

**LOCKHEED MARTIN CORPORATION**

**PRIME SUPPLEMENTAL FLOWDOWN DOCUMENT (PSFD)**

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

CANADA CP140 ASLEP KIT PROCUREMENT  
CONTRACT NO. W8495-06BA01/001/SSC

**Generated using Lockheed Martin CorpDocs 2009 Version**

09 February 2009

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.

**1.0 SECURITY REQUIREMENT**

In the event SELLER will generate or receive CLASSIFIED information/assets (identified as TOP SECRET, SECRET, CONFIDENTIAL, or PROTECTED by Canada) in the performance of Work under this Contract, then certain Canada terms and conditions shall apply with respect to safeguarding such information/assets. Prior to generating or receiving CLASSIFIED information/assets, SELLER shall immediately contact the applicable LOCKHEED MARTIN Buyer for the terms and conditions that will apply.

**2.0 PLANT ACCESS**

LOCKHEED MARTIN or Canada, or any other Canadian authorized representative shall have access to SELLER's plant or premises where the Work is being performed during usual business hours and subject to reasonable advance notice to SELLER. LOCKHEED MARTIN or Canada's Quality Assurance Authority Representative shall have access at all times to SELLER's plant or premises where the Work is being performed, subject to reasonable limitations and restrictions as may be determined to be necessary by SELLER.

**3.0 SUSPENSION OF PAYMENT**

(1) Notwithstanding anything herein contained, LOCKHEED MARTIN may suspend payments whenever it finds substantial evidence that SELLER:

(a) has failed to comply with any material requirement of this Contract;

(b) has so failed or is unable to make progress in the performance of the Work or any of its various components so as to either endanger the due completion of the Work or so as to prevent LOCKHEED MARTIN from using a Deliverable End Item, as intended because of the lack of progress on or the untimely completion of another Deliverable End Item; or

(c) is in such unsatisfactory financial condition as to endanger the due completion of this Contract.

(2) Prior to suspending payment pursuant to this section, LOCKHEED MARTIN shall, by Notice to SELLER, give SELLER a period of time, which is reasonable in the opinion of LOCKHEED MARTIN, in which to cure such failure, refusal or inability to comply with any obligation under this Contract, such period of time to be no less than forty-five (45) calendar days.

**4.0 PACKAGING, MARKING AND SHIPPING**

The following shall apply to vendor direct shipping only:

**4.1 Preservation, Packaging, Packing and Marking**

Preservation, packaging, packing and marking shall be in accordance with forms D-LM-008-022/SF-001. Upon signing of DD form 250 by Canada, SELLER shall cause the Work to be packed, marked and ready for shipping within 20 calendar days. Once the Work is ready for shipping, SELLER shall notify Canada and LOCKHEED MARTIN within 48 hours that the Work is ready for pick up.

**4.2 Shipping Advice**

Canada’s Contracting Authority and Technical Authority and LOCKHEED MARTIN are to be notified by SELLER, either by electronic mail (e-mail) or by facsimile, of shipping details when items are ready to be shipped. SELLER shall detail the item(s) to be shipped, the quantity, the waybill/shipment number and the document number.

**4.3 Shipping Instructions**

(1) SELLER must load the Work in accordance with the applicable terms and conditions of this Contract onto the carrier designated by Canada’s Department of National Defence (DND). Onward shipment from the delivery point to the consignee will be Canada’s responsibility.

(2) Before delivering the Work, SELLER must contact LOCKHEED MARTIN and the following Inbound Logistics coordination center by telephone, facsimile or e-mail, to arrange for shipment, and provide the information detailed at subsection (4) below.

(3) Insert the following when SELLER is located in the United States (U.S.): Inbound Logistics Coordination Center (ILCC):

Telephone: 1-877-447-7701  
 Facsimile: 1-877-877-7409  
 Email: ilhqottawa@forces.gc.ca

(4) SELLER must provide the following information to the Inbound Logistics contact when arranging for shipment:

(a) the Prime Contract number;

(b) consignee address (if multiple addresses, goods must be packaged and labeled separately with each consignee address);

(c) description of each item; skid);

(d) the number of pieces and type of packaging (e.g. carton, crate, drum,

(e) actual weight and dimensions of each piece type, including gross weight;

(f) copy of the commercial invoice (in accordance with SACC Manual clause C2608C, section 4) or a copy of the Canada Customs Invoice;

(g) export/harmonized tariff number (in the U.S., the export tariff is commonly called "Schedule B" and can be found at:

<http://www.customs.ustreas.gov/xp/cgov/export> or <http://www.census.gov/foreign-trade/schedules/b/index.html>);

(h) NAFTA Certificate of Origin (in accordance with SACC Manual clause C2608C, section 2) for the U.S. and Mexico only;

(i) full details of dangerous material, as required for the applicable mode of transportation, signed certificates for dangerous material as required for shipment

by the International Maritime Dangerous Goods Code, or International Air Transportation Association regulations or the applicable Canadian Dangerous Goods Shipping Regulations and a copy of the Material Safety Data Sheet.

