

**PRIME CONTRACT NO. C-130-000001  
C-130J Hercules TLS Services  
Supplement to Lockheed Martin CORPDOC**

For all subcontracts issued under the subject Prime Contract (hereinafter also referred to as "TLS"), the following terms and conditions, applicable as noted, are incorporated by reference in addition to those other terms and conditions (Lockheed Martin CORPDOC series) to be used for subcontracts issued under such Prime Contract. Relevant portions of the Prime Contract are excerpted hereto and incorporated as part of this Supplement.

1. With reference to clause 10.13 of the Prime Contract, Seller shall meet the subcontractor requirements contained therein.
  
2. Seller shall comply substantially with the obligations set out in the following clauses of the Prime Contract and perform its duties under the subcontract so as not to be inconsistent with Lockheed Martin's duties under TLS.
  - a. Clause 5 Intellectual Property
  - b. Clause 8 Insurance and Liability
  - c. Clause 10.5 Commercial-In-Confidence Information
  - d. Clause 10.6 Publicity
  - e. Clause 10.7 Assignment and Novation
  - f. Clause 10.9 Audits and Access
  - g. Clause 10.10 Commonwealth Access
  - h. Clause 10.12 Subcontracts
  - i. Clause 11 Policy and Law
  - j. Clause 12.3 Termination for Convenience

With reference to Paragraph 1 and 2 the following clauses require Seller's compliance and inclusion in this subcontract per requirement of the Prime Contract and are excerpted from said contract in its entirety as follows:

**5. INTELLECTUAL PROPERTY**

**5.1 INTELLECTUAL PROPERTY DEFINITIONS**

5.1.1. In the interpretation of this clause 5, unless the contrary intention appears.

- a. "Aircraft" means the RAAF Hercules C-130J model aircraft
  
- b. "Australian Aerospace Representative" means the person holding or performing the office identified in the conditions of contract or any other person appointed pursuant to the Contract as the Australian Aerospace Representative

- c. “Background IP” means IP, other than Third Party IP, that was licensed to the Commonwealth under the original C-130J Sales Contract
- d. “Commercial-in-Confidence Information” means information that.
  - i) by its nature is confidential; or
  - ii) the receiving party knows or ought to know is confidential, but does not include information which:
    - iii) is or becomes public knowledge other than by breach of this clause 5;
    - iv) is in possession of a party without restriction in relation to disclosure before the date of receipt; or
    - v) has been independently developed or acquired by the receiving party.
- e. “Defense Purposes” means any purpose within the power of the Commonwealth with respect to the Defense of the Commonwealth and includes purposes that are necessary or incidental to that purpose,
- f. “Deliverables” means any service, information (with Technical Data limited to that which is specifically developed, acquired and licensed to the Commonwealth for the performance of the Services), document (including report, manuals, designs, drawings and the like), hardware, software or other thing which is required by this Contract to be, delivered or provided by LM Aero or its agents to Australian Aerospace, the Commonwealth or its agents in the course of the provision of the Services,
- g. “Foreground IP” means IP which is created as a requirement of the performance of this Contract other than Third Party IP.
- h. “Infringement” includes unauthorized acts which would, but for the operation of section 163 of the Patents Act 1990 (Cth), section 96 of the Designs Act 2003 (Cth), section 183 of the Copyright Act 1968 (Cth), and section 25 of the Circuits Layout Act 1989 (Cth). constitute an infringement.
- i. “Intellectual Property” or “IP” means all copyright (including future copyright) and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks) registered and unregistered designs, and circuit layouts, Moral Rights and any other rights resulting from intellectual activity in the industrial,

scientific, literary and artistic fields recognized in domestic law anywhere in the world, including the right to register such IP.

- j . “Life of Type” means the period commencing upon acquisition of the Aircraft and ending on the day when the last of the Aircraft is withdrawn from service and the last of the Aircraft is disposed of.
- k. “Modification” means modifications to the Aircraft, Deliverables, Services or Support Systems that are necessary for the repair, maintenance and through life support of the Aircraft, excluding all other modifications such as Block Upgrades or modifications that change the basic performance or mission of the aircraft or increase the military capability of the Aircraft.
- l. “Moral Rights” means:
  - i) a right of attribution of authorship;
  - ii) a right not to have authorship falsely attributed: or
  - iii) a right of integrity of authorship.
- m. “Related Body Corporate” has the meaning given by section 9 of the Corporations Act 2001 (Cth).
- n. “Services” means the services, Deliverables and Intellectual Property required to be supplied under this Contract.
- o. “Software Design Data” means data which describes the internal design and operation of a software program and its interface with the external software and hardware
- p. “Support System” means the organization of hardware, software, materiel, facilities, personnel, TD, processes and services required to enable the Aircraft to be effectively operated and supported so that the Aircraft can meet its operational requirements. The Support System includes the support required for Support System Components. The Support System embraces the support responsibilities undertaken by Australian Aerospace and its support subcontractors (including LM Aero).
- q. “Technical Data” or “TD” means technical know how and information reduced to a material form produced, acquired or used by LM Aero in relation to the Services and includes without limitation all data, databases, manuals, handbooks, designs. standards, specifications, reports, writings,

models, sketches, plans, drawings, calculations, software, software updates, Software Design Data, test results and other items describing or providing information relating to the Services or their operations.

- r. “Third Party IP” means that IP that is not owned (either in whole or part) by:
  - i) the Commonwealth;
  - ii) Australian Aerospace;
  - iii) LM Aero
  - iv) any Approved Subcontractor; or
  - v) any Related Body Corporate of an entity listed in paragraphs iii) or iv),

and is embodied in the Services, or attaches to, the Services or is otherwise necessarily related to the functioning or operation of the Services, and is not limited to Commercial-Off-The-Shelf or Military-Off-The-Shelf items

- s. “TLS Support Data” means, other than Foreground IP and Background IP as defined in this clause 5, data LM Aero and Australian Aerospace mutually agree is necessary to maintain the Aircraft for the period of performance under this Contract.
- t. “Working Day” means, in relation to the doing of an action in a place means any day other than a Saturday, Sunday or public holiday in that place. A national public holiday is a Commonwealth Public Service holiday throughout Australia promulgated in the Commonwealth Gazette.

## **5.2 Not used**

## **5.3 Ownership of Intellectual Property**

- 5 3.1. Nothing in the Contract affects the ownership of Background IP or Third Party IP.
- 5 3.2. Ownership of all Foreground IP that is created under this Contract shall vest in its creator, Australian Aerospace or LM Aero.

#### **5.4. Intellectual Property License**

- 5.4.1. Without limitation to any license granted to Australian Aerospace by LM Aero (or any Related Body Corporate of LM Aero) in any other contract, LM Aero grants Australian Aerospace a royalty-free, irrevocable, worldwide, perpetual, non-exclusive license (including the right to sub-license, but only for the purposes set out in this clause 5.4.1) to Foreground IP and Background IP that is owned by LM Aero and is required for the performance of the Services under this Contract:
- a. to use, perform, repair, maintain and dispose of the Services and any Aircraft or Support System to which they relate;
  - b. to make Modifications, as defined in this clause 5, to the Aircraft, Services, Deliverables or Support System and develop the Services, provided that it is done for Defense Purposes and without commercializing the licensed IP;
  - c. to complete the Services and Deliverables (and for the purpose of such completion, have performed any design work in respect of the Services or Deliverables) following termination of the Contract pursuant to clause 12.2 or at law;
  - d. to remedy defects or omissions in the Services or Deliverables in accordance with clauses 6.5 or 9.2 as applicable; and
  - e. to use or disclose any Technical Data and information contained or embodied in any Technical Data for such purposes provided that such disclosure and use are subject to a written agreement prohibiting unauthorized use or disclosure of the Technical Data.
- 5.4.2. To avoid doubt, the license granted to Australian Aerospace under this clause 5.4.1 provides Australian Aerospace, or any person acting on behalf of Australian Aerospace, with all necessary rights to exercise and sub-license the Background IP, owned by LM Aero, and the Foreground IP owned or created by LM Aero to properly use and support the Aircraft and Support System owned or operated by the Commonwealth throughout its Life of Type.
- 5.4.3. Where required, LM Aero will endeavour to ensure that Australian Aerospace is granted a license to exercise all Third Party IP on the customary available commercial terms, consistent where possible with the terms of the license in clause 5.4.1. If LM Aero is unable to secure a license to Australian Aerospace to exercise Third Party IP on terms comparable to those in clause 5.4.1, LM Aero will notify the Australian

Aerospace Representative. The Australian Aerospace Representative may direct LM Aero to use an alternative third party where available.

- 5.4.4. Australian Aerospace grants LM Aero a royalty-free, non-exclusive license to use Australian Aerospace owned Foreground IP, with the right to sub-license to Approved Subcontractors, for the Term for the sole purpose of LM Aero providing the Services and performing its other obligations under the Contract.

