



**LOCKHEED MARTIN CORPORATION**

**PRIME SUPPLEMENTAL FLOWDOWN DOCUMENT (PSFD)**

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

JSF LRIP 4  
CONTRACT NUMBER N00019-09-C-0010

**Generated using Lockheed Martin CorpDocs 2012 Version**

September, 18 2012

The following are the supplemental terms and conditions to be incorporated, in addition to those other terms and conditions (e.g., Corpdoc 3, Corpdoc 3a, Corpdoc 4, etc.), into subcontracts issued under the LRIP 4 prime contract Prime Contract N00019-09-C-0010.

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 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.

**1. The dates of the following FAR and DFARS clauses are modified as follows:  
RESERVED**

**2. The following FAR and DFARS clauses are added:**  
The following clauses apply for all contracts:

**FAR 52.211-15 Defense Priority and Allocation Requirements (Apr 2008)**

Subcontracts that are issued under a rated prime contract must carry the rating of the prime contract.

**FAR 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004)**

Applies if this contract exceeds \$100,000.

**FAR 52.223-7 Notice of Radioactive Materials (Jan 1997)**

Applies if this contract is for radioactive materials. "Contracting Officer" and "Government" means "Lockheed Martin." The blank in paragraph (a) is replaced with "180 days."

**FAR 52.227-11 Alt I Patent Rights--Ownership by the Contractor (Jun 1989)**

Paragraph (d)(2), insert: JSF SDD and PFSD MOUs

**FAR 52.229-8 Taxes--Foreign Cost-Reimbursement Contracts (Mar 1990)**

In paragraph (b), "Contracting Officer" and "Government of the United States" mean "Lockheed Martin." The blank is completed with \_\_\_\_\_.

**FAR 52.232-16 Progress Payments (Aug 2010)**

"Contracting Officer" means "Lockheed Martin" except in paragraph (g) where it r  
Contracting Officer." "Government" means "Lockheed Martin" except: (1) in paragraphs (d), (e) and (j)(5) where  
the term is unchanged and (2) in paragraphs (g) and (i) where it means "Lockheed Martin and the Government."

**FAR 52.243-7 Notification of Changes (Apr 1984)**

Paragraph (b), insert 7; Paragraph (d), insert 30

**FAR 52.245-9 Use and Charges (Aug 2010)**

Applies when Government Property is provided. Communications with the Government under this clause will be  
made through Lockheed Martin

**FAR 52.246-2 Alt I Inspection of Supplies--Fixed-Price (Jul 1985)**

Applies to Fixed Price Incentive contracts. "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 52.246-3 Inspection of Supplies—Cost-Reimbursement (May 2001)**

Inspection and acceptance for items delivered directly to United States Government Base or the regional spares  
warehouse (CEVA) shall be performed by the cognizant CAO at the manufacturing locations in accordance with  
FAR 52.246-3. At the time of delivery the supplier shall prepare and furnish a material and inspection receiving  
report in accordance with FAR 252.246-7000.

**FAR 52.246-15 Certificate of Conformance (Aug 1984)**

Applies if shipping is direct to the Government.

**DFARS 252.204-7000 Disclosure of Information (Dec 1991)**

In paragraph (b) "Contracting Officer" means "Lockheed Martin" and "45 days" means "60 days."

**DFARS 252.215-7004 Excessive Pass- Through Charges (May 2008)**

Applies unless this contract is a fixed price contract, including fixed-price subcontracts with economic price  
adjustment, awarded on the basis of adequate price competition. Communications with the Contracting Officer  
under this clause shall be made through Lockheed Martin. In paragraph (e), the term "Contracting Officer" includes  
Lockheed Martin. If the Contracting Officer determines excessive pass-through charges are included in Seller's  
prices, Lockheed Martin shall make an adjustment to exclude such charges.

