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service marks), registered and unregistered designs, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields and Technical Data.

- (f) The term "Ozone Depleting Substance" means any substance prescribed in the Ozone Protection Act of 1989, or any complementary legislation of a State or Territory of Australia.
- (g) The term "Product Definition Data" means that data which fully describes the Items (both hardware and software) accepted by the Commonwealth. It includes, without limitation, data such as production and engineering drawings, schematic diagrams, wiring diagrams and lists, software source listings, and software variable indexes and cross-references, down to the Configuration Item level which describe the geometry, topology, relationships, tolerances, attributes and features to completely define a component part or assembly of parts or software modules.
- (h) The term "Project Authority" or "PA" means the person holding or performing the office of the Director of Transport and Training Projects - Air Force (DTTPROJ-AF) or the person for the time being holding, or performing the duties of that position or of any position which may replace it.
- (i) The term "RAAF" means the Royal Australian Air Force.
- (j) The term "Service Data" means data which describes how the Items (both hardware and software) are to be operated, maintained or modified. It includes, without limitation, data such as the operation or operating manuals, maintenance manuals and schedules, and manuals which describe how software updates are performed.
- (k) The term "Software" means computer programs consisting of a series of instructions or statements, in machine readable (object code) form or a systematized collection of data in object code form including any operating system or any such programs which may be hardwired into read-only memory integrated circuits or similar firmware devices, together with any associated materials and documentation, flow charts, logic diagrams and listings being items of software specified in the Items.
- (l) The term "Software Documentation" means the information that describes or specifies the design or details, explains the capabilities, or provides operating instructions for using the Software or to obtain desired results therefrom including without limitation software requirement specifications, Software Design Documentation, software support manuals, programming standards, software development files/folders, software programming manuals, test specifications, test descriptions, test reports, Source Listings.

- (m) The term "Source Code" means the Software in its human readable form
- (n) The terms "Source Listings" means document(s) generated by whatever means which list Source Code, and any other information which is necessary to render the Source Code useable, such as that which results from compiling or other processes.
- (o) The term "Design Data" means data which describe the internal design and operation of the Items (both hardware and software), describe how each item of hardware and software interfaces with other items of hardware and software, and documents the design process. This includes, without limitation, data at the system level down to the level of individual Configuration Items (with reference to inputs, outputs and processes), such as theory of operation manuals, design calculations and related information, design assumptions, math model reports, explanations of particular codes, standard headers or distinct procedures, design documents and reports for hardware and software and for the system as a whole, as well as the specifications to which the Items and their component systems and parts are designed and the tests required to establish performance, so as to provide: (a) a complete and accurate technical description of the design and operation of the system and its Configuration Items and aggregates of Configuration Items to permit investigation and isolation of failures and defects in service; (b) a clear understanding of the design and operation of internal interfacing and external interfacing systems; and (c) material and information to enable modifications and design enhancements to be implemented and fully tested.
- (p) The term "Configuration Item" means a collection of hardware or software elements treated as a unit for the purpose of configuration management.
- (q) The term "Software Design Documentation" means the description of the internal design and operation of the computer program and its interfaces with the hardware in which it operates, including explanations of particular codes, standard headers or distinct procedures (with reference to inputs, outputs and processing) so as to provide: (a) a clear understanding of the design and operation of internal interfacing and external interfacing software systems; (b) a complete and accurate technical description of the design and operation of the software system to permit investigation and isolation of software failures and defects in service; and (c) material and information to enable software modifications and design enhancements to be implemented and fully tested.
- (r) The term "Source Data" means all data which is used as a basis for the design or selection of the Items (both hardware and software). It includes, without limitation, Source Code, Primary Design Criteria and data relating to elements of the Items which were not designed or developed specifically for the Contract, and all data items which define requirements or impose limitations or constraints on the design of the Items.

(s) The term "Technical Data" means reco

Items shall not be supplied in excess of quantities specified herein, except for allowed shipping tolerances, if any. Seller shall be liable for handling charges and return shipment costs for any excess quantities; and, unless Seller agrees to pay and does pay such charges and costs within a reasonable time, the overshipped material will be retained by Buyer at no cost and shall become the property of Buyer.

4. Prices

Unless otherwise specified, prices are f.o.b. destination and shall include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government. The price includes all charges for boxing, packing, crating, drayage, storage, dunnage, and bundling. Seller warrants that prices charged for Items are not hig2i6-0.010TJd by

processes of manufacture; and

- (iii) Design including changes to design and the effect of such changes on unaltered elements of earlier design, in view of the state of the art at the time of such design and of such changes, respectively;
- (b) All manuals, drawings, and data prepared by Seller and delivered to Buyer or the Commonwealth under this PO shall, in form and substance, be accurate and free from deficiencies in accordance with accepted aircraft manufacturing and engineering standards; and
- (c) Buyer's remedy for a breach of the warranties set forth in paragraph (a)(1) and (a)(2) and Seller's obligation and liability therefor shall be:
 - (1) In the event that the warranties are breached as a result of a design defect, one of the remedies provided for in paragraph (d) below; or
 - (2) In the event that the Warranties are breached as a result of a reason other than design defect; repair, rework or replacement of any non-conforming accessory, equipment or part or correction of any defective or non conforming manuals, drawings or technical data which have been provided to Buyer by Seller.
- (d) Where a warranty set forth in paragraph (a)(1) or (a)(2) has, as a result of a design defect, been breached by Seller, Seller shall in its discretion either:
 - (1) Repair or rework defectively designed items so that they perform as if they had not been defectively designed;
 - (2) Redesign and replace defectively designed items so that they are no longer defective: or
 - (3) Continue to repair or replace all items affected by the design defect for a period of sixty (60) months from the date of notice; provided, however, that if Seller offers another customer the remedy set forth in subparagraph (d)(2) during such period Seller shall offer that remedy to Buyer at that time.
- (e) Subject to paragraph (f), Seller's obligation and liability under paragraphs (b) and (c) are expressly conditioned upon:
 - (1) Buyer notifying Seller of such defect or non conformance within sixty (60) days after discovery thereof;
 - (2) In respect of defects or non-conformances of Items incorporated into an aircraft:

- (i) Any defect (other than a Latent Defect) being notified by Buyer to Seller within twelve (12) months after acceptance of the Aircraft containing the defect or non-conformance, or before such Aircraft has been operated for one thousand (1000) flight hours whichever occurs later:
 - (ii) Any Latent Defect in the Items being notified by Buyer to Seller within twenty-four (24) months after acceptance of the aircraft containing the Items; and
 - (3) In respect of defects or non-conformances relating to a part of the Items not incorporated into an aircraft;
 - (i) Any defect (other than a Latent Defect) being notified by Buyer to Seller within twelve (12) months after acceptance of such part of the Items by Buyer, or, in the case of Items furnished directly to the Commonwealth, within twelve (12) months after acceptance of such part by the Commonwealth; and
 - (ii) Any Latent Defect in the Items being notified by Buyer to Seller within twenty-four (24) months after acceptance of the aircraft containing the Items; and
 - (4) The notice referred to in subparagraph (e)(1) stating such particulars as may reasonably be necessary to notify Seller of the nature of the asserted defect or non-conformance:
 - (5) Buyer providing such facts as are reasonably necessary to support its assertion that the asserted defect or non-conformance is due to a matter embraced within the said warranty and providing reasonable support for the fact that it did not result from acts or omissions of Buyer: and
 - (6) The delivery by Buyer, at Buyer's expense to Seller or its agent at such other place as may be agreeable to Buyer and Seller, of such of the items asserted to be defective or non-conforming as are necessary to enable Seller to redesign, repair, rework or replace (as the case may be) the defective or non-conforming item. Buyer shall pay transportation costs to the point of repair or replacement, it being agreed that Seller shall bear the expense of return transportation of the item or any redesigned, repaired, reworked, replacement or corrected item to Buyer or to Buyer's customer in Australia as directed by Buyer.
- (f) If the defect or non-conformance relates to a redesigned, repaired, reworked, replaced or corrected item, then the period for giving notice shall extend for:

Martin's option, the defective good or service shall be repaired or replaced within ten (10) business days of such notice at no cost to Lockheed Martin.

Nothing in this provision shall be construed to limit any other rights or remedies under this contract, at law or in equity that Lockheed Martin may have with respect to Year 2000 compliance.

- (j) Seller's warranties, as set forth in this Article, are exclusive, are in lieu of, and Buyer hereby waives all other warranties, express or implied, including, without limitation, any implied warranties of merchantability or implied warranties of fitness.
- (k) The warranties provided herein run to Buyer and its customer.

7. Compliance with Laws

- (a) Seller shall comply with the applicable provisions of all Federal, state, and local laws and ordinances and all lawful orders, rules and regulations promulgated thereunder including without limitation the Arms Export Control Act; and such compliance shall be a material requirement of this PO. Seller agrees to indemnify Buyer against any loss, cost, damage or liability by reason of Seller's violation of this clause.
- (b) Seller warrants that each chemical substance constituting or contained in Items sold or otherwise transferred to Buyer hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to The Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
- (c) Seller shall provide to Buyer with each delivery any Material Safety Data Sheet applicable to the Items and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder.

8. Responsibility for Property

Unless otherwise specified, Seller shall be liable for any loss or destruction of or damage to property of Buyer or of any customer property Seller whether furnished to Seller by any such customer or Buyer; and, Seller shall be responsible for returning any such property in as good condition as when received except for reasonable wear and tear and for the utilization of it in accordance with the provisions of this PO. Upon request of Buyer, such property will be delivered to Buyer at Seller's expense. Seller shall promptly notify Buyer if such property is lost, destroyed or damaged. Title thereto shall not be affected by the incorporation or attachment to any property not owned by Buyer, nor shall any such property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty. All

property furnished by Buyer shall be used solely in the performance of this PO or other POs issued by Buyer.

9. Special Tooling and Test Equipment

Except as may be otherwise provided for in this PO, jigs, dies, fixtures, molds, patterns, special gages, and other items of special tooling (including software) and special test equipment, shall be furnished by and at the expense of Seller. Special tooling and test equipment shall be kept in good condition by Seller and replaced as necessary by Seller, without expense to Buyer. Title to special tooling and test equipment shall remain in Seller, except that Buyer may, at any time, reimburse Seller for the cost of part or of all special tooling and test equipment, and upon payment therefor shall become the sole owner thereof. Buyer shall at all times have unrestricted access to all such tooling, equipment, and information pertinent thereto for purposes of quality control, evaluation and verification.

10. Data Rights

(a) Rights and Reservations. The information contained in reports, drawings, documents or other records which are furnished to Seller by Buyer (hereinafter referred to as "property") relative to this PO, to the extent that such information is not in the public domain, shall not be disclosed to others, except to subcontractors as necessary for completion of this PO, in which event the subcontractors shall have the same obligation of nondisclosure and restriction on use. Such information shall not be used or reproduced for any purpose whatsoever except in the performance of work under this PO. Upon completion, termination or cancellation of this PO, Seller shall, if requested by Buyer, return all property to Buyer thirty (30) days after the effective date of such completion, termination or cancellation. Any such property of Buyer retained by Seller shall remain subject to the foregoing restrictions on use, reproduction and disclosure.

(b) Rights in Seller Data.