## **5.5 Release to Third Parties**

- 5.5.1. If Australian Aerospace makes available to another person:
- a. any Foreground IP or Background IP licensed to Australian Aerospace by LM Aero under this Contract; or
  - b. any TD or IP provided by LM Aero to Australian Aerospace under clause 5.

Australian Aerospace will obtain from that person a deed of confidentiality in the form set out in Attachment I of this Contract.

## **5.6 Moral Rights**

- 5.6 1. If LM Aero is a natural person and the author of the Services, he or she consents to:
- a. the performance of acts permitted under any license provided under clause 5; and
  - b. any dealings with the Foreground IP licensed to Australian Aerospace as a consequence of this Contract including Australian Aerospace's licensees; or
  - c. any dealings by any person authorized by Australian Aerospace to exercise Australian Aerospace's rights to Foreground IP licensed to Australian Aerospace as a consequence of this Contract;

with or without attribution of authorship (but excluding an act amounting to false attribution of authorship) to all or any part of the Services by Australian Aerospace or any person claiming under or through Australian Aerospace.

- 5.6.2. In any other case, LM Aero must:

- a. obtain from each and any author of IP vesting in or licensed to Australian Aerospace under this Contract a written consent which extends directly or indirectly to:
  - i) the performance of acts permitted under any license provided under clause 5.4; and
  - ii) any dealings with Foreground IP licensed to Australian Aerospace as a consequence of this Contract including Australian Aerospace's licensees; or
  - iii) any dealings by any person authorized by Australian Aerospace to exercise the Australian Aerospace's rights to Foreground IP licensed to Australian Aerospace as a consequence of this Contract;

with or without attribution of authorship (but excluding an act amounting to false attribution of authorship) to all or any part of the Services by Australian Aerospace or any person claiming under or through Australian Aerospace (whether occurring before or after the consent is given); and
- b. upon request, provide the executed original of any consent provided under this clause 5.6 to Australian Aerospace.

## **5.7 Intellectual Property Indemnity**

- 5.7.1. LM Aero agrees to indemnify Australian Aerospace, its officers, employees, agents, licensees or sub-licensees ("those indemnified") against any liability, loss, damage, cost (including the cost of any settlement and reasonable legal costs and expenses on a solicitor and own client basis), compensation or expense sustained or incurred by any of those indemnified which arises out of any action, claim, dispute, suit or proceeding brought by any third party in respect of any:
  - a. Infringement or alleged Infringement of that third party's IP (including Moral Rights) where the Infringement or alleged Infringement arises out of any activity permitted under any license or assignment referred to in this Contract resulting from the use or disclosure of LM Aero Intellectual Property; or
  - b. breach or alleged breach of any duty of confidentiality owed to that third party resulting from the use or disclosure of LM Aero Intellectual Property, where the breach is caused by any act or omission on the part of LM Aero or any of its contractors, officers, employees or agents whether or not such act or omission constitutes a breach of this Contract.

- 5.7.2. Australia Aerospace's remedy and LM Aero's obligation and liability in relation to clause 5.7.1 are expressly conditioned upon Australian Aerospace:
- a. furnishing prompt written notice to LM Aero of any actual or threatened claims or suits against Australian Aerospace alleging such infringement and all pertinent data, papers, records, and assistance within Australian Aerospace's control;
  - b. making diligent effort to minimize (other than by non-use), the loss, cost, or damage for which LM Aero is obligated hereunder and obtaining LM Aero's approval of payment of any claim (except final judgement); and
  - c. authorizing LM Aero to intervene in and/or control the Defense of any related suit and to negotiate, settle, and/or compromise such claim or suit; provided, that at the request of Australian Aerospace, LM Aero will assume and undertake the conduct and control of any suit when it is practicable legally to do so.
- 5.7.3. Australian Aerospace grants LM Aero the same Intellectual Property Indemnities as LM Aero provides Australian Aerospace under this provision 5.7 in relation to any data Australian Aerospace provides to LM Aero under this Subcontract.
- 5.7.4. The indemnities in clause 5.7.1 in favour of those indemnified may be enforced by Australian Aerospace on their behalf and for their benefit.

## **5.8 Provision of Technical Data to Australian Aerospace**

- 5.8.1. Where Australian Aerospace is granted a license under clause 5.4, LM Aero must provide with the Deliverables, to Australian Aerospace where agreed by the parties, such Technical Data necessary for Australian Aerospace to exercise its rights for the purposes permitted by that license, other than where LM Aero is not permitted to release such Technical Data due to restrictions such as third party or security related constraints.
- 5.8.2. LM Aero will provide Australian Aerospace access to TLS Support Data for evaluation purposes and as LM Aero and Australian Aerospace mutually agree is necessary to maintain the Aircraft. Australian Aerospace will obtain the prior approval of LM Aero prior to providing access to TLS Support Data to a third party on a case by case basis. To avoid doubt LM Aero does not grant IP license rights in respect of the TLS Support Data provided to Australian Aerospace and all rights to use or possess such TLS Support Data terminates upon termination of this Subcontract.



- 5.8.3. LM Aero must ensure that all Technical Data provided to Australian Aerospace will enable a person reasonably skilled in performing the applicable acts referred to in clause 5.4 to perform those acts.
- 5.8.4. Australian Aerospace must notify LM Aero of the Deliverables or the part of the Deliverables, to which the TD required under this clause 5.8 relates.
- 5.8.5. In the event of termination or expiry of this Contract other than in accordance with clause 12.3 of the Contract, LM Aero must provide to Australian Aerospace the ID required to complete any undelivered Deliverables required to be provided by LM Aero under this Subcontract within 30 days of receipt of the notice of termination. LM Aero shall have no further obligation to provide TD for any other Deliverables after termination.
- 5.8.6. Where Australian Aerospace elects to remedy defects or omissions in the Deliverables in accordance with clause 6.5 or 9.2 of the Contract, LM Aero must provide to Australian Aerospace the TD required to remedy the defects or omissions in the Deliverables within 30 days of receipt of a written request from the Australian Aerospace Representative.
- 5.8.7. Australian Aerospace may provide or transfer TD and IP to a third party for the purposes mentioned in clause 5.4 and subject to clause 5.5.
- 5.8.8. Without prejudice to any other rights and remedies, LM Aero may terminate the license grant of 5.4.1 upon 90 days' notice and failure to cure if Australian Aerospace fails to comply with the terms and conditions of this Subcontract or fails to take all steps to seek to cause each Party which has received any LM Aero Intellectual Property to comply with the license restrictions of this Subcontract. In such event, Australia Aerospace must return to LM Aero, or if so instructed, destroy, all copies of LM Aero's Information provided to Australian Aerospace. Such termination shall not affect in anyway the rights already granted to the Commonwealth of Australia.

## **5.9 Service Marks**

- 5.9.1. Subject to clause 5.9.2, neither party shall use the name, service marks or trade marks of the other party and in the case of the Commonwealth this prohibition as to LM Aero shall apply to such Commonwealth marks including that of the Department of Defense or of the Defense Materiel Organization, or of any branch of the ADF (including Defense insignia protected under the Defense (Protected Words and Letters) Regulations 1957), in any advertising or promotional materials prepared by or on

behalf a party, including in private correspondence or communications to current or potential customers.

- 5.9.2. LM Aero may request prior written consent through Australian Aerospace to use one or more of the names, service marks or trade marks referred to in clause 5.9.1, subject to any terms and conditions notified by Australian Aerospace to LM Aero from time to time.