**DFARS 252.222-7006 Restrictions on the Use of Mandatory Arbitration Agreements (May 2010)**

Applies if contract exceeds \$1,000,000 that will be funded in whole or part with Fiscal Year 2010 appropriated  
funds. The certification in paragraph (b)(2) applies to both Seller in its own capacity and to Seller's covered  
subcontractors.

**DFARS 252.225-7012 Preference for Certain Domestic Commodities (Jun10)**

Applies if Seller is furnishing any of the items covered by this clause.

**DFARS 252.225-7028 Exclusionary Policies and Practices of Foreign Government (Apr 2003)**

**DFARS 252.225-7032 Waiver of United Kingdom Levies--Evaluation of Offers (Apr 2003)**

Applies if Seller is a United Kingdom firm. "Contracting Officer means "Lockheed Martin."

**DFARS 252.227-7017 Identification and Assertion of Use, Release or Disclosure Restrictions (Jun 1995)**

"Offeror" means "Seller." 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 (Jun 2010)**

In paragraph (a)(1)(i) "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." Subparagraphs (d)(2)(ii), (d)(3)(ii) and the last  
are deleted

**DFARS 252.239-7016 Telecommunications Security Equipment, Devices, Techniques, and Services (Dec 1991)**

Applies if this contract requires securing telecommunications.

**DFARS 252.243-7002 Requests for Equitable Adjustment (Mar 1998)**

"Government" means "Lockheed Martin."

**DFARS 252.244-7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts Aug 2009)**

The clause mandates flowdown of the DFARS provisions identified in the clause.

Applies for Fixed Price Contract Line Items Only

**3. The following Section H is added:**

**SECTION H – SPECIAL PURCHASE ORDER REQUIREMENTS**

For purposes of this Section H, “Government” means the United States Government.

**H-1 5252.204-9504 DISCLOSURE OF CONTRACT INFORMATION (NAVAIR) (JAN 2007)**

- (a) The Contractor shall not release to anyone outside the Contractor’s organization any unclassified information (e.g., announcement of contract award), regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless the Contracting Officer has given prior written approval.
- (b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least twenty (20) days before the proposed date for release.
- (c) The Contractor agrees to include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.
- (d) Communications with the Contracting Officer shall be made through Lockheed Martin

**H-2 5252.227-9501 INVENTION DISCLOSURES AND REPORTS (NAVAIR) (MAY 1998)**

- (a) In accordance with the requirements of the Patent Rights clause of this contract, the contractor shall submit “Report of Inventions and Subcontracts” (DD Form 882) along with written disclosure of inventions to the designated Contract Administrator.
- (b) The Contract Administrator will forward such reports and disclosures directly to the appropriate Patent Counsel, designated below, for review and recommendations, after which the reports will be returned to the Contract Administrator.

Name and address of Patent Counsel:

John Gladstone Mills  
 COMNAVAIRSYSCOM  
 47123 Buse Road, Unit IPT  
 Patuxent River, MD 20670-1547  
 (301) 757-0573

- (c) The above designated Patent Counsel will represent the Procurement Contracting Officer with regard to invention reporting matters arising under this contract.
- (d) A copy of each report and disclosure shall be forwarded to the Procuring Contracting Officer.
- (e) The contractor shall furnish the Contracting Officer a final report within three (3) months after completion of the contracted work listing all subject inventions or certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts

**H-3 NOTICE REGARDING THE DISSEMINATION OF EXPORT-CONTROLLED TECHNICAL DATA (NAVAIR)( 5252.227-9507) (OCT 2005)**

- (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) Lockheed Martin or 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.

**H-4 5252.228-9501 LIABILITY INSURANCE (NAVAIR) (MAR 1999)**

The following types of insurance are required in accordance with the clause entitled, “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: \$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 limits of \$200,000 per passenger, multiplied by the number of seats or number of passengers, whichever is greater.

