
AUSTRALIAN MARITIME SAFETY AUTHORITY

AND

[INSERT NAME OF CONTRACTING ENTITY]

**OPPORTUNITY SEARCH AND RESCUE SERVICES
AGREEMENT**

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THIS AGREEMENT is made on _____ 2019

BETWEEN

THE AUSTRALIAN MARITIME SAFETY AUTHORITY a body corporate established by subsection 5(2) of the *Australian Maritime Safety Authority Act 1990* (Cth) ABN: 65 377 938 320 and having its head office at 82 Northbourne Avenue Canberra in the Australian Capital Territory (**AMSA**).

AND

[**INSERT NAME OF CONTRACTING ENTITY**] with the ABN [Insert number] and having its registered office at [**Insert Address**] (**SRU**).

PRELIMINARY STATEMENTS

- A. AMSA is responsible for the search and rescue response to national civil aviation and maritime distress incidents and for managing and coordinating the national strategy for preparedness and response to marine pollution incidents.
- B. In order to provide an effective response, AMSA requires a pool of properly equipped aircraft with appropriately trained crew to participate in the conduct of aerial search and rescue operations and pollution response operations within the capability of the SRU.
- C. The SRU has agreed to provide AMSA with aircraft and crew on an opportunity basis and to maintain a specified capability on the terms set out in this Agreement.
- D. AMSA has agreed to pay the SRU fees on the terms set out in this Agreement.

THE PARTIES AGREE AS FOLLOWS

1. Interpretation

1.1 In this Agreement:

Aircraft means any aircraft set out in Schedule 1

Aircraft Usage Fee means the Aircraft Usage Fee as set out in Schedule 1.

Air Operator's Certificate or **AOC** has the same meaning as in the Aviation Law.

AMSA Contact Officer means the person for the time being holding, occupying or performing the duties of the position within AMSA specified under the "AMSA Contact Officer" heading in Schedule 1, or such other position within AMSA that is specified from time to time by AMSA in a notice to the SRU.

AMSA Material means any material provided or made available by or on behalf of AMSA to the SRU or the SRU's Personnel for the purposes of this Agreement including documents, equipment, information and data stored by any means.

AMSA's Personnel includes AMSA's employees, contractors, nominees and agents (but not the SRU or the SRU's Personnel).

AMSA-Provided SAR Equipment means equipment that may be provided by AMSA to the SRU for use in the provision of SAR Service or training for the provision of SAR Services.

Approved Subcontract means a contract for the provision of services related to this Agreement that AMSA has approved by giving written consent in accordance with clause 21.4.

Approved Subcontractor means a party with whom the SRU has an Approved Subcontract.

Aviation Law includes, without limitation:

- the *Civil Aviation Act 1988* (Cth);
- the *Civil Aviation Regulations 1988* made under the *Civil Aviation Act 1988* (Cth);
- the *Civil Aviation Regulations 1998* made under the *Civil Aviation Act 1988* (Cth); and
- Civil Aviation Orders made under the *Civil Aviation Act 1988* (Cth) or the *Civil Aviation Regulations 1988*.

CASA means the Civil Aviation Safety Authority established under section 8 of the *Civil Aviation Act 1988* (Cth).

Class of operation has the same meaning as in the Aviation Law.

Confidential Information means:

- (i) Contract Material;
- (ii) AMSA Material;
- (iii) "personal information" within the meaning given in section 6 of the *Privacy Act 1988* (Cth); and
- (iv) other information acquired or produced by or becoming available to the SRU or the SRU's Personnel in connection with the performance of the SAR Services, which is not in the public domain and which is by its nature confidential or which is indicated by AMSA to be confidential.

Contract Material means any material brought into existence by the SRU or the SRU's Personnel when performing the SAR Services, or otherwise arising out of the performance of this Agreement, including documents, equipment, information and data stored by any means.

Contract Period means the period specified under the "Contract Period" heading in Schedule 1.

Crew means people assigned by the SRU for duty on the Aircraft during flight time (including the pilots and other personnel).

Employee Payments means rates, levies, taxes, contributions or other payments required by law or contract to be paid in respect of the SRU's Personnel, including superannuation, payroll or other taxes, workers' compensation and wages.

Fees mean the Signing Fee and Aircraft Usage Fee set out under the "Fees" heading in Schedule 1.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Home Base means the location, or if more than one, each of the locations, set out in Table 1 of Schedule 1.

Joint Rescue Coordination Centre or JRCC means the unit and its staff within AMSA (who may be located at a forward field base during operations) responsible for the coordination of search and rescue within the Australian search and rescue region.

Maintenance has the same meaning as in the Aviation Law.

Maintenance release has the same meaning as in the Aviation Law, and includes any alternative document that has been approved by CASA.

Operations manual has the same meaning as in the Aviation Law.

passenger has the same meaning as in the Aviation Law.

pilot in command has the same meaning as in the Aviation Law.

SAR Services means search and rescue and associated services (including pollution response services) provided by the SRU to AMSA under this Agreement.

Signing Fee means the Signing Fee as set out in Schedule 1

SRU Contact Officer means the person named under the “SRU Contact Officer” heading in Schedule 1, or such other person specified from time to time by the SRU in a notice to AMSA.

SRU’s Personnel includes the SRU’s officers, employees, contractors (including Approved Subcontractors) and agents (but not AMSA or AMSA’s Personnel).

1.2 The following interpretation rules apply in this Agreement:

- (a) words suggesting any gender should be read as including all genders;
- (b) if the context permits, words suggesting the singular number should be read as including the plural and vice versa;
- (c) headings are included merely to assist the reader and should not be used to assist with the interpretation of this Agreement;
- (d) references to **clauses** and to **Schedules** are to clauses of, and Schedules to, this Agreement;
- (e) if the context permits, references to a **person** are to be read as including individuals, bodies corporate, bodies politic, partnerships, unincorporated associations and other entities;
- (f) a reference to any legislation is to the legislation as in force from time to time; and
- (g) the Schedules form part of this Agreement.

1.3 To the extent of any conflict between the terms and conditions contained in the clauses of this Agreement, the Schedules or documents incorporated by reference, they will take precedence in the following order:

- (a) the clauses;
- (b) the Schedules; and
- (c) documents incorporated by reference.

