

**CONTRACT FOR PROVISION OF SERVICES**

**BETWEEN THE**

AUSTRALIAN MARITIME SAFETY AUTHORITY

**ABN 65 377 938 320**

AND

**[Insert COMPANY NAME]**

**ABN [ ]**

in relation to the provision of services for the

**SEARCH AND RESCUE AIRCRAFT PANEL AGREEMENT**

**CONTRACT No. 24AMSA001**

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Schedule 1. OBLIGATIONS AND SERVICES TO BE PERFORMED

**THIS CONTRACT is made on the ..................... of ........................ 2024**

**BETWEEN**

The **AUSTRALIAN MARITIME SAFETY AUTHORITY**, a statutory authority established by the *Australian Maritime Safety Authority Act 1990*, ABN: 65 377 938 320; 82 Northbourne Ave, Canberra, ACT, 2601 (“**AMSA**”)

**AND**

**[ORGANISATIONS NAME]** whose registered office is at **[ORGANISATIONS ADDRESS],** **[ABN, ACN]**, **(**“**SRU**”)

**PRELIMINARY STATEMENTS:**

A. AMSA is responsible for the search and rescue response to national civil aviation and maritime distress incidents within Australia’s search and rescue region and for managing and coordinating the national strategy for preparedness and response to marine pollution incidents within Australian waters.

B. In order to provide an effective search and rescue 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.

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 and at its discretion provide the SRU with search and rescue (SAR) equipment on the terms set out in this Agreement.

**OPERATIVE PROVISIONS**

**1. INTERPRETATION**

* 1. In this Agreement unless the contrary intention appears:

**Aerial Work Certificate** or **AWC** has thesame meaning as in the Aviation Law.

**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 or is copied or derived from Material so provided.

**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 Services 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 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*.

**Aerial Work Certificate** or **AWC** has the same meaning as in the Aviation Law.

**CASA** means the Civil Aviation Safety Authority established by 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’** means this document, together with any Schedules and Annexures;

**‘Contract Material’** means all Material:

1. brought into existence for the purpose of performing the SAR Services;
2. incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or
3. copied or derived from Material referred to in paragraphs (a) or (b);

**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, Aircraft Usage Fee and any miscellaneous fees 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.

**Material** includes documents, software, goods, equipment, information and data stored by any means.

**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 aerial search and rescue and associated services (including pollution response services) provided by the SRU to AMSA under this Contract.

**Significant Event means:**

* 1. any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the SRU or its officers, employees, agents or Subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
	2. any other significant matters, including a referral to a commission, commencement of legal, regulatory or disciplinary action involving the SRU or its officers, employees, agents or Subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth’s reputation.

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

**SRU means** Search and Rescue Unit and includes where the context so admits the SRU Personnel and any of its Subcontractors.

**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).

**Subcontractor** means any person that, for the purposes of this Agreement, furnishes services directly or indirectly to the SRU through another person or organisation.

1.2 The following interpretation rules apply in this Contract:

(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**

* 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:
1. maintain the operational capability to provide the SAR Services as detailed for each type of Aircraft in Schedule 1;
2. 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;
3. obtain and maintain the certificates, licences, authorities, permits, endorsements, supplements, exemptions and variations, including an AOC/AWC 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 4;

1. notify the JRCC immediately if the SRU’s AOC/AWC, 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;
2. take reasonable care of the AMSA-Provided SAR Equipment (if provided) having regard to any instructions given by AMSA from time to time;
3. 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; and

1. comply with operational orders and procedures, or other reasonable instructions, notified by AMSA from time to time; and
2. report any incidents, accidents or hazards that occur or it becomes aware of whilst performing the SAR Services, to the JRCC immediately.
3. 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.
	1. 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. 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. If the SRU cannot do so on the day nominated by AMSA, due to operational requirements, it must arrange an alternate day with AMSA’s approval. Compliance indicators may include, but are not limited to:
4. provision of Aircraft and Crew and demonstrated ability to perform SAR Services, which may include flying;
5. currency of all necessary approvals, licences, certificates, log books and maintenance releases; and
6. completeness and currency of appropriate documentation and adherence to documented procedures.
	1. The SRU must:

(a) 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 2 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.

1. 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
2. if requested by AMSA, verify that the information that AMSA has on record is accurate and up-to-date.
	1. 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. 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 an obligation of the SRU to ensure that the Approved Subcontractor performs the obligation as if it were the SRU.
	3. 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:
3. the disclosure is necessary for AMSA to perform its functions;
4. the disclosure is necessary for AMSA to assess the SRU's performance in providing the SAR Services;
5. AMSA has a legal obligation to disclose the information; or
6. the information is already in the public domain.