**H-5 5252.232-9509 REIMBURSEMENT OF TRAVEL, PER DIEM, AND SPECIAL MATERIAL COSTS (NAVAIR) (OCT 2006) (APPLICABLE TO COST REIMBURSEMENT CONTRACTS and/ or Line Items ONLY)**

(a) Area of Travel. 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. All contractor personnel required to perform work on any

U.S. Navy vessel shall obtain boarding authorization from the Commanding Officer of the vessel before boarding.

(b) RESERVED

(c) Travel. Travel and subsistence are authorized for travel beyond a fifty-mile radius of the contractor's office whenever a task assignment requires work to be accomplished at a temporary alternate worksite. No travel or subsistence shall be charged for work performed within a fifty-mile radius of the contractor's office. The contractor shall not be paid for travel or subsistence for contractor personnel who reside in the metropolitan area in which the tasks are being performed. Travel performed for personal convenience, in conjunction with personal recreation, or daily travel to and from work at the contractor's facility will not be reimbursed.

(1) For travel costs other than described in paragraph (c) above, the contractor shall be paid on the basis of actual amount paid to the extent that such travel is necessary for the performance of services under the contract and is authorized by the Contracting Officer Representative in writing.

(2) When transportation by privately owned conveyance is authorized, the contractor shall be paid on a mileage basis not to exceed the applicable Government transportation rate as contained in the Federal Travel Regulation, Joint Travel Regulation or SR. Authorization for the use of privately owned conveyance shall be indicated in the basic contract. Distances traveled between points shall be shown on invoices as listed in standard highway mileage guides. Reimbursement will not exceed the mileage shown in the standard highway mileage guides.

(3) The contractor agrees, in the performance of necessary travel, to use the lowest cost mode commensurate with the requirements of the mission as set forth in the basic contract and in accordance with good traffic management principles. When it is necessary to use air or rail travel, the contractor agrees to use coach, tourist class, or similar accommodations to the extent consistent with the successful and economical accomplishment of the mission for which the travel is being performed.

(4) RESERVED

(d) RESERVED

(e) RESERVED

(f) Per Diem. The contractor shall not be paid for per diem for contractor personnel who reside in the metropolitan areas in which the tasks are being performed. Per Diem shall not be paid on services performed within a fifty-mile radius of the contractor's home office or the contractor's local office. Per Diem is authorized for contractor personnel beyond a fifty-mile radius of the contractor's home or local offices whenever a task assigned requires work to be done at a temporary alternate worksite. Per Diem shall be paid to the contractor only to the extent that overnight stay is necessary and authorized under this contract. The authorized per diem rate shall be the same as the prevailing per diem in the worksite locality. These rates will be based on rates contained in the Federal Travel Regulation, Joint Travel Regulation, or SR. The applicable rate is authorized at a flat seventy-five (75%) percent on the day of departure from contractor's home or local office, and on the day of return. Reimbursement to the contractor for per diem shall be limited to actual payments to per diem defined herein. The contractor shall provide actual payments of per diem defined herein. The contractor shall provide supporting documentation for per diem expenses as evidence of actual payment.

(g) RESERVED

(h) RESERVED

**Revision actions for September 18, 2012 release of PSFD.**

**1. The following FAR & DFAR regulations added:**

**FAR 52.246-3**

2. Document re-formatted to numerically align the various regulations

**H-6 AUTHORIZATION TO INCORPORATE CONCURRENCY CHANGES**

The JSF production effort under the Low Rate Initial Production (LRIP) Prime Contract is occurring at the same time as, or concurrently with, the System Development and Demonstration (SDD) program. Due to this concurrency, the LRIP production configuration of the JSF Air System may evolve or change as the design matures and systems are tested and qualified during SDD development testing. LOCKHEED MARTIN, in its prime contract with the US Government, is responsible for incorporating concurrency related changes into the LRIP production Air Systems. The purpose of this clause is to describe SELLER’s responsibility to support LOCKHEED MARTIN in incorporating concurrency related changes into LRIP production.