2. Provision of the SAR Services

2.1 The SRU must for the duration of the Contract Period and subject to compliance with the Aviation Law and any other applicable State, Territory and federal law:

- (a) maintain the operational capability to provide SAR Services;

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- (b) provide and maintain a reliable 24 hour communication system, through which the JRCC is able to request the SRU to conduct search and rescue operations and, if the SRU accepts a request, through which the JRCC (or an organisation authorised by AMSA) is able to issue tasking directions to the SRU;
 - (c) obtain and maintain the certificates, licences, authorities, permits, endorsements, supplements, exemptions and variations, including an AOC authorising operation of the Aircraft within, outside and into and out of Australian territory, as are necessary to:
 - (i) perform tasks in accordance with tasking directions issued by the JRCC (or an organisation authorised by AMSA) and accepted by the SRU; and
 - (ii) store and use the AMSA-Provided SAR Equipment (if provided) in accordance with clause 5;
 - (d) notify the JRCC immediately if the SRU's Air Operator's Certificate, or an authorisation contained in the Certificate or any other certificate or approval that is required to conduct the SAR Services is varied, suspended or cancelled;
 - (e) take reasonable care of the AMSA-Provided SAR Equipment (if provided) having regard to any instructions given by AMSA from time to time;
 - (f) if the SRU accepts a request from the JRCC to conduct SAR Services, ensure the Aircraft:
 - (i) responds to the request as soon as practicable after acceptance by the SRU of a tasking instruction;
 - (ii) is operated in accordance with tasking directions issued by the JRCC (or an organisation authorised by AMSA); and
 - (iii) has a Crew that are authorised to carry out the tasks;
 - (g) comply with operational orders and procedures, or other reasonable instructions, notified by AMSA from time to time; and
 - (h) without limiting any other provision of this Agreement, ensure that all activities in connection with this Agreement are conducted with a high degree of professional skill, care, competence and diligence, in accordance with an appropriate safety program which should be accredited if appropriate.
- 2.2 The SRU must ensure that, at all times during the conduct of the SAR Services, all requirements of the Aviation Law in respect of the applicable Aircraft and its equipment, instruments, maintenance and personnel are met.
- 2.3 AMSA may, for the purpose only of assessing the SRU's compliance with its obligations under this Agreement, request access to the Aircraft, SRU facilities, or any document mentioned in this clause 2. The SRU must facilitate such assessment and must comply with the request within one month of the day nominated by AMSA in the request (and subject to operational requirements, will use its best endeavours to do so on the day nominated by AMSA or as soon as practicable thereafter). Compliance indicators may include, but are not limited to:
- (a) provision of Aircraft and Crew and demonstrated ability to perform SAR Services, which may include flying;

- (b) currency of all necessary approvals, licences, certificates, log books and maintenance releases; and
 - (c) completeness and currency of appropriate documentation and adherence to documented procedures.
- 2.4 Not used.
- 2.5 The SRU must:
- (a) [not used]
 - (b) give AMSA access to the sections of the SRU's operations manual that relate to search and rescue operations, at AMSA's request;
 - (c) notify AMSA of any amendment to the SRU's operations manual that relates to search and rescue operations, within 14 days of the amendment taking effect; and
 - (d) if Table 1 of Schedule 1 lists one or more Aircraft capability, without limiting the SRU's obligations under Aviation Law or this Agreement, ensure that the SRU has procedures that:
 - (i) require the Crew to be cognisant of, and take precautions to protect themselves from, the dangers associated with approaching a crash site, particularly an aircraft crash site, including potential hazards from structural materials, fuels and lubricants, electrical items and biological materials;
 - (ii) prohibit Crew being winched directly into a crash site; and
 - (iii) require Crew, within the limitations imposed by preserving life, to minimise disturbance to a crash site to assist crash investigators and police.
 - (e) immediately notify AMSA of any change in respect of the Aircraft, the SRU facilities or the SRU that may impact upon the ability of the Aircraft to provide SAR Services or the nature of the SAR Services that can be provided; and
 - (f) if requested by AMSA, verify that the information that AMSA has on record is accurate and up-to-date.
- 2.6 The SRU may discharge an obligation placed upon it by this Agreement by procuring the services of an Approved Subcontractor to fulfil the obligation.
- 2.7 To the extent that the SRU subcontracts the performance of an obligation under this Agreement to an Approved Subcontractor, the obligation will be read as obligating the SRU to ensure that the Approved Subcontractor performs the obligation as if it were the SRU.
- 2.8 To the extent that AMSA is aware or ought reasonably be aware that information obtained by it under this clause 2 is confidential to the SRU, AMSA must not disclose that information unless:
- (a) the disclosure is necessary for AMSA to perform its functions;
 - (b) the disclosure is necessary for AMSA to assess the SRU's performance in providing the SAR Services;
 - (c) AMSA has a legal obligation to disclose the information; or
 - (d) the information is already in the public domain.

3. Not used**4. Crew**

- 4.1 The SRU must ensure Crew used to perform SAR Services:
- (a) are competent and qualified in their role in the operation of the Aircraft;
 - (b) are trained and current in SAR techniques (unless otherwise agreed with the JRCC on a case by case basis); and
 - (c) understand the role of, and are competent in the use of, all equipment (including AMSA-Provided SAR Equipment, if provided) that they may be required to use in performing the SAR Services.
- 4.2 Except as approved by AMSA, the SRU must not permit a passenger to be carried on any aircraft engaged in performing SAR Services.
- 4.3 Nothing in this Agreement affects the responsibilities of the pilot in command of any aircraft engaged in performing SAR Services, for:
- (a) the start, continuation, diversion and end of a flight by the Aircraft;
 - (b) the operation and safety of the Aircraft during flight time;
 - (c) the safety of persons and cargo carried on the Aircraft; and
 - (d) the conduct and safety of members of the Crew on the Aircraft.

5. AMSA-Provided SAR Equipment

- 5.1 AMSA may from the commencement of this Agreement, provide instruction to the SRU's nominees at each Home Base on the correct use of AMSA-Provided SAR Equipment. This clause 5.1 in no way limits the SRU's obligation to deliver training in accordance with clause 5.3(f).
- 5.2 AMSA may make AMSA-Provided SAR Equipment available at each Home Base for use by the SRU, and if so the SRU must ensure that the SRU's Personnel involved in the provision of the SAR Services at each Home Base use the AMSA-Provided SAR Equipment:
- (a) safely and correctly; and
 - (b) in accordance with such other orders, procedures or directions notified by AMSA from time to time.
- 5.3 The SRU must:
- (a) store the AMSA-Provided SAR Equipment, when it is not in use, in a suitable building (with appropriate security) within close proximity to the Aircraft and in accordance with any storage instructions notified by AMSA or marked on the AMSA-Provided SAR Equipment;
 - (b) subject to clause 5.4, use the AMSA-Provided SAR Equipment for the purposes only of the SAR Services or other orders, procedures or directions notified by AMSA from time to time;
 - (c) on request from AMSA or its nominee, arrange to dispatch or receive within 24 hours of the request (at AMSA's cost) specified items of the AMSA-Provided SAR Equipment for testing, maintenance or replacement to or from the address specified by AMSA or its nominee;
 - (d) maintain a record of the items of AMSA-Provided SAR Equipment held by the SRU and the items of AMSA-Provided SAR Equipment consumed by the SRU and the reason for which the AMSA-Provided SAR Equipment was consumed;