(1) In addition to any other provision of this PO providing Buyer and/or Buyer's customers rights in Data delivered under this PO, Seller grants to Buyer:

(i) A worldwide, perpetual, royalty-free, non-exclusive right and license to: (A) utilize and have utilized on Buyer's behalf the Data delivered under this PO for Buyer's own internal purposes in connection with the development, certification, validation and production of the Hercules (C-130J/382J) Aircraft, and (B) disclose the Data delivered under this PO, in confidence, to any third party for accomplishing such internal purposes, providing any such disclosure is made pursuant to a written understanding precluding unauthorized use and disclosure by provisions no less restrictive than those imposed on the Parties hereunder; and

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- (ii) A worldwide, perpetual, royalty-free, non-exclusive right and license to grant to Buyer's customers the right to: (A) utilize and have utilized

- (a) In the event that Seller or Seller's employees, subcontractors, or agents enter onto Buyer's premises for any reason in connection with this PO, Seller and such other parties shall observe all security requirements and all plant safety, plant protection, and traffic regulations.
- (b) Seller, and any subcontractors used by Seller in connection with this PO, shall carry Worker's Compensation and Employee's Liability Insurance to cover Seller's and such subcontractors' legal liability on account of accidents to their respective employees. Seller and its subcontractors shall carry adequate Comprehensive General Liability and adequate Comprehensive Automobile Liability Insurance covering the legal liability of Seller and such subcontractors on account of accidents arising out of the operations of Seller or such subcontractors and resulting in bodily injury, including death, being sustained by any person or persons, or in any damage to property. At Buyer's request, Seller shall furnish to Buyer certificates from Seller's insurers showing such coverage in effect and agreeing to give Buyer ten (10) days' prior written notice of cancellation of such coverage.

13. Amendments Required by the Prime Contract

Seller agrees that upon Buyer's request, it will from time to time enter into amendments of this PO to incorporate additional provisions herein or to change the provisions hereof, as Buyer may reasonably deem necessary in order to comply with the provisions of the prime contract(s) or with the provisions of amendments to the prime contract(s) under which this PO is issued. If any such amendment to this PO causes an increase or decrease in the cost of this PO, or the time required for performance of this PO, an equitable adjustment shall be made in the price or delivery schedule, or both, in accordance with the provisions of the "Changes" clause of this PO.

14. Remedies/Waiver

- (a) The rights and remedies provided under this PO shall be cumulative and in addition to any other rights and remedies provided by law or equity.
- (b) Failure by Buyer either to enforce at any time or to enforce at any time the provisions of this PO shall constitute a breach of the terms of this PO.

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become due under this PO may be assigned to a bank, trust company or other financing institution, including any Federal lending agency, by Seller without such consent. Seller shall furnish Buyer with two signed copies of any such assignment. Payment to an assignee of any such claim shall be subject to set-off or recoupment for any present or future claim or claims which Buyer may have against Seller. Buyer shall have the right to make direct settlements or adjustments in price, or both, with Seller under the terms of this PO notwithstanding any assignment of claims for monies due or to become due hereunder and without notice to the assignee.

16. Environmental Issues

- (a) Prohibition of Hazardous Substances Without Consent. (1) The Commonwealth considers the substances so defined or listed in the National Occupational Health and Safety Commission Guidance Note for determining and classifying a Hazardous Substance (NOHSC:30011 (1991)), in all forms, to be hazardous substances. Subject to subparagraph (a)(2), such substances shall not be used in the Items without prior written consent of Buyer. Buyer shall have absolute discretion as to whether or not to grant that consent and as to what conditions to impose.
- (2) Seller is hereby authorized to include in the Items the Hazardous Substances listed on the face of this PO.
- (3) Where consent is given under subparagraph (a)(1) and in the case of a Hazardous Substance listed on the face of this PO, Seller shall ensure in respect of the Items that:
- (i) Full details of any hazardous substances (as identified in accordance with subparagraph (a)(1)) included in the Items are provided to Buyer;
 - (ii) All documentation, including that related to operation, maintenance, assembly, shipping and handling, is clearly endorsed to identify the presence and nature of the hazard;
 - (iii) All Items containing hazardous substances bear appropriate labels which clearly identify the nature of the substances, the associated hazards and appropriate safeguards; and
- (4) In addition to any other provision for indemnification under this PO, Seller hereby indemnifies and shall keep indemnified Buyer against any all liability, loss, damages, costs (including the costs of any reasonable settlement) compensation or expense whatsoever incurred by Buyer which arises out of any action, claim or proceeding in respect of incorporation or use in the Items of hazardous Substances for which consent has not been

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given under this Article or which have not otherwise been expressly approved by Buyer during performance of this PO.

- (5) Seller undertakes to advise Buyer, at any time during the production of Items, within a thirty (30) day period of becoming aware of a non-hazardous substance which could be substituted for a hazardous substance permitted under subparagraph (a)(1) without significant detriment to the performance of the Items.
- (6) All Items for delivery under this PO shall conform to all laws relating to any hazardous substance included therein which apply in the country of manufacture.
- (7) Items containing an unauthorized hazardous substance may be rejected by Buyer.

(b) Ozone Depleting Substances.

- (1) Seller shall not provide Items containing an Ozone Depleting Substance unless authorized by Buyer. Buyer shall have absolute discretion as to whether or not to grant that consent and as to what conditions to impose.
- (2) Buyer shall not authorize the provision of Ozone Depleting Substances unless the importation or manufacture of the substance is licensed, and Seller shall not in the importation or manufacture exceed the quota applying to Seller for the substance.
- (3) Items containing an unauthorized Ozone Depleting Substance may be rejected by Buyer.
- (4) Seller is hereby authorized to include in the Items the Ozone Depleting Substances listed on the face of this PO.

17. Consideration

Seller shall, for the consideration hereinafter mentioned and within the time specified, accomplish all required services, testing, manufacturing and other work; deliver to Buyer the Items provided for in this PO; and grant to Buyer the right to exercise the options, if any, provided for in this PO.