(b) Definitions

- (1) Variance – For purposes of this clause, “Variance” means a concurrency change that the Contractor has not incorporated into an LRIP 4 Air System at the time of acceptance (DD250).
- (2) Record Variance – For purposes of this clause, “Record Variance” means the documentation indicating the Government’s decision to forego the Contractor’s incorporation of a Concurrency Change into an LRIP 4 Air System and to use an LRIP 4 Air System in an “as is” condition.
- (3) Concurrency Change - For purposes of this clause, “Concurrency Change” means a change to the configuration baseline of LRIP 4 Air System hardware resulting from the SDD design maturation process or the SDD systems testing and qualification process that is necessary to provide the capabilities described in the Capabilities and Configuration Description Document, Attachment (2) of Section J, or achieve the requirements stated in the JSF Air System Contract Specification (JCS), Attachment (2) of JSF SDD Contract N00019-02-C-3002.
- (4) Configuration Baseline – For purposes of this clause, “Configuration Baseline” means the baseline for the LRIP 4 Air System described in Section 4.0 “Configuration Baseline” of the Capabilities and Configuration Description Document, Attachment (2) of Section J, plus Government-approved Change Requests.
- (5) Concurrency Change Plan - For purposes of this clause, “Concurrency Change Plan” means the Contractor’s proposed plan documenting the actions required to incorporate a Concurrency Change into the LRIP 4 Air Systems.
- (6) Pre-Acceptance Concurrency Action – For purposes of this clause, “Pre-Acceptance Concurrency Action” means a Concurrency Change that the Contractor incorporates in an LRIP 4 Air System prior to acceptance of the Air System (via DD250)
- (7) Post-Acceptance Concurrency Action – For purposes of this clause, “Post-Acceptance Concurrency Action” means a Concurrency Change that the Contractor incorporates in an LRIP 4 Air System after acceptance of the Air System (via DD250) via a Contractor-supplied post-acceptance installation kit.
- (8) Point of Discovery – For purposes of this clause, “Point of Discovery” means the date on which a meeting is convened by the Contractor’s Chief Engineer to discuss the resolution of a reported deficiency in the Air System configuration, which, if left unresolved, may result in the Contractor’s failure to provide the capabilities described in the Capabilities and Configuration Description Document, Attachment (2) of Section J, or achieve the requirements stated in the JSF Air System Contract Specification (JCS), Attachment (2) of JSF SDD Contract N00019-02-C-

3002. The Chief Engineer shall convene a meeting of cognizant Contractor and Go practical, but not later than 60 days after the deficiency is reported. Deficiencies may be reported by either Government or Contractor personnel.

(9) Point of Discovery Cut-Off Date – For purposes of this clause, “Point of Discovery Cut-Off Date” means the date appearing in Block 21a of the DD250 for the last LRIP 4 Air System delivered under this contract. The Contractor is not obligated to incorporate Concurrency Changes discovered after the Point of Discovery Cut-Off Date.

(10) Preliminary Engineering Change Proposal (PECP) – For the purposes of this clause, “Preliminary Engineering Change Proposal (PECP)” means an Engineering Change Proposal (DD1692) that does not contain certified cost and pricing data and the Certificate of Current Cost or Pricing Data required by FAR 15.406-2 but does include a not-to-exceed estimate of the proposed change with supporting cost information.

(c) Contractor Responsibility to Incorporate Changes

(1) Material or Workmanship Deficiencies: Concurrency Changes do not include material and workmanship deficiencies. SELLER is obligated to correct material or workmanship deficiencies in accordance with the terms of the Contract.

