



Australian Government

Australian Maritime Safety Authority

AUSTRALIAN MARITIME SAFETY AUTHORITY
(ABN 65 377 938 320)

AND

[INSERT NAME OF CONTRACTOR]
(ABN xx xxx xxx xxx)

CONTRACT FOR THE DESIGN, MANUFACTURE AND SUPPLY OF
TWENTY ALUMINIUM STORAGE BOXES

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- "Contract Deliverables"** means those goods and/or services required to be provided in accordance with this Contract and as defined at Item 2 to Schedule 1 and the Specification.
- "Contract Material"** means all material brought into existence by the Contractor or the Contractor's Personnel when performing any works associated with this Contract or otherwise arising out of the performance of this Contract, including manuals, documents, reports, equipment, information or other material and data stored by any means. It includes any modifications to those Contract Materials, but does not include any AMSA Material.
- "Contract Price"** means the total amount payable by AMSA to the Contractor as specified at Item 6 to Schedule 1.
- "Contractor's Personnel"** means all the Contractor's employees, sub-contractor's, sub-contractor's employees, agents or other staff by whatever means of engagement.
- "Delivery Address"** means that/those delivery point(s) specifically identified at Item 5 to Schedule 1.
- "Delivery Date"** means that/those date(s) set out in Item 4 to Schedule 1, on which the Contractor must deliver the Contract Deliverables.
- "Inspecting Officer"** means that person nominated as being the representative of AMSA specified at Item 7 to Schedule 1 or their nominated representative for the purposes of inspecting the Contract Deliverables.
- "Intellectual Property Rights"** includes copyright, trade mark, design, patent, semiconductor or circuit layout rights, trade, business or company names, trade secrets, confidential or other proprietary rights, or any rights to registration of such rights whether created before or after the date of this Contract and whether existing in Australia or otherwise.
- "Purchase Order"** means the official printed order that specifically relates to the Contract Deliverables.
- "Reception Points"** means AMSA's facsimile and registry facilities nominated at Item 3 (a) to Schedule 1.
- "Special Conditions"** means the "Special Conditions" (if any), attached at Schedule 3.
- "Specification"** means the specification of the Contract Deliverables as detailed in Schedule 2.
- "Specified Personnel"** means the key Contractor's Personnel required to undertake work in respect of this Contract (if any) as specified at Item 8 to Schedule 1.
- "Warranty Period"** means that period set out at Item 9 to Schedule 1 and commencing on the date of acceptance of the Contract Deliverables.

- 1.2 In this Contract, unless the contrary intention appears:
- (a) words in the singular number include the plural and words in the plural number include the singular;
 - (b) words importing a gender include any other gender;
 - (c) words importing persons include a partnership and a body whether corporate or otherwise;
 - (d) all references to clauses are clauses in this Contract;
 - (e) all references to dollars are to Australian dollars;
 - (f) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, is a reference to that statute or other legislation as amended;
 - (g) an uncertainty or ambiguity in the meaning of a provision of this Contract will not be interpreted against a Party just because that Party prepared the provision; and
 - (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

2. PRECEDENCE OF DOCUMENTS

- 2.1 In the event of any inconsistency between the Contract documents, the following order of precedence shall prevail:
- (a) any addenda to the Specification;
 - (b) the Specification;

- (c) other Schedules to the Contract;
- (d) the Contract terms and conditions;
- (e) the AMSA Official Purchase Order; and
- (f) any other documents incorporated by reference.

3. SCOPE OF THE CONTRACTOR'S OBLIGATIONS

3.1 The Contractor must in accordance with the terms and conditions of this Contract:

- (a) provide the Contract Deliverables
 - (i) in the manner,
 - (ii) within the time frame,
 - (iii) for the price,
 - (iv) so as to provide the functionality and to meet the performance criteria,
 - (v) in accordance with the Quality Plan at Schedule 6 (if any), and
 - (vi) in conformity with the standards and other documents detailed in this Contract;
- (b) be responsible for all sub-contractor and sub-contracted services; and
- (c) comply with such other reasonable obligations relating to performance of the Contract as may be identified to the Contractor by AMSA from time to time.

4. SCOPE OF AMSA'S OBLIGATIONS

4.1 AMSA must comply with its obligations as set out in this Contract and pay to the Contractor the Contract Price identified at Item 6 to Schedule 1.

5. CONTRACT VARIATIONS

5.1 If either Party wishes to vary the Contract, the proposing Party must submit the proposed variation to the other Party in writing.

5.2 The receiving Party must advise the proposing Party in writing within five (5) working days, or such other period as is agreed, of receipt of the variation either:

- (a) that the receiving Party accepts the variation (including any changes to the Contract Price set out in the notice);
- (b) that the receiving Party rejects the variation; or
- (c) that the receiving Party wishes to propose a different variation (full details must be provided), in which case the response under this sub-clause 5.2 will constitute a new notice of proposed variation under sub-clause 5.1.

5.3 If the receiving Party accepts the variation, the Contract will be deemed to incorporate the accepted variations from the date upon which the receiving Party gives the proposing Party written notification that it accepts the variation.

