



Australian Government

Australian Maritime Safety Authority

# Deed of Standing Offer

**XXAMSAXXX**

Under Panel Arrangement 24AMSA280

Level 2 Emergency Towage Capability Services

Add Contractor business name

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## Parties

The **AUSTRALIAN MARITIME SAFETY AUTHORITY**, a statutory authority established by the *Australian Maritime Safety Authority Act 1990*, ABN: 65 377 938 320; Level 7 and 8, 18 Marcus Clarke Street, Canberra, ACT, 2601 (**AMSA**)

AND

The party named in Item 2 of Annexure A (Particulars Schedule) (the **Supplier**)

## Recitals

- A. AMSA may require provision of the Services in the Regions.
- B. AMSA has established a panel of towage vessel providers that are capable of providing the Services within a Region or Regions upon request by AMSA (the **Panel**). The Supplier is one of the towage vessel providers on the Panel.
- C. The Supplier has agreed that it will provide the Services to AMSA within its Capability as specified in a Work Order issued on the terms and conditions of this Deed.

## Operative Provisions

### 1. Definitions and Interpretation

#### Definitions

1.1 In this Deed unless the contrary intention appears:

**Acceptance of Quote** means Part C of the Work Order.

**Capability** means the Supplier's capability to provide the Services, including:

- (a) the number and type of vessels available to provide the Services;
- (b) the vessel's specifications, including bollard pull and towing equipment; and
- (c) the operational/geographical area that the vessels are capable of operating within.

**Commencement Date** means the date specified in Item 4 of Annexure A.

**Contract** means a contract formed following the completion of a Work Order including the acceptance by AMSA of a Quotation for Services provided by way of an executed Acceptance of Quote.

**Expiry Date** means the date specified in Item 5 of Annexure A.

**Quotation** means Part B of the Work Order.

**Region** means one of the Regions.

**Regions** means the areas where the Services are to be performed as identified by AMSA from time to time.



**Request for Quotation** means Part A of the Work Order.

**Services** means the emergency towage services required by AMSA as detailed in the Conditions of Contract.

**Term** means the term of this Deed specified in clause 2.1.

**Vessel Requirements** means the requirements of the vessels that may provide the Services as detailed in Annexure C.

**Work Order** means the Work Order in Annexure D and made up of Part A Request for Quotation, Part B Quotation and Part C Acceptance of Quote as amended by AMSA from time to time.

## Interpretation

1.2 In this Deed, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) a person includes its legal personal representatives, successors and assigns;
- (e) all references to clauses are clauses in this Deed;
- (f) all references to dollars are to Australian dollars;
- (g) a reference to time is to the time in Canberra, Australia;
- (h) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth unless otherwise stated, and, if it has been or is amended, is a reference to that statute or other legislation as amended;
- (i) a right includes a benefit, remedy, discretion, authority or power;
- (j) reference to this or any other document includes the document as varied or replaced notwithstanding any change in the identity of the Parties;
- (k) a reference to this document includes all schedules and annexures referred to in it;
- (l) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmission and email;
- (m) an uncertainty or ambiguity in the meaning of a provision of this Deed will not be interpreted against a Party just because that Party prepared the provision;
- (n) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning; and
- (o) words of inclusion must be construed as being without limitation.

1.3 For the purposes of this Deed any words or terms that are given a particular meaning and have not been defined in clause 1.1 will be interpreted as having the meaning given to it in the Contract Conditions.

## 2. Deed Term

2.1 This Deed commences on the Commencement Date and continues until the Expiry Date unless extended or terminated in accordance with this Deed (the **Term**).



- 2.2 At its sole discretion, AMSA may extend the Deed for the period specified in Item 6 of Annexure A (if any) beyond the Deed Term, by giving the Supplier written notice at least 60 days prior to the date on which the Deed would otherwise expire.

### 3. Panel Arrangement

- 3.1 The Supplier irrevocably offers to provide the Services within its Capability as and when requested by AMSA in accordance with clause 5 of this Deed.
- 3.2 The Supplier's standing offer in clause 3.1 will remain open for acceptance by AMSA for the Term of this Deed.
- 3.3 The Supplier acknowledges that there is no guarantee that AMSA will require the Supplier to provide the Services and no contractual relationship exists between AMSA and the Supplier for the supply of the Services until such time as a Contract is created in accordance with clause 5.
- 3.4 AMSA may appoint additional contractors to the Panel for the remainder of the Term to provide the Services provided that each additional contractor meets the same terms and conditions and is subject to the same evaluation criteria as set out in AMSA's request for tender for the Panel.

### 4. Guidance on Operation of this Deed and Contracts formed

- 4.1 The Parties agree that the obligations under this Deed will continue to apply in addition to terms and conditions of a Contract once formed in accordance with this Deed. A Contract formed will operate separately for the particular Services detailed in a Work Order. AMSA may issue additional Work Orders to the Supplier and the Supplier must comply with its obligations under this Deed and each Contract formed separately.
- 4.2 The Parties agree that if a Contract is formed in accordance with this Deed the following will apply:
- (a) the Supplier will become the 'Contractor';
  - (b) the particulars of the Contract will be those included in the Work Order;
  - (c) the specifications (if any) relevant to the Services will be those contained in the Vessel Requirements; and
  - (d) the terms and conditions of the Contract will be the Conditions of Contract.
- 4.3 If this Deed or any Contract is terminated or expires at any time, any remaining agreements between the Parties will continue to operate on the agreed terms and conditions unless otherwise agreed by the Parties.

### 5. Formation of Contract

- 5.1 If AMSA requires the Services it may issue a Request for Quotation to the Supplier at any time during the Term. The Request for Quotation must detail the Region and the period the Services are required.
- 5.2 If AMSA issues a Request for Quotation to the Supplier, the Supplier must provide a completed Quotation to AMSA within 10 Business Days, or such other period of time specified in the Request for Quotation provided that period is longer than 10 Business Days. The Quotation must be provided free of charge.
- 5.3 A valid Quotation must be completed in full and include the following:
- (a) A contract price for the provision of the Services in the relevant Region;



- (b) The vessel/s that the Supplier will make available for provision of the Services;
  - (c) Evidence of Insurance required by the Contract Conditions;
  - (d) Evidence that the vessel/s meet the Vessel Requirements and list any discrepancies in accordance with clause 5.5; and
  - (e) Documents evidencing vessel specifications and certifications in accordance with the Vessel Requirements or as requested by AMSA in the Request for Quotation.
- 5.4 Where pricing rates have been agreed and are specified in Annexure B (Pricing), a Quotation must be calculated in accordance with those rates and the Supplier must ensure that its fees fit within the fee categories listed in Annexure B (Pricing).
- 5.5 If Services that the Supplier is capable of providing differ from those outlined in the Contract Conditions or Vessel Requirements, the Supplier must consult with AMSA regarding the discrepancies. Where the parties agree to a varied scope of Services these must be appropriately detailed in the Quotation provided by the Supplier.
- 5.6 Following receipt of a Quotation, AMSA, acting reasonably, may request that the Supplier resubmit the Quotation if the form has not been completed in full or if the discrepancies do not appropriately represent the parties agreement of the amended scope of Services. The Supplier must resubmit the Quotation within a further 5 Business Days or such other period of time specified by AMSA provided the period is longer than 5 Business Days.
- 5.7 AMSA may at its absolute discretion, issue an Acceptance of Quote accepting a Quotation within 21 Business Days of receipt of a Quotation from the Supplier.
- 5.8 Upon issue of an executed Acceptance of Quote a Contract will be formed with the date of the Contract being the date of the Acceptance of Quote.
- 5.9 The Supplier is not to commence any work unless a Contract is formed pursuant to this Deed and AMSA will not be liable to pay for any work carried out by the Supplier in reliance of a purported order without receipt of an executed Acceptance of Quote.

## 6. Regions

- 6.1 The Regions are subject to change at any time and AMSA may, at its sole discretion:
- (a) Review and reassign the geographical areas and/or boundaries of the Regions;
  - (b) alter the number of Regions; and
  - (c) update indicative maps showing the Regions.
- 6.2 Notwithstanding clause 6.1, AMSA cannot change the geographical area or boundary of a Region that is subject to a Contract unless agreed in writing between the parties.

## 7. Capability

- 7.1 AMSA acknowledges that the Supplier's standing offer in clause 3.1 is limited by its Capability and AMSA agrees that it will only issue a Request for Quotation where the requested Services are within the Supplier's Capability.
- 7.2 The Supplier must give AMSA details of its Capability at the following times:
- (a) prior to the Commencement Date of this Deed; and
  - (b) at any time the Supplier's Capability changes.