- (e) notify the JRCC of the items of AMSA-Provided SAR Equipment consumed by the SRU, in writing as soon as possible and in any event within 24 hours of the item being consumed;
 - (f) provide Crew ongoing training in use of AMSA-Provided SAR Equipment; and
 - (g) permit AMSA or its nominee to inspect the SRU's compliance with paragraphs (a) to (f), inclusive, of this clause 5.3.
- 5.4 The SRU may use AMSA-Provided SAR Equipment for a purpose other than providing SAR Services if:
- (a) AMSA has given the SRU written consent to use the AMSA-Provided SAR Equipment for that other purpose; or
 - (b) the use is to enable the SRU to respond to a search and rescue or medical emergency and there is not sufficient time for the SRU to seek AMSA's consent.
- 5.5 The AMSA-Provided SAR Equipment remains the property of AMSA. The SRU is not obliged to maintain insurances to cover theft, accidental breakage, loss or replacement of the AMSA-Provided SAR Equipment.
- 5.6 After the expiry or termination of this Agreement, the SRU must give AMSA or its nominee reasonable access to recover the items of the AMSA-Provided SAR Equipment in the SRU's possession, and ensure that AMSA or its nominee is given access to any items of the AMSA-Provided SAR equipment in an Approved Subcontractor's possession, no later than 5 days from the date of termination or expiry.
- 5.7 AMSA may set off against amounts owing to the SRU (or, if that is not sufficient, may recover from the SRU) the value of:
- (a) damage to returned items of AMSA-Provided SAR Equipment, if the damage was caused by the negligence of, or breach of duty or statute by, the SRU or the SRU's Personnel (and, for the avoidance of doubt, AMSA's right will not extend to damage by fair wear and tear); and
 - (b) any item of AMSA-Provided SAR Equipment that is neither:
 - (i) consumed for the purposes of the SAR Services; nor
 - (ii) returned on request by AMSA.
- 5.8 The parties agree that the consideration paid by AMSA for the SAR Services comprises the Fees plus the use of the AMSA-Provided SAR Equipment.
- 6. Fees**
- 6.1 Subject to this clause 6 and clause 7, AMSA must:
- (a) pay the SRU the Fees; and
 - (b) if an Aircraft is operating away from the Home Base of that Aircraft as set out in Table 1 of Schedule 1 in order to perform SAR Services tasked by the JRCC, reimburse the SRU (at the SRU's actual cost) for reasonable expenses not covered by the Fees incurred by the SRU in the performance of particular SAR Services.
- 6.2 AMSA must pay the SRU the Signing Fee within 30 days of the commencement date set out at Schedule 1.

- 6.3 AMSA has no obligation to pay the SRU any amount in relation to:
- (a) the maintenance of the Aircraft;
 - (b) the delivery of an Aircraft to its Home Base as set out in Table 1 of Schedule 1;
 - (c) the replenishment of the Aircraft's fuel or oil;
 - (d) the Crew;
 - (e) training (other than training for which AMSA has, by this Agreement, agreed to pay the SRU);
 - (f) the performance of any SAR Services other than in accordance with this Agreement; or
 - (g) airways charges, navigation charges, en-route charges, landing charges and other similar charges relating to the operation of the Aircraft at, to and from its Home Base as set out in Table 1 of Schedule 1.
- 6.4 If AMSA has paid the SRU in error or has overpaid the SRU and so advises the SRU in writing, the SRU must repay to AMSA the amount of the overpayment within 14 days. AMSA may withhold that amount from the payment in respect of the SRU's next invoice or set it off against any other sum otherwise payable by AMSA to the SRU.
- 6.5 On each anniversary of the start of this Agreement, if the SRU, acting reasonably, is of the view that the hourly cost to it of providing an Aircraft has increased or decreased since the hourly cost for that Aircraft was last agreed by the parties, the SRU must notify AMSA in writing. Following receipt of the notice, the parties must enter negotiations in good faith to vary the Aircraft Usage Fee to take account of the increase or decrease. Any agreed variation will take effect from the date of the variation.

7. Invoices and payment

- 7.1 The SRU may give AMSA an invoice relating to SAR Services performed under this Agreement.
- 7.2 The SRU must ensure that each invoice it gives to AMSA:
- (a) only requests the payment of amounts that, at the date of the invoice, are payable by AMSA to the SRU under this Agreement;
 - (b) includes sufficient information to enable AMSA to verify that the Fees claimed are presently payable;
 - (c) includes details of each cost or charge for which reimbursement is claimed, including the dates and locations of the SAR Services to which the cost or charge relates;
 - (d) is addressed to the AMSA Response Invoices Section at the address specified under the "AMSA Response Invoices Section" heading in Schedule 1, or such other address that is specified from time to time by AMSA in a notice to the SRU;
 - (e) in the case of an invoice for actual search and rescue operations, specifies the incident number; and
 - (f) is in a form that enables AMSA to claim an input tax credit for any GST imposed on any supply by the SRU to AMSA under this Agreement.
- 7.3 AMSA must pay an invoice that complies with this clause 7 within 30 days of receiving it.

- 7.4 AMSA may set off against amounts payable under clause 7.3:
- (a) amounts payable by the SRU under clause 5;
 - (b) amounts determined by AMSA to be available for set off pursuant to clause 11.4; and
 - (c) subject to clause 7.5, costs incurred by AMSA and AMSA's Personnel as a consequence of the SRU's failure to attend any training or assessment session or perform any agreed search and rescue operation.
- 7.5 AMSA may not set off costs incurred by AMSA or AMSA's Personnel as a consequence of the SRU's failure to attend a training or assessment session, if that failure was due to:
- (a) an act or event beyond the reasonable control of the SRU; or
 - (b) an act or omission by AMSA or AMSA's Personnel.

8. No disclosure or advertising

- 8.1 The SRU must not, and must ensure that the SRU's Personnel do not, at any time, make any disclosure or publish any statement (by means of advertisement or otherwise) about or in relation to the SAR Services, unless the SRU has obtained AMSA's consent to the disclosure or publication, which consent:
- (a) may not be unreasonably withheld by AMSA;
 - (b) may be given subject to reasonable conditions; and
 - (c) may be withdrawn by AMSA at any time.
- 8.2 The SRU must not make any disclosure or statement about or in relation to the SAR Services that would:
- (a) constitute a disclosure of "personal information" or "sensitive information" within the meaning given in section 6 of the *Privacy Act 1988*; and
 - (b) be likely to cause harm, damage or loss to the reputation or business of AMSA either directly or indirectly.