6. PAYMENTS OF ACCOUNTS

6.1 The Contractor must submit a tax invoice in respect of each payment milestone shown at Item 6 of Schedule 1. Accounts for payment must:

- (a) specify the Purchase Order number and the Reference number of the contract;
- (b) be accompanied by any applicable supporting documents; and
- (c) be rendered to the AMSA Accounts Payable section.

6.2 AMSA will be entitled to an early settlement discount as set out in Item 12 of Schedule 1.

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- 6.3 Unless otherwise stipulated at Item 13 to Schedule 1 AMSA's settlement terms are 30 days.
- 6.4 Time for settlement commences on the date when AMSA has both:
- (a) accepted the Contract Deliverables; and
 - (b) received a correctly submitted invoice.
- 6.5 Payment will be made by electronic funds transfer unless other arrangements are stipulated at Item 14 to Schedule 1.
- 6.6 Payment of the account by electronic funds transfer will be deemed to have been made on the date on which the tax invoice amount is transferred from an AMSA account. Where payment of the account is made by cheque, such payment will be deemed to have been made on the date a cheque is drawn by AMSA in favour of the Contractor.
- 6.7 Invoices which are submitted incorrectly or which contain incorrect information (eg failing to quote or incorrectly quoting the Purchase Order number, sent to the wrong address, or not attaching supporting information) may be returned, unpaid, to the Contractor.
- 6.8 All advance payments must be invoiced strictly in accordance with the Contract Price milestone structure at Item 6 to Schedule 1.
- 6.9 A payment in advance made under this clause 6 will be deemed to have been made at the express request of the Contractor and the making of the payment will not:
- (a) imply that the manufacture of any Contract Deliverables in respect of which the advance is being made is satisfactory and will subsequently be accepted by AMSA's Inspecting Officer when submitted for final inspection; or
 - (b) prejudice the right of AMSA's Inspecting Officer to reject or direct the removal of any Contract Deliverables , whether built in, fixed or installed, that are not in accordance with the Contract.
- 6.10 AMSA may deduct from any money due to the Contractor under this Contract:
- (a) any money due to it under this Contract;
 - (b) any amount incurred on the behalf of the Contractor under this contract;
 - (c) any damages, costs, expenses or other monies determined under this Contract or by a court to be recoverable by it from the Contractor as a consequence of the Contractor's breach of this Contract; and
 - (d) any money determined under this Contract or by a court to be payable to it on account of an indemnity given by the Contractor under this Contract.
- 6.11 If the amount which AMSA may deduct under the preceding sub-clause exceeds the amount which is due to the Contractor under this Contract, the excess shall be a debt due by the Contractor to AMSA and may be:
- (a) set off against any other money due to the Contractor by AMSA under any other contract between AMSA and the Contractor;
 - (b) satisfied by a call on the security guarantees listed at Item 15 to Schedule 1 (if any); or
 - (c) recovered from the Contractor by AMSA in any court of competent jurisdiction.

7. THE CONTRACTOR'S PERSONNEL

- 7.1 The Contractor must ensure that all the Contractor's Personnel performing any work under or related to this Contract:
- (a) are properly qualified for the tasks they are to perform; and
 - (b) will act in all circumstances in a fit and proper manner.

- 7.2 The Contractor and the Contractor's Personnel must at all times abide and adhere to the security procedures in place at the time at any locations associated with the performance of this Contract.
- 7.3 The Contractor must provide such information as AMSA requests for the purpose of allowing AMSA to undertake investigations for the purposes of this clause 7.
- 7.4 AMSA may, at its absolute discretion, give notice requiring the Contractor to remove Contractor's Personnel, including Specified Personnel, from work in respect of this Contract. The Contractor must promptly arrange for the removal of such persons and their replacement (as required) with persons acceptable to AMSA.

8. SUB-CONTRACTING

- 8.1 The Contractor must not, without the consent in writing of AMSA or unless provided for in this Contract, sub-contract the whole or any part of the Contract.
- 8.2 Notwithstanding any consent given under sub-clause 8.1, the Contractor will be held strictly responsible for performance of the Contract in accordance with its terms and conditions.

9. ACCESS TO THE CONTRACTOR'S PREMISES

- 9.1 The Contractor must, where required for the purposes of this Contract, at all reasonable times:
- (a) permit officers authorised by AMSA to have access to the premises of the Contractor; and
 - (b) where requested by AMSA, arrange for access to any sub-contractor's premises.

10. DELIVERY

- 10.1 The Contractor must provide the Contract Deliverables:
- (a) by the Delivery Date;
 - (b) to the Delivery Address; and
 - (c) in accordance with other directions contained in the Specification.
- 10.2 The Contractor must notify AMSA in writing prior to the Delivery Date of any circumstances that may delay delivery beyond the Delivery Date.
- 10.3 AMSA may, pursuant to clause 36 (Termination of Contract) and subject to clause 16 (Excusable Delays), terminate the Contract in part or whole in the event of any item of the Contract Deliverables not being delivered by the Delivery Date.