## 8. Supplier Warranties

- 8.1 The Supplier warrants that:



- (a) it has and will be deemed to have done everything possible to inform itself fully and completely as to:
  - i. the requirements of this Deed and any Contract;
  - ii. the law and the conditions, risks, contingencies and all other factors which may affect the timing, scope, cost or effectiveness of performing this Deed and any Contract formed under this Deed; and
  - iii. all things necessary for delivery and management of this Deed and any Contract and the performance of the Services pursuant to a Contract;
- (b) it enters into this Deed based on its own investigations, interpretations, deductions, information and determinations; and
- (c) it does not rely on any representation, warranty, condition or other conduct, information, statement or document which may have been made by AMSA or any person purporting to act on behalf of AMSA in entering into this Deed, other than an express warranty contained in this Deed or a Contract.

## 9. Taxes, Duties and Government Charges

- 9.1 All taxes, duties and charges imposed or levied in Australia or overseas in connection with this Deed must be borne by the Supplier.

## 10. Entire Agreement and Variation

- 10.1 The Supplier acknowledges and agrees that the Deed and any Contract records the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements and that it does not rely upon any representation, warranty, condition or other conduct on the part of AMSA or any person purporting to act on behalf of AMSA in entering into this Deed.
- 10.2 No agreement or understanding varying or extending this Deed will be legally binding upon either party unless it is in writing and signed by both parties.

## 11. Disclosure of Information

- 11.1 The Supplier must not, without the prior written approval of AMSA disclose to any person other than AMSA, unless authorised or required by law to be disclosed, any Confidential Information contained in this Deed or in any material provided to the Supplier during the Term of this Deed. The Supplier agrees that in giving written approval, AMSA may impose such terms and conditions as it thinks fit.
- 11.2 AMSA must not, without the prior written approval of the Supplier, disclose to any person other than the Supplier, any information which is confidential to the Supplier, unless AMSA is authorised or required by law to disclose the information.
- 11.3 AMSA may at any time require the Supplier to give and to arrange for its officers, employees, agents and subcontractors to give written undertakings, in a form required by AMSA, relating to the non-disclosure of such Confidential Information. The Supplier must promptly arrange for all such undertakings to be given.
- 11.4 The Supplier must not make any public announcements, press releases, statements or other comments, in any form of print or online publication or media concerning this Deed or any potential Contract without the prior approval in writing of AMSA.
- 11.5 In this Deed, **Confidential Information** includes information that is by its nature confidential, is designated by AMSA as confidential or the Supplier knows or ought to know is confidential. Confidential Information does not include information which is or becomes public knowledge,



other than by breach of this Deed or any other unlawful means, is in the possession of the Supplier without restriction in relation to disclosure before the date of receipt from AMSA or has been independently developed or acquired by the Supplier as established by written evidence.

## 12. Protection of Personal Information

- 12.1 The Supplier must comply with the provisions of the *Privacy Act 1988* (Cth) (**Privacy Act**) as if it were included in the definition of 'agency' under that Act. The Supplier must also comply with any directions made by the Privacy Commissioner or any privacy procedures notified to it by AMSA. The Supplier's obligations in this clause 12.1 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 Supplier's obligations under section 6A of the Privacy Act.
- 12.2 The Supplier must not do anything which may cause AMSA to breach its obligations under the Privacy Act.
- 12.3 If the Supplier becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach, as defined by the Privacy Act, or is aware that there has been an Eligible Data Breach, in relation to any Personal Information held by the Supplier as a result of this Deed, the Supplier must notify AMSA as soon as possible, which must be no later than within 3 days and where there has been an Eligible Data Breach:
- (a) 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;
  - (b) following consultation with AMSA, take all other action necessary to comply with the requirements of the Privacy Act; and
  - (c) take any other action as reasonably directed by AMSA.
- 12.4 For the purposes of this Deed, the terms **agency**, **Eligible Data Breach**, **Personal Information** and **Privacy Commissioner** have the meaning given in the Privacy Act.

## 13. Indemnity

- 13.1 The Supplier indemnifies AMSA against any liability, claim, expense, loss or damage (including legal costs on a solicitor and own client basis) arising directly or indirectly from:
- (a) breach of this Deed by the Supplier;
  - (b) negligent act or omission or wilful misconduct of the Supplier or its officers, employees, agents, subcontractors with respect to the Supplier's obligations under this Deed.
- 13.2 The Supplier's liability to indemnify AMSA under subclause 13.1 shall be reduced proportionally to the extent that any act or omission of AMSA or its officers, employees or agents contributed to the loss or liability.

## 14. Conflict of Interest

- 14.1 The Supplier warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Deed no conflict with the interests of AMSA exists or is likely to arise in the performance of its obligations under this Deed or a Contract created by this Deed by itself or by any of its officers, employees, agents or subcontractors.
- 14.2 If during the term of this Deed a conflict of interest arises, or appears likely to arise, the Supplier undertakes to notify AMSA immediately in writing and to take such steps as AMSA may reasonably require to resolve or otherwise deal with the conflict. If the Supplier fails to notify AMSA or is unable or unwilling to resolve or deal with the conflict as required, AMSA



may terminate this Contract for a breach that is not capable of remedy pursuant to this clause 14.

- 14.3 The Supplier must not, and must ensure that any officer, employee, agent or subcontractor of the Supplier does not, engage in any activity or obtain any interest during the course of this Deed that is likely to conflict with or restrict the Supplier in providing services to AMSA, fairly and independently.

## 15. Negation of Employment, Partnership and Agency

- 15.1 The Supplier must not represent itself, and must ensure that its officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, agent or partner of AMSA, or as otherwise able to bind or represent AMSA.
- 15.2 The Supplier will not by virtue of this Deed be or for any purpose be taken to be an officer, employee, agent or partner of AMSA, or as having any power or authority to bind or represent AMSA.

## 16. Termination for Default

- 16.1 AMSA may terminate this Deed if the Supplier:
- (a) breaches this Deed and the breach is not capable of remedy;
  - (b) does not remedy a breach of the Deed which is capable of remedy within the period (being not less than 10 working days) specified by AMSA in a notice of default issued by AMSA to the Supplier requiring the Supplier to remedy the breach;
  - (c) becomes bankrupt or insolvent; or
  - (d) the Supplier assigns its rights otherwise than in accordance with this Deed.

## 17. Termination for Convenience

- 17.1 In addition to AMSA's rights in clause 16.1, AMSA may terminate this Deed at any time and for any reason whatsoever, by giving the Supplier at least twenty eight (28) days' notice in writing. If AMSA issues a notice, the Supplier must stop any work in accordance with the notice, comply with any directions given by AMSA and mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination, including those arising from any relevant subcontracts.

## 18. Action on Termination

- 18.1 On termination or expiry of this Deed, if directed by AMSA, the Supplier must delete or dispose of all Personal Information or Confidential Information that the Supplier acquired as a result of this Deed.
- 18.2 Subject to clause 25 (Survival) and unless expressly specified to the contrary in this Contract, all of the Supplier's rights, obligations and benefits under this Deed cease immediately on the termination or expiry of this Deed.

## 19. Dispute Resolution

- 19.1 Subject to clause 19.4, before resorting to external dispute resolution mechanisms, the parties must attempt to settle by negotiation any dispute in relation to this Deed including by referring the matter to personnel who may have authority to intervene and direct some form of resolution.



- 19.2 If a dispute is not settled by the parties within ten (10) Business Days of one party first sending to the other party written notice that they are in dispute, the dispute may be the subject of court proceedings or may be submitted to some alternative dispute resolution mechanism as may be agreed in writing between the parties.
- 19.3 Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Deed.
- 19.4 A party may commence court proceedings relating to any dispute arising from this Deed at any time where that party seeks urgent interlocutory relief.
- 19.5 This clause 19 (Dispute Resolution) will survive the expiration or termination of this Deed.