9. Liaison and direction

- 9.1 The SRU authorises the SRU Contact Officer to receive or sign any formal notice or other communication under this Agreement on behalf of the SRU.
- 9.2 AMSA authorises the AMSA Contact Officer to receive or sign any formal notice or other communication under this Agreement on behalf of AMSA.

10. Hull and third party indemnity and insurance

- 10.1 Subject to clause 10.4, the SRU must release and indemnify AMSA (and keep AMSA indemnified) in respect of any claim, loss or expense (including legal costs and expenses on a solicitor and own client basis) which is brought, paid, suffered or incurred by AMSA or AMSA's Personnel as a consequence of:
- (a) the theft, loss or destruction of, or damage to, the Aircraft;
 - (b) the injury or loss of life of any person; or
 - (c) the material loss, damage or destruction of anything,
- caused by the performance of this Agreement by the SRU including the operation of the Aircraft or the performance of the SAR Services by the SRU.
- 10.2 The SRU must ensure that, continuously for the Contract Period, a policy of insurance is in force that:

- (a) relates to the Aircraft;
- (b) covers all usual hull, passenger liability and third party liability risks;
- (c) covers the class of operations of which the SAR Services are a part;
- (d) is not subject to any unusual exclusions; and
- (e) provides no less than \$15 million per-event cover to AMSA, the Commonwealth, the SRU and each of the SRU's Personnel who are Crew.

10.3 At AMSA's request, the SRU must provide AMSA with copies of such documents as are reasonably required to enable AMSA to verify that the SRU is complying with its obligations under clause 10.2.

10.4 If:

- (a) AMSA fails to comply with its obligations under this Agreement (**Breach**);
- (b) the Breach is a cause of the injury or loss of life of any person, or the material loss, damage or destruction of anything;
- (c) a policy of insurance is in force in accordance with clause 10.2;
- (d) the Breach constitutes a breach of the policy, or a ground for exclusion of liability under the policy; and
- (e) the SRU makes a claim on the insurance and the insurer relies upon the Breach to deny cover,

then,

- (f) the indemnity in clause 10.1 does not apply; and
- (g) AMSA must indemnify the SRU for any claim, loss or expense (including legal costs and expenses on a solicitor and own client basis) which is brought, paid, suffered or incurred by the SRU or the SRU's Personnel as a consequence of:
 - (i) the injury or loss of life of any person; or
 - (ii) the material loss, damage or destruction of anything, caused by the Breach (to a limit equal to the amount the SRU would have received from the insurer, had the policy cover not been denied).

11. General indemnity

11.1 The SRU must perform the SAR Services solely at its own risk and, except as provided in clause 10.4 or clause 11.3, AMSA will not be liable to the SRU for any loss, damage, injury, disease, illness or death sustained by the SRU, SRU Personnel or any other person or caused to any property however caused.

11.2 The SRU is liable to AMSA for, and must indemnify (and keep indemnified) AMSA against, any claim, loss or expense (including legal costs and expenses on a solicitor and own client basis) (**Loss**) which is brought, paid, suffered or incurred by AMSA or any of AMSA's Personnel as a result of any of the following:

- (a) any negligent, unlawful or deliberately wrongful act or omission by the SRU or any member of the SRU's Personnel; or
- (b) a breach of the SRU's obligations under this Agreement

except to the extent that the Loss is covered by clause 11.3.

For the avoidance of doubt, the SRU's liability to AMSA will not include Loss arising from the conduct of SAR Services in the ordinary course, even when that involves dangerous activities, provided that the SRU has not acted negligently.

11.3 AMSA is liable to the SRU for, and must indemnify (and keep indemnified) the SRU against, any claim, loss or expense (including legal costs and expenses on a solicitor and own client basis) (**Loss**) which is brought, paid, suffered or incurred by the SRU or any of the SRU's Personnel as a result of any of the following:

- (a) any negligent, unlawful or deliberately wrongful act or omission by AMSA or any member of AMSA's Personnel; or
- (b) a breach of AMSA's obligations under this Agreement.

except to the extent that the Loss is covered by clause 11.2.

For the avoidance of doubt, AMSA's liability to the SRU will not include Loss arising from the conduct of SAR Services in the ordinary course, even when that involves dangerous activities provided that AMSA has not acted negligently.

11.4 If the SRU has any liability to AMSA under this Agreement, including under clause 10 or 11, AMSA may set off that liability against any liability AMSA has to the SRU.

11.5 The SRU must make all Employee Payments, and at the time it is required to do so. If AMSA is required for any reason to make an Employee Payment, AMSA may deduct that amount from the entitlements of the SRU which are otherwise payable under this Agreement.

12 SRU's warranties

12.1 The SRU warrants and undertakes to AMSA that:

- (a) it and its Approved Subcontractors (if any) have all authorisations and certifications (including those required by the Aviation Law) and all equipment, materials and personnel to enable the SRU to meet its obligations under this Agreement;
- (b) the use of the Aircraft by the SRU in accordance with this Agreement is neither inconsistent with any contractual arrangements between the SRU and another person, nor inconsistent with the property rights of any person;
- (c) the SRU or an Approved Subcontractor holds an Air Operator's Certificate that contains an authorisation to engage the Aircraft in the class of operation of which the SAR Services are a part, and the authorisation remains in force;
- (d) it is not named by the Equal Opportunity for Women in the Workplace Agency as an employer that is currently not complying with the *Workplace Gender Equality Act 2012* (Cth);
- (e) it has not had a judicial decision against it (not including decisions under appeal) relating to employee entitlements where it has not paid the claim;
- (f) it is not on the Commonwealth's consolidated list of individuals and entities to which terrorist asset freezing applies and no SRU Personnel are on, or a member of an entity on, that list; and
- (g) it will promptly notify AMSA of any material changes to the circumstances falling within:
 - (i) any of the warranties set out above; or
 - (ii) any representations or warranties given to AMSA either before or after the date of execution of this Agreement,

and SRU must promptly provide any information required by AMSA in relation to those circumstances and comply with any directions given by AMSA to address those circumstances.