11. PACKING

- 11.1 Packing and protective treatment must be of sufficient strength and quality to ensure the Contract Deliverables reach their destination intact. It must be capable of withstanding damage from extremely rough handling in transit and from moisture penetration.
- 11.2 Airfreight packing must be as light as possible in weight but must be sturdy enough to provide protection.
- 11.3 Special packing requirements (if any) will be detailed on Purchase Orders or in the Specification or Special Conditions.

12. INSPECTION AND ACCEPTANCE

- 12.1 AMSA shall inspect the Contract Deliverables upon receipt at a Delivery Address as identified in Item 5 to Schedule 1 and may issue a formal notice of acceptance or a notice of rejection to the Contractor.
- 12.2 Any Contract Deliverables which require certification of Acceptance Tests by an Inspecting Officer will not be accepted without such certification.
- 12.3 Subject to sub-clause 12.2 Contract Deliverables will be deemed to be accepted by AMSA at close of business on the tenth day after actual delivery unless AMSA issues a rejection notice to the Contractor.

13. ACCEPTANCE TESTING PLAN

- 13.1 If a formal Acceptance Testing Plan is detailed in Schedule 5, the Contract Deliverables must be inspected by the Inspecting Officer and tested in accordance with Schedule 5.
- 13.2 Once the Inspecting Officer is satisfied that the Contract Deliverables have passed the Acceptance Tests, s/he must certify in writing that the Contract Deliverables have been inspected and are accepted.
- 13.3 Certification of the Contract Deliverables by the Inspecting Officer in accordance with sub-clause 13.2 will not relieve the Contractor from liability for any breach of this Contract, including breach of warranty, which could not have been ascertained by the conduct of the Acceptance Tests or which was not revealed due to the conduct (defective or otherwise) of the Acceptance Tests by the Inspecting Officer or the Contractor.

14. POWER OF REJECTION

- 14.1 AMSA reserves the right to reject any Contract Deliverables found to be unsatisfactory (including, without limitation, because they do not comply with the warranty in sub-clause 19.1) either in whole or in part, before or after delivery is effected. Any Contract Deliverables rejected by AMSA must be replaced by the Contractor at its own expense in such time as is agreed between the Parties.
- 14.2 In the event of the Contractor:
 - (a) failing to replace any rejected Contract Deliverables in the agreed timeframe; or
 - (b) delays being occasioned due to the non-availability of the Contract DeliverablesAMSA reserves the right to obtain replacements elsewhere at the Contractor's expense.
- 14.3 Where the Contract Deliverables are to be manufactured, the Contractor must afford all facilities necessary for AMSA to carry out tests/inspections at the Contractor's works during the progress of manufacture in order to ascertain whether the Contract Deliverables will be able to be accepted.

15. TITLE AND RISK

- 15.1 Title to Contract Deliverables will pass to AMSA upon acceptance.
- 15.2 The risk of loss or damage to the goods will pass from the Contractor to AMSA upon actual delivery of the Contract Deliverables to AMSA.

16. EXCUSABLE DELAYS

- 16.1 Where the Contractor is delayed in delivery of the Contract Deliverables by any cause beyond the control of the Contractor (except a cause arising out of any breach of the provisions of the Contract by the Contractor) which the Contractor considers justifies an extension of time for delivery of the Contract Deliverables, the Contractor may notify AMSA in writing of its request for time extension, together with a statement of facts and any documentation supporting the request.
- 16.2 AMSA must notify the Contractor as soon as practicable of its decision whether or not to allow an extension of time for delivery.
- 16.3 Subject to the agreement by the Contractor, AMSA may extend the time for delivery without having received a request from the Contractor.

17. LIQUIDATED DAMAGES

- 17.1 Subject to clause 16 (Excusable Delays) where, through the fault of the Contractor, delivery of the Contract Deliverables is not successfully completed by the Delivery Date, then if an amount is specified at Item 11 to Schedule 1, that amount is to be payable by the Contractor as and by way of liquidated damages to AMSA for the loss suffered by AMSA as a result of the delay.
- 17.2 Accrual of Liquidated Damages will commence on expiration of the Delivery Date.
- 17.3 The Contractor must pay the Liquidated Damages amount in respect of each day of delay, but not for more than 180 days.

18. PROGRESS REPORTING (if Applicable)

- 18.1 Within 14 days, or such other time as agreed by the Parties, of completion of each milestone referred to at Item 10 to Schedule 1, or at such other times as requested by AMSA in writing, the Contractor must submit to AMSA a report of progress under this Contract. That report must detail all relevant matters and any other matters in respect of which AMSA has requested information.
- 18.2 Additionally, the Contractor must report immediately to AMSA on any perceived or anticipated problems which may have an effect on the cost, performance or provision of the Contract Deliverables.

19. WARRANTY

- 19.1 The Contractor warrants that all Contract Deliverables will:
- (a) be fit for any intended purpose known to the Contractor;
 - (b) conform to any relevant product specification and the Specification including:
 - (i) the manner and ease of installation and maintenance,
 - (ii) the functionality and performance criteria, and
 - (iii) any standards and other documents;
 - (c) not infringe any other party's Intellectual Property Rights;
 - (d) be free from deficiencies in design, performance, materials and workmanship;
 - (e) be able to be installed in the agreed manner with a minimum of disruption to AMSA's activities or modifications to AMSA's premises or other equipment; and
 - (f) where the subject of another party's intellectual property rights, be supplied pursuant to an appropriate license, the total cost of which is included in the Contract Price unless expressly stated otherwise in this Contract.