**3. CREW**

* 1. The SRU must ensure Crew used to perform SAR Services:
1. are competent and qualified in their role in the operation of the Aircraft;
2. are trained and current in search and rescue techniques (unless otherwise agreed with the JRCC on a case by case basis); and
3. 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.
	1. Except as approved by AMSA, the SRU must not permit a Passenger to be carried on any aircraft engaged in performing SAR Services.
	2. Nothing in this Agreement affects the responsibilities of the Pilot in Command of any aircraft engaged in performing SAR Services, for:
4. the start, continuation, diversion and end of a flight by the Aircraft;
5. the operation and safety of the Aircraft during flight time;
6. the safety of persons and cargo carried on the Aircraft; and
7. the conduct and safety of members of the Crew on the Aircraft.

**4. AMSA-PROVIDED SAR EQUIPMENT**

* 1. This clause 4 applies if AMSA supplies AMSA-Provided SAR Equipment to the SRU.
	2. 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 4.1 in no way limits the SRU's obligation to deliver training in accordance with clause 4.4(f). .
	3. 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:
1. safely and correctly; and
2. in accordance with such other orders, procedures or directions notified by AMSA from time to time.
	1. The SRU must:
3. 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;
4. subject to clause 4.5, 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;
5. 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;
6. 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;
7. 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;
8. provide Crew ongoing training in use of AMSA-Provided SAR Equipment; and
9. permit AMSA or its nominee to inspect the SRU’s compliance with paragraphs (a) to (f), inclusive, of this clause 4.4.
	1. The SRU may use AMSA-Provided SAR Equipment for a purpose other than providing SAR Services if:
10. AMSA has given the SRU written consent to use the AMSA-Provided SAR Equipment for that other purpose; or
11. 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.
	1. 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.
	2. 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
	3. 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 (for the avoidance of doubt, AMSA’s right will not extend to damage by fair wear and tear); and

* 1. 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.

* 1. 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.

**5. FEES**

5.1 Subject to this clause 5 and clause 6, AMSA must:

1. pay the SRU the Fees; and
2. if an Aircraft is operating away from the Home Base of that Aircraft as set out in Table 2 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.

5.2 AMSA must pay the SRU the Signing Fee within 30 days of the commencement date set out at Schedule 1.

5.3 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 2 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 unless it is provided for in Table 2 of Schedule 1.

5.4 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.

* 1. 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 anniversary and Table 2 of Schedule 1 is deemed to have been changed from the anniversary in accordance with that agreement.

**6. INVOICES AND PAYMENT**

6.1 The SRU may give AMSA an invoice relating to SAR Services performed under this Agreement.

6.2 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;

1. 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;
2. 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;
3. in the case of an invoice for actual search and rescue operations, specifies the incident number; and
4. 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.

6.3 AMSA must pay an invoice that complies with this clause 6 within 30 days of receiving it.

6.4 AMSA may set off against amounts payable under this clause 6 from:

(a) amounts payable by the SRU under clause 5;

(b) amounts determined by AMSA to be available for set off pursuant to clause 10.4; and

(c) subject to clause 6.5, 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.

6.5 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.

**7. NO DISCLOSURE OR ADVERTISING**

7.1 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.

7.2 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.

**8. LIAISON AND DIRECTION**

8.1 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.

* 1. AMSA authorises the AMSA Contact Officer to receive or sign any formal notice or other communication under this Agreement on behalf of AMSA.

**9. AIRCRAFT HULL AND THIRD PARTY INDEMNITY AND INSURANCE**

9.1 The SRU releases and indemnifies AMSA (and keeps 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.

9.2 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 aircraft 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 $30 million general liability insurance in total, per-event cover to AMSA, the Commonwealth, the SRU and each of the SRU’s Personnel who are Crew.

9.3 The SRU must hold any other insurance policies specified in Schedule 1.

9.4 At AMSA’s request, the SRU must provide AMSA with copies of such documents as are reasonably required.

**10. GENERAL INDEMNITY**

10.1 The SRU must perform the SAR Services solely at its own risk and, except as provided in clause 10.3, 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.

10.2 The SRU is liable to AMSA for, and agrees to 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 10.3.

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.

10.3 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 10.2.

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.

10.4 If the SRU has any liability to AMSA under this Agreement, including under clause 9 or 10, AMSA may set off that liability against any liability AMSA has to the SRU.