12.2 The SRU is taken to repeat the warranties in clause 12.1 on an ongoing basis through the Contract Period.

13. Termination

13.1 Either AMSA or the SRU may terminate this Agreement by giving the other 90 days' written notice.

13.2 If any of the following things happen, AMSA may give the SRU a notice terminating this Agreement with immediate effect:

- (a) the SRU breaches one of its obligations under this Agreement;
- (b) the SRU becomes an "insolvent under administration" or an "externally administered body corporate" within the meaning of the *Corporations Act 2001* (Cth);
- (c) there is a change in control of the SRU within the meaning of the *Corporations Act 2001* (Cth);
- (d) the SRU, for any reason, has no Aircraft available to engage in search and rescue operations for a continuous period in excess of 30 days;
- (e) the Air Operator's Certificate or any other approval required for the performance of this Agreement (including performance of SAR Services) ceases to authorise the SRU or an Approved Subcontractor to operate the Aircraft in the class of operations of which the SAR Services are a part;
- (f) in AMSA's opinion the SRU's operations manual is not suitable for an organisation that may be requested to perform SAR Services; or
- (g) the SRU fails to remedy a breach of a term of this Agreement within the period specified in a written notice from AMSA (which period must not be less than 10 days).

13.3 The SRU may give AMSA a notice terminating this Agreement with immediate effect if AMSA fails to remedy a breach of a term of this Agreement within the period specified in a written notice from the SRU (which period must not be less than 10 days).

13.4 If this Agreement is terminated or expires:

- (a) subject to this Agreement, AMSA must pay the SRU any outstanding Fees, costs or charges that are due and payable under this Agreement; and
- (b) the rights and obligations of the SRU and AMSA under clauses 5.5, 5.6, 5.7, 6.4, 7.4, 8, 10, 11, 13.4, 14, 15, 16, 18, 19.1, 21.1 and 21.3 continue.

13.5 Without limiting clause 13.4, if this Agreement is terminated, the SRU has no right to claim any amount from AMSA for loss of anticipated Fees or profit or for reduction in value of capital items or for any other damage arising from the termination.

14. AMSA Material

14.1 Subject to clause 14.5, AMSA Material and any Intellectual Property rights in relation to AMSA Material are and will remain the property of AMSA.

- 14.2 Subject to clause 14.5, AMSA grants to the SRU a non-exclusive licence to use (including copying and, if necessary, adapting) AMSA Material solely for the purpose of performing the SAR Services.
- 14.3 The SRU is responsible for the safe keeping and maintenance of AMSA Material, and the protection of any Intellectual Property rights in relation to AMSA Material, in the possession or control of the SRU or the SRU's Personnel.
- 14.4 If AMSA Material has been provided to the SRU or an Approved Subcontractor, the SRU must ensure the return of AMSA Material to AMSA within fourteen days of being requested by AMSA.
- 14.5 If AMSA is aware that any third parties own any Intellectual Property rights in respect of any AMSA Material, it must inform the SRU of that fact and of any conditions attaching to the use of that material. Such Material must only be used by the SRU in accordance with those conditions.

15. Contract Material

- 15.1 Ownership of the Contract Material, including all Intellectual Property rights which may arise in respect of the Contract Material, vests upon its creation in AMSA.
- 15.2 AMSA grants to the SRU a non-exclusive licence to use (including copying and, if necessary, adapting) Contract Material solely for the purpose of performing the SAR Services.

16. Confidential Information

- 16.1 Subject to this clause 16 and to clause 8.1, the SRU must:
- (a) only use, copy, publish or disseminate, or permit to be used, copied, published or disseminated, the Confidential Information for the purposes of properly performing the SAR Services;
 - (b) except as otherwise agreed by AMSA, only disclose, or allow the disclosure of, the Confidential Information to persons:
 - (i) who are informed the Confidential Information is confidential;
 - (ii) to whom it is necessary to disclose the Confidential Information for the performance of the SAR Services; and
 - (iii) who, if AMSA so requires, have executed confidentiality deeds in whatever form AMSA reasonably directs reflecting the obligations contained in this Agreement;
 - (c) ensure that it keeps the Confidential Information confidential and does not use or disclose it other than as permitted by clause 16.1(a) or (b);
 - (d) store and keep safe the Confidential Information in its possession or under its control and maintain sufficient and appropriate procedures for the protection of the Confidential Information; and
 - (e) comply with any direction that AMSA gives to the SRU regarding the safe-keeping and storage of the Confidential Information.
- 16.2 If the SRU has been advised that any Confidential Information belongs to, or contains any information which is confidential to, a person other than AMSA, and has been advised of any conditions which attach to the use of that Confidential Information, then the SRU must use that Confidential Information only in accordance with those conditions of use and subject to any directions from that party.

- 16.3 The restrictions on the SRU under this clause 16 in relation to the disclosure and use of Confidential Information:
- (a) apply subject to legal obligations to the contrary; and
 - (b) do not apply to any Confidential Information which at the time of being provided to the SRU was in the public domain or which subsequently becomes part of the public domain without fault or neglect on the part of the SRU.
- 16.4 If the SRU or any of the SRU's Personnel become compelled to disclose any of the Confidential Information, or otherwise propose to disclose any Confidential Information, because of an applicable law or an order of a court, the SRU must:
- (a) notify AMSA promptly, and if possible prior to making the disclosure, of that fact;
 - (b) provide AMSA with all assistance and co-operation which AMSA considers reasonably necessary to prevent the disclosure of the Confidential Information or to seek to prevent that disclosure;
 - (c) ensure the disclosure of only that part of the Confidential Information which is required by law, having regard to any advice or directions given by AMSA;
 - (d) permit AMSA to conduct, or to direct the conduct of, the response to any applicable court or similar proceedings to the extent that they concern the disclosure of Confidential Information; and
 - (e) use its best endeavours to assist AMSA in the conduct of any of the proceedings referred to in subparagraph (d), including making available any required SRU Personnel.

17. Notices

- 17.1 Any formal notice given under this Agreement by the SRU to AMSA must be in writing, must be signed by or on behalf of the SRU, must be addressed to the AMSA Contact Officer and must be:
- (a) delivered by hand to the address set out on page 1 of this Agreement (or such other address as AMSA may advise to the SRU by notice from time to time);
 - (b) sent by pre-paid post to that address; or
 - (c) transmitted by email to the email address set out under the "AMSA Contact Officer" heading in Schedule 1 (or such other email address as AMSA may advise to the SRU by notice from time to time).
- 17.2 Any formal notice given under this Agreement by AMSA to the SRU, other than tasking directions issued by the JRCC, must be in writing, must be signed on behalf of AMSA, must be addressed to the SRU and must be:
- (a) delivered by hand to the address set out under the "SRU Contact Officer" heading in Schedule 1 (or such other address as the SRU may advise to AMSA by notice from time to time);
 - (b) sent by pre-paid post to that address; or
 - (c) transmitted by email to the email address, if any, appearing under the "SRU Contact Officer" heading in Schedule 1 (or such other email address as SRU may advise to AMSA by notice from time to time).