18. Technical Surveillance

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If this PO specifies that the Items furnished hereunder are to be delivered directly to or performed at a Buyer facility, the laws, excluding choice of state law rules, of the state where the Items are delivered or are performed shall apply to the interpretation and construction of this PO. For Items neither delivered directly to nor performed at a Buyer facility, the laws of the state of Texas, excluding choice of state law rules, shall apply.

20. Acceptance of Order

This PO is the entire agreement between the Buyer and Seller in respect of the subject matter of this PO and is subject to the terms and conditions herein. This PO supersedes all communications, representations or agreements, oral or written, between Buyer and Seller with respect to the subject matter of this PO. Either: (a) acknowledgment of this PO, (b) furnishing of Items under this PO, (c) acceptance of payment under this PO, or (d) commencement of performance of this PO, shall constitute Seller's unqualified acceptance of this PO. Additional or differing terms or conditions proposed by Seller or included in Seller's acknowledgement hereof shall be void and have no effect unless accepted in writing by Buyer.

21. Packing, Shipment and Shipping Instructions

- (a) Unless otherwise specified by Buyer, Seller shall assure that all packing and packaging shall comply with good commercial practice and applicable carrier's tariffs. The use of commercial practices shall not relieve Seller of responsibility for packaging in a manner that will insure receipt of Items in an acceptable condition at the destination specified in this PO.
- (b) Seller shall assure the packaging, labeling and shipping of all HAZARDOUS SUBSTANCES including DANGEROUS MATERIALS, conforms to all applicable international, federal, state and local laws and regulations.
- (c) Seller shall mark on the outside of each exterior container: (i) the PO number(s) or numbers of the Items packed in that container; (ii) the sequence and quantity of each exterior container in each shipment (such as "1 of 3"); (iii) the bill of lading/express receipt number. If shipments against more than one purchase order are packed in one exterior container, mark each intermediate container with its applicable purchase order number.
- (d) Seller shall properly describe Seller's Less than Truckload shipments in accordance with the National Motor Freight Classification to insure the correct classification rate. Include this PO number on all carrier bills of lading and shipping labels. Combine on the same bill of lading, all shipments consigned to the same Buyer address and ship on the same day. No C.O.D. (Collect on Delivery) shipments will be received by Buyer. There shall be no deviation from these routing instructions unless such deviation is approved prior to shipping by Buyer's Authorized Procurement Representative or Buyer's Traffic Department.

- (e) Seller shall be responsible to Buyer for any increased costs to Buyer which result from Seller's failure to follow Buyer's routing instructions if such instructions are specified on the face of this order.

22. Public Release of Information

No public release (including, without limitation, photographs, films, announcements, denials or confirmations of same) on any part of the subject matter of this PO or any phase of any program hereunder shall be made without the prior written approval of Buyer.

23. Disputes

Except as otherwise provided in this PO, Buyer and Seller shall have the right to redress any dispute arising under or related to this PO, which is not disposed of by agreement, by pursuing any right or remedy which Buyer or Seller, as the case may be, may have at law, in equity or under this PO in any United States court of competent jurisdiction. Pending resolution of any dispute, Seller shall proceed diligently with the performance of work, including the delivery of Items in accordance with Buyer's direction. Upon resolution of any such dispute, this PO shall be equitably adjusted, if necessary, to reflect such resolution.

24. Severability of Provisions

Any provision of this PO that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, and shall be unenforceable in that jurisdiction without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction.

25. Contractual Commitments

The parties agree that there shall be no adjustment in the price, time for performance or any other provision of this PO unless Buyer's authorized representative shall have issued a written order directing a change hereto.

26. Changes

- (a) Buyer's Authorized Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this PO in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance or point of delivery; and (iv) delivery schedule.
- (b) Except as may otherwise be expressly provided in this PO, if any such change under paragraph (a)(i), (ii), or (iii) above causes an increase or decrease in the

time required for performance of any part of this PO, whether or not directed by such change, Buyer shall make an equitable adjustment in the delivery schedule and the PO shall be modified accordingly in writing.

- (c) Except as may otherwise be expressly provided in this PO, if any change under paragraph (a) above causes an increase or decrease in the cost or performance of any part of this PO, whether or not directed by such change, Buyer shall make an equitable adjustment in the PO price, and the PO shall be modified accordingly in writing.
- (d) Such equitable adjustment, if any, shall be calculated in a manner similar to that used to originally price the PO and shall be for the net increase or decrease in the cost for the changed portion only. In no event shall Seller reprice any portion of the Items unaffected by the change. Seller must assert its right to an adjustment under this clause within thirty (30) days from the date of the change to which such adjustment is attributable.
- (e) Seller agrees that its failure to submit such claim or claims within the applicable time period shall constitute a waiver thereof unless, for good cause, Seller requests in writing, prior to expiration of the applicable time period that a time extension for filing its claim or claims be granted by Buyer and Buyer grants such extension. Any such extensions, if approved, shall be effective only if authorized in writing by Buyer's authorized procurement representative. Prior to final settlement of any timely filed claim or claims, Seller may submit revisions to such claims or claims provided that such revisions do not introduce different areas of costs or claim elements.
- (f) Nothing contained in this clause shall relieve Seller from proceeding without delay in the performance of this PO as changed.

27. Notification of Changes

- (a) Only Buyer's Authorized Representative may direct or redirect Seller's effort hereunder. In the event, however, Seller considers any conduct including any

(a) Only Buyer's Authorized Representative may direct or redirect Seller's effort hereunder. In the event, however, Seller considers any conduct including any

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schedule impact; (5) Seller's estimate of the time by which Buyer must respond to Seller's notice to minimize cost, delay or disruption of performance.

- (b) Seller shall take no action in reliance on the conduct considered to constitute a change unless and until Buyer's Authorized Representative issues a written change order covering the conduct in question.