- 19.2 The Warranty Period for all Contract Deliverables is as set out at Item 9 to Schedule 1. During the Warranty Period the Contractor must, without delay and at no cost to AMSA, correct all defects and omissions covered by this warranty by way of repair, replacement or modification or other means acceptable to AMSA. The Contractor must meet all costs incidental to the discharge of its warranty obligations, including but not limited to attendances on site, packing, freighting, disassembly and reassembly costs.
- 19.3 The Contractor warrants that:
- (a) it is experienced in the provision of the Contract Deliverables or like supplies;
 - (b) it has the capacity to provide the Contract Deliverables so as not to breach the warranty set out in sub-clause 19.1; and
 - (c) that it has or can access, and will ensure that the Contract Deliverables are provided by, persons who have the skills and experience to properly provide the Contract Deliverables so as not to breach the warranty set out in sub-clause 19.1.
- 19.4 The Contractor will not be in breach of the warranties set out in sub-clauses 19.1 and 19.3 to the extent that the relevant default arises from the wilfully wrongful or negligent act or omission of AMSA or its officers or employees.
- 19.5 If the Contractor fails to comply with, or to remedy any failure to comply with, the warranty in sub-clause 19.1 within a time or in a manner to AMSA's reasonable satisfaction, AMSA may take or procure such remedial action as may be appropriate and the Contractor must indemnify and keep indemnified AMSA in respect of any costs, losses or damage AMSA may suffer or incur in so doing.

20. FINANCIAL UNDERTAKING (if any)

- 20.1 The Contractor is required to provide AMSA with security guarantees in respect to advance payments, performance guarantees and / or retention monies as listed at Item 15 to Schedule 1.
- 20.2 Security guarantees are to be in the form of financial undertakings and must be irrevocable and unconditional, issued by a financial institution acceptable to AMSA, and in a form consistent with that provided at Schedule 4.
- 20.3 The Contractor must lodge all financial undertakings for the amount and by the nominated lodgement date detailed at Item 15 of Schedule 1.
- 20.4 Any milestone payments claimable by the Contractor in advance of the delivery of the Contract Deliverables or part thereof as provided at Item 6 of Schedule 1 must be offset by the lodgement of a financial undertaking to be held by AMSA as security against the total of the advance payments.
- 20.5 Financial undertakings (if any) shall be released in accordance with the release details / date as defined at Item 15 of Schedule 1.

21. LIABILITY

- 21.1 The Contractor must perform the Contract Services solely at its own risk and AMSA will not be liable to the Contractor or the Specified Personnel for any loss, damage, injury, disease, illness or death sustained by any person or caused to any property (referred to in this **clause 21.1** as "**Loss**") however caused, with the exception of any Loss caused by the negligence of, or breach of duty or statute by, AMSA or its officers, employees or agents.
- 21.2 The liability of the Contractor to AMSA for loss of, or damage to the Contract Deliverables will be reduced proportionately to the extent of AMSA's failure to comply with its obligations and

responsibilities under the Contract, except to the extent such failure by AMSA is caused, or contributed to, by an act or omission of the Contractor or the Contractor's Personnel.

22. INDEMNIFICATION

- 22.1 Subject to sub-clauses 22.2, the Contractor must indemnify AMSA and keep AMSA indemnified against:
- (a) all loss or damage to the property of AMSA; and
 - (b) any breach of the terms of this Contract; and
 - (c) against any claim, demand, action, suit or proceeding that may be made or brought by any person against AMSA or the officers, employees, or agents of AMSA or any of them in respect of personal injury to or the death of any person or loss of or damage to property; and
 - (d) any costs and expense that may be incurred in connection with any such claim, demand, action, suit or proceeding including, without limitation, legal costs on a solicitor and own client basis
- arising from or as a consequence of the performance of the Contract by the Contractor's Personnel.
- 22.2 The Contractor shall not, under sub-clause 22.1, be required to indemnify AMSA for or in respect of any loss or damage to the extent that it results from any negligent act or omission of AMSA or the officers, employees, or agents of AMSA.

23. ROYALTIES AND FEES

- 23.1 Except as otherwise specified, all royalties and fees due or payable to any person or Government for or in connection with any land, matter, or thing (including any invention or patent, design, trade mark or copyright) used or required to be used in the performance of the Contract or supplied under the Contract, must be paid by the Contractor and the Contractor warrants that such payments have been provided for in the Contract Price.
- 23.2 The Contractor must indemnify AMSA and keep AMSA indemnified at all times against any action, claim, demand or expense (including legal costs on a solicitor and own client basis) arising from, or incurred by reason of, any infringement of or alleged infringement of any patent, design, trade mark or name, copyright, confidential information or other protected right in respect of or related to the Contract Deliverables including any machine, plant, work material or thing, system or method of using, fixing, working, or arrangement used or fixed or supplied by the Contractor.
- 23.3 In the event of any claim being made or action being brought against AMSA in respect of any of the matters referred to in sub-clause 23.2, AMSA must immediately notify the Contractor, and the Contractor must, with the assistance of the Chief Executive Officer if required, (but subject to it not seeking to avoid the indemnity in clause 23.2, and to it providing any form of security reasonably requested by AMSA) at its own expense, conduct all negotiations for settlement of the same or any litigation that may arise therefrom.