- 17.3 A notice given under clause 17.1 or 17.2 is taken to be received:
- (a) if delivered by hand, on the day of delivery if that is a Business Day, otherwise on the next Business Day;
 - (b) if sent by post, on the third Business Day after posting (unless non-receipt can be proven); and
 - (c) if sent by email, , on the day of transmission or, if that is not a Business Day, on the next Business Day (unless non-receipt can be proven).
- 17.4 The JRCC may issue tasking directions to the SRU through the communication system provided by the SRU under clause 2.1(b).
- 17.5 A tasking direction issued to the SRU through the communication system provided by the SRU under clause 2.1(b) is taken to be received at the moment it is issued.

18. Policy provisions

- 18.1 The SRU must comply with the provisions of the *Privacy Act 1988* (Cth) as if it were included in the definition of ‘agency’ under that Act. The SRU must also comply with any directions made by the Privacy Commissioner or any privacy procedures notified to it by AMSA. The SRU’s obligations in this clause 18.1 are in addition to, and do not restrict, any obligations it may have under the *Privacy Act* as amended from time to time including, without limitation, the SRU’s obligations under section 6A of that Act. The SRU must not do anything which may cause AMSA to breach its obligations under the *Privacy Act*.
- 18.2 If an application is made under the *Freedom of Information Act 1982* (Cth) for access to documents concerning the SRU, AMSA:
- (a) may, before making a decision, consult with the SRU, without prejudice to any decision to release the information; and
 - (b) must determine the application in accordance with the requirements of the *Freedom of Information Act 1982* (Cth).
- 18.3 The SRU must ensure that its Personnel, when using AMSA premises or facilities, comply with:
- (a) all reasonable directions and AMSA procedures relating to occupational health (including AMSA smoke free work place policy), safety and security in effect at those premises, as notified by AMSA or as might reasonably be inferred from the use to which the premises or facilities are being put.
 - (b) all applicable Commonwealth, State, Territory and Local government laws, regulations and procedures relating to occupational health and safety as if those provisions applied to the SRU.
- 18.4 AMSA must, when on the SRU's premises or Aircraft, comply with all reasonable directions and SRU procedures relating to occupational health, safety and security in effect at those premises or on those Aircraft, as notified by the SRU or as might reasonably be inferred from the use to which the premises or Aircraft are being put.
- 18.5 The SRU agrees to promptly give the Australian National Audit Office or any other auditor appointed by AMSA, the assistance they reasonably require in conducting any audits, including full access at all reasonable times and on reasonable notice to all premises, equipment, documents and software used in connection with this Agreement (including in connection with the performance of the SAR Services).

- 18.6 The SRU must comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth).
- 18.7 The SRU must perform its obligations under this Agreement in a way that does not:
- (a) place AMSA in breach of any applicable environmental legislation including the *Environment Protection and Biodiversity Conservation Act 1999* (Cth); and
 - (b) have an adverse effect on any ISO certification that AMSA holds in respect of environmental management.
- 18.8 At AMSA's request, the SRU must obtain and give to AMSA, within 10 days of the request, a written notice from each Approved Subcontractor stating that the Approved Subcontractor irrevocably consents to AMSA publicly disclosing that the Approved Subcontractor has been engaged to perform services in relation to the provision of SAR Services.
- 18.9 The SRU must comply with obligations arising under any applicable government policy directives of which it is aware or which are advised to it by AMSA in writing from time to time.
- 18.10 Without limiting clause 18.9, the SRU must comply with AMSA's fraud control requirements as advised to the SRU by AMSA in writing from time to time.

19. Negation of employment, partnership and agency

- 19.1 The SRU and the SRU's Personnel are not, by virtue of this Agreement, employees, partners or agents of AMSA.
- 19.2 The SRU must ensure that it and the SRU's Personnel do not represent themselves as being, or allow another person to be under the misapprehension that any of them are, an employee, partner or agent of AMSA.

20. Taxation and duties

- 20.1 Despite any other provision of this Agreement, if, under *A New Tax System (Goods and Services) Act 1999* (Cth) and related Acts, a goods and services tax ("GST") is payable on any supply made by the SRU under or in the performance of this Agreement, the amount payable by AMSA under this Agreement will be increased by the net amount of such GST.
- 20.2 Subject to clause 20.1, all taxes, duties and charges imposed or levied in Australia or overseas on the SRU in connection with the performance of this Agreement (other than the charges (if any) that AMSA agrees in advance to reimburse under clause 6.1(b)) must be borne by the SRU.
- 20.3 Without limiting clause 6.4, if a variation in a government tax, duty or charge affects an item included in the Fees, the SRU may apply to AMSA to vary the Fees to take account of the variation in the tax, duty or charge, but if that variation increases the Fees, that increase will not take effect, and AMSA is not obliged to pay the amount claimed to be attributable to that tax, duty or charge, unless and until AMSA has given its written approval that it is satisfied that:
- (a) the claimed increase is actually attributable to that tax, duty or charge; and
 - (b) the tax, duty or charge increase has affected the Fees.

21. Machinery provisions

- 21.1 This Agreement is governed by the laws of the Australian Capital Territory and the SRU and AMSA irrevocably submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.
- 21.2 This Agreement may not be varied or supplemented, except in writing signed by both the SRU and AMSA.
- 21.3 Any failure by either party to exercise, or delay by either party in exercising, any right against the other party under this Agreement cannot be taken as a waiver of the right or as an election not to exercise that right or any other right.
- 21.4 The SRU must not subcontract the performance of any of its obligations under this Agreement, or assign its rights under this Agreement, without the prior written consent of AMSA, which consent:
- (a) must not be unreasonably withheld;
 - (b) may be given subject to reasonable conditions; and
 - (c) does not limit or otherwise affect the SRU's obligations under this Agreement.
- 21.5 This Agreement may be executed in any number of counterparts and each counterpart when so executed will be an original but all of which taken together will be deemed to constitute one and the same instrument.
- 21.6 Nothing in this Agreement prevents AMSA from engaging persons other than the SRU to provide services of any kind in relation to any matter.
- 21.7 This Agreement sets out the entire agreement between AMSA and the SRU in relation to the subject matter and supersedes any previous correspondence, agreement, arrangement or understanding.

22. Dispute resolution

- 22.1 Without limiting clause 13.1 or clause 13.2, if any dispute arises in connection with this Agreement which cannot be settled by negotiation between AMSA and the SRU, AMSA will consider the use of mediation in accordance with the Guidelines for Commercial Mediation for the time being of the Australian Commercial Disputes Centre and arbitration in accordance with the Rules for Conduct of Commercial Arbitrations for the time being of the Institute of Arbitrators Australia before considering termination.
- 22.2 If a dispute is submitted to mediation or arbitration under clause 22.1:
- (a) the SRU and AMSA must continue to perform their respective obligations under this Agreement, and neither the SRU nor AMSA will be prevented from seeking urgent equitable relief before an appropriate court; and
 - (b) the SRU and AMSA must share the costs of mediation or arbitration equally unless determined otherwise as part of the mediation or arbitration.