28. Change and Follow-On Proposals

Circumstances may arise during the course of performance under this PO where

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design is Buyer's detailed design). Without limiting any other rights Buyer may have, Buyer at its option shall have the right to require Seller to (i) repair or

- (b) In the event Seller contemplates making an award to a lower tier subcontractor which is a foreign concern, or a domestic concern where any defense articles or technical data may be disclosed to foreign nationals, Seller shall ensure that all necessary U.S. export licenses are obtained prior to the transfer of any defense articles or technical data or other information to the prospective lower tier subcontractor.

34. Reliance

Seller represents and acknowledges that it is, and that Buyer absolutely relies upon Seller as an expert, fully competent in all areas of the requirements of this PO. Seller expressly agrees that it will not deny any responsibility or obligation to Buyer on the basis that such was originated, approved, reviewed, or accomplished by Buyer. In addition, Seller expressly agrees and acknowledges that it has received and reviewed all drawings, specifications and documents referred to in this PO either prior to or simultaneous with the execution of this PO, and Seller represents that it has the capability and resources to design and produce all such goods or services described herein. Seller agrees that it hereby assumes all risks of impossibility of performance, and commercial impracticability, under this PO.

35. Access by Commonwealth

(a) Access by Commonwealth to Seller's Premises.

- (1) Seller shall at all reasonable times, permit officers nominated by the Project Authority to enter upon its premises, and shall stipulate in all lower tier subcontracts that such authorized officers be granted similar entry to lower tier subcontractor's premises, for purposes associated with this PO. Seller may, at its discretion and at no cost to Buyer or the Commonwealth, arrange for any of its officers to accompany the Commonwealth representative on the visit to Seller's lower tier subcontractors. Any such visit must be for purposes associated with this PO and Seller shall not make any claim for delay under this PO caused by having any of its officers so accompany the Commonwealth. In relation to visits to both Seller's and lower tier Subcontractor's premises, the Commonwealth officers will be allowed to freely examine any material or talk to personnel to review Seller's (or lower tier subcontractor's) performance, progress, quality control, security and manufacturing and testing procedures; provided that any such examination is performed in such manner as not unduly to delay or to hinder manufacture, continuation or performance under this PO.
- (2) The Project Authority shall comply with, and shall require any authorized person to comply with, any Seller safety and security requirements or codes of behavior for the premises.

- (3) Access as permitted by this paragraph (a) shall not apply to financial information that is considered proprietary to Seller and/or lower tier subcontractor.

(b) Seller Access to Commonwealth Premises.

- (1) The Commonwealth shall provide all reasonable access to Commonwealth premises for persons approved under this Article as necessary for Seller's performance of this PO.
- (2) The Project Authority will notify Seller of any special security or access provisions that apply to particular Commonwealth premises or sites relevant to PO.
- (3) Seller shall seek written permission from the Project Authority a minimum of seven days before entry is required, for each person Seller wishes to have access to Commonwealth premises or sites.
- (4) Seller shall comply with, and shall require persons afforded access under this Article to comply with, any relevant Commonwealth safety and security requirements, regulations, standing orders, or codes of behavior for the Commonwealth premises or sites.
- (5) The Project Authority may by notice to Seller withdraw access rights to any Commonwealth premises at any time for any period, and the extent to which that withdrawal of access dela

reasonable assistance required for the located Commonwealth personnel. The facilities provided shall be of an equal standard to Seller's personnel of similar status, and take into account requirements for health, safety and comfort.

- (3) Commonwealth incurred telephone, Fax and other similar usage charges shall be paid by Commonwealth. Such charges shall be invoiced at cost. Seller shall separately invoice buyer for such costs in the form specified by

Seller; (ii) attendances at technical reviews, audits, contract progress meetings; or (iii) review, acceptance of or payment for, any of the work or services for any part of the design or the design process, shall be construed as limiting Seller's responsibility under this PO in any way or as operating as a waiver of any right under this PO or of any cause of action arising out of the performance of this PO.

- (3) Without limiting the generality of any other provision of this PO, interpretation or assistance provided by resident, visiting or other Buyer or Commonwealth personnel to Seller shall not be taken as acceptance of materials or work which do not conform to the requirements of this PO and shall not waive any provisions of, or release Seller from its obligation under this PO.
- (b) Data. Seller shall (1) identify, collect, assess and reduce into appropriate useable form all data necessary to enable it to carry out its obligations under this PO; and (2) retain all technical data for a period of ten years after final acceptance.
- (c) Audit, Examination and Investigation.
- (1) The Commonwealth's representatives may visit Seller's and Seller's lower tier subcontractors premises to inspect, examine, or investigate any work of Seller performed under this PO provided that any such inspection, examination or investigation is performed in such a way as to not unduly delay or hinder performance under this PO. Seller may, at its discretion and at no additional cost to Buyer or the Commonwealth, arrange for any of its officers to accompany the Commonwealth on the visit to lower tier subcontractor's premises provided that Seller shall not make any claim for delay under this PO caused by having any of its officers so accompany the Commonwealth representative.
 - (2) Seller shall ensure that the Commonwealth has the right to exercise the rights detailed in paragraph (c)(1) above in relation to any lower tier subcontractor.
 - (3) Where Buyer or the Project Authority is of the opinion that Seller has failed to comply with any of its obligations under the Engineering Management section of the Statement of Requirement, in a way which endangers the due and proper completion of this PO, then Buyer may provide written notice to Seller giving the details of such failure.
 - (4) If within thirty (30) days of receiving a notice pursuant to subparagraph (c)(3) above, Seller has not remedied its failure to comply with any of its obligations under the Engineering Management section of the Statement of Requirement, then Buyer may withhold all payments which would