(5) Following receipt of this information by Canada, Canada will provide the appropriate shipping instructions, which may include the requirement for specific consignee address labelling, the marking of each piece with a Transportation Control Number and customs documentation.

(6) If SELLER delivers the Work at a place and time that are not in accordance with the given delivery instructions or fails to fulfill reasonable delivery instructions given by Canada, SELLER must pay LOCKHEED MARTIN any additional expenses and costs incurred by Canada.

## **5.0 CANADA DEPARTMENT OF NATIONAL DEFENCE FACILITIES**

In the event SELLER enters Department of National Defence (DND) facilities for any reason in connection with this Contract, SELLER shall procure and maintain comprehensive general liability, bodily injury, and property damage insurance in reasonable amounts. SELLER shall also comply with Canada's military base's requirements while present on such base.

## **6.0 INTERNATIONAL SANCTIONS**

(1) Persons in Canada, and Canadians outside of Canada, are bound by economic sanctions imposed by Canada. As a result, the Government of Canada cannot accept delivery of goods or services that originate, either directly or indirectly, from the countries or persons subject to economic sanctions.

Details on existing sanctions can be found at:

**<http://www.dfait-maeci.gc.ca/trade/sanctions-en.asp>**

(2) It is a condition of this Contract that SELLER, and any subcontractor at any tier, shall not supply to LOCKHEED MARTIN any goods or services which are subject to economic sanctions by the Government of Canada.

(3) By law, SELLER must comply with changes to the regulations imposed during the life of this Contract.

## **7.0 DEFENCE CONTRACT**

This Contract is a defence Contract within the meaning of Canada's Defence Production Act and shall be governed accordingly.

## **8.0 CONFLICT OF INTEREST**

SELLER agrees that it is a term of this Contract that no person who is not in compliance with the provisions of Canada's Conflict of Interest and Post-Employment Code for Public Office Holders or the Values and Ethics Code for the Public Service or the Defence Administrative Orders and Directives governing Conflict of Interest and Post-Employment, shall derive any direct benefit from this Contract.

## **9.0 PRIORITY RATING**

Canada is a participant in the US Defense Priorities and Allocations System and LOCKHEED MARTIN's prime contract is eligible for a Priority Rating. The Central Allocations and Defense Priorities Allocations Officer, Public Works and Government Services Canada, should advise SELLER as to the appropriate priority rating within 60 calendar days of the Effective Date of this Contract.

## **10.0 PERMITS AND LICENSES**

SELLER shall, at no additional cost or liability to LOCKHEED MARTIN or Canada, obtain and maintain all permits, licenses, regulatory approvals and certificates required to perform the Work. If requested by LOCKHEED MARTIN, SELLER must provide a copy of any required permit, license, regulatory approvals or certificate to LOCKHEED MARTIN or Canada.

## **11.0 MILITARY AVIATION REPLACEMENT PARTS**

(1) SELLER must retain, maintain and keep available for review, for three (3) years following delivery of the last item of Work under this Contract, records of the manufacturer sufficient to constitute proof of origin. Such records include the following:

(a) sufficient information to identify the item by type, class, style, grade (including lot or batch number), cast number, the source of the part, and the date and place of manufacture, as appropriate;

(b) the name and description (or other positive identification) of, and the application issue of, the specification, drawing, process and inspection requirements, as appropriate;

(c) records of all inspections and tests carried out, including those carried out on behalf of either the manufacturer or LOCKHEED MARTIN;

(d) copies of any Certificate of Conformance or Certificate of Compliance issued by the manufacturer;

(e) and any other relevant technical data.