Executed by the parties as an agreement

SIGNED for and on behalf of **AUSTRALIAN
MARITIME SAFETY AUTHORITY** by its duly
authorised representative in the presence of:)
)
)

.....
(Witness signature)

.....
(Name of signatory)

.....
(Witness name)

.....
(Title of signatory)

.....
(Date)

SIGNED for and on behalf of [**Insert Name of
Contracting Entity**] by a duly authorised
representative in the presence of:)
)
)

.....
(Witness signature)

.....
(Name of signatory)

.....
(Witness name)

.....
(Title of signatory)

.....
(Date)

SCHEDULE 1: Contract Period, Fees, Contact Officers

Contract Period

The Contract Period is the period from the Commencement date until the Expiry date.

Commencement date: The date of the first day on which this Agreement is executed by both AMSA and the SRU.

Expiry date: Five years after the Commencement date.

Fees

The Fees comprise:

- (a) the Signing Fee; and
- (b) the Aircraft Usage Fee.

Signing Fee

The Signing Fee is \$1.00

Aircraft Usage Fee

Aircraft Usage Fee = Claimable Hours x Hourly Rate; where

Claimable Hours = Each hour or part thereof (measured from engine(s) on to engine(s) off) that an Aircraft is being used to perform SAR Services (including flights undertaken to comply with a request from AMSA under clause 2.3) or other tasks agreed by AMSA.

Hourly Rate = The relevant hourly rate for the applicable Aircraft as listed in the table below.

Table 1 of Schedule 1 - Hourly Rate

Aircraft registration	Aircraft type	Home Base	Hourly Rate (ex GST)	Category

AMSA Contact Officer

Position: Manager Asset Capability

Address: Response, GPO Box 2181, Canberra City ACT 2601

Tel: 07 3001 6820

Email: ResponseAssetCapabilityManager@amsa.gov.au

AMSA Response Invoices Section

Position: Accounts Payable

Address: Australian Maritime Safety Authority, GPO Box 2181, Canberra ACT 2601

Email: Response.Invoices@amsa.gov.au

SRU Contact Officer

Name: [Insert]

Position: [Insert]

Address: [Insert]

Tel: [Insert]

Mob: [Insert]

Email: [Insert]

ATTACHMENT A: Letter of Consent to a Subcontract

[Insert addressee name, position and address]

Dear [Insert]

Consent to subcontract SAR Services – [INSERT NAME OF SUBCONTRACTOR] ABN [INSERT ABN]

I refer to the Contract for the provision by [Insert name of contracting entity] of SAR Services to AMSA ('**the Contract**'). Clause 21.4 of the Contract provides that the SRU must not subcontract the performance of any of its obligations, or assign its rights, without the prior written consent of AMSA, which consent:

- (a) must not be unreasonably withheld;
- (b) may be given subject to reasonable conditions; and
- (c) does not limit or otherwise affect the SRU's obligations under the Contract.

This letter sets out the terms on which AMSA consents to [INSERT NAME OF CONTRACTING ENTITY] (SRU) subcontracting with [INSERT NAME OF SUBCONTRACTOR] (Subcontractor).

Consent

1. Subject to paragraphs 2 and 3 below, AMSA consents to the SRU entering a subcontract with the Subcontractor for the performance of the SRU's obligations under the Contract.

Conditions of Consent

2. The conditions on which AMSA's consent is granted are that: [AMSA to review and confirm conditions]
 - (a) the SRU must obtain an executed deed from the Subcontractor in the form attached to this consent, and provide AMSA with a copy of the executed deed;
 - (b) the SRU must not subcontract on terms that would permit the Subcontractor to do or omit to do something that would, if done or omitted to be done by the SRU, would constitute a breach of the SAR Services Contract;
 - (c) the SRU must provide AMSA with a copy of the subcontract between the SRU and the Subcontractor within 7 days if requested by AMSA (from which copy prices may be deleted);
 - (d) the SRU must not consent to the Subcontractor further subcontracting the performance of any of the Subcontractor's obligations;

- (e) the SRU must notify AMSA within 24 hours if the subcontract between the SRU and the Subcontractor is terminated or expires;
- (f) the SRU must not subcontract with an entity that is named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth)
- (g) the SRU must not subcontract with an entity that has had a judicial decision against it (not including decisions under appeal) relating to employee entitlements and has not paid the claim;
- (h) the SRU must not subcontract with an entity that is on, or has one or more employees that are on or members of an entity that is on, the Commonwealth's consolidated list of individuals and entities to which terrorist asset freezing applies; and
- (i) the SRU must obtain, and give to AMSA, a written notice from the Subcontractor stating that the Subcontractor irrevocably consents to AMSA publicly disclosing that the Subcontractor has been engaged to perform services in relation to the provision of SAR Services.

Termination of Consent

- 3. AMSA may terminate this consent:
 - (a) by 90 days' written notice to the SRU, for any reason; or
 - (b) by written notice to the SRU with immediate effect:
 - (i) if the SRU breaches any of the conditions in paragraph 2 of this consent; or
 - (ii) if the Subcontractor does or omits to do something which, if done or omitted to be done by the SRU under the SAR Services Contract, would give AMSA the right to terminate that Contract with immediate effect.

Signed for and on behalf of AMSA:

Name:

Date:

Subcontractor Deed

Parties

THE AUSTRALIAN MARITIME SAFETY AUTHORITY, a body corporate established by subsection 5(2) of the *Australian Maritime Safety Authority Act 1990* and having its head office at 82 Northbourne Avenue Canberra in the Australian Capital Territory ('AMSA'),

AND

[INSERT NAME OF SUBCONTRACTOR] ABN [INSERT ABN], of [INSERT ADDRESS] ('SRU Subcontractor')

PRELIMINARY STATEMENT

- A. AMSA has entered a contract with [INSERT NAME OF ENTITY WITH WHOM AMSA HAS ENTERED THE SAR SERVICES CONTRACT] ('the SRU') for the provision of search and rescue and associated services (including pollution response services) to AMSA ('the SAR Services').
- B. AMSA has given conditional consent to the SRU subcontracting to the SRU Subcontractor the performance of some of the SAR Services ('Subcontracted Services'), which conditions include that the SRU obtain from the SRU Subcontractor an executed deed in a specified form.
- C. The SRU wishes to subcontract the performance of the Subcontracted Services to the SRU Subcontractor, and the SRU Subcontractor has agreed to execute this deed.