* 1. 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.

**11. SRU’S WARRANTIES**

11.1 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/Aerial Work 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.

* 1. The SRU is taken to repeat the warranties in clause 11.1 on an ongoing basis through the Contract Period.

**12. TERMINATION**

* 1. Either AMSA or the SRU may terminate this Agreement for any reason by giving the other 90 days’ written notice.
	2. If any of the following happen, AMSA may give the SRU a notice terminating this Agreement with immediate effect:

(a) the SRU breaches an obligation under this Agreement that is not capable of remedy;

(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 AOC/AWC 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 or obligation of this Agreement, with the exception of the events listed in sub-clauses 12.2 (a)-(f), within the period specified in a written notice from AMSA (which period must not be less than 10 days).

* 1. 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).
	2. If this Agreement is terminated or expires:
1. subject to this Agreement, AMSA must pay the SRU any outstanding Fees, costs or charges that are due and payable under this Agreement; and
2. the rights and obligations of the SRU and AMSA under clauses 5, 6.4, 7, 9, 10, 12.4, 13, 14, 15, 17, 18.1, 20 and 23 continue.
	1. Without limiting clause 12.4, 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.

**13. AMSA MATERIAL**

13.1 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.

13.2 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.

13.3 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.

13.4 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.

* 1. 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.

**14. CONTRACT MATERIAL**

14.1 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.

* 1. 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.
	2. The SRU warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in any Contract Material in the manner provided for in this clause 14.
	3. The SRU must at all times indemnify and hold harmless AMSA and AMSA Personnel from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person in respect of any infringement of Intellectual Property by the SRU, SRU Personnel or Approved Subcontractors in connection with the performance of the SAR Services or the use by AMSA of the Contract Material.
	4. The indemnity referred to in subclause 14.4 will survive the expiration or termination of this Agreement.
	5. The SRU must establish and maintain procedures to secure the Contract Material in its possession against loss and unauthorised access, use, modification or disclosure.
	6. For avoidance of doubt, AMSA may use any imagery or video footage obtained by the SRU whilst performing the SAR Services, without consent or approval from the SRU for any purpose including for any media or advertising purpose. The SRU waive any rights and interest in copyright in the imagery or video footage, and the indemnity in clause 14.4 applies with respect to the publication of the imagery and/or video footage whether by AMSA or by a third party.

**15. CONFIDENTIAL INFORMATION**

15.1 Subject to this clause 15 and to clause 7.1, 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 15.1(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.

15.2 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.

15.3 The restrictions on the SRU under this clause 15 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.

15.4 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.

**16. NOTICES**

16.1 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).

16.2 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).

16.3 A notice given under clause 16.1 or 16.2 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).

16.4 The JRCC may issue tasking directions to the SRU through the communication system provided by the SRU under clause 2.1(b).

16.5 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.

**17. POLICY PROVISIONS**

17.1 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 17.1 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*.

17.2 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).

17.3 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.

17.4 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.

17.5 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).

17.6 The SRU must comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth).

17.7 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.

17.8 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.

17.9 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.

17.10 Without limiting clause 17.9, the SRU must comply with AMSA's fraud control requirements as advised to the SRU by AMSA in writing from time to time.

**18. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY**

18.1 The SRU and the SRU’s Personnel are not, by virtue of this Agreement, employees, partners or agents of AMSA.

18.2 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.

**19. TAXATION AND DUTIES**

* 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.
	2. Subject to clause 19.1, 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 5.1(b)) must be borne by the SRU.
	3. Without limiting clause 5.4, 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.

**20. MACHINERY PROVISIONS**

20.1 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.

20.2 This Agreement may not be varied or supplemented, except in writing signed by both the SRU and AMSA.

20.3 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.

20.4 The SRU must not, without the prior written approval of AMSA, subcontract the performance of the whole or any part of the SAR Services. In giving written approval, AMSA may impose such terms and conditions as it thinks fit, noting that:

1. The SRU is wholly responsible for the performance of the SAR Services notwithstanding that the SRU has subcontracted the performance of any part of those SAR Services.
2. Despite any approval given by AMSA, the SRU must exercise care in selection of a Subcontractor and is responsible for ensuring the suitability of a Subcontractor for the proper performance of the SAR Services proposed to be carried out by the Subcontractor, and for ensuring that the performance of the Services meets the requirements of this Agreement.

20.5 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.

20.6 Nothing in this Agreement prevents AMSA from engaging persons other than the SRU to provide services of any kind in relation to any matter.