- (1) Seller shall ensure that all work carried out under this PO (including that by lower tier subcontractors) is performed under the quality system which complies with the requirements of this PO.
- (2) Notwithstanding subparagraph (a)(1) above, Seller shall establish and apply to all work (including design and development if applicable) performed by Seller under this PO a quality system which meets the requirements of ISO 9001.
- (3) Seller shall ensure that all lower tier subcontracts contain provisions which require work performed under this PO (including design and development if applicable) to be carried out under the quality system which complies with the requirements of this PO. Without limiting this requirement in any way, Seller shall make reasonable efforts to ensure that a representative of Buyer and/or the Project Authority may be located at or visit the premises of any lower tier subcontractor for the purpose of performing source Quality Audits or Quality Surveillance at those premises.
- (4) Seller shall perform self audits and allow oversight by the Federal Aviation Administration (FAA) and US Government quality auditing body of compliance with the quality system standards specified in subparagraph (a)(2) above.

of this PO affected by the nonconformity of a quality system to the quality requirements of this PO. Seller shall comply with any such direction and shall not recommence work on the specified aspect of this PO until directed to do so by notice in writing from Buyer. Delay caused by cessation of work under this Article shall not be ground for an equitable adjustment to this PO.

- (10) Without limiting the generality of any provision of this PO, references to "quality systems" in this paragraph (a) shall include both those of Seller and Seller's lower tier subcontractors.
- (b) Quality Plan. Seller shall maintain the Quality Plan submitted by Seller with its proposal as modified by and changes agreed to with Buyer to the production (including design and development) of the Items under this PO. Review of the quality plan does not relieve Seller of any obligations under this PO.
- (c) Quality Management.
 - (1) Seller shall maintain effective control of the quality of the Items at all stage of performance of work under this PO, shall provide test facilities and shall perform, or have performed, all examination and tests reasonably necessary to demonstrate that the quality of materials and workmanship used in the production of the Items conforms to the requirements of this PO. Where such examinations and tests are at the instigation of Buyer or the Project Authority, the Project Authority will, as far as practicable, give sufficient notice of such examinations to tests to permit them to be integrated with Seller's own conduct of inspection and testing. Buyer and the Project Authority shall be given reasonable notice of and be permitted to attend all such examinations and tests.
 - (2) Seller shall provide Buyer and the Project Authority with, or give access to, all documentation related to design, development, production or testing of the Items, as well as to test pieces and samples that may reasonably be required for verification of Items at all stages of this PO. Buyer and the Project Authority shall also have the right to make copies of such documents necessary to facilitate their Quality Audits or Quality Surveillance. Copies of such documents will not be released to a third party without the approval of Seller.
 - (3) Seller shall calibrate inspection, measuring and testing equipment and maintain associated documentation in accordance with MIL-STD-45662.
 - (4) Except for those materials, components, assemblies, documentation and records exempted by Buyer, Seller shall establish and maintain procedures for the identification and tracing of: (i) materials, components

and assemblies capable of introducing systemic defects; and (ii) documentation and records relating to the quality of the Items.

- (5) Records pertaining to the verification of quality shall be retained for a minimum period of ten years after final acceptance.

- (d) Control of Nonconforming Items. Seller shall have in place procedures for the management of Nonconforming Items in accordance with the requirements of ISO 9001. In accordance with the definitions in ISO 9001, "product" includes services. Seller shall not use in the performance of its obligations under this PO

Escrow agreement in the form specified by Buyer within 12 months of the effective date of this PO requiring the escrow agent on request by Buyer or the Project Authority to release the current copy of the Source Data and Software Design Data held by the escrow agent if:

- (i) The Commonwealth terminates the prime contract or Buyer terminates this PO;
 - (ii) Seller ceases the production of items to which the Source Data and Software Design Data is relevant; or
 - (iii) Seller and Buyer/the Commonwealth agree to the release of the Source Data and Software Design Data.
- (2) Seller shall prior to acceptance of the first Items under this PO lodge the Source Data and Software Design Data with the escrow agent.
 - (3) Seller shall provide updates for the Software and to the Source Code for a period of five years from delivery of the Items.
 - (4) Failure by Seller to provide the Source Code and updates as required by this Article shall entitle Buyer to terminate this PO for default if Seller fails to remedy the default in accordance with the default provisions hereof.

40. Indemnities

- (a) In addition to any other provision of this PO providing for indemnification of Buyer or the Commonwealth, Seller shall be liable for and shall indemnify Buyer and the Commonwealth against:
 - (1) Any loss or damage to or loss of use of any property of Buyer or the Commonwealth or property for which Buyer or the Commonwealth is responsible (including the Items after acceptance and Government Property) while in the possession and control of Seller; and
 - (2) Any claims for damages or losses and any demands, actions, suits or proceedings which may be made or bought by any person (including employees and dependents and personal representatives of employees of Buyer, the Commonwealth, Seller or lower tier subcontractors) against Buyer or the Commonwealth in respect of (and whether resulting directly or indirectly from): (i) personal injury to or the death of any person; (ii) loss of damage to, or the loss of use of, any property; including all costs and expenses that may be incurred in connection with any such claim, demand, action, suit or proceeding whether arising from any defense, settlement, investigation procedure or otherwise including expenses of debris removal,

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cleaning up and mitigation or expenses incurred in prevention and mitigation of any pollution hazard; occurring during and caused by or arising from any negligent act or omission of Seller or a lower tier subcontractor occurring during, or in connection with, the performance of this PO and not proximately caused by the contributory negligence of a

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conform to this PO; and (iii) shall not waive any provisions of, or release Seller

immediately upon creation vest in and become the property of the Commonwealth and is by force of this Article assigned by Seller to the Commonwealth.

1.2 The Commonwealth shall have the exclusive right to apply for registration of any Commonwealth Intellectual Property in all countries of the world.

1.3 Seller shall cooperate with the Commonwealth to provide access and information so that the Commonwealth can effectively perfect, utilize and defend its rights in this Article.