(2) For any Concurrency Change that does not involve a deficiency in material or workmanship, SELLER will support the LM Concurrency process by a Not to Exceed (NTE) proposal for the recurring effort, as delineated in CM 2YZA00017 Rev C. In the event LOCKHEED MARTIN and its Customer agree to proceed with incorporation of the Concurrency Change, whether by Pre-Acceptance Concurrency Action or Post-Acceptance Concurrency Action, LOCKHEED MARTIN will notify SELLER and SELLER will incorporate the Concurrency Change into LRIP production. Cost and schedule impacts of the Concurrency Change will be negotiated between the Parties consistent with SELLER’s NTE proposal. In no event will a Concurrency Change action under this provision exceed the Truth in Negotiation Act (TINA) threshold. For any action that exceeds the TINA threshold, the Parties will proceed as delineated in the Changes clause of this Contract. Whether any change to the LRIP baseline is a Concurrency Change will be determined by LOCKHEED MARTIN.

For purposes of Concurrency Changes hereunder, non-recurring costs are borne under the SDD contract pursuant to the term of that contract.

**H-7 LIQUIDATED DAMAGES FOR LATE DELIVERY** Should SELLER fail to make delivery of an item in accordance with the delivery schedule in this PO, then LOCKHEED MARTIN shall be entitled to receive, and SELLER shall pay, compensation in the form of liquidated damages and not as a penalty. SELLER shall be entitled to a ten (10) day grace period. In the event SELLER fails to make delivery of an item within the grace period, then the amount of liquidated damages shall accrue at the rate of \$ \_\_\_\_\_ per day beginning on the first day of the scheduled delivery date. SELLER agrees that liquidated damages in the foregoing amounts are reasonable in light of the anticipated harm caused by the late delivery, the difficulties of the proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. Liquidated damages arising under this PO may be deducted by SELLER, in whole or in part, from any payments due SELLER following the late delivery of any such item(s). In no event shall failure to assess liquidated damages be considered a waiver of LOCKHEED MARTIN’s rights in this or any other articles or clauses



set forth herein, or at law or in equity. Moreover, LOCKHEED MARTIN may, as : liquidated damages, recover actual damages under other articles or clauses set forth herein, or by other remedies at law and/or equity.

**H-8 WARRANTY** SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship. This warranty shall begin upon final acceptance and extend for a period of one (1) year. If any nonconforming Work is identified within the warranty period, SELLER shall: (1) at LOCKHEED MARTIN's option, promptly repair, replace, or reperform the Work; (2) pay to LOCKHEED MARTIN as a warranty expense all costs incurred by LOCKHEED MARTIN to remove and replace the nonconforming Work, including without limitation all costs incurred by LOCKHEED MARTIN relating to the removal of such nonconforming Work, the reinsertion of conforming Work and any testing necessitated by the reinstallation of Seller's conforming Work; and (3) pay LOCKHEED MARTIN'S other reasonable costs from delays and disruptions caused to LOCKHEED MARTIN by SELLER's nonconforming Work. Transportation of replacement Work, return of nonconforming Work, handling cost, delays and disruptions costs and reperformance of Work shall be at SELLER's expense. If repair, or replacement, or reperformance of Work is not timely, LOCKHEED MARTIN may elect to return, reperform, repair, replace, or reprocur the non-conforming Work at SELLER's expense. All warranties shall run to LOCKHEED MARTIN and its customers. Notwithstanding any other provision of this Contract, all such costs shall be deemed direct damages.

**H-9 PROVISIONAL ACCEPTANCE UNDER SPECIAL CONDITIONS**

(a) Acceptance under Special Conditions. LOCKHEED MARTIN may, at the discretion of the Authorized Procurement Representative, finally or provisionally accept any supply prior to completion of work on such supply in the following situations:

- (1) When the SELLER, despite the exercise of due diligence, encounters unavoidable delay in securing SELLER-furnished property;
- (2) When Lockheed Martin or Government-furnished property suitable for installation in any supply to be furnished hereunder is not delivered to the SELLER in sufficient time to permit installation by the SELLER prior to the date the supply is scheduled for delivery; or,
- (3) When defects or deficiencies are known to exist in the Item, but when correction of the defects or deficiencies is not practicable within the delivery schedule set forth in the contract.