20.7 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.

* 1. The SRU, must not assign, in whole or in part, its rights and obligations under this Agreement without the prior written approval of AMSA.
	2. Each provision of this Agreement and each part thereof will, unless the context otherwise necessarily requires it, be read and construed as a separate and severable provision or part. If any provision or part thereof is void or otherwise unenforceable for any reason, that provision or part (as the case may be) will be severed and the remainder will be read and construed as if the severable provision or part had never existed.

**21. DISPUTE RESOLUTION**

21.1 Without limiting clause 12.1 or clause 12.2, 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.

21.2 If a dispute is submitted to mediation or arbitration under clause 21.1:

 (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.

**22. PRIVACY AND NOTIFIABLE DATA BREACHES**

* 1. In providing the SAR Services, the SRU must comply, and ensure that SAR Personnel and Approved Subcontractors comply with the *Privacy Act 1988* (Cth) (**Privacy Act**)and not do anything, which if done by AMSA would breach an Australian Privacy Principle as defined in the Privacy Act. The SRU will notify AMSA if it becomes aware that it may be required to disclose Personal Information by law or to the Australian Information Commissioner
	2. If the SRU becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by the SRU as a result of this Agreement or its provision of the SAR Services, the SRU agrees to:
1. notify AMSA in writing as soon as possible, which must be no later than within 3 days; and
2. unless otherwise directed by AMSA, carry out an assessment in accordance with the requirements of the Privacy Act 1988 (Cth).
	1. Where the SRU is aware that there are reasonable grounds to believe there has been, or where AMSA notifies the SRU that there has been, an Eligible Data Breach in relation to any Personal Information held by the SRU as a result of this Agreement or its provision of the SAR Services, the SRU will:
3. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;
4. unless otherwise directed by AMSA, take all other action necessary to comply with the requirements of the Privacy Act; and
5. take any other action as reasonably directed by AMSA.
	1. The SRU must ensure that any subcontract entered into by the SRU for the purposes of fulfilling the SRU’s obligations under the contract imposes on the Subcontractor the same obligations regarding privacy and notifiable data breaches that the SRU has under this Agreement.  Each subcontract must also require the same obligations (where relevant) to be included by the Subcontractor in any secondary subcontracts.
	2. The SRU will notify AMSA as soon as reasonably practicable if it becomes aware of a breach or possible breach of the obligations contained in this clause.
	3. For avoidance of doubt, The SRU’s obligations in this clause 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.
	4. For the purposes of this clause, the terms ‘Personal Information’ and ‘Eligible Data Breach’ have the same meaning as in the Privacy Act.
6. **CONFLICT OF INTEREST**
	1. In this clause 23, ‘conflict’ means any matter, circumstance, interest or activity affecting the SRU (including SRU Personnel) which may or may appear to impair the ability of the SRU to provide the SAR Services to AMSA, diligently and independently.
	2. The SRU warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement no conflict with the interests of AMSA exists or is likely to arise in the performance of its obligations under this Agreement by itself or SRU Personnel or Approved Subcontractors.
	3. If during the term of this Agreement a conflict of interest arises, or appears likely to arise, the SRU undertakes to notify AMSA immediately in writing and to take such steps as AMSA may reasonably require it to resolve or otherwise deal with the conflict. If the SRU fails to notify AMSA or fails to resolve or deal with the conflict as required, it will constitute a breach of an obligation of this Agreement that is not capable of remedy and AMSA may terminate this Agreement pursuant to clause 12.2(a) of this Agreement.
	4. The SRU must not, and must ensure that any SRU Personnel or Approved Subcontractors do not, engage in any activity or obtain any interest during the course of this Agreement that is likely to conflict with or restrict the SRU in providing the SRU Services to AMSA, fairly and independently.

**24. NATIONAL ANTI-CORRUPTION COMMISSION ACT 2022 (CTH) REQUIREMENTS**

* 1. Notwithstanding anything else in this Agreement, the SRU acknowledges that in providing the SAR Services to AMSA under this Agreement, it is a contracted service provider for the purposes of the *National Anti-Corruption Commission Act 2022 (Cth) (‘****NACC Act****’).*
	2. SRU must comply with any reasonable request, policy or direction issued by AMSA and otherwise cooperate with AMSA in relation to any action taken by AMSA required or authorised by the NACC Act.