## **8. LIABILITY AND INSURANCE**

### **8.1 Indemnity by LM Aero**

- 8.1 .1. LM Aero must indemnify Australian Aerospace, its officers, employees and agents against, and must pay Australian Aerospace on demand the amount of, the proven losses, liabilities, costs and expenses incurred in connection with, or as a result of:
- a. LM Negligence directly causing the illness, death of, or personal injury to any person employed or engaged, directly or indirectly, or deemed employed by LM Aero on work under the Contract, except to the extent that such illness, death or injury results from any unlawful or negligent act or omission on the part of Australian Aerospace or any person acting through Australian Aerospace (other than LM Aero, any of its Subcontractors and LM Aero Personnel);
  - b. any claims in respect of:
    - i) personal injury, illness or death except to the extent that LM Aero's indemnity under clause 8.1.1a applies;
    - ii) loss of, loss of use of, or damage to, any property (including Commonwealth and Australian Aerospace Property) other than LM Aero Managed Commonwealth Assets, in the care, custody or control of LM Aero, its Subcontractors or LM Aero Personnel;

to the extent caused by an unlawful or negligent act or omission on the part of LM Aero, or LM Aero Personnel (including Embedded Personnel acting in accordance with the explicit directions of LM Aero), except to the extent that such death, injury, illness, or property loss or damage results from any unlawful or negligent act or omission on the part of Australian Aerospace or any person acting through Australian Aerospace (other than LM Aero, any of its Subcontractors and LM Aero Personnel and other than any negligent act or omission of Commonwealth Personnel and Embedded Personnel acting in accordance with the directions of LM Aero);

- c. any loss or damage resulting from any unlawful or negligent act or omission of LM Aero, its Subcontractors or LM Aero Personnel (except to the extent that such loss or damage is a direct consequence of an Excepted Risk), caused to any Services provided or to be provided under the Contract, or any Commonwealth or Australian Aerospace Property while the property is in the care, custody or control of LM Aero, its Subcontractors or LM Aero Personnel, or while the risk in any property to be delivered to Australian Aerospace as part of the Services resides with LM Aero;
- d. any loss, damage, cost and expenses in relation to LM Aero Managed Commonwealth Assets supplied by the Commonwealth or Australian Aerospace to, or at the direction of, LM Aero directly caused by:
  - i) loss or destruction of, or damage to LM Aero Managed Commonwealth Assets while risk resides with LM Aero resulting from any unlawful or negligent act or omission of LM Aero, its Subcontractors or LM Aero Personnel except to the extent that such loss, destruction, or damage results from any unlawful act or omission or negligence on the part of Australian Aerospace or in circumstances where Australian Aerospace is responsible, for loss or destruction of, damage to, or defects or deficiencies in LM Aero Managed Commonwealth Assets; or
  - ii) any negligent conclusions, assumptions or interpretations made by LM Aero on the basis of the GFD, or its application or use except where, and to the extent that, Australian Aerospace is in breach of its warranty in clause 3.15.7;
- e. any loss, damage, costs (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis) and expenses incurred by Australian Aerospace in relation to GFI directly caused by:
  - i) LM Aero's negligent or reckless application or use of the GFI; and
  - ii) any negligent conclusions, assumptions or interpretations made by LM Aero on the basis of the GFI, or its application or use thereof;
- f. any action, claim, dispute, suit or proceeding brought by any third party in respect of any:
  - i) infringement or alleged infringement of that third party's IP where the infringement or alleged infringement arises out of any activity permitted under any license or assignment to Australian Aerospace referred to in clause 5 or otherwise under the Contract, including

clause 10.5.5 however, expressly excluding infringement arising from: (i) use in combination with other items where infringement would not have occurred from the normal use for which items were designed; and (ii) any accessories, equipment, or parts not manufactured to LM Aero's detail design and specification, provided however, that Australian Aerospace's remedy and LM Aero's obligation and liability therefore under this Clause 8.1.1 (f) are expressly conditioned upon Australian Aerospace:

- (1) furnishing prompt written notice to LM Aero of any actual or threatened claims or suits against Australian Aerospace alleging such infringement and all pertinent data, papers, records, and assistance within Australian Aerospace's control;
  - (2) making diligent effort to minimize (other than by non-use), the loss, cost, or damage for which LM Aero is obligated hereunder and obtaining LM Aero's written approval of payment of any claim (except final judgment); and.
  - (3) authorizing LM Aero to intervene in and/or control the defense of any related suit and to negotiate, settle and/or compromise such claim or suit.; or
- ii) breach or alleged breach of any duty of confidentiality owed to that third party, where the breach is caused by any act or omission on the part of LM Aero, any of its Subcontractors or LM Aero Personnel (whether or not such act or omission constitutes a breach of the Contract):

8.1.2. For the purposes of clause 8.1 .lf(i), "infringement" includes acts which would, but for the operation of section 163 of the Patents Act 1990, section 96 of the Designs Act 2003, sections 183 or 183A of the Copyright Act 1968, and section 25 of the Circuits Layout Act 1989, constitute an infringement.

## **8.2. Obligations in relation to IP Indemnity**

8.2.1. Australian Aerospace will notify LM Aero in writing as soon as practicable of any action, claim, dispute, suit or proceeding (Proceedings) threatened or brought against Australian Aerospace arising from an infringement or alleged infringement referred to in clause 8.1.lf.

8.2.2. If LM Aero agrees to comply at all times with Australian Government policy relevant to the conduct of the Proceedings, including the Legal Services Directions in force from time to time issued in accordance with

the Judiciary Act 1903 (Cth) (Legal Services Directions), and Australian Aerospace is granted leave to withdraw from the Proceedings:

- a. Australian Aerospace may withdraw from the Proceedings; and
  - b. LM Aero must, in its own name and at its own expense, conduct the Proceedings.
- 8.2.3. For Proceedings where Australian Aerospace is not granted leave to withdraw, if LM Aero admits its obligations under the indemnity in clause 8.1 if and upon request lodges security in a reasonable amount with Australian Aerospace, Australian Aerospace will:
- a. continue to keep LM Aero informed of all developments; and
  - b. defend, arbitrate, appeal, settle or otherwise conduct the Proceedings as LM Aero may from time to time reasonably direct, subject to Australian Government policy, including the Legal Services Directions.
- 8.2.4. If a final judgment or award is made against Australian Aerospace in the Proceedings, or if a settlement is agreed with the plaintiff in a situation covered by the indemnity under clause 8.1.1f, but without limiting LM Aero's obligations under that indemnity, LM Aero must pay to Australian Aerospace by bank cheque a sum equivalent to the sum that Australian Aerospace is required to pay under that judgment, award or settlement:
- a. at least seven (7) days before the date on which Australian Aerospace is required to pay; or
  - b. where no date for payment has been fixed under the judgment, award or settlement, within seven (7) days after receipt of a notice from Australian Aerospace that it intends to pay the amount referred to in the judgment, award or settlement.
- 8.2.5. Australian Aerospace will regularly consult with LM Aero prior to agreeing to a settlement referred to in clause 8.2.4. In considering whether to agree to a settlement, Australian Aerospace will have due regard to any matters reasonably raised by LM Aero.
- 8.2.6. If LM Aero fails to comply with this clause 8.2, Australian Aerospace has the right, without prejudice to any other right or remedy it may have, to suspend any payment due under the Contract until such Proceedings have been finalized.

### **8.3 Enforcement of Indemnities**

8.3.1. The indemnities in clause 8.1 in favour of Australian Aerospace officers, employees or agents may be enforced by Australian Aerospace under the terms of the Contract on their behalf and for their benefit.

**8.4 Not Used**

**8.5 Not Used**

**8.6 Limitation of Liability**

8.6.1. Notwithstanding any other provision of the Contract, but subject to clause 8.6.4, the liability of LM Aero to Australian Aerospace, its officers, employees or agents under or in connection with the Contract (whether in contract, tort including negligence, or otherwise) including under an indemnity whether or not expressly referred to in this clause 8.6, is limited as follows:

- a. for loss of or damage to Defense Property (including aircraft) (except the Aircraft, associated Stock and S&TE) to an aggregate amount of \$51,842,598;
- b. for loss of, or damage to, the Aircraft, associated Stock and S&TE, to the cost of repair or replacement up to \$85,021,861 per occurrence to an aggregate amount of \$170,043,723;
- c. for liquidated damages recoverable under the Contract to an amount of \$2,900,000;
- d. for breach of warranties in clause 9, as set out in that clause;
- e. for any defect in Supplies or Services sourced from a third party (other than Services sourced under a Subcontract), the performance of its obligations under clause 9.3; and
- f. for a breach of contract or negligent act or omission, other than a breach of contract or act or omission of negligence dealt with in clauses 8.6.1a to 8.6.1e inclusive, to \$7,257,964 in aggregate each year of the Contract to an aggregate amount of \$14,515,928.

8.6.1A For the purposes of the clause 8.6 the “Total Contract Price” as at the Effective Date is \$98,600,000.

- 8.6.2. LM Aero acknowledges and agrees that if, after the Effective Date, the Commonwealth provides GFF in addition to that which was contemplated at the Effective Date, the Parties will, acting reasonably, agree to an increase in the amounts specified at clause 8.6.1.a and clause 8.6.1.b.
- 8.6.3. The Parties acknowledge and agree that the Limitation Amounts specified in clause 8.6.1.c and clause 8.6.1.f have been calculated on the basis of a 7 year Term (notwithstanding clause 1.3) and accordingly that the Limitation Amounts specified in clause 8.6.i.c and clause 8.6.1.f represent the limitation of the LM Aero's liability to the Australian Aerospace over any 7 year period of the Contract. If the Term is extended in accordance with clause 1.9, then the liability of LM Aero under clause 8.6.1 .c or clause 8.6.1 .f in respect of an event (**Relevant Event**) which is the subject of a relevant Limitation Amount:
- a. will be calculated, in the case of clause 8.6.i.c, as \$5,907,983 less any amount in respect of which liability has arisen during the previous 7 years of the Contract (including the year in which the Relevant Event occurs as year 7); and
  - b. will be calculated in the case of clause 8.6.1 .f, \$7,257,964 in aggregate for the year that the Relevant Event occurs, to an aggregate amount of \$14,515,928 calculated less any amount in respect of which liability has arisen during the previous 7 years of the Contract (including the year in which the Relevant Event occurs as year 7).
- 8.6.4. LM Aero's limitation of liability is limited to 50% of the Total Contract Price for the liability of LM Aero arising out of or in connection with LM Aero's performance of the Contract, including under an indemnity whether or not expressly referred to in this clause 8.6.4, for:
- a. personal injury to, illness of or death of any person;
  - b. loss of or damage to property of any person (including Commonwealth Property other than Defense Property or Australian Aerospace Property);
  - c. Wilful Default of, or fraudulent acts or omissions by LM Aero, a Related Body Corporate of LM Aero or any of their Personnel;
  - d. the IP indemnity provided by LM Aero under clause 8.1.1f;
  - e. breach of confidentiality obligations; or
  - f. fines or penalties.