24. INSURANCE

- 24.1 In this clause 24 "**Claim(s)**" includes claims, demands, actions, suits and proceedings whether threatened, brought or to be brought in a court of law or any forum used as part of an agreed alternative dispute resolution process and all costs and expenses associated with these, including all legal costs and expenses (on a solicitor and own client basis) and including a liability to pay compensation or damages, whether arising at law or in equity or under any legislative provision.

- 24.2 The Contractor must ensure that, where required in Schedule 7, as at the date of execution of this Contract the Contractor and its sub-contractors have in force a suitable insurance policy:
- (a) to cover the Contractor and AMSA in respect of any Claims by other parties arising in connection with the delivery, installation, integration and acceptance testing of the Contract Deliverables and otherwise in connection with the performance of the Contract;
 - (b) to cover the Contractor and its sub-contractors against any Claim(s) under any legislative provision relating to workers' compensation or rehabilitation and occupational health and safety, or arising at common law or in equity, or under any applicable legislative provision, as a result of personal injury or death of any person employed or engaged by the Contractor or by any sub-contractor in the performance of the Contract;
 - (c) to cover loss or damage to the Contract Deliverables until delivery and loss suffered by AMSA as a result of failure of the Contract Deliverables until the end of the Warranty Period, except where the loss or damage arose from the negligent act or omission of AMSA or its officers, employees, consultants or agents;
 - (d) to cover professional indemnity Claims; and
 - (e) to provide any other required insurance cover
- in each case conforming to the requirements set out in Schedule 7 (including as to level, extent and period of cover) and otherwise in terms approved in writing by AMSA, which approval must not be unreasonably withheld.
- 24.3 The Contractor must submit to the AMSA Nominated Officer for examination, if and when required, originals of each relevant policy of insurance required under this clause 24, or original Certificates of Currency signed by the Contractor's or sub-contractor's insurance broker in respect of each policy. If required by AMSA, the Contractor shall obtain, in a form acceptable to AMSA, from an insurer or insurance broker of the Contractor and its sub-contractors, a letter stating that a policy of insurance covers the matters set out in clause 24.2.
- 24.4 If, after being requested by the AMSA Nominated Officer to do so, the Contractor fails to produce evidence of continuing compliance with its insurance obligations under this clause 24, or fails to comply with the obligation under the sub-clause 24.3, AMSA may effect and keep in force any such insurance and pay such premiums as may be necessary for the purpose and the amount so paid will be a debt due from the Contractor to AMSA which may be deducted from amounts otherwise payable by AMSA to the Contractor under this Contract or recovered by AMSA from any financial undertaking provided by the Contractor.
- 24.5 The Contractor must, as soon as practicable, inform AMSA in writing of an event which may give rise to a Claim under a policy of insurance effected as required by this clause 24 and must ensure that AMSA is kept fully informed of subsequent action and developments concerning the Claim. The Contractor must take such steps as are necessary or appropriate to ensure that a sub-contractor will take, in relation to AMSA, like action to that which the Contractor is required to take under this sub-clause 24.5.
- 24.6 The effecting of insurances required by this clause 24 shall not in any way limit the liabilities or obligations of the Contractor under other provisions of this Contract.
- 24.7 The Contractor shall:
- (a) ensure that it is a provision of all of the policies of insurance referred to in this clause 24 that, prior to any cancellation or material change to any such policy by either the insurer or the Contractor or sub-contractor, the insurer will notify AMSA in writing; and

- (b) notify AMSA as soon as practicable of any intention to cancel or change, or expectation of cancellation of or change to, any of the policies of insurance referred to in this clause 24.

25. INTELLECTUAL PROPERTY

- 25.1 Subject to this clause, the title to and Intellectual Property Rights in all AMSA Material provided as part of this Contract, and all Contract Material created by the Contractor as part of this Contract, shall remain AMSA's and or be vested in AMSA in accordance with the provisions of sub clauses 25.2 and 25.3.
- 25.2 Copyright (including future copyright) in all Contract Material created by the Contractor, is hereby assigned to AMSA.
- 25.3 Title to and Intellectual Property Rights (other than copyright) in all Contract Material created by the Contractor shall upon its creation be transferred and assigned to AMSA without need for further assurance.
- 25.4 To the extent that the Contract Material contains material the subject of pre-existing Intellectual Property Rights of the Contractor or third parties this Contract does not affect those rights but, the Contractor hereby grants and shall ensure that relevant third parties grant to AMSA a non-exclusive, non-transferable, irrevocable paid up license:
 - (a) to use, reproduce and adapt for its own use, and
 - (b) if specified elsewhere in this Contract, to perform any other act with respect to copyright,all those Intellectual Property Rights but only as part of the Contract Material and of any future development of that Contract Material.
- 25.5 On the expiration or earlier termination of this Contract, and after receipt of a written request to do so, the Contractor shall deliver to AMSA all Contract Material together with all copies thereof.
- 25.6 The Contractor shall execute all documents and do all acts and things required by AMSA for the purposes of giving effect to this clause.
- 25.7 The Contractor shall ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract.
- 25.8 The rights and obligations arising in connection with this clause will survive any termination or expiration of the Contract.

