proposal under this contract shall be final and shall not be subject to the "Disputes" clause of the contract.

(d) The Contracting Officer may accept any engineering change proposal submitted pursuant to this clause by giving the contractor written notice thereof. This written notice may be given by issuance of a modification to this contract. Unless and until a modification is executed to incorporate an engineering change proposal under this contract, the contractor shall remain obligated to perform in accordance with the terms of the existing contract.

(e) If an engineering change proposal pursuant to this clause is accepted and applied to this contract, an equitable adjustment in the contract price and in any other affected provisions of this contract shall be made in accordance with the "Changes" clause.

(f) The contractor is requested to identify specifically any information contained in its engineering change proposal which it considers confidential and/or proprietary and which it prefers not to be disclosed to the public. The identification of information as confidential and/or proprietary is for information purposes only and shall not be binding on the Government to prevent disclosure of such information. Offerors are advised that such information may be subject to release upon request pursuant to the Freedom of Information Act (5 U.S.C. 552).

**HTXT.245-0001 RENT-FREE USE OF GOVERNMENT PROPERTY ACCOUNTABLE UNDER AN ALTERNATE GOVERNMENT CONTRACT (NAVAIR)(JUL 2018)**

(a) Pursuant to FAR 45.301, authorization is granted to use the Government property identified below on a noninterference basis without rental charge in the performance of this contract and subcontracts of any tier issued hereunder. Government property currently accountable and managed under the following contracts:

Contracts specified at the delivery order level

(b) The said property shall be governed by the terms and conditions of the contract(s) under which it is accountable.

(c) The contractor is responsible for scheduling the use of the said property. The Government shall not be responsible for conflicts, delay or disruptions to any work performed by the contractor due to use of the property under this contract or any other contracts under which use of such property is authorized.



## H-23 BASE SUPPORT FROM THE SAHW CONTRACT

### “(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 TBD. Incidental Government Property is Government property that is incidental to the place of performance, when the contract requires contractor personnel to be located on a Government site or installation, and when the property used by the contractor 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.

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 Contractor in accordance with this clause. Failure by the Contractor 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. If warranted, and if the Contractor has complied with the requirements of this clause, an equitable adjustment may be made if the Government fails to provide base support by the date(s) required.

(2)The Government shall provide base support to the Contractor on a rent-free basis for performance of this contract and the value shall be a part of the Government's contract consideration.

(3)During contract performance, the Contractor agrees to immediately report inadequacies, defects, or non-availability of support stipulated by the contract schedule in writing to the contracting officer representative (COR) with a copy of the letter provided to the contracting officer. The contractor 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 contractor. The Contracting Officer, with the advice of the COR, will provide written determination (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 the Contractor a minimum of 90 days prior to termination of the service or support, so the Contractor may make alternate arrangements or put work around procedures in place. Facilities shall not be purchased under this clause. Additionally, the Contractor (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 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 Contractor 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 . Only the prior written approval of the Contracting Officer can relieve the Contractor from this restriction.

(c) Use of Incidental Government property.

(1) The Contractor shall use Incidental Government property provided as base support only for performing this contract, unless otherwise provided for in this contract or approved by 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 the Contracting Officer.

(3) The Contractor shall not cannibalize Incidental Government property provided as base support unless otherwise provided for in this contract or approved by the Contracting Officer.

(d) Incidental Government property.

(1) The Government shall deliver to the Contractor the Incidental Government property described as base support in the incidental property list. 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 Contractor as contractor-acquired property and subsequently transferred to another contract with this Contractor.

(2)

(i) The Contracting Officer 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 Contractor for the Government under this contract; or

(C) Withdraw authority to use property.

(ii) Upon completion of any action(s) under paragraph (d)(2)(i) of this clause, and the Contractor's timely written request, the Contracting Officer shall consider an equitable adjustment under this contract.

(e) Contractor Liability for Incidental Government Property.

(1) Unless otherwise provided for in the contract, the Contractor 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 Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with 31.205-19.

(ii) Loss of Incidental Government property that is the result of willful misconduct.

(2) The Contractor shall take all reasonable actions necessary to protect the Incidental Government property from further loss. The Contractor 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 Contractor shall do nothing to prejudice the Governments rights to recover against third parties for any loss of Incidental Government property.

(4) Upon the request of the Contracting Officer, the Contractor shall, at the Governments expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government 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 Government 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. Standard Form 1428”

**H-24 PARTNERING WITH MILITARY SERVICE DEPOTS**

“This clause is in accordance with Article 8.2 of the F-35 Lightning II Depot Partnering Agreement.