- 8.6.5. In addition to any limitation of liability included in the warranties or other provisions of this Contract, the total liability of LM Aero, any affiliate or other component or subsidiary of LM Aero, including their subcontractors or suppliers, on any claim, whether in contract, warranty, tort (including gross negligence or patent infringement) or otherwise, arising out of, connected with, or resulting from the performance or non performance of any agreement resulting here from or from the manufacture, sale, delivery, resale, repair, replacement or use of any product or the furnishing of any service, shall not exceed the contract value of the price allocable to the product or service which gives rise to the claim. The aggregate total liability of Contractor for all claims shall not exceed the Total Contract Price. Except as to title, any such liability shall terminate upon the expiration of the warranty period. Any liabilities assessed and paid by LM Aero are included in the aggregate amount.
- 8.6.6. In no event, whether as a result of breach of contract, warranty, tort (including negligence or patent infringement) or otherwise, shall LM Aero, or any other component or subsidiary of LM Aero. or their subcontractors or suppliers, be liable for any special, consequential, incidental, indirect or exemplary damages, including, but not limited to, loss of profit or revenues, loss of use of the Products or any associated equipment, cost of capital, cost of substituted goods, facilities, services or replacement power, downtime costs or claims of Australian Aerospace customers for such damages.
- 8.6.7. If LM Aero furnishes Australian Aerospace with advice or other assistance which concerns any Product supplied hereunder or any system or equipment in which any such Product may be installed and which is not required by the terms of this contract or pursuant to any agreement resulting here from the furnishing of such advice or assistance shall not subject LM Aero, or any affiliate or other component or subsidiary of LM Aero, to any liability, whether in contract, warranty. tort (including negligence or patent infringement) or otherwise.
- 8.6.8. LM Aero's cumulative total liability for all categories of liability under this Contract are limited to an amount not to exceed the Total Contract Price.
- 8.6.9. Each limitation (Limitation Amount) set out in clause 8.6.1 or 8.6.1A or 8.6.3 or 8.6.4 or 8.6.5 or 8.6.8 as the case may be, will be subject to adjustment on each anniversary of the Effective Date (Relevant Date) in accordance with the following formula:

$$Li = (Lo \times \frac{CPI_i}{CPI_o})$$



where:

Lo = each Limitation Amount as referred to in clause 8.6.1 or clause 8.6.3, as the case may be;

Li = the Limitation Amount on and from each Relevant Date;

CPlo = the CPI number for the quarter ended immediately prior to the Effective Date; and

CPi = the CPI number for the quarter ended immediately prior to the Relevant Date.

8.6.10. In this clause 8.6, "CPI" means the Consumer Price Index, All Groups, weighted average of eight capital Cities published by the Australian Bureau of Statistics (ABS). or if that Index is no longer published by the ABS, the index published by the ABS in substitution for that Index.

8.6.11. To avoid doubt, where the Commonwealth has recovered an amount in respect of a liability referred to in clause 8.6.1 or clause 8.6.3, as the case may be, only the balance of the relevant Limitation Amount for that liability at each Relevant Date will be subject to escalation in accordance with clause 8.6.9.

## **8.7 Insurance**

### **8.7.1. Liability Insurance**

LM Aero must effect or cause to be effected.

- a. (except in relation to the risks dealt with in clauses 8.7.i.b, 8.7.1.c and 8.7.i.d) **broadform** public and products liability insurance written on an occurrence basis for not less than \$200 million each occurrence and, with respect to products liability, also in the aggregate for all occurrences any one 12 month policy period, which covers the liability of LM Aero and its Personnel (including to Australian Aerospace) in respect of:
  - i) loss of, damage to, or loss of use of, any real or personal property; and
  - ii) the personal injury of, disease or illness (Including mental illness) to, or death of, any person (other than an employee of the insured),

arising out of the performance of the Contract or any products manufactured, altered, repaired, supplied or installed by LM Aero. The insurance must include cover for Commonwealth and Australian Aerospace real and personal property in the care, custody or control of LM Aero and have a definition of products sufficiently wide to include any software and other computer related products to be supplied by LM Aero;

- b. insurance for not less than \$20 million for any one occurrence which covers third party property damage caused by any plant or vehicles (registered or unregistered) used in respect of the performance of the Contract and which covers injury to, illness of or death of any person caused by any unregistered plant or vehicles used in the performance of the Contract;
- c. compulsory third party motor vehicle insurance in respect of all registered plant or vehicles used in the performance of the Contract, and
- d. aviation liability insurance including premises, hangar keepers liability and aviation products liability for not less than \$800 million for any one occurrence and, with respect to aviation products liability \$200 million in the annual aggregate for all occurrences which covers the liability of LM Aero (including to Australian Aerospace) in respect of:
  - i) loss of, damage to or loss of, any real or personal property; and
  - ii) the personal injury of, disease or illness (including mental illness) to, or death of, any person (other than an employee of the insured),

arising out of or in connection with the maintenance, repair or testing of any Aircraft in performance of the Contract and including cover for liability to passengers and cover for any aviation products manufactured, supplied, repaired, altered, prescribed, distributed or installed by LM Aero and such policy must not have an exclusion in relation to claims arising from a breach of professional duty.

#### **8.7.2. Workers' Compensation Insurance**

LM Aero must effect or cause to be effected, insurance which insures any injury, damage, expense, loss or liability suffered or incurred by any person engaged in the work under the Contract (or their dependants):

- a. giving rise to a claim:
  - i) under any statute relating to workers' or accident compensation; or

- ii) where common law claims are possible outside of the statutory scheme referred to at clause 8.7.2.a(i), for employer's liability at common law for not less than \$50 million for any one occurrence;
- b. in every country, State or Territory where the works under the Contract will be carried out as well as each State or Territory where LM Aero's employees normally reside or where their contract of employment was made; and
- c. where possible under the relevant country, State or Territory law or scheme governing workers compensation insurance, extending to indemnifying Australian Aerospace as principal for principal's liability.

### **8.7.3. Professional Indemnity Insurance**

LM Aero must effect or cause to be effected professional indemnity insurance covering non aviation risks:

- a. which covers liability of LM Aero arising from a breach of a duty owed in a professional capacity by any act or omission of LM Aero, its employees, subcontractors, consultants or agents:
- b. extending to include cover for unintentional breaches of trade practices related legislation and of intellectual property rights; and
- c. with a limit of indemnity of not less than \$20 million for any one claim and \$20 million in the aggregate for any period of insurance with provision for one reinstatement per period of insurance.

### **8.7.4. Property Insurance**

LM Aero must effect or cause to be effected all risks property insurance covering all plant and equipment of LM Aero material to LM Aero's ability to perform the Contract against the risks of loss, damage or destruction by all insurable risks to the reasonable satisfaction of Australian Aerospace for their full replacement or reinstatement value.

### **8.7.5. Transit Insurance**

LM Aero must effect Transit "All Risks" insurance in respect of:

- a. all materials and goods supplied by LM Aero pursuant to the Contract where those materials or goods are purchased by LM Aero and

subsequently conveyed by land, sea or air for a sum insured for each consignment of not less than 110% of the consignment value; and

- b. certain AAFM and GFM (as notified by Australian Aerospace to LM Aero by class from time to time) conveyed by LM Aero by land, sea or air for a sum insured for each consignment of not less than 110% of the consignment value.

#### **8.7.6. Periods of Insurance**

LM Aero must ensure that each insurance referred to in this clause 8.7 (other than the insurance referred to in clause 8.7.5, which insurance is to be effected as set out below) is in force before LM Aero commences to perform the Contract and is maintained:

- a. in the case of the insurance referred to in clauses 8.6.1 (other than 8.7.i.d to the extent it is written on a claims made basis), 8.7.2 and 8.7.4 until the completion of the Contract or earlier termination of the Contract;
- b. in the case of the insurance referred to in clauses 8.7.1.d (to the extent it is written on a claims made basis) and 8.7.3, until the end of six (6) years following the completion of the Contract or earlier termination of the Contract; and
- c. in the case of the insurance referred to in clause 8.7.5 for the period of each consignment including storage during transit.