**25. COMPLIANCE WITH LAW AND GOVERNMENT POLICIES**

* 1. In performing the Services the SRU:
1. must comply and procure that each of its officers, employees, agents, approved subcontractors and Authorised Personnel complies with; and
2. must not and must procure that each of its officers, employees, agents, and approved subcontractors and Authorised Personnel does not cause AMSA to be in breach of;

any laws, statutes, regulations, by-laws, ordinances or subordinate legislation in force from time to time, including in particular but not limited to the:

* *Crimes Act 1914*;
* *Criminal Code Act 1995*;
* *Privacy Act 1988*;
* *Racial Discrimination Act 1975*;
* *Sex Discrimination Act 1984*;
* *Disability Discrimination Act 1992*;
* *Workplace Gender Equality Act 2012*;
* *Work Health and Safety Act 2011;*
* *Safety, Rehabilitation and Compensation Act 1988*;
* *Competition and Consumer Act 2010*
* *Environment Protection and Biodiversity Conservation Act 1999*;
* *Auditor-General Act 1997*;
* *Public Governance, Performance and Accountability Act 2013*;
* *Freedom of Information Act 1982*;
* *Public Interest Disclosure Act 2013*;
* *Modern Slavery Act 2018 (Cth);*
* *National Anti-Corruption Commission Act 2022* (Cth)*.*

and to prescribed requirements for licences or permits to practice a profession or trade.

* 1. In performing the Services, using AMSA equipment and whilst on AMSA premises, the SRU must comply with policies and guidelines of AMSA, including in particular but not limited to those in relation to work health and safety at AMSA premises, security at AMSA premises, use of AMSA computers and the Internet, workplace diversity (including harassment, discrimination and use of language matters), personnel management/human resources, and conservation, preservation and protection, of the environment.
	2. Even though the SRU is not an AMSA employee, in performing the Services the SRU must act in a manner consistent with the AMSA Code of Conduct.
	3. If at any time the Supplier becomes aware of Modern Slavery practices in the operations and supply chains used in its performance of the Contract, the Supplier must as soon as reasonably practicable:
1. promptly notify AMSA of the Modern Slavery practices and provide any relevant information requested by AMSA;
2. take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains; and
3. take all reasonable steps to remediate any adverse impacts caused or contributed to by the Supplier from these practices in accordance with the Guiding Principles on Business and Human Rights;
	1. The SRU must comply, and as far as practicable must ensure its subcontractors comply, with all relevant requirements of workplace relations and work health and safety laws while performing the Services, including by:
4. complying with all applicable workplace relations, work health and safety, and workers’ compensation laws;
5. informing AMSA of any adverse court or tribunal decision for a breach of workplace relations law, work health and safety laws, or workers’ compensation laws made against it during the term of the Contract and any remedial action it has taken, or proposes to take, as a result of the decision; and
6. participating in all compliance activities associated with its legal obligations. Compliance activities may include responding to requests for information and/or audits undertaken by AMSA, its nominees and/or relevant regulators.
	1. Where AMSA has received a request for access to a document under the Freedom of Information Act 1982 created by, or in the possession of, the SRU or any subcontractor that relates to the performance of this Contract (and not to the entry into the Contract), AMSA may at any time by written notice require the SRU to provide the document to AMSA and the SRU must, at no additional cost to AMSA, promptly comply with the notice. In this clause, ‘document’ has the same meaning as in the Freedom of Information Act 1982.
	2. The SRU must have in place all necessary practices, procedures and systems to ensure that all instances of disclosable conduct disclosed by its officers, employees or subcontractors in connection with this Contract to the SRU or to any supervisor of the SRU are:
7. handled in accordance with the requirements of the Public Interest Disclosure Act 2013, including all requirements of confidentiality and protections from reprisals contained therein;
8. notified to an authorised officer of AMSA as soon as practicable, or to an alternative internal or external recipient if required or authorised by the Public Interest Disclosure Act 2013; and
9. following notification, the SRU must assist AMSA with any ensuing investigation into the disclosable conduct if the disclosable conduct relates to the SRU at no additional cost to AMSA,
10. For the purposes of this clause, the terms “disclosable conduct”, “supervisor”, “authorised officer”, “internal recipient” and “external recipient” have the meaning as in the Public Interest Disclosure Act 2013.