## **12.0 CANADA - INTELLECTUAL PROPERTY RIGHTS**

(1) Canada's primary objective in entering into the prime contract with LOCKHEED MARTIN is to receive the deliverables contracted for, to be able to use those deliverables, and any Intellectual Property arising by virtue of the prime contract for Canada's activities, including future contracts, procurements and to protect or advance the broader public interest. The clauses in this Addendum (Clauses 12.0 through 12.6) grant the Commonwealth of Canada the rights in SELLER's Intellectual Property as required by LOCKHEED MARTIN's prime contract as set forth herein.

(2) "Background Information" means all Intellectual Property that is not Foreground Information that is incorporated into the Work or necessary for Canada to use the Work and that is proprietary to or the confidential information of SELLER or any other third party.

(3) "Firmware" means computer programs that are stored in integrated circuits, read-only memory or other similar devices within the hardware or other equipment.

(4) "Foreground Information" means all Intellectual Property first conceived, developed, produced or reduced to practice as a part of the Work under this Contract.

(5) "Intellectual Property" means any information or knowledge of an industrial, scientific, technical, commercial, literary, dramatic, artistic or otherwise creative nature relating to the Work, whether oral or recorded in any form or medium and whether or not subject to patent, copyright or other forms of formal registration; this includes but is not limited to any inventions, works of authorship, trade secrets, business methods, designs, methods, processes, techniques, know-how, show-how, models, prototypes, patterns, samples, schematics, experimental or test data, reports, drawings, plans, specifications, photographs, manuals and any other documents, Software, and Firmware.

(6) "Intellectual Property Right" means any intellectual property right recognized by law, including any intellectual property right protected by legislation such as patents, copyright, industrial design, integrated circuit topography, and plant breeders' rights, or subject to protection under the law as trade secrets and confidential information.

(7) "Moral Rights" has the same meaning as in Canada's Copyright Act, R.S. 1985, c. C-42.

(8) "Software" means any computer program whether in source or object code (including Firmware), any computer program documentation recorded in any form or upon any medium, and any computer database, including any modification.

## **12.1 Records and disclosure of Foreground Information**

(1) During and after the performance of this Contract, SELLER shall keep records sufficient to identify the Foreground Information generated in performance of this Contract, including details of its creation and ownership. SELLER shall report and disclose to LOCKHEED MARTIN or Canada all Foreground Information upon reasonable notice of request by LOCKHEED MARTIN or Canada whether before or for a period of five (5) years after the completion of this Contract.

(2) Upon reasonable written notice and during the time period stipulated in subsection 1 above, SELLER must provide LOCKHEED MARTIN and/or Canada with access to such records and supporting data that are reasonably required to identify Foreground Information.

(3) For any Intellectual Property that was first developed or created in relation to the Work, SELLER

agrees that Canada will be entitled to assume as between LOCKHEED MARTIN, SELLER and Canada that it was developed or created by Canada, if SELLER's records do not list that Intellectual Property or do not indicate that it was created by SELLER, or by someone on behalf of SELLER, other than Canada.

## **12.2 Ownership of Intellectual Property Rights in Foreground Information**

(1) In addition to LOCKHEED MARTIN's ownership of all the Intellectual Property Rights in the Foreground Information under CORP DOCS 1, 1 SER, 1 T&M, or 1 INT, SELLER agrees that Canada has ownership rights in the tangible embodiment of any prototype, model, custom or customized system or equipment that is a deliverable under this Contract. This includes the right to make the tangible embodiment of any prototype, model, custom or customized system or equipment that is a deliverable under this for public use solely in connection with CP-140's owned and operated by Canada.

(2) Any personal information, as defined in the *Privacy Act*, R.S., 1985, c. P-21, collected by SELLER in the execution of the Work under this Contract becomes the property of Canada immediately upon collection and must be used only for the performance of the Work. SELLER has no right in any such personal information.

(3) If the Work under this Contract involves the preparation of a database or other compilation using information or data supplied by Canada and any personal information referred to above, SELLER agrees that the Intellectual Property Rights in the database or compilation containing such information will belong to Canada.

(4) SELLER shall maintain the confidentiality of the information or data supplied by Canada and the personal information using the same safeguards it uses to protect its own information of like kind, but in no event less than a reasonable standard of care. SELLER must return or destroy, at its option, all the information belonging to Canada on request of either LOCKHEED MARTIN or Canada or on completion or termination of this Contract. This includes returning or destroying all hard copies and electronic copies as well as any paper or electronic record that contains any part of the information or information derived from it. If the information or data is destroyed, SELLER shall certify its destruction to LOCKHEED MARTIN and Canada in writing.