#### **8.7.7. Evidence of Policies**

- a. LM Aero must, in respect of each insurance referred to in this clause 8.7, give Australian Aerospace:
  - i) acceptable proof of currency and coverage of the insurances at least ten (10) Working Days before the relevant commencement date referred to in clause 8.7.6 for each insurance;
  - ii) copies of all cover notes, policies, certificates of currency, renewal certificates and endorsement slips as soon as LM Aero receives them; and
  - iii) on request, other evidence of the insurances which the Project Authority reasonably requires.

- b. If LM Aero does not comply with clause 8.7.7.a., Australian Aerospace may, but is not obliged to, effect the relevant insurances and may:
  - i) recover the cost of doing so as a debt due from LM Aero and recoverable by Australian Aerospace under clause 12.4; or
  - ii) deduct the premiums payable for them from amounts payable to LM Aero.

**8.7.8. Provisions in Policies**

LM Aero must ensure that (except for the insurance referred to in clauses 8.7.1 .a (i) and 8.7.1 .c):

- a. the insurance referred to in clauses 8.7.1.a and 8.7.i.d provide that:
  - i) all insurance agreements and endorsements (with the exception of limits of liability) name as insureds, and operate as if there was a separate policy of insurance covering, Australian Aerospace (for its vicarious liability for the acts or omissions of other insureds only), LM Aero and its employees; and
  - ii) failure by any insured to observe and fulfil the terms of the policy or to comply with the duty of disclosure does not prejudice the insurance of any other insured;
- b. the insurances referred to in clauses 8.7.4 and 8.7.5 provide that:
  - i) all insurance agreements and endorsements (with the exception of limits of liability), name of insureds, and operators if there was a separate policy of insurance covering Australian Aerospace and LM Aero for their respective rights and interests;
  - ii) failure by any insured to observe and fulfil the terms of the policy or to comply with the duty of disclosure does not prejudice the insurance of any other insured; and
  - iii) the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against named insureds (to the extent they are insured under the policy);
- c. each insurance referred to in this clause 8.7 is:

- i) effected with reputable insurers with a financial strength rating of A- or better with Standard and **Poors** or the equivalent rating with another reputable ratings agency; and
  - ii) on terms approved in writing by Australian Aerospace, which approval by Australian Aerospace must not be unreasonably withheld; and
- d. once approved by Australian Aerospace. the terms of the insurance is not changed without Australian Aerospace's prior written approval (not to be unreasonably withheld). LM Aero must indemnify, and keep indemnified, Australian Aerospace for its reasonable legal and other costs (if any) associated with determining whether or not to approve any such requested change.

#### **8.7.9. Notices of Cancellation**

LM Aero must immediately give notice to Australian Aerospace whenever an insurer of any of the insurances effected in compliance with this clause 8.7 gives LM Aero a notice of cancellation or any other notice in respect of the relevant policy of insurance

#### **8.7.10. Premiums**

LM Aero must punctually pay all premiums in respect of all insurances referred to in this clause 8.7.

#### **8.7.11. Undertaking to Inform**

LM Aero must, subject to its obligations to insurers, inform Australian Aerospace immediately it becomes aware of any actual, threatened or likely claims (other than a claim by Australian Aerospace against LM Aero) which may give rise to a claim under any of the insurances referred to in this clause 8.7 which could materially reduce the available limits of indemnity or involve Australian Aerospace. Where such a claim is unrelated to the Contract and has materially reduced the aggregate limit of a policy required by this clause 8.7, LM Aero will reinstate the aggregate limit to comply with the requirements of this clause 8.7.

#### **8.7.12. Warranty**

Each Party warrants that nothing is to be done or omitted to be done by it whereby any insurance policy effected pursuant to this clause 8.7 may become void, invalid, vitiated or non-effective or by which an insurer may be entitled to refuse to pay a claim in whole or in part.

**8.7.13. Subcontractors**

LM Aero must ensure that its Subcontractors, agents and consultants are insured as required by this clause 8.7, as is appropriate including as to limits given the nature of services or work to be performed by them, as if they were LM Aero.

**8.7.14. Uninsurability**

If either Party becomes aware that a risk to be Covered by an insurance policy under this clause 8.7 has or is to become Uninsurable then that Party must immediately notify the other Party. The Parties must then meet as soon as reasonably practicable but no later than five (5) Working Days after notification to discuss all means by which the risk is to be managed (including the option of Australian Aerospace providing an indemnity to LM Aero covering substantially the risks which have become Uninsurable). If agreement cannot be reached by the Parties acting reasonably and in good faith before the day on which the policy becomes Uninsurable, either Party may terminate the Contract by giving written notice to the other Party with effect from the day on which the policy becomes Uninsurable. In such an event the provisions of clause 12 are to apply. However, where Australian Aerospace has provided an indemnity the right of termination must not be exercised by LM Aero during the period of the indemnity.

**8.7.15. Periodic review of required insurances**

- a. On each five year anniversary of the Operative Date, or at any time in the event of a change of law which has a material effect on the risk exposure of LM Aero, the Parties must meet to review the terms and level of insurance required under this clause 8.7 to ensure that LM Aero has in place for its benefit the type and level of insurance adequate for a corporate entity with a similar risk exposure as LM Aero having regard to then current market practice for companies carrying out maintenance of aircraft under comparable contract terms. As part of the review, the Parties may agree to vary the terms of insurance required by this clause 8.7 or to increase or decrease the required limits of indemnity, and in doing so may have regard to an opinion(s) from a reputable insurance broker or otherwise appropriately qualified consultant

- b. If the Parties acting reasonably and in good faith, cannot agree as contemplated by clause 8.7.15.a as to whether and if so how, the required insurances are to be varied within ninety (90) calendar days after each fifth year anniversary of the Operative Date, either Party may terminate the Contract by giving two hundred and seventy (270) calendar days notice in writing to the other Party and the provisions of clause 12 are to apply.

## **8.8 Not Used**

## **8.9 LM Aero Managed Commonwealth Assets**

- 8.9.1. LM Aero must take all reasonable care of LM Aero Managed Commonwealth Assets and must provide facilities to store and handle all LM Aero Managed Commonwealth Assets as they are received.
- 8.9.2. LM Aero must, within seven (7) Working Days after becoming aware that any LM Aero Managed Commonwealth Assets are lost, destroyed, damaged, defective or deficient, notify the Australian Aerospace Representative of the event in writing.
- 8.9.3. If in the reasonable opinion of the Australian Aerospace Representative and LM Aero, LM Aero has the necessary capacity, the Australian Aerospace Representative may require LM Aero by notice in writing to transport, dispose of or repair damaged, defective or deficient LM Aero Managed Commonwealth Assets. To the extent LM Aero is liable under clause 8.1.1.d for the damage, defect or deficiency, the work performed by LM Aero under this clause 8.9.3, to the extent of the value of the work, discharges LM Aero's liability. To the extent LM Aero is not liable under clause 8.1.1 .d for the damage, defect or deficiency, LM Aero is to, if the Parties agree in advance to the cost of the work, perform the work for no more than the agreed cost.

## **8.10 Risk Assessment**

- 8.10.1. Australian Aerospace may at any time initiate a risk assessment during the Term to perform one or more risk analyses of LM Aero and LM Aero's provision of the Services under the Contract for the purposes of determining whether or not the amounts specified in clauses 8.6 and 8.7 reflect an appropriate allocation of risk.
- 8.10.2. LM Aero must provide all reasonable assistance within the terms of the Contract and subject to an equitable adjustment in the Contract price if required, to Australian Aerospace or its nominee for the purposes of this clause 8.10, including by providing assistance and access in accordance with clauses 10.9 and 10.10.



**10.5 Commercial-in-Confidence Information**

- 10.5.1. Subject to this clause 10.5, a Party must not disclose any Commercial-In-Confidence Information of the other Party to a third party.
- 10.5.2. If it is necessary to disclose Commercial-in-Confidence Information provided or produced by or on behalf of the other Party to a third party, other than for a purpose within an exception listed in clause 10.5.5, the Party wishing to make the disclosure must obtain the written consent of the other Party.
- 10.5.3. In giving written consent to the disclosure of Australian Aerospace's Commercial-In-Confidence Information, Australian Aerospace may impose such conditions as it thinks fit, and LM Aero agrees to comply with these conditions.
- 10.5.4. Australian Aerospace may require LM Aero to ensure that its Subcontractors and LM Aero Personnel engaged in the performance of the Contract give a written undertaking in the form of the Deed of Confidentiality and Fidelity set out at Annex C to Attachment I prior to the disclosure of Commercial-in-Confidence Information. LM Aero is to provide properly executed Deeds of Confidentiality and Fidelity as required by this clause 10.5.
- 10.5.5 The obligations on the Parties under this clause 10.5 will not be taken to have been breached to the extent that Commercial-in-Confidence Information:
  - a. is disclosed to a Party's internal management Personnel on a need to know basis, to enable effective management or auditing of Contract-related activities;
  - b. Not Used;
  - c. Not Used;
  - d. is shared by Australian Aerospace to the Commonwealth subject to being properly marked as Commercial-In-Confidence;
  - e. is authorized or required by law to be disclosed subject to being properly marked as Commercial-In-Confidence;
  - f. is in the public domain otherwise than due to a breach of this clause 10.4.1.