2 Grant of Licence

2.1 Seller and any subcontractor may seek a licence from the Commonwealth to use inventions or processes or other Intellectual Property contained in the Commonwealth Intellectual Property subject to such terms as are mutually agreed.

2.2 Seller hereby grants to the Commonwealth an irrevocable, world-wide, royalty-free, and perpetual licence (including a right to sub-licence, but only for the purposes specified herein) to use, reproduce, copy and do all such other things with all Seller Intellectual Property as are necessary to enable the Commonwealth. or another Person (including Buyer) on behalf of the Commonwealth:

(a) to use, repair, maintain and modify the Items (including reproduction and manufacture of items of Items for the purpose of such repair, maintenance and modification); and

(b) in the event of termination of this PO, to complete the development and production of the Items.

Without limitation, the activities referred to in paragraphs 2.2(a) and 2.2(b) above, may be performed by a contractor for the Commonwealth and the licence provided for in this clause 2.2 will allow the Commonwealth to make such Seller Intellectual Property available in confidence to such a contractor for use in this regard.

For purposes of this clause, modify shall include the work to adapt, integrate, refurbish and develop the Items.

2.3 The licence to modify using Intellectual Property in Clause 2.2 shall only include minor modifications, except as authorised in this clause. For the purposes of this clause, a minor modification shall consist of those modifications where the actual contract value of the nonrecurring design portion, or the relevant portion where not separately priced, of any contract for modification shall not exceed \$5 million Australian in December 1995 prices.

2.4 Not Used.

2.5 The Commonwealth is authorised to perform any modification but excluding minor modifications as stipulated in Clause 2.3) subject to the payment of a percentage fee of 6.25% of the price of the non recurring design work referred to in clause 6.5. Upon payment of the fee, Seller shall provide to the Commonwealth Seller Intellectual Property then in existence which is necessary to perform the desired modification. Seller shall also provide the rights to the Commonwealth to use Seller Intellectual Property for that purpose. The purpose will be limited to the modification of the Items only for the Commonwealth. Subject to these requirements, the Commonwealth shall have the rights as provided in clause 2.2.

3 Limitation of Rights

3.1 Seller agrees to work with the Commonwealth and make all reasonable efforts:

- (a) to identify lower tier Subcontractors who are relevant to the rights granted in this Clause and who have not yet provided rights equivalent to the Seller Intellectual Property rights granted under this Clause, and
- (b) to obtain from the lower tier Subcontractors similar or comparable license rights as set forth in paragraph 2 above for the Commonwealth with regard to lower tier Subcontractor's Intellectual Property.

3.2 In respect of non-developmental items that are incorporated into the Items, Seller shall make available to the Commonwealth the same Intellectual Property rights which are provided to Seller and shall make all reasonable efforts to obtain from the supplier similar or comparable licence rights, as set forth in paragraph 2, for the Commonwealth with regard to Intellectual Property.

4 Disclosure Rights

4.1 Without limiting any rights of the Commonwealth provided for elsewhere in this PO and in particular in this clause 18, Seller hereby grants to the Commonwealth the rights to disclose, in confidence, Seller Intellectual Property which may be required to be released by the Commonwealth so as to allow software or equipment to connect to or communicate with any of the Items purchased under this PO.

5 Commercial in confidence

5.1 Where the Commonwealth makes available to another person any Seller Intellectual Property, or other such property as obtained under paragraph 3.1 or paragraph 3.2 the Commonwealth shall obtain from that person a deed of confidentiality or other agreement substantially which deed shall or other agreement shall:

- (a) impose an obligation on such person:

- (i) to use such Intellectual Property solely for the purposes provided for in this clause 1 and to observe appropriate confidentiality requirements;
and
 - (ii) not to disclose any such information to any other person without the consent of Seller, lower tier subcontractor or supplier in whom the such Intellectual Property are vested:
- (b) obtain an acknowledgment from such person that:

Seller on a time and materials basis.

- 6.2 Seller shall provide all such Intellectual Property in printed form and where possible in electronic format, and where more than one printed or electronic copy is required, the Commonwealth shall pay all reasonable costs of reproduction.
- 6.3 Seller undertakes to support the Intellectual Property throughout the life of the Items and to meet orders by the Commonwealth for such support. The price of such support shall be justified by Seller on a time and materials basis.
- 6.4 Failure by Seller to provide the source code or other Intellectual Property as required by this PO shall be a breach.
- 6.5 For purposes of differentiating minor and other modifications for this clause, the Commonwealth shall provide reasonable documentation to Seller identifying the nonrecurring design work or relevant portion thereof. In the event that a modification is properly characterized as a major modification, then the calculation of the amount payable by the Commonwealth shall be based on the price of nonrecurring design work to be undertaken in the modification.
- 6.6 For all work, the calculations shall be made in Australian dollars, and the payments will be made in United States Dollars at the then applicable rate of exchange quoted by Westpac Bank.
- 6.7 The Commonwealth shall, on or before the thirty-first (31st) day of each and every March from and after the date hereof and during the period that the Commonwealth continues to own the Items, render to Seller a statement in writing setting forth the contractual payments made on each contract for work described in paragraph 2.4 and Clause 2.5 above during the twelve (12) immediately preceding calendar months, such statements to be accompanied by the amount shown by the said statement to be due to Seller. Such annual reports described herein are required even when no such contracts have been performed during the reporting period.
- 6.8 The Commonwealth, for the purpose of this clause, agrees to keep records and books of account sufficient to establish the value of any fee payable to Seller pursuant to this Clause 18. The Commonwealth further agrees to make such records and books of account available during reasonable business hours solely for the purpose of determining the accuracy of the yearly statements and payments provided herein.

7 Identification of Intellectual Property

- 7.1 Seller shall maintain detailed records of the work, including research and development work, carried out by Seller, lower tier subcontractor or any Third Party in order that all Commonwealth Intellectual Property may be readily identified and

distinguished.