## 20. Compliance with Law and Government Policies

- 20.1 The Supplier must comply with all security requirements relating to the custody of, and access to, any AMSA documents, records, information, data or equipment (electronic or otherwise) wherever they are held.
- 20.2 The Supplier must give a notice to AMSA if it becomes aware of any referrals to a court, commission, tribunal or other statutory body, the commencement of legal proceedings or any regulatory or disciplinary actions taken regarding the conduct or performance of the Supplier or its officers, employees, agents and subcontractors that may adversely impact on compliance with this Deed, any Commonwealth policy and legislation or the Commonwealth's reputation. The notice must provide details of the referral, legal proceeding or disciplinary action and how the Supplier has addressed the relevant event since it became aware of it.
- 20.3 The Supplier must comply with the Commonwealth Fraud and Corruption Control Framework 2024, as amended from time to time set out at: [Commonwealth Fraud and Corruption Control Framework 2024 | Commonwealth Fraud Prevention Centre](#) and must notify AMSA immediately if it knows or has reason to suspect that any fraud has occurred or is occurring or is likely to occur in relation to this Deed including by the Supplier.
- 20.4 The Supplier 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 Deed to the Supplier or to any supervisor of the Supplier are:
  - (a) handled in accordance with the requirements of the *Public Interest Disclosure Act 2013*, including all requirements of confidentiality and protections from reprisals contained therein;
  - (b) 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
  - (c) following notification, the Supplier must assist AMSA with any ensuing investigation into the disclosable conduct if the disclosable conduct relates to the Supplier at no additional cost to AMSA.
- 20.5 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*.



## General Provisions

### 21. Assignment and Novation

- 21.1 The Supplier must not assign, novate or subcontract, in whole or in part, its benefits or rights under this Deed without the prior written approval of AMSA.

### 22. Severability

- 22.1 Each provision of this Deed 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.

### 23. Applicable Law and Court Jurisdiction

- 23.1 This Deed is governed by and construed in accordance with the laws in force in the Australian Capital Territory, and the parties agree that the Courts of that Territory have jurisdiction to entertain any action in respect of, or arising out of, this Deed.

### 24. Notices

- 24.1 Any notice or communication under the Deed will be effective if it is in writing, signed and delivered to the AMSA or the Supplier, as the case may be, at the address or emails set out in Annexure A.
- 24.2 Any notice, request or other communication will be deemed to be received:
- (a) if delivered personally, on the date of delivery;
  - (b) if sent by prepaid security post, on the day that the acknowledgment of delivery is completed by the recipient; or
  - (c) if sent by email, when the email enters an information system accessible to the recipient.

### 25. Survival

- 25.1 Unless the contrary intention appears, the expiration or termination of this Contract will not affect the continued operation of any provision relating to:
- (a) Confidential Information;
  - (b) protection of Personal Information;
  - (c) an indemnity;
  - (d) dispute resolution;
  - (e) any warranty;
  - (f) security or
  - (g) any other provision which expressly or by implication from its nature is intended to continue.





## Annexure A - Particulars Schedule

Item No.	Description	Particulars
<b>Item 1</b>		<b>AMSA's Details</b>
	Name	Australian Maritime Safety Authority
	ABN/ACN	ABN: 65 377 938 320
	Address for Service	Level 8, 18 Marcus Clarke Street CANBERRA ACT 2601
	Phone	1800 627 484
	Email	etc-cm@amsa.gov.au
<b>Item 2</b>		<b>Supplier's Details</b>
	Name	Insert Supplier's Name
	ABN/ACN	Insert Supplier's ABN or ACN
	Address for Service	Insert Supplier's Address for Service
	Phone	Insert Contract Manager Phone
	Email	Insert Contract Manager Email
<b>Item 3</b>	<b>Tender</b>	24AMSA280
<b>Item 4</b>	<b>Commencement Date</b>	Insert date
<b>Item 5</b>	<b>Expiry Date</b>	30 June 2030
<b>Item 6</b>	<b>Option to Extend</b>	2 Years



## Annexure B – Pricing

### 1. General

- 1.1 The purpose of this Annexure B is to detail the Contract Price and payment arrangements for this Contract, in conjunction with clause 16 (Invoicing and Payment of Accounts) of the Conditions of Contract.

### 2. Pricing Categories

- 2.1 The Contract Price is comprised of the following fee categories:

- (a) the Annual Fee is the annual fee payable to the Contractor for the provision of the ETC Services and remaining in a State of Readiness following Transition;
- (b) the Monthly Fee, is the monthly portion of the Annual Fee payable to the Contractor following completion of Transition and is calculated as follows:  
$$(\text{Annual Fee} - 20\%) / 12 \text{ months} = \text{Monthly Fee}$$
- (c) the Annual Performance Payment amount is the 20% of the Annual Fee that is withheld until the end of each Contract Year with the portion paid being subject to the Contractor's performance against the KPIs and calculated in accordance with the Contract Conditions;
- (d) the fixed Daily Rate, which will apply only if AMSA requires the Contractor to perform On Task Services;
- (e) the Disengagement Services Fee, which will apply only if AMSA requires the Contractor to perform Disengagement Services; and
- (f) The Transition Fee, if applicable.

- 2.2 For the purposes of this Annexure B (Pricing), the terms Monthly Fee, State of Readiness, Commencement Date, Annual Performance Payment, KPI's, Daily Rate, On Task Services, Disengagement Services Fee, Disengagement Services and Transition Fee have the same meaning as set out in the Contract Conditions.

### 3. Annual Fee and Discounts

Note: This section will be completed based upon the information provided in the Tender Submission.

Annual Fee:

Discount structure for award of multiple regions:

Early Payment of invoice discount:

### 4. Indexation Formula

- 4.1 The Annual Fee (incl. GST) and Daily Rate (incl. GST) if applicable, will be subject to indexation and variation on 1 July of each year during the Term or until the Expiry of any Contract formed pursuant to the Deed of Standing Offer (whichever occurs last) in accordance with the following formula:



% Applicable	Escalation Factor	ABS Ref No.
65%	Consumer Price Index	A130397382W
35%	Wage Price Index	A2602899X

$$\mathbf{NF = RF + (RF \times ABS \text{ Change})}$$

Where:

**NF** = the new amount applicable on the anniversary of the Commencement Date

**RF** = the reviewable amount applicable immediately before the Commencement Date

$$\mathbf{ABS \text{ Change} = (B-A)/A}$$

Where:

**A** = the ABS figure as at 1 March of the current year

**B** = the updated ABS figure published after 1 March of the current year

- 4.2 If the parties agree the new amount, AMSA will advise the Contractor in writing of the change to the Annual Fee and Daily Rate and the Contractor may use the revised Annual Fee for charging the Monthly Fee and Daily Rate in the next applicable invoice.
- 4.3 If, during the Contract Term, the indexes listed in clause 4.1 are permanently discontinued or restructured AMSA will determine an equivalent appropriate index or price adjustment mechanism should this occur and notify the Contractor as soon as practicable after doing so.
- 4.4 The Annual Fee and Daily Rate can increase or decrease depending on the index change.



## Annexure C – Vessel Requirements

### 1. General

1.1.1. The purpose of this Annexure C is to detail the vessel requirements for any vessels nominated in the Work Order or undertaking the Services in accordance with a Contract.

### 2. Vessel Requirements

2.1.1. For the purposes of the Deed of Standing Offer and any Contract a Vessel (including a Nominated Vessel) must:

- (a) be in Class 2B Survey or an equivalent certification arrangement as deemed suitable by AMSA.
- (b) under its own classification society be notated as:
  - (i) an Ocean Going or Escort Tug (E) or equivalent, and
  - (ii) FiFi Class 1
- (c) meet or exceed DNV- ST-N001 Marine operations and marine warranty section 11.13 Towing arrangements and equipment.
- (d) meet or exceed the International Maritime Organisation Guidelines for Safe Ocean Towing, specifically the Towing Vessel Requirements in paragraph 11 of the Guidelines, and Towing Equipment Section 12. In particular the Vessel:
  - (i) certificate file must be maintained on board;
  - (ii) must have bollard pull certification;
  - (iii) deck and engine room log must be maintained up to date;
  - (iv) maintenance must be carried out in accordance with the Vessel's Marine Planned Maintenance System;
  - (v) radios must be maintained and GMDSS certified;
  - (vi) has appropriate charts covering the Region, which are maintained and kept on board.
- (e) be equipped with:
  - (i) a functional aft winch with no less than 600m of tow wire of sufficient rated capacity for the vessels bollard pull;
  - (ii) closeable mounted guideposts that meet or exceed DNV- ST-N001 Marine operations and marine warranty section 4.4 Guiding and positioning systems;
  - (iii) a minimum of two functional towage kits which include a stretcher tow line, messenger line, shackles and other appropriate towing equipment of sufficient rated capacity for the vessels bollard pull;
  - (iv) either a functional GMDSS communication suite or is equipped with a satellite voice and data service with coverage/service in the full extent of the Region;
  - (v) a functional firefighting self-protection system;
  - (vi) with pyrotechnic line throwing device x 4, to connect tow and transfer lines or provide an alternative way for transferring lines;



- (vii) a large pump that can be deployed to assist a sinking vessel (minimum 1000lpm and 25m head such as or similar to Aussie Pumps RSE3BSV/L48E) and a suitable quantity of compatible suction and discharge hose;
- (f) have a certified bollard pull of not less than 60T;
- (g) have the capability to undertake:
  - (i) operations inclusive of line handling and stabilisation of a casualty at minimum Beaufort sea state scale 7 (wind 28-33 knots and wave height 4-5.5m)
  - (ii) operations outside of port limits to 200 nautical miles from shore;
  - (iii) continuous operations in excess of seven (7) days;
- (h) have a speed exceeding 8 knots when fully laden to undertake Services;
- (i) is crewed by appropriately trained, competent and certified personnel.