AMSA and the SRU Subcontractor agree as follows:

Indemnities

- 1.1 The SRU Subcontractor agrees to perform the Subcontracted Services solely at its own risk and, except as provided in clause 1.3, AMSA will not be liable to the SRU Subcontractor for any loss, damage, injury, disease, illness or death sustained by the SRU Subcontractor or its officers, employees, agents or any other person or caused to any property however caused.
- 1.2 The SRU Subcontractor is liable to AMSA for, and must indemnify (and keep indemnified) AMSA against, any claim, loss or expense (including legal costs and expenses on a solicitor and own client basis) ('Loss') which is brought, paid, suffered or incurred by AMSA or any of AMSA's officers, employees or agents as a result of any of the following:
 - (a) any negligent, unlawful or deliberately wrongful act or omission by the SRU Subcontractor or any of its officers, employees or agents; or
 - (b) a breach of the SRU Subcontractor's obligations under its contract with the SRU, except to the extent that the Loss is covered by clause 1.3.

For the avoidance of doubt, the SRU Subcontractor's liability to AMSA will not include Loss arising from the conduct of the Subcontracted Services in the ordinary course, even when that involves dangerous activities, provided that the SRU Subcontractor has not acted negligently.

- 1.3 AMSA is liable to the SRU Subcontractor for, and must indemnify (and keep indemnified) the SRU Subcontractor against, any claim, loss or expense (including legal costs and expenses on a solicitor and own client basis) (**Loss**) which is brought, paid, suffered or incurred by the SRU Subcontractor or any of its officers, employees or agents as a result of any of the following:
- (a) any negligent, unlawful or deliberately wrongful act or omission by AMSA or AMSA's officers, employees or agents; or
 - (b) a breach of AMSA's obligations under the contract for SAR Services between AMSA and the SRU, except to the extent that the Loss is covered by clause 1.2.

For the avoidance of doubt, AMSA's liability to the SRU Subcontractor will not include Loss arising from the conduct of the Subcontracted Services in the ordinary course, even when that involves dangerous activities, provided that AMSA has not acted negligently.

No disclosure by SRU Subcontractor

- 2.1 The SRU Subcontractor must not, and must ensure that the SRU Subcontractor's officers, employees and agents do not, at any time, make any disclosure or publish any statement (by means of advertisement or otherwise) about or in relation to the Subcontracted Services, unless the SRU Subcontractor has obtained AMSA's consent to the disclosure or publication, which consent:
- (a) may not be unreasonably withheld by AMSA;
 - (b) may be given subject to reasonable conditions; and
 - (c) may be withdrawn by AMSA at any time.

Confidential Information

- 3.1 Subject to this clause 3, the SRU Subcontractor must:
- (a) only use, copy, publish or disseminate, or permit to be used, copied, published or disseminated, the Confidential Information for the purposes of properly performing the Subcontracted Services;
 - (b) except as otherwise agreed by AMSA, only disclose, or allow the disclosure of, the Confidential Information to persons:
 - (i) who are informed the Confidential Information is confidential;
 - (ii) to whom it is necessary to disclose the Confidential Information for the performance of the Subcontracted Services; and
 - (iii) who, if AMSA so requires, have executed confidentiality deeds in whatever form AMSA reasonably directs reflecting the obligations contained in this clause 3;

- (c) ensure that it keeps the Confidential Information confidential and does not use or disclose it other than as permitted by clause 3.1(a) or (b);
 - (d) store and keep safe the Confidential Information in its possession or under its control and maintain sufficient and appropriate procedures for the protection of the Confidential Information; and
 - (e) comply with any direction that AMSA gives to the SRU Subcontractor regarding the safe-keeping and storage of the Confidential Information.
- 3.2 If the SRU Subcontractor has been advised that any Confidential Information belongs to, or contains any information which is confidential to, a person other than AMSA, and has been advised of any conditions which attach to the use of that Confidential Information, then the SRU Subcontractor must use that Confidential Information only in accordance with those conditions of use and subject to any directions from that party.
- 3.3 The restrictions on the SRU Subcontractor under this clause 3 in relation to the disclosure and use of Confidential Information:
- (a) apply subject to legal obligations to the contrary; and
 - (b) do not apply to any Confidential Information which at the time of being provided to the SRU Subcontractor was in the public domain or which subsequently becomes part of the public domain without fault or neglect on the part of the SRU.
- 3.4 If the SRU Subcontractor or any of the SRU's officers, employees or agents become compelled to disclose any of the Confidential Information, or otherwise propose to disclose any Confidential Information, because of an applicable law or an order of a court, the SRU Subcontractor must:
- (a) notify AMSA promptly, and if possible prior to making the disclosure, of that fact;
 - (b) provide AMSA with all assistance and co-operation which AMSA considers reasonably necessary to prevent the disclosure of the Confidential Information or to seek to prevent that disclosure;
 - (c) ensure the disclosure of only that part of the Confidential Information which is required by law, having regard to any advice or directions given by AMSA;
 - (d) permit AMSA to conduct, or to direct the conduct of, the response to any applicable court or similar proceedings to the extent that they concern the disclosure of Confidential Information; and
 - (e) use its best endeavours to assist AMSA in the conduct of any of the proceedings referred to in subparagraph (d), including making available any required SRU Subcontractor's officers, employees or agents.
- 3.5 In this clause 3 'Confidential Information' means:
- (a) "personal information" within the meaning given in section 6 of the *Privacy Act 1988* (Cth); and

- (b) other information acquired or produced by or becoming available to the SRU Subcontractor or the SRU's officers, employees or agents in connection with the performance of the Subcontracted Services, which is not in the public domain and which is by its nature confidential or which is indicated by AMSA to be confidential.

Warranties

4.1 The SRU Subcontractor warrants that:

- (a) it is not named by the Workplace Gender Equality Agency as an employer that is currently not complying with the *Workplace Gender Equality Act 2012* (Cth)
- (b) it has not had a judicial decision against it (not including decisions under appeal) relating to employee entitlements where it has not paid the claim; and
- (b) it is not on the Commonwealth's consolidated list of individuals and entities to which terrorist asset freezing applies and none of its personnel are on, or a member of an entity on, that list.

Execution

Executed as a deed

Date:

Signed sealed and delivered by **[INSERT NAME OF SUBCONTRACTOR]** acting by the following persons or, if the seal is affixed, witnessed by the following persons:

.....
.....

Signed sealed and delivered by **AMSA** acting by the following persons or, if the seal is affixed, witnessed by the following persons:

.....
.....