**26. NOTIFICATION OF SIGNIFICANT EVENTS**

* 1. The SRU must immediately issue a notice to AMSA on becoming aware of a Significant Event.
	2. The notice issued under clause 26.1 must provide a summary of the Significant Event, including the date that it occurred and whether any personnel engaged in connection with the SAR Services were involved.
	3. AMSA may notify the SRU in writing that an event is to be considered a Significant Event for the purposes of this clause, and where this occurs the SRU must issue a notice under clause 26.1 in relation to the event within three (3) business days of being notified by AMSA.
	4. Where reasonably requested by AMSA, the SRU must provide AMSA with any additional information regarding the Significant Event within three (3) business days of the request.
	5. If requested by AMSA, the SRU must prepare a draft remediation plan and submit that draft plan to the AMSA Contact Officer for approval within ten (10) business days of the request.
	6. A draft remediation plan prepared by the SRU under clause 26.4 must include the following information:
1. how the SRU will address the Significant Event in the context of the SAR Services, including confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the SAR Services or compliance by the SRU with its other obligations under this Agreement; and
2. how the SRU will ensure events similar to the Significant Event do not occur again; and
3. any other matter reasonably requested by AMSA.
	1. AMSA will review the draft remediation plan and either approve the draft remediation plan or provide the SRU with the details of any changes that are required. The SRU must make any changes to the draft remediation plan reasonably requested by AMSA and resubmit the draft remediation plan to AMSA for approval within three (3) business days of the request unless a different timeframe is agreed in writing by AMSA. This clause (c) will apply to any resubmitted draft remediation plan.
	2. Without limiting its other obligations under this Agreement, the SRU must comply with the remediation plan as approved by AMSA. The SRU agrees to provide reports and other information about the SRU’s progress in implementing the remediation plan as reasonably requested by AMSA.
	3. For the purposes of clause 12.2 of this Agreement, a failure by the SRU to comply with its obligations under this clause will constitute a breach of an obligation of this Agreement that is not capable of remedy. AMSA’s rights under this clause are in addition to and do not otherwise limit any other rights AMSA may have under the Agreement.
	4. The performance by the SRU of its obligations under this clause will be at no additional cost to AMSA.

**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)……………………………(Witness name) | ……………………………….(Name of signatory)……………………………….(Title of signatory)……………………………….(Date) |

|  |  |
| --- | --- |
| **SIGNED** for and on behalf **[INSERT CONTRACTING ENTITY]** by a duly authorised representative in the presence of: | ))) …………………………… |
| ……………………………(Witness signature)……………………………(Witness name) | ……………………………….(Name of signatory)……………………………….(Title of signatory)……………………………….(Date) |

**SCHEDULE 1: Contract Period, Fees, Contact Officers**

**Contract Period**

The Contract Period: The period from the Commencement Date until the Expiry Date, where:

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.

**Variation of Contract Term**

AMSA may, upon written notice to the SRU, extend the term of this Contract for a further two (2) periods of one (1) year on the same terms and conditions as in this Contract.

**Table 1 of Schedule 1 - Essential Requirements (applicable to specific category only)**

**Rotary Wing Rescue**

|  |  |  |
| --- | --- | --- |
|  | **Criterion** | **Specification** |
| **Essential requirements** | Operator | * Operator to have a current and relevant Australian regulatory approvals/certification e.g. an Australian Aerial Work Certificate (AWC) or other relevant certification prescribed by civil aviation law that may replace it in the future, that permits the conduct of each of the activities for the relevant category of service
* Authorised to carry AMSA-nominated people on board for the purposes of incident response operations, including SAR or other emergency response operations, and training for such operations
* 24 hour point of contact
 |
| Aircraft capability | Nominated aircraft to be:* covered by the AOC/AWC or other relevant certification
* twin-engined and turbine-powered
* fitted with a rescue hoist
* approved to conduct stores dropping operations
* crewed with an air crew officer and rescue crew officer in normal operations
 |
| Aircraft Capacity | Space and weight limitations are such that it can carry:* at least 4 people in addition to the pilot,
* miscellaneous equipment and pyrotechnics (20kg);
* a droppable life raft (55 kgs), and
* a Self-Locating Datum Marker Buoy (11kgs).
 |
| Aircraft Avionics & communication | * Dual VHF transceiver
* 406Mhz GPS GNSS ELT installed
* Fully integrated or portable GPS/GNSS that is mounted/installed in the aircraft for navigational use
* ADS-B Out (recommended in and out)
* Pilot intercom system
* Rear cabin intercom system
* Portable satellite phone or a portable cellular phone, available to be carried onboard the aircraft, to allow communications to other parties via satellite phone or cellular phone
* Independent tracking system with potential ability to participate in the Australian Fire Aircraft Monitoring System (AFAMS) through which tracking data is forwarded to NAFC. This is managed by TracPlus Global Ltd. examples include, but are not limited to, TracPlus, Skyconnect and Spidertracks
 |
| Base facilities (for usual base) | * Reliable internet access
* Sufficient indoor storage space for AMSA equipment
 |

