

**LOCKHEED MARTIN CORPORATION**

**PRIME SUPPLEMENTAL FLOWDOWN DOCUMENT (PSFD)**

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

**JSF LRIP 2**

**SECTION H – SPECIAL PURCHASE ORDER REQUIREMENTS**

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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.

**For purposes of this Section H, the following terms shall have the meanings set forth below:**

**(a) "Contract" means the instrument of contracting, such as "PO", "Purchase Order", or "Task Order", or other such type designation, including all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the release document for the Work to be performed.**

**(b) "Government" means United States Government.**

**(c) "LOCKHEED MARTIN" means LOCKHEED MARTIN CORPORATION, acting through its companies or business units as identified on the face of this Contract. If a subsidiary or affiliate of LOCKHEED MARTIN CORPORATION is identified on the face of this Contract then "LOCKHEED MARTIN" means that subsidiary or affiliate.**

**(d) "PO" or "Purchase Order" means this Contract.**

**(e) "SELLER" means the party identified on the face of this Contract with whom LOCKHEED MARTIN is contracting.**

**H-1 PRESERVATION OF RIGHTS FOR INFORMATION PROVIDED ELECTRONICALLY**

Information, whether delivered under any SDRL or Seller equivalent form of this Purchase Order or in response to Seller’s Statement of Work 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 Lockheed Martin or delivery by the Seller is by electronic means. The rights of the parties shall be as specified in DFARS 252.227-7013 and DFARS 252.227-7014.

**H-2 CONCURRENCY MANAGEMENT**

(a) The JSF production effort in this LRIP 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.

Concurrency Change – Changes to the LRIP production baseline Air System hardware or software resulting from SDD design maturation process which require incorporation into the LRIP Air System in order to meet contract capability or the JSF Air System Contract Specification.

Concurrency Change Plan – Action required by LOCKHEED MARTIN to implement a Concurrency Change into the LRIP production Air System.

Configuration Management Plan 2YZA00017 Rev C, Section 4.1 – describes the requirements for addressing the concurrency management process.

Pre-Acceptance Concurrency Action – Incorporation of a Concurrency Change prior to acceptance of the SELLER’s Item.

Post-Acceptance Concurrency Action – Incorporation of a Concurrency Change after acceptance of the SELLER’s Item via a post-delivery installation kit.

(c) SELLER Responsibility to Support and Incorporate Concurrency Related 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) proposals 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. 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.

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

**H-3 ALTERNATIVE DISPUTE RESOLUTION**

Alternative Dispute Resolution is the preferred approach for settling Purchase Order disputes. Accordingly, the parties confirm their mutual commitment to consider the use of Alternative Dispute Resolution (ADR) processes to avoid/resolve disputes under this Purchase Order. Notwithstanding the foregoing, nothing herein shall be deemed to limit the rights and remedies of the parties under the "Disputes" provision in Section I of this Purchase Order.

**H-4 5252.216-9501 IDENTIFICATION OF COSTS (MAR 1999) (NAVAIR)**

(Applicable to Long Lead Items only.)

The Seller shall identify all costs incurred under this Purchase Order from the costs of all other work currently being performed and from all contracts that are subsequently received.

**H-5 DATA DELIVERY**

All unclassified data, including technical data, and information generated in the performance of this Purchase Order or Contract shall be furnished to the JSF Virtual Environment (JDL or PDM, as applicable).

**H-6 MANAGEMENT OF SUPPLIERS**

Notwithstanding any direction to the contrary herein, Seller has an obligation under this Purchase Order 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-7 GOVERNMENT PROPERTY FOR THE PERFORMANCE OF THIS CONTRACT (COST-REIMBURSEMENT) (MAR 2008)**

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 Seller-caused 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-8 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 Martin in fulfillment of such 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 State of 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, the Seller’s lower tier industrial participation plan, investment plan, and technology transfer activity related to work to be performed under this Contract.

**H-9 INFORMATION SECURITY ASSURANCE**

A. Seller certifies and represents that it has established Information Security Assurance processes sufficient to adequately protect data and information of Lockheed Martin, its subsidiaries, suppliers, teammates, contractors and agents.

B. Seller shall monitor and update its Information Security Assurance processes as necessary to ensure the data and information of Lockheed Martin, its subsidiaries, suppliers, teammates, contractors and agents, is and, during the term of this Purchase Order or for longer periods as may be specified in this Purchase Order, continues to be, adequately protected.

C. Records of Seller's Information Security Assurance processes shall be kept complete and available to Lockheed Martin and its customers during the performance of this Purchase Order and for such longer periods as may be specified in this Purchase Order.

D. Lockheed Martin shall have the right to audit Seller's Information Security Assurance processes. In the event Seller's Information Security Assurance processes do not adequately protect the data or information, Lockheed Martin shall have the right to deny or revoke the Seller's access to any or all Lockheed Martin computing system(s). Denial or revocation of access to any or all Lockheed Martin computing system(s) shall not alter or change Seller's obligations under this Contract.

E. The rights and remedies available to Lockheed Martin in this paragraph are in addition to any other rights and remedies provided in this Purchase Order, any Proprietary Information Agreement between the Parties, at law or in equity.

#### **H-10 CLIN 0020, CLIN 0021 and PNR CERTIFICATION**

Seller certifies that any and all items designated as Production Non-Recurring (PNR) and/or delineated on CLIN 0020 and CLIN 0021 (whether characterized by Seller as tooling, test equipment, capital equipment or otherwise) that are charged directly to this Contract, including any directly charged PNR tooling or test equipment, are special tooling or special test equipment, as respectively defined in FAR 2.101, and are of such a specialized nature that without substantial modification or alteration their use is limited to the production of the F-35 Joint Strike Fighter aircraft. In addition to any other remedies that may be available, should the Parties discover that any item directly charged to this Contract is not special tooling or special test equipment, as respectively defined by FAR 2.101, shall be removed from the Contract and the Contract cost and fee or price shall be adjusted to reflect its removal.