### 3. Emergency Towage Capability Documentation

3.1.1. For the purposes of the Contract, the certificates required to be maintained by the Contractor, in addition to any other certificates required by Law, for the Vessels are as follows:

- (a) Vessel survey certificates;
- (b) Sea trial reports;
- (c) Vessel arrangement drawings;
- (d) Bollard pull certificates; and
- (e) Towing equipment certificates.



## Annexure D – Work Order

PART A – REQUEST FOR QUOTATION	
<b>Date:</b>	[insert date]
<b>AMSA Contract Number</b>	[insert AMSA Contract Number]
<b>Region:</b>	[Geographical location of the Services required by AMSA – maps and GPS locations to be provided]
<b>Documents/Information to be provided by Supplier:</b>	[Evidence of Insurance, Details of Vessels etc]
<b>Proposed Commencement Date:</b>	AMSA requires that the ETC Services to commence on [insert date] however is subject to the Transition Period that is achievable by the Contractor and provided in Part B of the Work Order.
<b>Expiry Date:</b>	The Expiry Date is the date X years after the Confirmed Commencement Date.
<b>Option Term:</b>	[insert term if any]
<b>AMSA Contract Manager:</b>	Name: Phone: Email:
<b>Liquidated Damages Daily Rate:</b>	
<b>Liquidated Damages Limit:</b>	
<b>Financial Undertaking Required:</b>	Yes/No  Details: The Contractor's Financial Undertaking must be given by a financial institution approved by AMSA in the amount of \$[insert amount].  Release: AMSA must release the Financial Undertaking upon the earlier of:  (a) the Bank paying the full amount of the Financial Undertaking; or



**PART A – REQUEST FOR QUOTATION**

(b) within 20 Business Days of expiration or termination of the Contract.

**Date Quotation required:** 10 Business Days [or where another longer time frame is insert relevant period]

**Executed by Authorised AMSA Delegate:**

.....  
[signature of Delegate]  
Name of Delegate:



**PART B – QUOTATION**

<b>Date:</b>									
<b>Contract Price:</b>	[Contractor to detail Contract Price here or attach schedule to Quotation]								
	<table border="1"> <thead> <tr> <th>Description</th> <th>Price (incl GST)</th> </tr> </thead> <tbody> <tr> <td><b>Transition Fee</b></td> <td></td> </tr> <tr> <td><b>Annual Fee</b></td> <td>(which must not be more than the amount of the indexed Annual Fee amount set out in Annexure B of the Deed of Standing Offer)</td> </tr> <tr> <td><b>Daily Rate</b></td> <td>(indexed in accordance with the indexation method set out in Annexure B of the Deed of Standing Offer)</td> </tr> </tbody> </table>	Description	Price (incl GST)	<b>Transition Fee</b>		<b>Annual Fee</b>	(which must not be more than the amount of the indexed Annual Fee amount set out in Annexure B of the Deed of Standing Offer)	<b>Daily Rate</b>	(indexed in accordance with the indexation method set out in Annexure B of the Deed of Standing Offer)
Description	Price (incl GST)								
<b>Transition Fee</b>									
<b>Annual Fee</b>	(which must not be more than the amount of the indexed Annual Fee amount set out in Annexure B of the Deed of Standing Offer)								
<b>Daily Rate</b>	(indexed in accordance with the indexation method set out in Annexure B of the Deed of Standing Offer)								
<b>Details of any discrepancies with the scope of Services or Vessel Requirements:</b>									
<b>Contractor's Contract Manager:</b>	Name: Phone: Email:								
<b>Transition Period:</b>	[Supplier to state transition period required]								
<b>Transition Services:</b>	[Supplier to provide details of the Transition Services that are required to be delivered]								
<b>Home Port:</b>									
<b>Vessel/s:</b>									
<b>Vessel/s Certification and Specifications:</b>									
<b>Insurance Evidence Attached:</b>	Yes/No								
<b>Specified Personnel:</b>									



## PART B – QUOTATION

### Declaration

This Quotation has been prepared in accordance with the Deed of Standing Offer dated <<XXth XXXX 20xx>>. I also acknowledge that:

- (a) neither AMSA will be liable to pay any amount that has not been calculated or quoted in accordance with the Deed; and
- (b) unless and until AMSA provides and executed Acceptance of Quote no contractual relationship exists between AMSA and ourselves, as the Contractor, for the supply of any Services.

### Executed by Authorised Representative of the Contractor:

.....  
[signature of Authorised Representative]  
Name:



**PART C – ACCEPTANCE OF QUOTE**

<b>Date:</b>	
<b>Confirmed Commencement Date:</b>	[calculated based on transition period stated by Contractor in Part B]
<b>Acceptance :</b>	AMSA confirms its acceptance of the Contractor Quotation dated XXX and agrees to be bound by the Contract as specified in the Deed of Standing Offer between AMSA and the Contractor dated XXXX.
<b>Executed by Authorised AMSA Delegate:</b>	    ..... [signature of Delegate] Name of Delegate:



## Annexure E – Contract Conditions

### Recitals

- A. AMSA and the Contractor are Parties to the Deed of Standing Offer.
- B. AMSA accepted the Contractor's standing offer contained in the Deed of Standing Offer to perform the Services in the Region pursuant to the Work Order.
- C. The Contractor has agreed to perform the Services on the terms and conditions set out in this Contract.

### Operative Provisions

#### 1. Definitions and Interpretation

##### Definitions

1.1 In this Contract unless the contrary intention appears:

**Additional Terms** means the additional terms of this Contract (if any) in Schedule 1 of this Contract.

**AMSA Authorised Officer** means the person or persons nominated as the AMSA Authorised Officer or any person or persons notified, whether that be in the Standard Operating Procedures or otherwise, to the Contractor by an AMSA Authorised Officer as being a delegate of the AMSA Authorised Officer when acting within the scope of that delegation.

**AMSA Contract Manager** means the person specified as the AMSA Contract Manager in the Work Order.

**AMSA Material** means any material provided or made available by or on behalf of AMSA to the Contractor for the purposes of this Contract and may include documents, equipment, information and data stored by any means.

**AMSA Personnel** includes 'officers' and 'members' as defined under section 3 of the *Australian Maritime Safety Authority Act 1990* (Cth) and all other employees, contractors, contractors' employees, consultants, agents or other staff of AMSA, but excluding the Contractor and the Contractor Personnel.

**AMSA Property** means items provided by AMSA to the Contractor from time to time for the purposes of the Contractor performing the Services. AMSA Property may include generators, booms and buoys.

**Annual Fee** means the Annual Fee specified in the Work Order and indexed in accordance with Annexure B of the Deed of Standing Offer.

**Annual Performance Payment** means the amount that is 20% of the Annual Fee that is withheld until the end of each Contract Year with the portion paid being subject to the Contractor's performance against the KPIs and calculated in accordance with clause 30.

**Annual Review** means the review described in clause 28 (Annual Review).



**Background Material** means all material existing at the Commencement Date and all material which comes into existence after the Commencement Date other than for the purposes of this Contract, and which is provided to AMSA by the Contractor for the purposes of this Contract, including manuals, documents, reports, equipment, tools, methodologies, information or other material and data stored by any means.

**Business Day** means a day which is not a Saturday, Sunday or public or bank holiday, in the place in which the relevant obligation is to be performed or, in the case of an obligation regarding a notice, the place in which the notice is to be received.

**Business Hours** means 9am to 5pm on a Business Day.

**Capability Availability Plan** means a plan that outlines the Contractor's availability to provide ETC Services pursuant to a Tasking and must include:

- (a) the availability of the Nominated Vessel (or other Vessels where agreed in writing by AMSA) to respond to incidents within the activation times set out in this Contract or the Standard Operating Procedures;
- (b) the maintenance and repair of the Vessels whilst maintaining a State of Readiness in accordance with the requirements set out in this Contract;
- (c) the serviceability and availability of salvage or towage equipment stock holdings;
- (d) the provisioning of crew rationing for extended operations;
- (e) stand-by bunkering;
- (f) provision of potable water prior to responding to a Tasking; and
- (g) reporting and recording of availability to provide the ETC Services.