**Rotary Wing Search**

|  |  |  |
| --- | --- | --- |
|  | **Criterion** | **Specification** |
| **Essential requirements** | Operator | * Operator to have a current and relevant Australian regulatory approvals/certification e.g. an Australian Aerial Work Certificate (AWC) or other relevant certification prescribed by civil aviation law that may replace it in the future, that permits the conduct of each of the activities for the relevant category of service
* Authorised to carry AMSA-nominated people on board for the purposes of incident response operations, including SAR or other emergency response operations, and training for such operations.
* 24 hour point of contact
 |
| Aircraft Capability | Nominated aircraft to be:* covered by the AWC/AOC or other relevant certification
* turbine-powered
 |
| Aircraft Capacity | Space and weight limitations are such that it can carry a load comprising 3 people in addition to the pilot  |
| Aircraft Avionics & communication | * Dual VHF transceiver
* 406Mhz GPS GNSS ELT installed
* GPS/GNSS
* ADS-B Out (recommended in and out)
* Pilot intercom system
* Rear cabin intercom system
* Portable satellite phone or a portable cellular phone, available to be carried onboard the aircraft, to allow communications to other parties via satellite phone or cellular phone
* Independent tracking system with potential ability to participate in the Australian Fire Aircraft Monitoring System (AFAMS) through which tracking data is forwarded to NAFC. This is managed by TracPlus Global Ltd.
 |
| Base facilities (at usual base) | * Reliable internet access
* Suitable indoor storage for AMSA equipment (if provided)
 |

**Fixed Wing Search**

|  |  |  |
| --- | --- | --- |
|  | **Criterion** | **Specification** |
| **Essential requirements** | Operator | * Operator to have a current and relevant Australian regulatory approvals/certification e.g. an Australian Aerial Work Certificate (AWC) or other relevant certification prescribed by civil aviation law that may replace it in the future, that permits the conduct of each of the activities for the relevant category of service
* Authorised to carry AMSA-nominated people on board for the purposes of incident response operations, including SAR or other emergency response operations, and training for such operations.
* 24 hour point of contact
 |
| Aircraft Capability | Nominated aircraft to be:* covered by the AOC/AWC or other relevant certification, and either
	+ twin-engined piston or turbine powered with a published normal cruise speed of at least 175KTAS, or
	+ single-engined aircraft of a type that is eligible for the purpose of ASETPA operations
* if twin engined, able to operate over water to 100nm offshore with a minimum of 60 minutes on scene at 100nm, carrying the load set out below
 |
| Carrying Capacity | Space and weight limitations are such that it can carry in the cabin a load comprising:* 4 people in addition to the pilot, each in a seat adjacent to a window
* miscellaneous equipment (10kg), and
* a crew life raft (35kgs).
 |
| Aircraft Avionics & communication | * Dual VHF transceiver.
* 406Mhz GPS GNSS ELT installed
* GPS/GNSS
* ADS-B Out (recommended in and out)
* Pilot intercom system
* Intercom system (ideally incorporating rear cabin)
* Integrated cellular and/or satellite phone
* Independent tracking system with potential ability to participate in the Australian Fire Aircraft Monitoring System (AFAMS) through which tracking data is forwarded to NAFC. This is managed by TracPlus Global Ltd.
* IFR capable aircraft preferable (AMSA will not exclude aircraft that don’t have this capability)
 |
| Base facilities (at usual base) | * Reliable internet access
* Suitable indoor storage for AMSA equipment (if provided)
 |

**Fees**

The Fees comprise:

(a) the Signing Fee; and

(b) the Aircraft Usage Fee; and/or

(c) Miscellaneous fees.

**Signing Fee**

The Signing Fee is $1.00

**Insurance**

The SRU must, for so long as any obligations remain in connection with the Agreement, effect and maintain;

* + 1. Workers’ compensation insurance for an amount required by the applicable law;
		2. General liability insurance for an amount of not less than Thirty Million Dollars ($30 million) in total per event; and
		3. all other insurances as required under clause 9.