26. CONFLICT OF INTEREST

- 26.1 In this clause "**Conflict**" refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through the Contractor engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Contractor in providing the Contract Deliverables to AMSA fairly and independently.
- 26.2 The Contractor warrants that, to the best of the Contractor's knowledge after making diligent inquiry, at the date of this Contract no conflict exists or is likely to arise in the performance of its obligations under this Contract.
- 26.3 If during the term of this Contract, a conflict arises, the Contractor must:
 - (a) immediately notify AMSA in writing of that Conflict and of the steps proposed to resolve or otherwise deal with the Conflict;
 - (b) make full disclosure to AMSA of all relevant information relating to the Conflict; and

- (c) take such steps as AMSA may, if AMSA choose to, reasonably require resolving or otherwise dealing with that Conflict.

26.4 If the Contractor fails to notify AMSA under this clause 26, or is unable or unwilling to resolve or deal with the Conflict as required, AMSA may terminate this Contract in accordance with clause 36 (Termination of Contract).

27. COMPLIANCE WITH LAWS

27.1 The Contractor, in carrying out this Contract, must:

- (a) comply at its own expense with the provisions of any relevant Statutes, regulations and By-laws, and the requirements of any relevant Commonwealth, State, Territory or local authority; and
- (b) obtain, at its own expense, any necessary permits, consents, approvals or certifications.

27.2 Without limiting sub-clause 27.1, the Contractor must comply with any relevant import requirements and pay any relevant duties of Customs including any special duty of Customs or similar payment, and any applicable penalty ("Further Payment") which may become payable. Where any such Further Payment is payable, the Contractor:

- (a) is solely liable to pay that Further Payment;
- (b) may not increase the Contract Price in order to meet that liability; and
- (c) indemnifies and must keep AMSA indemnified with respect to any such Further Payment which AMSA may be required to pay in respect of the Contract Deliverables.

28. FREEDOM OF INFORMATION

28.1 The *Freedom of Information Act* 1982 enables the Australian community to have access to information (general documents) in the possession of the Commonwealth Government. The Contractor must, on request, indicate where it believes any material provided by it should be exempt from the operations of the *Freedom of Information Act*.

29. EQUAL OPPORTUNITY

29.1 The Contractor must comply with its obligations, if any, under the *Equal Employment Opportunity for Women in the Workplace Act 1999*. Information about the legislation can be obtained from the Equal Opportunity for Women in the Workplace Agency (EOWA) on (02) 9448 8500 or at www.eowa.gov.au

29.2 The Contractor must not enter into a sub-contract under this contract with a sub-contractor named by the EOWA as an employer currently not complying with the *Equal Employment Opportunity for Women in the Workplace Act 1999*.

30. OCCUPATIONAL HEALTH AND SAFETY

30.1 The Contractor shall assist AMSA to meet its obligations under the *Occupational Health and Safety Act* 1991 with regard to the health, safety and welfare of its employees, contractors, visitors or members of the public by complying with all regulations and codes of practice applying within the State or Territory and applicable to AMSA's operations.

30.2 The Contractor must have in place a health and safety management system that meets the following minimum requirements for health and safety:

- (a) OHS policy and objectives;
- (b) Organisation structure and responsibilities;

- (c) Safe work practices and procedures in relation to hazards associated with work under the Contract;
- (d) OHS training and induction;
- (e) OHS auditing and inspection procedures;
- (f) OHS consultation procedures;
- (g) OHS performance monitoring; and
- (h) Incident investigation and reporting.

31. PRIVACY

31.1 The Contractor agrees, with respect to this Contract:

- (a) to comply with those Information Privacy Principles which concern the security, use and disclosure of personal information, as if it were a record-keeper as defined in the Privacy Act;
- (b) to co-operate with any reasonable demands or inquiries made by the Privacy Commissioner;
- (c) to ensure that any person who has an access level which would enable that person to obtain access to any personal information (as defined in the Privacy Act) is made aware of, and undertakes in writing, to observe the Information Privacy Principles referred to in sub-clause 31.1 (a);
- (d) to comply insofar as is practicable with any policy guidelines laid down by the Commonwealth, AMSA or issued by the Privacy Commissioner from time to time relating to the handling of personal information;
- (e) to comply with a direction to observe any recommendation of the Privacy Commissioner relating to any acts or practices of the Contractor that the Privacy Commissioner considers breach the obligation in sub-clause 31.1 (a) above; and,
- (f) to indemnify AMSA in respect of any loss, liability or expense suffered or incurred by AMSA arising out of or in connection with a breach of the obligations of the Contractor under this sub-clause 31.1 or any misuse of personal information or disclosure in breach of an obligation of confidence whether arising under the Privacy Act or otherwise.

