



- 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 Defense of the Commonwealth) or information specifically developed, acquired and licensed to Defense of the Commonwealth.

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means the period commencing upon acquisition of the Aircraft and ending on the day when the last of the Aircraft is withdrawn from service and the last of the Aircraft is disposed of.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,

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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.

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- 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

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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

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- 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

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

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**



- 8.6.2. 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 (





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

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- 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;

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.

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- 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

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**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

- 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.



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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

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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.

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- 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

**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

- 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.

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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