- 10.5.6. Where a Party discloses Commercial-in-Confidence Information to a third party:
- a. pursuant to clauses 10.5,5a or 10.5.5f, the disclosing Party must:
    - i) notify the receiving third party that the information is Commercial-in-Confidence Information; and
    - ii) not provide the Commercial-in-Confidence Information unless the receiving third party agrees to keep the Commercial-in-Confidence Information confidential: or
  - b. otherwise in accordance with clause 10.5.5, the disclosing Party must notify the receiving third party that the information is Commercial-in-Confidence Information.
- 10.5.7. The Parties may agree after the Effective Date, in accordance with the process in clause 10.1, that certain additional information is to constitute Commercial-in-Confidence Information.
- 10.5.8. LM Aero must not, in marking information supplied to Australian Aerospace, misuse the term “Commercial-in-Confidence”, “LOCKHEED MARTIN PROPRIETARY INFORMATION” or LM Aero’s equivalent. The marking of information as “Commercial-in-Confidence” or “LOCKHEED MARTIN PROPRIETARY INFORMATION” is not to affect the legal nature and character of the information.
- 10.5.9. Without limiting any rights of Australian Aerospace provided for elsewhere in the Contract, and in particular in clause 5 and this clause 10.5.1, LM Aero grants to Australian Aerospace the right to disclose information with the exception of such information that is marked “LOCKHEED MARTIN PROPRIETARY INFORMATION”. relating to communication protocols, interface standards, message formats, or any other electrical, mechanical or optical interface or other requirements which may be required to be released by Australian Aerospace so as to allow software or equipment to connect to or communicate with anything provided to Australian Aerospace in the course of the Services.
- 10.5.10. The Parties agree that the conditions of contract and Attachments, or the parts of them, listed in Attachment N are Commercial-in-Confidence Information to the relevant Party as at the Effective Date.
- 10.5.11. The receiving Party agrees to deliver to the disclosing Party, as required by the disclosing Party, all documents in its possession, power or control which contain or relate to any information that is Commercial-in-Confidence Information of the disclosing Party on the earlier of:

- a. demand by the disclosing Party; and
  - b. the time the documents and other material are no longer required for the purposes of the Contract.
- 10.5.12. If the disclosing Party makes a demand under clause 10.5.11, and the receiving Party has placed or is aware that documents containing the Commercial-in-Confidence Information are beyond its possession or control, then the receiving Party must provide full particulars of the whereabouts of the documents containing the Commercial-in-Confidence Information, and the identity of the person in whose custody or control they lie.
- 10.5.13. The receiving Party, when directed by the disclosing Party in writing agrees to destroy any document in its possession, power or control, which contain or relate to any Commercial-in-Confidence Information of the disclosing Party.
- 10.5.14. Not Used.
- 10.5.15. The obligations under this clause 10.5 continue in relation to an item, notwithstanding the expiry or termination of the Contract, for the period specified against that item in Attachment N, and such additional period as that item may remain confidential in nature.

## **10.6. Publicity**

- 10.6.1. If LM Aero receives a request or demand for access to, or production or release of, any security classified or official materials in the context of legal proceedings:
- a. LM Aero must promptly notify Australian Aerospace in writing of the request or demand;
  - b. LM Aero must consult with Australian Aerospace concerning the request or demand;
  - c. in the case of security classified material, except where it is ordered to do so by a court of competent jurisdiction, and subject to clause 10.6.2, LM Aero must refuse the request or demand on the grounds that the material is classified, in which case either Australian Aerospace will intervene in the legal proceeding concerned or the Parties will otherwise agree on how to proceed; and

- d. in the case of official materials, except where it is ordered to do so by a court of competent jurisdiction, and subject to clause 10.6.2, LM Aero must not accede to the request or demand unless Australian Aerospace agrees in writing that the official materials are relevant to matters at issue in those legal proceedings.
- 10.6.2. If so directed by Australian Aerospace following a request or demand of the kind described in clause 10.6.1, LM Aero must take all reasonable steps to:
- a. contest the relevance of any official materials or security classified information to matters at issue in the legal proceedings; and/or
  - b. assert restrictions applying to disclosure of security classified information. Those restrictions could include requesting in camera review of the security classified information by the court or tribunal, redacting security classified information from the information sought by the court or tribunal, producing the material under a protective order issued by the court that would restrict its distribution and preclude its publication, and similar precautions.
- 10.6.3. Without first obtaining Australian Aerospace's prior written approval as to the content, form, manner, and timing, LM Aero must not, and must ensure that its Subcontractors do not unless LM Aero is authorized or required by law to do so:
- a. make any press, public announcements, or media releases in respect of the Contract;
  - b. respond to any requests or approaches by the media, press, interested parties, or third parties (or their representatives) for "background", "off the record" or formal comment or opinion or information in respect of the Contract; or
  - c. list Australian Aerospace as a customer or client, leverage its position as LM Aero, or otherwise attempt to exploit the fact that it has entered into the Contract (including through media or press announcement or by public comment, and in any public or private marketing materials or other communications).
- 10.6.4 Australian Aerospace will not unreasonably withhold Its consent to the extent that any announcement or release is required to be made by LM Aero by law or by the rules of a stock exchange, but otherwise may withhold its consent at its absolute discretion.

## **10.7 Assignment and Novation**

- 10.7.1. The benefits and responsibilities of this Contract shall be binding upon the respective successors and assigns of the Parties hereto, but neither Party may assign any portion of this contract to a separate legal entity without the prior written consent of the other Party. Neither Party will unreasonably withhold consent.
- 10.7.2. If LM Aero proposes to enter into any arrangement which will require the novation of the Contract, it must notify and seek the consent of the Australian Aerospace Representative within a reasonable period prior to the proposed novation.
- 10.7.3. LM Aero must ensure that any arrangements proposed under clause 10.7.1 is governed by an agreement in the form of the Deed of Substitution and Indemnity set out in Annex I to Attachment I.
- 10.7.4. Notwithstanding LM Aero's compliance with clause 10.7.3, Australian Aerospace may, at its discretion, refuse to consent to an arrangement proposed by LM Aero under clause 10.7.1.; except where LM Aero proposed to assign any or part of this Contract to another element or to a wholly owned subsidiary or affiliate of LM Aero.

## **10.9 Audits and Access**

- 10.9.1. It is agreed that Australian Aerospace may carry out audits in relation to LM Aero's:
  - a. safety and environmental management in Australia;
  - b. quality management;
  - c. Maintenance Management System particularly RI maintenance venue qualification and monitoring practices; and
  - d. spares vendor qualification and monitoring practices,

Australian Aerospace may carry out these audits in accordance with 10.9.2 to 10.9.8 and these audits will be carried out at the cost of Australian Aerospace

- 10.9.2. Subject to this clause 10.9, LM Aero must, at all reasonable times with reasonable written notice, agree to the audit of practices and procedures as they strictly relate to performance of specific obligations under the Contract, including security procedures by either the resident U.S.

Government audit agency that routinely performs such audits of LM Aero's practices and procedures, or an independent commercial audit firm as designated by Australian Aerospace and deemed acceptable by LM Aero. For this purpose LM Aero grants access as required by Australian Aerospace to LM Aero's"

- a. premises, data, records or other material (including the Commonwealth's and Australian Aerospace's property) however or wherever stored or located under LM Aero's custody, possession or control for inspection or copying; and
- b. Personnel for discussions or to make enquiries,

In the case of audits carried out in Australia, the access granted by LM Aero is to officers and nominees of Australian Aerospace. In the case of audits carried out elsewhere, the access granted by LM Aero is to U.S. Government audit agency or independent commercial audit firm.