**Comcare** means the Australian Government agency known as 'Comcare' or any successor agency.

**Commencement Date** means the Confirmed Commencement Date specified in Part C of the Work Order.

**Commonwealth** means the Commonwealth of Australia.

**Confidential Information** includes information that:

- (a) is by its nature confidential;
- (b) is designated by AMSA as confidential;
- (c) the Contractor knows or ought to know is confidential; or
- (d) is personal information within the meaning of the Privacy Act 1988 (Cth),
- (e) and includes to the extent that it is confidential:
- (f) information comprising or relating to any AMSA Intellectual Property Rights;
- (g) information relating to the internal management and structure of AMSA; and
- (h) information relating to personnel of or contractors or suppliers to AMSA or customers of AMSA,

but does not include information which:



- (a) is or becomes public knowledge, other than by breach of this Contract or any other confidentiality obligations; or
- (b) has been independently developed or acquired by the Contractor as established by written evidence.

**Contract** means the documents that make up the contract described in clause 2.1 (Contract Documents).

**Contract Date** means the date the date that the Work Order is completed by AMSA's execution and delivery of Part C of the Work Order.

**Contract Management Plan** means the contract management plan that includes processes concerning how this Contract is to be administered by the Contractor, including reporting procedures, invoicing processes and meeting specified requirements.

**Contract Manager** means the person specified as the Contractors Contract Manager in the Work Order.

**Contract Material** means all material brought into existence by the Contractor or Contractor Personnel when performing the Services or any other activities associated with this Contract or otherwise arising out of the performance of this Contract, including manuals, documents, reports, equipment, tools, methodologies, information or other material and data stored by any means. It includes any modifications to the Contract Material but does not include any AMSA Material.

**Contract Particulars** means the particulars of the Contract included in the Work Order.

**Contract Price** means all amounts payable by AMSA to the Contractor in accordance with the Work Order or referenced in Annexure B of the Deed of Standing Offer and this Contract.

**Contract Term** means the term of this Contract specified in clause 3.1 and any extension to the term pursuant to clause 3.2.

**Contractor Personnel** means the Contractor's employees, subcontractors, subcontractors' employees, consultants, agents or other staff assisting the Contractor in the performance of the Contract, by whatever means they may be engaged, and includes the Master and crew of Vessels.

**Daily Rate** means the daily rate payable for On Task Services as set out in the Work Order and indexed in accordance with Annexure B of the Deed of Standing Offer.

**Deed of Standing Offer** means the Deed of Standing Offer between AMSA and the Contractor with respect to the panel arrangement for the Services.

**Disengagement Plan** means the plan for Disengagement Services.

**Disengagement Services** means the disengagement services to be provided upon request by AMSA in accordance with clause 32.

**Disengagement Services Fee** means the fee payable for Disengagement Services, if any, specified in the Work Order.

**EPBC Act** means *Environmental Protection and Biodiversity Conservation Act 1999* (Cth).

**Expiry Date** means the date on which this Contract expires, as specified in Work Order.

**ETC or Emergency Towing Capability** means the availability of a towing vessel capable of providing an emergency response to a shipping incident or casualty to:



- (a) preserve life;
- (b) hold a vessel clear of imminent danger;
- (c) tow a vessel out of immediate danger;
- (d) tow or escort a casualty to a place of refuge (as opposed to a place of repair);
- (e) fight fire;
- (f) stabilise a casualty to prevent further damage to the ship or the environment;
- (g) protecting the marine environment from pollution; and
- (h) provide other emergency or towage services as directed by AMSA.

**ETC Services** means any services by which the ETC is provided, including all other services which the Contractor is required to perform to fully discharge its obligations under this Contract but does not include the Transition Services or Disengagement Services.

**ETC Training Program** has the meaning given in clause 9.3.

**Financial Undertaking** means the financial undertaking that may be required by AMSA if specified in the Work Order and the Additional Terms.

**GST** means Goods and Services Tax as defined in the GST Act.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Harbour Master** means the person holding the position of harbour master under a statutory appointment at the applicable port in the Region.

**Harmful Code** means any virus, disabling or malicious device or code, worm, Trojan, time bomb or other harmful or destructive code, but does not include any software lock or other technical mechanism that is included to manage the proper use of software.

**Hazardous Substance** has the meaning given in clause 59.

**Home Port** means as the context requires, the applicable home port of a Vessel, as described in the Work Order or such other location agreed by the Parties in writing.

**Illegal Worker** means a person who:

- (a) has unlawfully entered and remains in Australia;
- (b) has lawfully entered Australia but remains in Australia after his or her visa has expired; or
- (c) is working in breach of his or her visa conditions.

**Intellectual Property** includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, Confidential Information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Intellectual Property Rights** or **IP Rights** means rights in respect of copyright, trade marks, designs, patents, semiconductors or circuit layouts, trade secrets, or other proprietary rights in respect of intellectual property, or any rights to registration of such rights, whether created before or after the date of this Contract and whether existing in Australia or elsewhere.



**KPI or Key Performance Indicators** means the performance indicators applicable to the performance of the Services which are set out in Schedule 2 of this Contract or which are amended by the Parties from time to time in accordance with this Contract.

**Law** means any applicable law or regulatory requirement of the Commonwealth, State or Territory or any other jurisdiction that is relevant to the Services or in which a Vessel is operating and includes Navigation Law.

**Liquidated Damages** means the compensation payable to AMSA at the Liquidated Damages Daily Rate for each day the Contractor fails to deliver the Services as required under clause 9 (Transition Services).

**Liquidated Damages Daily Rate** means the daily rate of Liquidated Damages.

**Liquidated Damages Limit** means the limit of Liquidated Damages payable by the Contractor under this Contract.

**Master** means the master of a Vessel.

**Modern Slavery** has the meaning given in the *Modern Slavery Act 2018*.

**Monthly Fee** means the monthly fee calculated as follows:

$$(\text{Annual Fee} - 20\%) / 12 = \text{Monthly Fee}$$

**Moral Rights** means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the Copyright Act 1968 (Cth).

**Navigation Law** means the *Navigation Act 2012* (Cth) and *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cth) and all regulations and legislative instruments promulgated under the *Navigation Act 2012* (Cth) and the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cth), as in effect and applicable to the Services under this Contract.

**Nominated Vessel** means the Vessel which has been nominated by the Contractor to provide On Task Services during a particular period, as notified to AMSA from time to time.

**Notice** means a notice issued under clause 63 (Notices) but excludes any On Task Direction.

**Option Term** means the Option Term specified in the Work Order.

**On Task Services** means the ETC Services undertaken pursuant to a Tasking.

**On Task Services Period** means a period commencing on the time and date a Tasking is issued and continues until the time (rounding up to the next hour) and date the Contractor is released from the Tasking in accordance with clause 12.2 of this Contract.

**Parties** means AMSA and the Contractor as specified in Item 1 and Item 2 of Annexure A of the Deed of Standing Offer and **Party** means either AMSA or the Contractor, as the context requires.

**Permitted Acts** means any of the following classes or types of acts or omissions:

- (a) using, reproducing, adapting, modifying, communicating, publishing or exploiting all or any part of the Contract Material or Background Material, with or without attribution of authorship;
- (b) supplementing the Contract Material or Background Material with any other material;



- (c) using the Contract Material or Background Material in a different context to that originally envisaged.

but does not include false attribution of authorship.

**Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Plans** means the Transition Plan, Risk Management Plan, Capability Availability Plan, Contract Management Plan and Disengagement Plan.

**Privacy Act** means *Privacy Act 1988* (Cth).

**Region** means the Region described in the Work Order.

**Related Services** has the meaning given in clause 13 (Engagement by a Third Party for Related Services).

**Released Vessel** has the meaning given in clause 13 (Engagement by a Third Party for Related Services).

**Risk Management Plan** means a risk management plan that identifies all risk associated with the provision of the Services (including but not limited to, commercial, environmental, ETC and health and safety risk), details how the identified risks will be managed and mitigated and includes a risk log and risk assessments for the Services and procedures for logging, updating and amending the risk log and risk assessments.

**Services** means the Services to be provided under this Contract and comprises:

- (a) the Transition Services;
- (b) the ETC Services; and
- (c) the Disengagement Services.

**Specified Personnel** means the key Contractor Personnel required to undertake work in respect of this Contract (if any) and as detailed in the Work Order.