7.2 Seller shall provide the Project Authority with written notice on a periodic basis not to exceed six (6) months of Intellectual Property which comes into existence during performance of this PO and which is to be used in the performance of this PO.

8 Intellectual Property Rights Issues

8.1 Seller warrants that use of Intellectual Property by the Commonwealth (or by a third party on its behalf), in accordance with this PO and in relation to the Items does not infringe the Intellectual Property rights or right to confidentiality of any person.

8.2 Seller shall indemnify, and shall at all times keep indemnified, Buyer and the Commonwealth against any and all liability, loss, damage, costs (including the cost of any settlement), compensation, or expense whatsoever incurred by them, arising out of any action, claim or proceeding brought by a third party in respect of

(a) an infringement or alleged infringement of that third party's Intellectual Property where the infringement arises out of any use, possession, reproduction, repair, maintenance, manufacture, modification or exploitation of the Items which is provided for in this Clause 18 or under this PO; or

(b) breach or alleged breach of a duty of confidentiality owed to that third party, where the breach is caused by an act or omission on the part of Seller or its officers, servants, agents or contractors (whether or not such act or omission constitutes a breach of this PO).

8.3 As soon as practicable, the Commonwealth, Buyer and Seller shall inform each other of the occurrence of any claim or demand made or action, suit or proceeding threatened or brought against the Commonwealth, Buyer or Seller arising from infringement or alleged infringement or breach referred to in paragraph 8.2 and shall ensure that the others are kept fully informed of subsequent proceedings concerning any subsequent claim.

8.3.1 The Commonwealth agrees that, subject to paragraph 8.3.2, Seller shall at Seller's expense have the right to conduct the defence of any claim against the Commonwealth, in respect of which Seller is required to indemnify the Commonwealth and or Buyer under paragraph 8.2.

8.3.2 The Commonwealth's and Buyer's obligation under paragraph 8.3.1 shall be subject to Seller throughout the conduct of the defence:

(a) keeping the Commonwealth and Buyer fully informed, consulting fully with the Commonwealth and according due consideration to the Commonwealth's position as defendant prior to making any material decision, regarding the

defense or settlement of the claim; and

(b) acting with the uttermost good faith

Commonwealth possession and use of the Items, and pursuant to paragraph 8.9, Seller shall pay to the Commonwealth an amount equal to the sum of:

- (a) the payments made by the Commonwealth to that owner under the relevant legislation; and
- (b) the reasonable costs incurred by the Commonwealth in reaching that agreement,

provided always that such payment by Seller shall not necessarily be in full satisfaction of its obligations under the indemnity in paragraph 8.2

8.9 For the purposes of this paragraph 8, "infringement" includes (without limiting the generality of the foregoing) unauthorized acts which would, but for the operation of section 163 of the Patents Act 1990 (Cth.), Section 40A of the Designs Act 1906 (Cth.), Section 183 of the Copyright Act 1968 (Cth.) and Section 25 of the Circuits Layout Act 1989 (Cth.) (or any sections that replace those sections from time to time), constitute an infringement.

44. Termination for Default

- (a) (1) Buyer may, subject to subparagraphs c and (d) below, by written notice of default to Seller, terminate this PO in whole or in part if Seller fails to (i) deliver or perform the Items within the time specified in this PO or any extension; (ii) make progress, so as to endanger performance of this PO (but see subparagraph (a)(2) below); (iii) perform any of the other provisions of this PO (but see subparagraph (a)(2) below); or (iv) in the event of the institution of any proceedings by or against Seller in bankruptcy or insolvency under any provisions of the applicable bankruptcy act or for the appointment of a receiver or trustee or any assignment for the benefit of creditors.(2) Buyer's right to terminate this PO under subdivisions (a)(1)(ii) and (a)(1)(iii) above may be exercised if Seller does not cure such failure within 10 days (or more if authorized in writing by Buyer) after receipt of the notice from Buyer specifying the failure.
- (b) If Buyer terminates this PO for default in whole or in part, Buyer shall have the right to acquire under the terms and in the manner it considers appropriate, Items similar to those terminated; and, the Seller will be liable to Buyer for any excess costs for those Items. However, Seller shall continue the work not terminated.
- (c) If this PO is terminated for default, Buyer shall have the right to require the Seller to transfer title and deliver to Buyer, as directed by Buyer, any (1) completed Items, and (2) partially completed Items, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that Seller has specifically produced or

acquired for the terminated portion of this PO. Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer has an interest.

- (d) Buyer shall pay the PO price for completed Items delivered and accepted. Seller and Buyer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the "Disputes" clause of this PO. Buyer shall have the right to withhold from these amounts any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.
- (e) After termination, if it is determined that Seller was not in default, or that the default was excusable, as set forth in the "Force Majeure" clause of this PO, the rights and obligations of Buyer and Seller shall be the same as if the termination had been issued for the convenience of Buyer.
- (f) The rights and remedies of Buyer in this "Termination for Default" clause are in addition to any other rights and remedies provided by law, in equity, or under this PO.

45. Termination for Buyer's Convenience

- (a) Buyer may terminate this PO, in whole or in part, at any time for its convenience by notice to Seller in writing. On receipt by Seller of such notice, Seller shall immediately comply with Buyer's instructions and, to the extent specified therein, stop work and the placement of subcontracts hereunder, terminate work under subc0.1027 ym.yw()Tjer

would have sustained a loss on the entire

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causes, it shall give the other Party prompt written notice of the fact, together with satisfactory evidence substantiating that said cause prevents performance, as well as a declaration specifying the steps being taken by the Party to remove the relevant cause(s) and shall continue the performance of its other obligations under this PO.

If Force Majeure remains in effect for a period longer than six (6) months, then Buyer may terminate all or part of this PO which is affected by the Force Majeure. Having done so, both Parties shall be relieved of any obligation for the canceled portion thereof.