- 10.9.3. In exercising its rights under clause 10.9.2, Australian Aerospace may only access LM Aero's premises, data, records or other material (including the Commonwealth's and Australian Aerospace's property) and personnel in respect of LM Aero's performance of the Contract, for purposes associated with the Contract, including to review LM Aero's performance, progress, quality control, security and manufacturing and testing procedures.
- 10.9.4. In exercising its rights under this clause 10.9, Australian Aerospace will use its best efforts not to unduly delay or hinder the LM Aero's performance of its obligations under the Contract.
- 10.9.5. Officers or nominees of LM Aero may accompany Australian Aerospace or its nominees during any visit to LM Aero's premises. LM Aero acknowledges and agrees that such accompaniment will not be a basis for any claim for delay under the Contract.
- 10.9.6. The Australian Aerospace Representative and its nominees will comply with any LM Aero safety and security requirements or codes of behaviour for the premises.
- 10.9.7. This clause 10.9 permits Australian Aerospace and its nominees to examine any material (subject to clause 10.9.8) or talk to any LM Aero personnel.
- 10.9.8. Notwithstanding anything in this clause 10.9, LM Aero is not required to permit Australian Aerospace access to financial information.

**10.10 Commonwealth Access**

- 10.10.1. Commonwealth access is granted in accordance with the Approved Subcontractor Intellectual Property and Commonwealth Access Deed between the Commonwealth and the Parties dated 11 March 2009.

**10.12 Subcontracts**

- 10.12.1. LM Aero must not Subcontract the whole of the work under the Contract.
- 10.12.2. LM Aero may, but is not required to, Subcontract with one or more of the Approved Subcontractors.
- 10.12.3. LM Aero must not Subcontract work under the Contract to a Subcontractor who is not an Approved Subcontractor if:
- a. the total value of all work with the Subcontractor is expected to \$500,000;
  - b. the Subcontractor will in any way be involved in:
    - i) design and development activities,
    - ii) modification of systems; or
    - iii) systems installation or integration;
  - c. the Subcontractor will bring IP to the proposed Subcontract or create IP under the proposed Subcontract necessary to enable the Commonwealth to use and support the Services; or
  - d. the Subcontractor does not have ITAR approval to access and use the Technical Data to be provided by the Commonwealth or Australian Aerospace,

unless otherwise agreed between the Parties and the extent of that exception is expressly set out in Attachment H.

- 10.12.4. LM Aero may request the inclusion of additional Approved Subcontractors in Attachment H by submitting a CCP in accordance with clause 10.1. The CCP must include full particulars of the work to be undertaken by the Subcontractor, the name and address of each proposed Subcontractor and any other information about the Subcontractor required by the Australian Aerospace Representative.

- 10.12.5. The Australian Aerospace Representative will approve or reject the CCP in accordance with clause 10.1.4. The Australian Aerospace Representative's approval will not be unreasonably withheld.
- 10.12.6. If LM Aero delegates any of its obligations under the Contract to a Subcontractor, LM Aero must remain fully responsible to Australian Aerospace for the provision of the Services and the performance of all of its other obligations under the Contract. LM Aero must be responsible for the work and activities of each Subcontractor and each LM Aero Personnel, whether directly employed or engaged by LM Aero or by a Subcontractor, including compliance with the Contract. LM Aero's retention of a Subcontractor does not in whole or in part abrogate LM Aero from any obligation under the Contract and the failure of a Subcontractor properly to perform under its subcontract does not exempt LM Aero from performing its obligations under the Contract. All Subcontractors are deemed to be under the control of LM Aero.
- 10.12.7. Not Used
- 10.12.8. In engaging Subcontractors, LM Aero must comply with applicable law and must not take any action that would result in Australian Aerospace not being in compliance with any law or applicable policies (such as the Commonwealth Procurement Guidelines).
- 10.12.9. Not Used.
- 10.12.10. Not Used

### **10.13 Qualifications and Resources of the Subcontractor**

- 10.13.1. LM Aero must ensure that each Subcontractor that it proposes to engage, or actually engages, in connection with the Contract:
  - a. has sufficient expertise to perform the activities under the Subcontract;
  - b. has in place any necessary Government Approvals in accordance with clauses 3.10 and 11.2.2, any necessary Consents in accordance with clause 3.9.2 and any necessary industry and other certifications in accordance with clause 3.9;
  - c. has in place adequate resources and personnel who are appropriately experienced and skilled to perform its obligations to the standards required by the Contract;
  - d. has in place adequate security precautions to satisfy the security, privacy, and confidentiality provisions of the Contract, including appropriate



qualifications and resources with respect the protection of national security classified information and information regulated under the U.S. Export Regulations and E.U. Export Regulations (as appropriate); and

- e. is of sufficient financial standing to enable it to perform its obligations to the standards required by the Contract.

- 10.23.2. LM Aero must comply with the reporting requirements set out in Attachment A in respect of reporting the qualifications and resources of each Subcontractor.

## **11. POLICY AND LAW**

### **11.1 Governing Law, Jurisdiction and Venue**

- 11.1.1. The laws of the State of New South Wales apply to the Contract. The courts of New South Wales will have jurisdiction to decide any matter arising out of the Contract.
- 11.1.2. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Contract.

### **11.2 Compliance with Laws**

- 11.2.1. LM Aero must, En the performance of the Contract, Comply with the laws from time to time in force in the State, Territory, or other jurisdictions in which any part of the Contract is to be carried out subject to an equitable adjustment to the Contract if required.
- 11.2.2. LM Aero must comply, and must ensure that its Subcontractors and LM Aero Personnel comply, with all applicable laws, Government Approvals, policies and all requirements of Government Agencies, including:
  - a. obtaining all Government Approvals without qualifications that would impact its ability to provide the Services or otherwise perform its obligations under the Contract;
  - b. complying with Occupational Health and Safety Legislation, environmental requirements and export requirements under the Customs Act 1981 (Cth); and
  - c. complying with the Archives Act 1983 (Cth) in respect of its activities under or in respect of the Contract.

- 11.2.3. LM Aero must not take any action, or omit to take any action (including any action or omission by a Subcontractor or LM Aero Personnel), which may constitute a breach of any law, policy, or Government Approval or may prejudice or result in the invalidity, cancellation, suspension, or limitation of any Government Approval or the imposition of any adverse conditions on any Government Approval.
- 11.2.4. If LM Aero (or a Subcontractor) at any time during the Term (or after the Term, with respect to obligations that survive the expiry or termination of the Contract) is not in compliance with clause 11.2.2 or clause 11.2.3, then LM Aero must provide written notice thereof to Australian Aerospace as promptly as possible, but in each case within five (5) Working Days after LM Aero becoming aware of that non compliance.

### **11.3 Policy Requirements**

- 11.3.1. LM Aero must comply with and require its Subcontractors and LM Aero Personnel to comply with the following policies of general application relevant or applicable to the Contract as amended from time to time. Any current or future Australian policy requirements that result in an impact to the scope of work or specific contract requirements shall require the submittal of a CCP within 30 days of becoming aware of the policy change and may include an adjustment in the contract price.
  - a. Australian Government Policy and Guidance on Industry Development and Local Purchasing as detailed in the DPPM;
  - b. Company ScoreCard policy as detailed in the Defense Company ScoreCard Policy Statement
  - c. Conflict of Interest policy as detailed in the DPPM,
  - d. Contract Reporting Requirements as detailed in the DPPM;
  - e. Defense Equity and Diversity policy as detailed in the Defense Plain English Guide to the Managing and Reporting Unacceptable Behavior DPI 1/2001; and 01(G) PERS 35-3;
  - f. Defense Stocktaking policy as detailed in the 01(G) LOG 07-15;
  - g. Equal Opportunity for Women in the Workplace policy as detailed in the DPPM;
  - h. Fraud Control policy as detailed in DI (G) FIN 12-1;

- i. Freedom of Information policy as detailed in the DPPM;
- j. Hazardous Substances policy as detailed in the DPPM;
- k. Industry Capability Network policy as detailed in the DPPM;
- l. Maximizing Employment Opportunities for Aboriginal and Torres Strait Islanders policy as detailed in the DPPM;
- m. Dumping and Predatory Pricing policy as detailed in the DPPM;
- n. Commonwealth — State Coordination and Cooperation policy as detailed in the DPPM;
- o. Environment in Procurement policies as detailed in the DPPM; and
- p. any other Commonwealth policy as notified by Australian Aerospace to LM Aero from time to time.

#### **11.4 Occupational Health and Safety**

- 11.4.1. LM Aero must make reasonable efforts to perform its obligations under the Contract in Australia in such a way that:
  - a. Commonwealth and Australian Aerospace officers and Commonwealth and Australian Aerospace employees (as defined in the Occupational Health and Safety Act 1991 (Cth)) are able to participate in any necessary inspections of work in progress and tests and evaluations of the Services without the Commonwealth or Australian Aerospace being in breach of; and
  - b. the Commonwealth and Australian Aerospace is able to support and to make full use of the Services for the purposes for which they are intended without being in breach of,any occupational health and safety statutory requirements which apply to the Services.
- 11.4.2. LM Aero is required to implement and comply with an Occupational Health and Management System in accordance with Attachment A in relation to work performed in Australia.