**Standard Operating Procedures** means the Standard Operating Procedures relevant to this Contract as approved by AMSA and in force from time to time.

**Standard Services** means the Services to be performed under this Contract, including the provision of Deliverables, but excluding Transition Services, On Task Services and Disengagement Services.

**Standards** means any applicable international, Commonwealth, State or Territory standards that are applicable to the Services or a Vessel.

**State of Readiness** has the meaning given in clause 11.1.

**Subcontractor** means any subcontractor approved by AMSA to assist the Contractor in the provision of the Services in accordance with clause 23 (Subcontracting).

**Tasking** means a direction given by an AMSA Authorised Officer in accordance with the Standard Operating Procedures for the Contractor to provide ETC Services within the scope of this Contract for a specific period, incident, event or circumstance. Taskings may be verbal or in writing however if a direction is given by phone call or by other means that is not in writing, AMSA agrees to confirm the



direction by email, letter or other notice in writing to the Contractor within 8 hours after the direction was given.

**Tender Information** means any information provided by AMSA to the Contractor as part of the conduct of the Tender including, but not limited to, information in documents, data, maps, drawings, photographs, schedules or verbal responses.

**Transition** means the process of the Contractor providing the Transition Services.

**Transition Fee** means the fee payable if any for the performance by the Contractor of the Transition Services as specified in the Work Order.

**Transition Period** means the period specified in the Work Order commencing on the Contract Date and ceasing on the Commencement Date.

**Transition Plan** means the plan for undertaking Transition and must include:

- (a) milestones for the delivery of Transition Services and a program of regular, planned Transition meetings between the Contractor and AMSA to occur during the Transition Period.
- (b) details of the key activities including:
  - i. the Vessel/s which will be used to provide the ETC Services, including identification of the Nominated Vessel;
  - ii. preparing a schedule of Key Personnel to provide the ETC Services;
  - iii. implementing the ETC Training Program;
  - iv. purchasing of equipment required to provide the ETC Services;
  - v. upgrade, repair or modification of Vessel/s required to meet the Vessel Requirements;
  - vi. preparing and delivering to AMSA for approval the Management Plans; and
  - vii. other activities required by this Contract or agreed by the Parties.

**Transition Services** means the activities detailed in the Work Order that are required to be carried out by the Contractor in accordance with the Transition Plan to ensure that the Contractor is ready to commence provision of the ETC Services upon request by AMSA including ensuring that the Nominated Vessel and other Vessels that may undertake the ETC Services meet the Vessel Requirements.

**Unforeseen Event** means a natural disaster in the area in which Services are being provided or confinement of a Vessel to port as described in clause 15.1.

**Vessel** means, as the context requires, any one or more of the vessels specified in the Work Order.

**Vessel Requirements** means the Vessel Requirements contained in Annexure C of the Deed of Standing Offer unless specified otherwise in a Work Order.

**WHS Act** means *Work Health and Safety Act 2011 (Cth)*.

**Work Order** has the same meaning as in the Deed of Standing Offer.

## Interpretation

1.2 In this Contract, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular;



- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) a person includes its legal personal representatives, successors and assigns;
- (e) all references to clauses are clauses in this Contract;
- (f) all references to dollars are to Australian dollars;
- (g) time is local time in the location at which an act must be performed or a Notice received;
- (h) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth unless otherwise stated, and, if it has been or is amended, is a reference to that statute or other legislation as amended;
- (i) a right includes a benefit, remedy, discretion, authority or power;
- (j) reference to this or any other document includes the document as varied or replaced notwithstanding any change in the identity of the Parties;
- (k) a reference to this document includes all schedules and annexures referred to in it;
- (l) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmission;
- (m) an uncertainty or ambiguity in the meaning of a provision of this Contract will not be interpreted against a Party just because that Party prepared the provision;
- (n) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning; and
- (o) words of inclusion must be construed as being without limitation.

## 2. Contract Documents

- 2.1 This Contract comprises the following documents in the order of precedence below. In the event of any inconsistency between the Contract documents, the following order of precedence will be applied:
- (a) The Work Order
  - (b) these Contract Conditions;
  - (c) the Deed of Standing Offer including any Annexures;
  - (d) Schedules to the Contract Conditions;
  - (e) the Standard Operating Procedures;
  - (f) the Contractor's Tender, subject to clause 2.2 below; and
  - (g) any Plans, the ETC Training Program other documents incorporated by reference.
- 2.2 The Contractor's Tender will form part of this Contract but only to the extent required to clarify any ambiguity, provide evidence for any dispute or rebut any assertion made by the Contractor inconsistent with its Tender. For all other purposes the other documents listed in clause 2.1 will set out the requirements for the Services.

## 3. Term and Options to Renew

- 3.1 This Contract will commence on the Contract Date and, subject to any other provisions of this Contract, will continue in force until the Expiry Date (**Contract Term**).



- 3.2 AMSA may, at its absolute discretion and by giving no less than 60 days prior written notice to the Contractor, extend the Contract Term for an Option Term.
- 3.3 If AMSA exercises the option referred to in clause 3.2, the extension will be on the same terms and conditions, including price, unless the Work Order provides otherwise and except where the Work Order provides for multiply Option Terms, the Option Terms specified in the Work Order will be taken to be amended so that the number of Option Terms is decreased by one. Where there is no further Option Term available the Option Term specified in the Work Order will be taken to be amended by deleting the option term and replacing it with the words 'not applicable'.

## 4. Vessels

- 4.1 The Contractor must use one or more of the Vessels as the Nominated Vessel to deliver the ETC Services as approved by AMSA in writing.
- 4.2 At any time during the Contract Term, if the Contractor proposes to change the Nominated Vessel for any reason, it must seek AMSA's approval in writing prior to changing the Nominated Vessel.
- 4.3 Unless agreed otherwise by AMSA in writing, at all times during the Contract Term the Contractor must maintain at least one Nominated Vessel in the Region that:
- (a) is listed as the Nominated Vessel within the Standard Operating Procedures;
  - (b) can be used by the Contractor to deliver the On Task Services; and
  - (c) meets the requirements specified in the Vessel Requirements.
- 4.4 Where the Contractor proposes to change the Vessels, it must seek AMSA's prior written consent. Unless approved by AMSA in writing additional Vessels must meet the Vessel Requirements for the Region.

## 5. Provision of Services

- 5.1 The Contractor must, in accordance with the terms and conditions of this Contract:
- (a) provide the Services within the Region:
    - i. in the manner and timeframes set out in this Contract (including in the Work Order, Vessel Requirements and Standard Operating Procedures);
    - ii. at the locations required by this Contract;
    - iii. to a high professional standard;
    - iv. for the Contract Price;
    - v. so as to meet or exceed the minimum levels of performance specified for each of the KPIs;
    - vi. in accordance with the Plans and other documents referred to in this Contract; and
    - vii. in conformity with Standards and Laws;
  - (b) be responsible for all Contractor Personnel including Subcontractors and for their compliance with this Contract;
  - (c) ensure that all Vessels used for delivering the Services are operated in accordance with Navigation Law; and
  - (d) obtain and maintain all the permits, consents, approvals and certificates described in the Vessel Requirements or which are required by Law and provide copies to AMSA promptly upon request; and



- (e) comply with its other obligations as set out in this Contract.
- 5.2 Unless AMSA agrees otherwise, the Contractor must ensure that it is able to provide the ETC Services from the Commencement Date and at all times during the Contract Term including when Vessels and crew are released in accordance with clause 13 (Engagement by a Third Party for Related Services).
- 5.3 The Contractor must, as part of the ETC Services and subject to compliance with all Laws:
- (a) ensure that the Nominated Vessel:
    - i. is operated by the Contractor in accordance with directions (including Taskings) issued by AMSA (or any organisation authorised by AMSA) in accordance with this Contract;
    - ii. has Contractor Personnel that satisfy the requirements of clause 21 (Contractor Personnel);
    - iii. have at least the operational capability and carrying capacity set out in the Vessel Requirements; and
    - iv. are fitted at least with the serviceable instruments and equipment set out in the Vessel Requirements;
  - (b) provide and maintain a continuous, real-time voice and data communication system (excluding video streaming), with failure back up for voice communications, through which AMSA is able to issue, and the Contractor is able to confirm receipt of, directions;
  - (c) respond to directions and Taskings from AMSA (or any organisation authorised by AMSA) regarding On Task Services within the response period set out in the Standard Operating Procedures; and
  - (d) notify AMSA immediately of any change to the information notified under this clause 5 (Provision of Services).
- 5.4 Except as directed or approved by AMSA, the Contractor must ensure that the Nominated Vessel remains in the Region during the Contract Term.
- 5.5 For the avoidance of doubt, this Contract does not alter:
- (a) the liability and compensation regime under any Law which is applicable in the event of a maritime casualty. If localised pollution or damage occurs as a consequence of action taken to prevent widespread pollution, the principles of "potential polluter pays" and "polluter pays" will continue to apply; and
  - (b) the responsibilities of the shipowner under current liability regimes in the event of an Australian Government response to a maritime casualty. Costs of individual responses will be borne by the owner of the ship requiring assistance in accordance with the generally applicable principles under international conventions and domestic laws.
- 5.6 Nothing in this Contract is intended to, or may be construed to, limit or affect AMSA's powers under the *Protection of the Sea (Powers of Intervention) Act 1981* (Cth).