31.2 For the purpose of clause 31.1 (f), "**liability**" includes:

- a) any liability to pay compensation in accordance with a determination of the Privacy Commissioner assumed by AMSA as a consequence of AMSA standing as respondent in the event of any complaint to the Privacy Commissioner alleging a breach by the Contractor of the Information Privacy Principles set out in the Privacy Act; and,
- (b) any liability assumed by AMSA to pay a person a reasonable amount as compensation for loss or damage suffered by that person as a result of disclosure or misuse of personal information for which AMSA would have been liable under the Privacy Act if the act or omission giving rise to that loss or damage had been that of AMSA and not the Contractor.

32. CONFIDENTIALITY

32.1 The Contractor will not, without the prior written approval of AMSA, disclose to any third person any information that is the subject of, or concerns, this Contract and the Contractor shall take all reasonable steps to ensure that the Contractor's Personnel also maintain this confidentiality.

32.2 AMSA may at any time require the Contractor to arrange for the Contractor's Personnel engaged in the performance of this Contract to execute an Employee Undertaking or Deed of

Confidentiality in a form acceptable to AMSA relating to the non-disclosure of AMSA's Confidential Information and the Contractor shall arrange for all such deeds to be executed promptly.

- 32.3 Nothing in this clause 32 shall apply to any information:
- (a) that is or becomes through no act or failure on the part of the Contractor part of the public domain;
 - (b) disclosed to the Contractor by a third party without any obligation of confidence to AMSA;
 - (c) that is required to be disclosed by law.
- 32.4 The rights and obligations arising in connection with this clause will survive any termination or expiration of the Contract.

33. DISCLOSURE OF INFORMATION

- 33.1 The Contractor acknowledges that AMSA may be required to provide information in relation to this Contract, as required by the operation of any law, judicial or parliamentary body or governmental agency, and accordingly AMSA can give no undertakings to treat any Contractor information or this Contract as confidential.
- 33.2 Subject to sub-clause 33.1 neither Party, their employees, sub-contractors or agents shall disclose or make public any information or material acquired or produced in connection with or by the performance of this Contract without the prior approval in writing of the other Party.

34. SECURITY

- 34.1 The Contractor agrees to comply with the security requirements for the protection of official information:
- (a) set out in the Contract; and
 - (b) as advised by the AMSA during the term of the Contract;
- 34.2 The rights and obligations arising in connection with this clause will survive any termination or expiration of the Contract.

35. DISPUTES

- 35.1 In the event that any dispute arises between the Contractor and AMSA in any matter arising from or in connection with this Contract, the Contractor must, within fourteen (14) days of the dispute arising, refer the matter in writing with detailed particulars to the Chief Executive Officer for decision and the Chief Executive Officer must, as soon as practicable thereafter, give his or her decision to the Contractor.
- 35.2 If the dispute is not mutually resolved within one calendar month of referral to the Chief Executive Officer, the dispute may upon the request of either Party be referred to arbitration in accordance with the laws relating to arbitration in force in the Australian Capital Territory.

36. TERMINATION OF CONTRACT

- 36.1 If the Contractor:
- (a) refuses or neglects to carry out any instructions given to it in accordance with the Contract;
 - (b) fails to deliver the Contract Deliverables by the Delivery Date(s) stated in the Contract;

- (c) otherwise fails to carry out deliveries at a rate satisfactory to AMSA; or
 - (d) intimates that it is unwilling or unable to complete deliveries in whole or in part; then
- AMSA may, by notice in writing, terminate the Contract. In that case AMSA may declare all sums of money which remain in its hands in respect of the Contract and all sums deposited or retained as security for the due fulfilment of the Contract to be forfeited and upon being so forfeited those sums will become vested in or become payable to AMSA.

36.2 On termination of the Contract under sub-clause 36.1, all monies which have been previously paid or have become payable to the Contractor will be deemed to be in full satisfaction of all claims of the Contractor of any kind or description whatsoever under or in respect of this Contract.

36.3 Termination under sub-clause 36.1 will not prejudice any right of AMSA to recover from the Contractor, including from any financial undertaking provided by the Contractor, any damages for breach of Contract or compensation under any of the indemnities contained in the Contract or for breach of any of the warranties contained in the Contract or otherwise available at law.

37. NOTICES

37.1 Any notice to be given to or served upon a Party will be deemed to have been given or served if signed by or on behalf of that Party and sent by pre-paid post or facsimile properly addressed to the other Party at the address given in Item 1 or Item 3 to Schedule 1 and any such notice will be deemed to have been given or served:

- (a) where served by post, on the third business day after posting; and
- (b) where sent by facsimile, on the receipt of a clear transmission report by the sender or, if sent out of business hours or not on a business day, at the commencement of the next business day in the place of receipt.

38. APPLICABLE LAW

38.1 This Contract will be governed by and construed in accordance with the laws of the Australian Capital Territory of the Commonwealth of Australia, and the Parties agree that the courts of that Territory will have jurisdiction to entertain any action in respect of, or arising out of, this Contract and hereby submit themselves to the jurisdiction of the court of that Territory.