## **12.3 Licenses to Intellectual Property Rights in Foreground and Background Information**

(1) As Canada has contributed to the cost of developing the Foreground Information, SELLER also grants to Canada a license to exercise all Intellectual Property Rights in the Foreground Information for Canada's activities. Subject to any exception described in this Contract, this license allows Canada to do anything it wants with the Foreground Information, other than exploit it commercially and transfer or assign ownership of it. SELLER also grants to Canada a license to use or have used on its behalf in confidence the Background Information owned or within control of the SELLER or in which SELLER has unrestricted sub-license rights but only to the extent that it is reasonably necessary for Canada to exercise fully all its rights in the deliverables and in the Foreground Information provided that such use of Background Information is solely in connection with CP-140 Aircraft owned and operated by Canada.

(2) SELLER agrees that these licenses to Canada are non-exclusive, perpetual, irrevocable, worldwide, fully-paid and royalty-free. Neither license shall be restricted in any way by SELLER by providing, for example, any form of notice to the contrary, including the wording on any shrink-wrap or click-wrap license or any other kind of packaging, attached to any deliverable in which the SELLER owns, controls

or has unrestricted sub-licensing rights in the Intellectual Property Rights.

(3) For greater certainty, Canada's licenses include, but are not limited to: confidence, to third parties bidding on or negotiating contracts with Canada in connection with CP-140's owned and operated by Canada and to sublicense or otherwise authorize the use of that information by any contractor engaged by Canada solely for the purpose of carrying out such contracts. Canada will require these third parties and contractors not to use or disclose that information except as may be necessary to bid on, negotiate or carry out those contracts;

(b) the right to disclose SELLER's Foreground and Background Information to other governments for information purposes;

(c) the right to reproduce, modify, improve, develop or translate SELLER's Foreground and Background Information, or have it done by a person hired by Canada, solely for use in connection with CP-140's owned and operated by Canada and subject to ITAR requirements. Canada, or a person designated by Canada, will own the Intellectual Property Rights associated with the modification, improvement, or development of the Foreground Information but not the underlying Foreground and Background Information of SELLER;

(d) without restricting the scope of any license or other right in the Background Information that Canada may otherwise hold, the right, in relation to any custom- designed or custom-manufactured part of the Work made by SELLER, to exercise such of the Intellectual Property Rights in SELLER's Background Information, in confidence, as may be required for the following purposes:

(i) for the use, operation, maintenance, repair or overhaul of the custom- designed or custom-manufactured parts of the Work; and/or

(ii) in the manufacturing of spare parts for maintenance, repair or overhaul of any custom-designed or custom- manufactured part of the Work by Canada, if those parts are not available on reasonable commercial terms from SELLER to enable timely maintenance, repair or overhaul.

#### **12.4 Seller's Right to Grant Licenses**

SELLER represents and warrants that it has the right to grant to Canada the licenses and any other rights to use the Foreground and Background Information owned or within the control of SELLER or in which SELLER has unrestricted sub-licensing rights as required by this Clause 12. If the Intellectual Property Rights in any Foreground or Background Information are or will be owned by a lower tier subcontractor of SELLER or any other third party, Seller shall use reasonable efforts to obtain a license from that lower tier subcontractor or third party that permits compliance with section 12.3 or arrange, for SELLER or third party to grant a license directly to Canada.

#### **12.5 Waiver of Moral Rights**

If requested by LOCKHEED MARTIN or Canada, during and after this Contract, SELLER must provide a written permanent waiver of moral rights, as defined in the *Copyright Act*, R.S., 1985, c. C-42, from every author that contributes to any Foreground Information subject to copyright protection that is a deliverable to LOCKHEED MARTIN under this Contract. If SELLER is an author of the Foreground Information, SELLER permanently waives SELLER's moral rights in that Foreground Information.

#### **12.6 License to Intellectual Property Rights to Canada's Information**

(1) Any information supplied by Canada to SELLER for the performance of the Work remains the property of Canada. SELLER shall use and disclose Canada's Information only to perform this Contract.

(2) If SELLER wants to use any information owned by Canada for the commercial exploitation or further development of the Foreground Information, SELLER must obtain a license from the department or agency for which the prime contract is performed. In its request for a license to that department or agency, SELLER must explain why the license is required and how SELLER intends to use the information. If the department or agency agrees to grant a license, conditions will be negotiated between SELLER and that department or agency and may include the payment of compensation to Canada.