## 6. Contractor's Warranties

- 6.1 The Contractor represents and warrants that it has, and Contractor Personnel have, and they will both continue to have and to use, the skills, qualifications and experience to perform the Services in a skilful, diligent, responsive, professional, efficient and controlled manner, with a high degree of quality and to a standard that complies with this Contract.



## 7. Standard Operating Procedures

- 7.1 The Contractor must comply with the Standard Operating Procedures and must ensure that the Master, officers and crew of each Vessel comply with the Standard Operating Procedures as approved by AMSA from time to time and provided to the Contractor.
- 7.2 AMSA may, at its sole discretion:
- (a) review the Standard Operating Procedures;
  - (b) consult with the Contractor on updates to be made to the Standard Operating Procedures;
  - (c) update the Standard Operating Procedures; and
  - (d) re-issue the Standard Operating Procedures, as amended.
- 7.3 When issued or re-issued by AMSA to the Contractor, the Standard Operating Procedures will form part of this Contract and be binding on the parties.
- 7.4 For avoidance of doubt, nothing in the Standard Operating Procedures will relieve the Contractor or Master of the responsibility for safe navigation and compliance with all relevant provisions of the Navigation Law.

## 8. General Scope of AMSA's Obligations

- 8.1 AMSA must, subject to the Contractor's performance of this Contract, make payments to the Contractor in accordance with the Work Order, Annexure B (Pricing) of the Deed of Standing Offer (if referred to in this Contract) and clause 16 (Invoicing and Payment of Accounts) and comply with its other obligations as set out in this Contract.
- 8.2 Neither AMSA nor AMSA Personnel will have any liability for any loss or damage which occurs in respect of the Contractor's property or equipment arising out of or in connection with the provision of the Services or the performance of this Contract, except to the extent that such loss or damage was caused by or contributed to by any wilful, unlawful or negligent act or omission of AMSA or AMSA Personnel.

## 9. Crew Complement, Experience and Qualifications

- 9.1 At all times during the Contract Term, the Contractor must provide qualified and competent crew for each Nominated Vessel, including at a minimum a Master, Mate, 1st Engineer and at least 3 general purpose Deckhands, to be able to safely deliver the range of operations detailed in this Contract, including the ETC Services.
- 9.2 The Contractor must ensure that the Nominated Vessel's crew complies with the relevant provisions of the Navigation Law in relation to complement, qualifications and training and must ensure that the crew's training and qualifications are maintained throughout the Contract Term.
- 9.3 The Contractor must develop and implement an ETC Training Program, for the development of full operational proficiency including:
- (a) engagement with industry towing experts;
  - (b) training required to maintain personnel levels of certification; and
  - (c) a minimum of one ETC activation drill annually for the Region that includes:
    - i. connection of towage arrangements to a simulated disabled vessel such as or similar to a bulk carrier or container ship;
    - ii. towage of a simulated disabled vessel, unless approved otherwise a vessel such as or similar to a bulk carrier or container ship;



- iii. demonstration of all towage arrangements,
- iv. operation of firefighting equipment; and
- v. operation of all equipment specified in this contract.

- 9.4 The Contractor must provide AMSA with its draft ETC Training Program for AMSA's review within 2 weeks of the Commencement Date and must ensure that any amendments to the program required by AMSA are implemented as soon as reasonably practicable after AMSA advises the Contractor of its requirements.
- 9.5 The Contractor must, if necessary, amend the ETC Training Program at regular intervals and provide the updated ETC Training Program to AMSA as part of the Annual Review.
- 9.6 The Contractor must maintain a skills, training and competence matrix that documents all training completed or required for the Nominated Vessel crew.
- 9.7 All training conducted by the Contractor for Contractor Personnel for the purposes of this Contract will be at no additional cost to AMSA.

## 10. Transition Services

- 10.1 The Contractor must provide the Transition Services during the Transition Period.
- 10.2 The Contractor must:
- (a) develop a Transition Plan; and
  - (b) submit the Transition Plan to AMSA for approval within 2 weeks of the Contract Date and if rejected resubmit as requested by AMSA, prior to the commencing the Transition Services.
- 10.3 If a Liquidated Damages Daily Rate has been specified in the Work Order, AMSA may require the Contractor to pay Liquidated Damages if it has not completed Transition by the Commencement Date. If this is the case, the Contractor will be liable to pay AMSA the Liquidated Damages Daily Rate amount each day until Transition is completed or the Liquidated Damages Limit has been reached, if one has been specified in the Work Order.
- 10.4 AMSA is not required to pay any part of the Contract Price for any period in which Liquidated Damages are payable by the Contractor.
- 10.5 If AMSA determines that the Contractor is unable to commence full provision of the Services within 30 days after the Transition Period, AMSA may terminate this Contract in accordance with clause 48 (Default).
- 10.6 If a Transition Fee applies for the performance of the Transition Services, the Transition Fee will be payable by AMSA once it has determined that the Contractor has successfully completed the Transition.
- 10.7 For avoidance of doubt, Liquidated Damages are only relevant to the Contractor completing Transition and will not be liable for Liquidated Damages following completion of Transition.

## 11. State of Readiness

- 11.1 From completion of Transition, the Contractor must be available to provide the ETC Services upon receipt of a Tasking, 24 hours a day, 7 days a week. In particular, the Contractor must ensure:
- (a) that the Contractor is able to respond to a Tasking within 2 hours (or such other time frame agreed between the parties prior to the Commencement Date of this Contract and set out in the Standard Operating Procedures) of receiving it, which includes the Nominated Vessel



leaving a port or commencing a journey required by the Tasking for provision of ETC Services;

- (b) the Nominated vessel is provisioned at all times with the minimum fuel level as documented in the Standard Operating Procedures and all equipment specified in the Contract;
- (c) it maintains a suitable number of experienced and trained crew to operate the Nominated Vessel, within the timeframes specified at (a), whilst ensuring compliance with the vessels minimum safe manning requirements and/or certificate of operation; and
- (d) unless agreed otherwise by AMSA in writing, that the Nominated Vessel is, at all times during the Contract Term, capable of providing the ETC within the indicative boundaries of the Region from the Home Port.

11.2 The Contractor must advise the AMSA Contract Manager of any change in the State of Readiness of the Nominated Vessel within an hour of such change. The Contractor must provide written notice to AMSA including but not limited to:

- (a) the change in State of Readiness;
- (b) reason(s) for the change;
- (c) if the Nominated Vessel is unavailable to provide the ETC Services, the estimated duration of non-availability; and
- (d) a request to change the Nominated Vessel for the duration of non-availability for the purposes of obtaining AMSA's written approval to change the Nominated Vessel in accordance with clause 4.2 of this Contract.

11.3 From the date the Contractor completes Transition, and provided the Contractor maintains a State of Readiness, AMSA must pay the Monthly Fee each month in arrears commencing on the date one month after the Contractor completes Transition, as payment for the Contractor remaining in a State of Readiness following receipt of an invoice from the Contractor issued in accordance with this Contract.

## 12. On Task Services

12.1 AMSA may issue a Tasking to the Contractor at any time during the Contract Term.

12.2 If AMSA issues a Tasking to the Contractor, the Contractor must:

- (a) comply with the terms and conditions in this clause 12 (On Task Services); and
- (b) continue to provide the On Task Services until such time as it is released from the Tasking by an AMSA Authorised Officer.

### Area of On Task Services

12.3 AMSA may direct the Contractor to provide On Task Services within a geographical location outside the Region which is no more than 1,500 nautical miles from a Home Port but on the basis that the Vessel does not breach its class limitations. On Task Services outside of the Region shall be charged in accordance with the On Task Service fee with no additional cost to AMSA.