1. FAR Non-Applicability. Pursuant to FAR 1.104, FAR Applicability, Partnering Agreements (PA) and Implementing Agreements (IA) between the Contractor 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 Contractor with an MSD providing a supply/service under this prime contract, except as may be expressly included by mutual consent of the Contractor and the MSD.

a. Non-Applicability of Advanced Payments. Payments made by the Contractor 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 Contractors 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 Contractor.

3. Release of Responsibility. The Government agrees not to hold the Contractor 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 Contractors 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 Contractor 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 Contractor. 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 Officers 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 Contractor 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 MSDs noncompliance under this contracts schedule and/or prices.”

**H-27 Delivery Order Processes:**

Each individual delivery order will identify, through an accompanying Exhibit, what work supplies are to be furnished based on which CLINs are chosen and the quantity procured under the CLIN within the requirements identified in the associated contract Exhibit (A, C, D and E). The Exhibit accompanying each delivery order will identify which part number(s), quantity, delivery location and schedule are required within the bounds of the Exhibits incorporated in this contract.

The Contractor warrants that the unit costs and prices set forth in this contract, identified in Exhibit A, C, D and E are mutually agreed upon as fixed charges for the applicable ordering period. The price of each individual delivery order will be derived by multiplying the price of each item under the applicable Exhibit by the quantity defined by the delivery order. and adding the cost of the associated consumables.

The ELIN delivery date shall be determined by utilizing the date a Delivery Order is placed, the months after receipt of order (ARO) as specified in Exhibit A, C, D and E. All delivery dates will reference the 28th of that month.

Examples:

Delivery Order Award Date: 02 September 2021, ARO: 36 Months, Delivery Date: 28 September 2024

Delivery Order Award Date: 29 November 2021, ARO: 48 Months, Delivery Date: 28 November 2025

On a quarterly basis, the Contractor shall submit a Part number/Configuration Change Report (Exhibit B001).

This report shall identify any part number or configuration changes and will specifically identify if the contractor anticipates any of those changes may result in an increased or decreased price or delivery schedule impact. If the Government concurs with the changes and there are no impacts to price or schedule identified in the report, the Contracting Officer will issue an administrative modification revising the contract Exhibit(s) to incorporate those changes.”

**HXT - 211.9502 Govt. Installation Work Schedule**

“(a)The Holidays applicable to this contract are: New Year's Day, Birthday of Martin Luther King Jr., Washingtons Birthday (President's Day), Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day.

(b)In the event that any of the above holidays occur on a Saturday or Sunday, or alternate Friday, then such holiday shall be observed as they are by the assigned Government employees at the using activity.

(c)The Naval Air Warfare Center Weapons Division works a 4/5/9 work schedule. Therefore alternate Fridays are not a part of the normal workweek for work performed on-site at a Naval Air Warfare Center Weapons Division site. The majority of the Government offices are closed on alternate Fridays.

(d) No deviation in the normal workweek will be permitted without express advance approval by the designated Contracting Officer with coordination of the using departments”

## **H-20 TAXES AND DUTIES SPECIFICALLY EXCLUDED FROM CONTRACT PRICES**

“(a) The contract prices include all applicable taxes and duties, as defined in FAR 52.229-6, Taxes Foreign Fixed-Price Contracts (FEB 2013) and FAR 52.229-8, Taxes-Foreign Cost-Reimbursement Contracts (MAR 1990), except for:

(1) Customs duties, import and export taxes, and similar charges imposed by Participants to the Joint Strike Fighter Production, Sustainment, and Follow-On Development Memorandum of Understanding (MOU) or Foreign Military Sales (FMS) customer of the F-35 Lightning II program;

(2) Value Added Taxes (VAT) or consumption taxes, imposed by the Country Concerned, as defined in FAR 52.229-6 and 52.229-8, on goods or services delivered in the Country Concerned under this contract.

(b) If the Contractor is required to pay or bear any tax or duty specified in subparagraphs (a)(2) above, including any interest or penalty, the Contractor shall follow the procedures specified in FAR 52.229-6, Taxes Foreign Fixed-Price Contracts (FEB 2013) and FAR 52.229-8, Taxes-Foreign Cost-Reimbursement Contracts (MAR 1990).

(c) Nothing outside of exceptions listed above alleviates the Contractor from the requirements of FAR 52.229-6 or 52.229-8.”