(c) Provisional Acceptance of WORK with Unverified or Deficient Requirements.

(1) Due to the concurrent nature of SDD Contract and this Contract, acceptance of WORK delineated shall not be contingent upon completion of all verification requirements under SDD Contract. All unverified requirements shall be listed on the CoC. No amounts shall be withheld at the acceptance or provisional acceptance of the Item due to the fact that the requirements listed on the Unverified Specification Requirements have yet to complete verification.

(2) Notwithstanding the above, if there is an identified deficiency against a requirement stated in this Contract or the SDD Contract, a withhold shall be taken, except in the case where LOCKHEED MARTIN has authorized a Record Variance.

- a. If a Preliminary Engineering Change Proposal (PECP) to correct the deficiency shall be taken at the time of provisional acceptance. The withhold amount shall be negotiated between LOCKHEED MARTIN and the SELLER and shall be based on the estimated price for correction of the deficiency. The withhold amount shall be released on a monthly basis at the rate of 80% of the SELLER's incurred costs to correct the deficiency. The withhold shall be fully released after LOCKHEED MARTIN inspection and approval that the deficiency against which the withhold was taken has been corrected.
- b. If a PECP to correct the deficiency has not been authorized, a withhold shall be taken at the time of provisional acceptance. The withhold amount, subject to mutual agreement, shall be negotiated between LOCKHEED MARTIN and the SELLER.
- (d) Nothing in this clause shall restrict LOCKHEED MARTIN's rights to withhold acceptance or provisional acceptance of the Items due to defects or deficiencies in materials or workmanship or with non-conformances unrelated to the materials and workmanship.

**H-10 VARIANCE / WITHHOLD POST ACCEPTANCE**

Notwithstanding any provision to the contrary herein, including the Inspection of Supplies – Fixed-Price Clause of this Contract, in the event LOCKHEED MARTIN is subject to a withhold, variance or other remedy by its Customer because of a defect/nonconformance in the SELLER's Work, a corresponding withhold, variance or other remedy shall be assessed against and shall be paid by the SELLER as a temporary or permanent reduction, as the case may be, in the price of the affected item(s).

**H-11 ALTERNATIVE DISPUTE RESOLUTION**

Alternative Dispute Resolution is the preferred approach for settling Contract disputes. Accordingly, the parties confirm their mutual commitment to consider the use of Alternative Dispute Resolution (ADR) processes to avoid or resolve disputes under this Contract. Notwithstanding the foregoing, nothing herein limits the Parties' rights and remedies under the "Disputes" clause in Section I of this Contract.

**H-12 MANAGEMENT OF SUPPLIERS**

Notwithstanding any direction to the contrary herein, SELLER is required under this Contract to manage any and all lower tier subcontractors. SELLER shall not use a subcontractor's status as an agreed or directed source as a performance excuse or basis for equitable adjustment.

**H-13 INDUSTRIAL PARTICIPATION**

(a) It is anticipated that LOCKHEED MARTIN will be involved in a number of foreign industrial participation arrangements in various countries in connection with the sale of LOCKHEED MARTIN's

products to foreign countries. SELLER agrees to cooperate with LOCKHEED MA industrial participation obligations.

(b) LOCKHEED MARTIN encourages SELLER to develop a plan for creating industrial participation opportunities in many countries, including the following: Australia, Canada, Denmark, The Netherlands, Norway, Italy, Turkey, and the United Kingdom. Any industrial participation credit value resulting from SELLER's procurements, investments or technology transfers related to work to be performed under this Contract shall accrue solely to the benefit of LOCKHEED MARTIN for its use.

(c) In addition, SELLER agrees to provide to LOCKHEED MARTIN, at no additional cost, a report every six (6) months during the performance of this Contract summarizing, by country, SELLER's lower tier industrial participation plan, investment plan, and technology transfer activity related to work to be performed under this Contract.