**Aircraft Usage Fee**

Aircraft Usage Fee: Claimable Hours x Hourly Rate; where

Claimable Hour: Each hour (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 2 of Schedule 1 - Hourly Rate**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Aircraft registration** | **Aircraft type** | **Home Base** | **Hourly Rate (ex GST)** | **Category** |
| [INSERT] | [INSERT] | [INSERT] | [INSERT] | [INSERT] |
| [INSERT] | [INSERT] | [INSERT] | [INSERT] | [INSERT] |

**Miscellaneous fees (if applicable)**

The miscellaneous fees, as listed in the table below, are claimable by the SRU only with pre-approval by the JRCC, prior to tasking (e.g. pre-approved additional crew members, etc.).

**Table 3 of Schedule 1 – Miscellaneous fees**

|  |  |
| --- | --- |
| **Fee/Rate type** | **Fee/Rate and unit of fee (e.g. hourly) (ex GST)** |
| [INSERT] | [INSERT] |
| [INSERT] | [INSERT] |
| [INSERT] | [INSERT] |

**AMSA Contact Officer**

Position: Manager, Asset Management & Preparedness

Address: PO Box 10790, Adelaide Street, Brisbane QLD 4000

Email: responseassetmanagement&preparednessmanager@amsa.gov.au

**AMSA Response Invoices Section**

The invoice must be submitted to AMSA via email as a PDF attachment to invoices@amsa.gov.au and must include the following information;

* 1. Contract number [24AMSA001];
	2. The Business Hub [Response]

Invoices must not state that they are due and payable other than in accordance with the number of days for payment after receipt of invoice specified in clause 6 of this Agreement.

**SRU Contact Officer**

Name: [INSERT]

Address: [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 agreement for the provision by [Insert name of contracting entity] of SAR Services to AMSA (‘**the Agreement**’). Clause 20.4 of the Agreement provides that the SRU must not subcontract the performance of any of its obligations without the prior written consent of AMSA, which consent:

(a) may be given subject to any conditions it thinks fit; and

(b) does not limit or otherwise affect the SRU’s obligations under the Agreement.

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

**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 Approved 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 Approved 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 Agreement;

(c) the SRU must provide AMSA with a copy of the subcontract between the SRU and the Approved Subcontractor within 7 days if requested by AMSA (from which copy prices may be deleted);

(d) the SRU must not consent to the Approved 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 Approved 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 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.

**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 Approved Subcontractor does or omits to do something which, if done or omitted to be done by the SRU under the SAR Services Agreement, would give AMSA the right to terminate the Agreement 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]** (‘**Approved Subcontractor**‘)

PRELIMINARY STATEMENT

A. AMSA has entered into an agreement with **[INSERT NAME OF ENTITY WITH WHOM AMSA HAS ENTERED THE SAR SERVICES AGREEMENT]** (‘**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 Approved Subcontractor the performance of some of the SAR Services (‘**Subcontracted Services**’), which conditions include that the SRU obtain from the Approved Subcontractor an executed deed in a specified form.

C. The SRU wishes to subcontract the performance of the Subcontracted Services to the Approved Subcontractor , and the Approved Subcontractor has agreed to execute this deed.

AMSA and the Approved Subcontractor agree as follows:

**Indemnities**

1.1 The Approved Subcontractor agrees to perform the Subcontracted Services solely at its own risk and AMSA will not be liable to the Approved Subcontractor or for any loss, damage, injury, disease, illness or death sustained by the Approved Subcontractor or its officers, employees, agents or any other person or caused to any property however caused.

1.2 The Approved 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 Approved Subcontractor or any of its officers, employees or agents; or

(b) a breach of the Approved Subcontractor’s obligations under its contract with the SRU

For the avoidance of doubt, the Approved 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 Approved Subcontractor has not acted negligently.

**No disclosure by Approved Subcontractor**

2.1 The Approved Subcontractor or must not, and must ensure that the Approved 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 Approved Subcontractor or 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 Approved 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; and

(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 Approved Subcontractor regarding the safe-keeping and storage of the Confidential Information.

3.2 If the Approved 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 Approved 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 Approved 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 Approved 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 Approved 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 Approved 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 Approved 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 Approved 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 Approved 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.

**National Anti-Corruption Commission Act 2022 (Cth) Requirements**

* 1. The Approved Subcontractor acknowledges that in providing the SAR Services to AMSA under its contract with the SRU, it is a contracted service provider for the purposes of the *National Anti-Corruption Commission Act 2022 (Cth) (‘****NACC Act****’).*
	2. The Approved Subcontractor must comply with any reasonable request, policy or direction issued by AMSA and otherwise cooperate with AMSA in relation to any action taken by AMSA required or authorised by the NACC Act.

**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:

…………………………………………

…………………………………………