39. WAIVER

39.1 No forbearance, delay or indulgence by a party in enforcing a clause of the Contract shall prejudice or restrict the rights of that Party, nor shall waiver of those rights operate as a waiver of any subsequent breach.

40. SEVERANCE

40.1 Any reading down or severance of a particular clause does not affect the remaining clauses of the Contract.

41. ENTIRE AGREEMENT

41.1 This Contract supersedes all prior agreements and understandings between the Parties and constitutes the entire agreement between the Parties relating to the Contract Deliverables.

42. ASSIGNMENT

42.1 The rights and obligations created under this Contract may not be assigned or transferred without the prior written consent of the other Party.

43. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

43.1 The Contractor shall not by virtue of the Contract be or for any purposes be deemed to be an employee, partner or agent of AMSA.

43.2 The Contractor shall not represent itself, and shall ensure that the Contractor's Personnel do not represent themselves as being employees, partners or agents of AMSA unless a specific written authority to do so is issued by AMSA.

44. NON EXCLUSIVE CONTRACT

44.1 This is a non-exclusive contract. For clarity AMSA reserves the right at its sole discretion to purchase supplies performing an equivalent function to the supplies specified in this Contract from any alternative source.

44.2 The Contractor may sell or provide supplies as specified in this Contract to any other purchaser.

45. MISCELLANEOUS

45.1 In this Contract the following shall apply:

- (a) subject to any express provision in this Contract to the contrary, each Party shall bear its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under this Contract;
- (b) subject to any express provision in this Contract to the contrary, the rights of a Party under this Contract are cumulative and are in addition to any other rights of that Party;
- (c) subject to any express provision in this Contract to the contrary, a Party may conditionally or unconditionally give or withhold any consent to be given and is not obliged to give its reasons for doing so;
- (d) each Party shall promptly execute all documents and do all things that any other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Contract and any transaction contemplated by it;
- (e) unless expressly provided otherwise, where time is to be reckoned by reference to a day or event, that day or the day of that event is included;
- (f) an obligation of two or more persons binds them jointly and severally;
- (g) this Contract may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument;
- (h) this Contract is not binding on any party unless it or a counterpart has been duly executed by, or on behalf of, each person named as a Party to the document;
- (i) no oral explanation or information provided by any Party to another shall:
 - i. affect the meaning or interpretation of this Contract; or
 - ii. constitute any collateral agreement, warranty or understanding between the Parties.

SCHEDULE 1 CONTRACT PARTICULARS

- Item 1 (a) **Contractor:**
- (b) **Contractor's address:**
- (c) **Contractor's Representative:**
 - Name:
 - Ph:
 - Facsimile:
 - Email:

- Item 2 **Contract Deliverables:**
[the goods and/or services being provided]

- Item 3 (a) **AMSA Reception Points**
 - address:
 - facsimile:
- (b) **AMSA Nominated Officer**
 - Name:
 - Ph:
 - Facsimile:
 - Email:

- Item 4 **Delivery Date:**

- Item 5 **Delivery Address:**

- Item 6 **Contract Price:**
 - (a) Price
 - (b) Fee Structure
 - (c) Milestones

Milestone	Milestone Description	Due Date	Amount
1			

- Item 7 **Inspecting Officer:**
- Item 8 **Contractor's Specified Personnel:**
- Item 9 **Warranty Period:**
- Item 10 **Milestone / Progress Reporting:**
- Item 11 **Liquidated Damages:** N/A
- Item 12 **Early settlement discount:**
- Item 13 **Terms of Payment:**
- Item 14 **Payment Details:** (EFT or Cheque)

Item 15

Security:

Security Description	Form	Amount	Lodgement Due Date	Release Details / Date
Advance Milestone Payment/s				
Performance Guarantee				
Retention Guarantee				

19.

SCHEDULE 2 SPECIFICATION

[AMSA to provide]

SCHEDULE 3 SPECIAL CONDITIONS

[To be negotiated]

SIGNED SEALED AND DELIVERED
for and on behalf of [

)
) [

]:

] By its attorney who
hereby states that at the time
of executing this instrument
there has been no notice of the
revocation of Power of Attorney
registered No.[] Book [] which
this instrument has been
executed.

.....

By [

]

it's duly constituted Attorney who is
personally known to me.

.....

[

]

SCHEDULE 5 ACCEPTANCE TEST PLAN

[Set out acceptance tests, methodology and timeframes]

SCHEDULE 6 QUALITY PLAN

[Set out details of the Contractor's quality plan]

SCHEDULE 7 INSURANCE

	Public Liability	Workers Compensation	Contract Deliverables	Professional Indemnity	Other
Coverage					
Amount	\$20M	As per State legislation	Contract value	\$5M	
Period of Cover					
Special Requirements					

EXECUTED as a Contract

SIGNED for and on behalf of)
AUSTRALIAN MARITIME SAFETY)
AUTHORITY by:)
)

.....Witness Name
(printed)

.....
Name (printed)

.....Witness
Signature

.....
Signature

THE COMMON SEAL of [*company*)
name] was affixed in the presence of,)
and the sealing is attested by:)
)

.....Witness
Name (printed)

.....
Name (printed)

.....Witness
Signature

.....
Signature