**H-14 INVESTMENT**

Any decision by SELLER at, or prior to, the date of award of this Contract or at or prior to the date of execution of any modification to this Contract to (i) incur costs, by reason of investment or otherwise, that are not expressly included in writing in the SELLER's bid, offer, or proposal to LOCKHEED MARTIN, agreed to by LOCKHEED MARTIN, and incorporated into this Contract's price, (ii) forego profit on costs, or (iii) apply a management decrement, is made at the sole risk of SELLER. SELLER acknowledges that the price of this Contract shall not be increased by any portion of incurred costs, foregone profit, or management decrement, for any reason, including, but not limited to, a termination for convenience of this Contract, notwithstanding any provisions of this Contract or applicable regulations governing termination for convenience settlements of purchase orders under United States Government prime contracts, unless LOCKHEED MARTIN expressly agrees in writing to pay such portion. LOCKHEED MARTIN, as set forth in the clause of this Contract entitled "Termination for Convenience (Fixed Price)," or "Termination (Cost Reimbursement)" may terminate this Contract for any reason if LOCKHEED MARTIN determines that it is in the LOCKHEED MARTIN's interest to do so. The term "any reason" includes, but is not limited to, termination of the LOCKHEED MARTIN's prime contract with the U.S. Government on any basis, convenience or default. A termination for default of this Contract is justified at any time where the circumstances provided in the clause of this Contract entitled "Default" apply.

**H-15 PRESERVATION OF RIGHTS FOR TECHNICAL DATA AND SOFTWARE PROVIDED ELECTRONICALLY**

Information, whether delivered under any CDRL or contractor equivalent form of this contract or in response to any other requirement contained in this contract shall be provided via the JSF Virtual Enterprise 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-16 5252.245-9500 GOVERNMENT PROPERTY FOR THE PERFORMAN  
(NAVAIR) (FEB 2009)**

Pursuant to FAR Clause 52-245-1 "Government Property (Cost-Reimbursement, Time and Material, or Labor Hour Contracts) (JUN 2007) the Seller is authorized to use the following Government property on a rent-free basis in performing this contract:

(a) Government Property currently accountable under the following contracts

TBD

(b) Government-Furnished Property provided under this contract:

TBD

The Seller is responsible for scheduling the use of all property covered by this clause and the Government shall not be responsible for Sellercaused

conflicts, delays, or disruptions to any work performed by the Seller 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.

(c) Government Furnished Property Provided "As Is": The Government Furnished Items listed in (a) or (b), above, that are provided to the Seller in an "As-Is" condition pursuant to FAR 52.245-1 may be repaired or modified, to meet contractual requirements, as a direct cost to this contract, as defined in items (1) through (4), below.

(1) If "As-Is" Government Furnished Items listed in (a) or (b), above, require refurbishment, the cost of which does not exceed 50% of acquisition cost, then Seller may proceed with refurbishment using contract funds and without obtaining Contracting Officer approval.

(2) If refurbishment costs exceed 50% of acquisition cost, the Seller shall seek PCO authorization, through LOCKHEED MARTIN, prior to undertaking a repair.

(3) Any repair or modification of these items shall not affect the title of the Government.

(4) Any refurbishment of Government Furnished Items provided As-Is shall not negate the warranty. That is, the Government does not warrant the condition of these assets provided to the Seller.

**H-17 TECHNICAL DATA AND COMPUTER SOFTWARE IDENTIFICATION IN ENGINEERING  
CHANGE PROPOSALS (ECPs) (5252.227-9505) (NAVAIR) (AUG 1987)**

Each Engineering Change Proposal (ECP) submitted by the Contractor shall identify each item of technical data and computer software delivered by the Contractor under any prior Navy contract required to be revised as a result of the proposed change and shall include an estimated price and cost proposal to furnish the revisions.