#### **11.5 Environmental Obligations**

- 11.5.1. LM Aero must, at its own cost, comply with, and must ensure that its Subcontractors and LM Aero Personnel comply with, all laws with respect to the protection of the Environment, applicable or relevant to the Services or LM Aero's performance under the Contract. LM Aero must, upon reasonable request by or on behalf of Australian Aerospace, demonstrate compliance with such requirements, including providing evidence of measures taken to achieve compliance.
- 11.5.2. LM Aero must not, and must ensure that its Subcontractors and LM Aero Personnel do not, abandon, dump, or otherwise improperly or unlawfully dispose of any Industrial Waste or Hazardous Substance.
- 11.5.3. LM Aero must not, and must ensure that its Subcontractors and LM Aero Personnel do not, handle any Industrial Waste or Hazardous Substance in a manner which may cause an Environmental Hazard.
- 11.5.4. LM Aero must not, and must ensure that its Subcontractors and LM Aero Personnel do not, release substances, deposit substances, or allow substances to emanate, such that a state of Contamination occurs.
- 11.5.5. LM Aero must at all times provide the Services in an environmentally responsible manner so as to protect the Environment.
- 11.5.6. In addition to the requirements of this clause 11.5, LM Aero must obtain and comply with all requirements of, and must ensure that its Subcontractors and LM Aero Personnel obtain and comply with all requirements of, any Government Approvals required to release or emit anything from any Commonwealth land into the air or water or onto the ground or otherwise into the Environment, or to emit any substantial noise.
- 11.5.7. LM Aero must promptly by notice in writing to Australian Aerospace notify non-compliance or potential non-compliance with the requirements of any law or Government Approval regarding the Environment in providing the Services
- 11.5.8. Any breach by LM Aero of clause 11.5 entitles Australian Aerospace, at its absolute discretion, to suspend the provision of the Services under the Contract in accordance with clause 12.5 until such time that LM Aero can demonstrate to Australian Aerospace's reasonable satisfaction that it has remedied any non-compliance or breach of this clause 11.5 and is in full compliance with clause 11.5. LM Aero must bear any cost it incurs in connection with the suspension and in complying with this clause 11.5 and in remedying any non-compliance or breach of this clause 11.5.

## **11.6 Compliance with United States and European Union Technology Transfer Requirements**

- 11.6.1. Australian Aerospace is aware that the Services, or one or more components of the Services, including software and technology, and information relating to the Services, may be subject to the U.S. Export Regulations or the E.U. Export Regulations. If, after contract award, any Services or Supplies provided under this Contract are found to be subject to European Union Technology Transfer requirements, LM Aero shall be entitled to submit a CCP for price adjustment in order to comply with those requirements.
- 11.6.2. Prior to providing the Services, LM Aero must identify by written notice to Australian Aerospace and in accordance with the IP Plan and Attachment A any item of the Deliverables, or component of an item of the Deliverables, or Information relating to the Services, that is subject to the U.S. Export Regulations or the E.U. Export Regulations and all relevant information concerning the applicable U.S. Export Regulations or EU. Export Regulations in respect of that item, component or information,
- 11.6.3. In respect of information related to the Services or to the Contract that is regulated under U.S. Export Regulations or the E.U. Export Regulations, LM Aero must comply with the relevant export license(s), Government Approval(s), and other documentation issued by the United States or the relevant Member State(s) of the European Union applicable to that information pursuant to this clause 11.6.
- 11.6.4. If an item of the Services or a component of an item of the Services is subject to the U.S. Export Regulations or the EU. Export Regulations, LM Aero must:
  - a. not provide any such item, or component, to Australian Aerospace without Australian Aerospace's prior written consent, which may be granted, withheld or conditioned by Australian Aerospace based on the absolute discretion of the Commonwealth;
  - b. prior to initiating any application process in the United States or the relevant Member State(s) of the European Union, as applicable, confer with the Commonwealth via Australian Aerospace in order to accurately determine the end use of the Services and the Authorized Users:
  - c. ensure that any required approvals, licenses or authorizations granted under the U.S. Export Regulations or EU. Export Regulations, as applicable, are sufficiently comprehensive to allow full access and use of the item of the Services, or component of the item of the Services, by all of the Authorized Users;

- d. ensure that the necessary export license(s), approvals or other appropriate documentation is issued by the relevant United States authorities or by the relevant Member State(s) of the European Union in time to allow the provision and use of such item or such component in compliance with the Delivery Schedule and the Phase-In Milestone Date: and
  - e. ensure that all delivery notices, invoices, airbills, waybills, bills of lading, and invoices properly identify the item or component and state the export license number or other documentation as required by the applicable U.S. Export Regulations or E.U. Export Regulations.
- 11.6.5. The Commonwealth's ability to use, operate, deliver or maintain the Services without restriction throughout the useful life of the Services is of the essence of the Contract. If the U.S. Export Regulations or EU. Export Regulations, as applicable, would prohibit the Commonwealth from using, delivering or supporting each item of the Services or each component of each item of the Services without restriction, then LM Aero must, at its own cost and in compliance with the Delivery Schedule and Phase-In Milestone Date:
- a. obtain the necessary export license(s), approvals or other appropriate documentation in respect of each item of the Services or each component of each item of the Services that is necessary for the Commonwealth to use, deliver, and support the Services and for Authorized Users to use, operate, deliver, or maintain the Services without restriction throughout the useful life of the Services; or
  - b. subject to the advance written approval of Australian Aerospace, which the Commonwealth via Australian Aerospace may grant, withhold, or condition at its absolute discretion, replace or modify the item of the Services, or the component of the item of the Services, while satisfying all requirements of the Contract (including for the Services to comply fully with the requirements for the Services set out in Attachment A).
- 11.6.6 If LM Aero (or a Subcontractor) at any time during the Term or after the Term is not in compliance with clause 11.6, then LM Aero must provide written notice thereof to Australian Aerospace within five (5) Working Days after LM Aero becoming aware of that non compliance.

## **11.7 Severability**

- 11.7.1. If any provision of the Contract is determined to be illegal, invalid or unenforceable, the remainder of the Contract shall continue in full force

and effect, unless it is determined that such provision destroys the essence of the contract.

## **11.8 Privacy**

### 11.8.1. LM Aero must:

- a. use or disclose Personal Information obtained during the course of providing Services under the Contract, only for the purposes of the Contract;
- b. not do any act, or engage in any practice that would breach an Information Privacy Principle contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that Information Privacy Principle;
- c. not use or disclose Personal Information, or engage in an act or practice that would breach section 16F of the Act, or an National Privacy Principle, particularly National Privacy Principles 7 through to 10 or an Approved Privacy Code, unless:
  - i) in the case of section 16F, the use or disclosure is necessary, directly or indirectly, to discharge an obligation under the Contract; or
  - ii) in the case of an National Privacy Principle or an Approved Privacy Code, if the activity or practice is engaged in for the purpose of discharging, directly or
- d. notify individuals whose Personal Information is held by LM Aero or Subcontractor, as the case may be, of the complaints mechanism outlined in the Privacy act that may apply to LM Aero;
- e. disclose in writing to any person who asks, the content of the provisions of the Contract (if any) that are inconsistent with an National Privacy Principle or an Approved Privacy Code binding a Party to the Contract;
- f. carry out and discharge the obligations contained in the Information Privacy Principles as if it were an agency under the Privacy Act; and
- g. ensure that any LM Aero Personnel who is required to deal with Personal Information for the purposes of the Contract, is made aware of the obligations of LM Aero as set out in the clause 11.8.

**12.3 Termination for Convenience**

- 12.3.1 In addition to any other rights it has under the Contract, Australian Aerospace may at any time terminate the Contract or reduce the scope of the Contract by notifying LM Aero in writing.
- 12.3.2. If the Australian Aerospace Representative issues a notice under clause 12.3.1, LM Aero must:
- a. stop work in accordance with the notice;
  - b. comply with any directions given to LM Aero by Australian Aerospace; and
  - c. mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination, including those arising from affected Subcontracts.
- 12.3.3. Australian Aerospace is only to be liable for:
- a. payments under the payment terms of the Contract for work properly conducted before the effective date of termination; and
  - b. any reasonable Costs incurred (including profit) by LM Aero that are directly attributable to the termination,
- if LM Aero substantiates these amounts to the satisfaction of the Australian Aerospace Representative.
- 12.3.4. Not Used
- 12.3.5. LM Aero is not entitled to be paid any profit anticipated on any part of the Contract terminated for convenience except where Australian Aerospace has been paid the anticipated profits under the Prime Contract with the Commonwealth.
- 12.3.6. LM Aero must, in each Approved Subcontract, secure the right of termination and terms for compensation functionally equivalent to that of Australian Aerospace under clause 12.3.