### Delivery of On Task Services

12.4 When performing On Task Services, the Contractor must ensure the applicable Vessel has the capability, description and classification required by the Vessel Requirements and this Contract and undertakes to so maintain the Vessel during the On Task Services Period.



- 12.5 The Contractor must, before a Vessel is used to perform On Task Services, make and maintain the Vessel tight, staunch, strong, in good order and condition and, without prejudice to the generality of the forgoing, in every way fit to operate effectively at all times in the performance of the On Task Services. When performing On Task Services, the Contractor shall exercise due diligence to maintain the Vessel in every way fit to operate effectively.
- 12.6 The Contractor must ensure that prior to any Vessel departing from any place to undertake any On Task Services, and at all times during the conduct of those On Task Services, all requirements of the Law in respect of the applicable Vessel and its equipment, instruments, maintenance and personnel are met.
- 12.7 The Contractor must ensure that On Task Service reporting is undertaken in accordance with the Standard Operating Procedures.
- 12.8 If required by AMSA, and with the consent of the Master, the Contractor must permit AMSA Personnel to board a Vessel for the purposes of, or during the performance of, On Task Services and must provide such access to facilities and accommodation as those AMSA Personnel may reasonably require, including radio telephone, and where available, satellite telephone, facsimile and data facilities. Without limiting the generality of the preceding sentence, AMSA will be entitled to require the Vessel to carry, so far as space is available and for purposes of this Contract, lawful cargo whether carried on or under deck and subject to the Vessel's Master being satisfied that it is safe to do so.
- 12.9 If AMSA notifies the Contractor that accommodation is required for AMSA Personnel on a Vessel, the Contractor must provide accommodation, meals, beverages, bedding and all other usual amenities given to the crew, for those AMSA Personnel.
- 12.10 If AMSA requires the accommodation described in clause 12.9 the Parties must agree on a daily rate payable by AMSA to the Contractor for the accommodation, meals and amenities, prior to the AMSA Personnel boarding the Vessel if practicable to do so.

### Permissions and Licences

- 12.11 During the On Task Services Period, the Contractor must ensure that each Vessel is used only for activities that are lawful in accordance with the Laws of the place of the Vessel's flag and registration and the area of operation relevant to the Tasking.
- 12.12 The Contractor must obtain all necessary permissions and licences from applicable authorities which are necessary for a Vessel to enter, work in and leave the area of operation relevant to the Tasking.
- 12.13 The Contractor must ensure that each Vessel's equipment complies with all Laws and Standards and that each Vessel has on board valid and current certificates which are necessary for the possession and operation of that equipment.

### Master and crew

- 12.14 The Contractor must ensure that the Master, officers and crew of each Vessel:
  - (a) speak and write fluent English;
  - (b) are fully trained in environmental impact minimisation, use of fuel spill clean-up equipment and proper spill avoidance fuel handling;
  - (c) are all fully qualified in accordance with applicable Commonwealth, State and Territory Laws for type, size and area of operation of the Vessel; and
  - (d) include one or more Masters and navigating officers with appropriate licences or exemptions to allow the Vessel to sail in the operational area without pilotage.



- 12.15 The Contractor must ensure that the Master of each Vessel, when performing On Task Services, carries out his or her duties promptly and in accordance with this Contract at such times and in such timeframes as AMSA reasonably requires. However, AMSA will not be liable to pay the Contractor or the Master, officers or the crew of the Vessel any excess or overtime payments that are incurred by the Contractor other than the Daily Rate.
- 12.16 The entire operation, navigation and management of a Vessel performing On Task Services must be in exclusive control of the Contractor, its Master, officers and crew and any other applicable Contractor Personnel.
- 12.17 The Contractor must ensure that the Vessel's crew perform all actions necessary for normal operation of the Vessel (including but in no way limited to connecting and disconnecting electric cables and fuel, water and pneumatic hoses when placed on board the Vessel in port) and operate all the machinery on board the Vessel, including any machinery for the loading and discharging of cargo.
- 12.18 AMSA may from time to time furnish the Master with instructions and sailing directions. The Contractor must ensure that the Master and engineer keep full and correct logs accessible to AMSA, including logs which record any such instructions or directions furnished by AMSA.
- 12.19 The Vessels must be operated and the Services provided as required by AMSA in accordance with this Contract, subject always to the exclusive right of the Contractor or the Master of a Vessel to determine whether operation of the Vessel may be safely undertaken.
- 12.20 The Contractor is an independent contractor and is not an employee or agent of AMSA. Accordingly, the Contractor is at all times responsible for the actions of its Master, officers and crew in operating a Vessel. Nothing in this Contract will impose any liability on AMSA in respect of any liabilities incurred by the Contractor to any other person in relation to a Vessel except as set out in clauses 39 (Liability) and 40 (Indemnity) of this Contract.

### Payment for On Task Services

- 12.21 Subject to clause 12.25, AMSA will pay the Contractor the Daily Rate for the On Task Services for each full day the On Task Services are provided during the On Task Services Period in accordance with this Contract, and on a pro rata basis for part days.
- 12.22 When the Contractor is performing On Task Services, the Contractor must keep an accurate record of the commencement and conclusion of the period in which the Vessel is On Task (as described in the Standard Operating Procedures), the number of hours worked, and the activities performed, in a form to allow the Contractor to prepare accurate invoices, and to allow AMSA to reconcile and check those invoices.
- 12.23 The Contractor must make copies of those records available to the AMSA Contract Manager as required by this Contract and otherwise on request.
- 12.24 The Contractor must provide and pay for everything necessary for the operation of each Vessel whatsoever, even when arising from operations as a consequence of AMSA's instruction or direction.

### Suspension of On Task Services

- 12.25 In the event of the loss of time from:
  - (a) deficiency, default, industrial action of, illness or injury to officers or crew of a Vessel, or the Contractor's shore personnel;
  - (b) fire;
  - (c) defects in, breakdown of, or damage to, a Vessel, machinery or equipment;



- (d) deficiency of spares or stores;
- (e) besetment or entrapment;
- (f) grounding;
- (g) drydocking;
- (h) arrest or detention of a Vessel by a court or governmental authority (including AMSA, but only under its statutory powers and responsibilities);
- (i) deficiency in a Vessel's documentary or legal status;
- (j) boycott of a Vessel by external labour other than where caused by the act or omission of AMSA;
- (k) stowaways; or
- (l) any other cause whatsoever, other than where caused by AMSA or where caused by or arising from compliance with AMSA's orders or where clause 12.27 applies,

preventing the full working of a Vessel which is performing, or is required to perform, On Task Services, then subject to clause 12.27, the payment of the Daily Rate will cease for the time lost.

12.26 For the avoidance of doubt:

- (a) a defect in, or breakdown of, a Vessel that reduces its speed is an event preventing its full working;
- (b) the expression "time lost" includes time lost in making good any deviation or putting back as a result of a cause mentioned at clause 12.25 above, even if the Vessel regained full working order; and
- (c) the expression "time lost" will be limited to the actual reduction in the performance of On Task Services by the Vessel. If the Vessel is still capable of performing some or all of the On Task Services required by AMSA, then subject to this clause 12.26, the Daily Rate will be payable in a proportionally reduced rate corresponding to the reduction in the Services provided. It will be at AMSA's absolute discretion to determine whether the Vessel is capable of performing some or all of the Services required in the event of loss of time for any of the reasons set out in clause 12.25.

12.27 The Daily Rate will continue despite circumstances otherwise attracting cessation of the Daily Rate if the time was lost as an immediate and direct consequence of:

- (a) default under this Contract by AMSA or AMSA Personnel;
- (b) the Vessel's loading, carriage and discharge of AMSA's equipment or cargo; or
- (c) the Vessel being driven into port or to anchorage through stress of weather.

## Wreck Removal

12.28 If a Vessel sinks and becomes a wreck and an obstruction to navigation and is required, by Law, to be removed, the Contractor will be liable for any and all expenses in connection with the raising, removal, destruction, lighting or marking of the wreck.

## Demise

12.29 Nothing in this Contract may be construed as creating a demise of a Vessel to AMSA.

## No Charter

12.30 Nothing in this Contract may be construed as creating a contract for charter of a Vessel.



### 13. Engagement by a Third Party for Related Services

- 13.1 This clause 13 (Engagement by a Third Party for Related Services) only applies to Vessels while they are being used to provide On Task Services.
- 13.2 At the Contractor's request AMSA may, in its absolute discretion and subject to such conditions as it thinks fit, provide written consent for the Contractor to use a Vessel which is providing On Task Services to cease providing On Task Services and be used by the Contractor for its own commercial purposes (such as providing salvage or towage services to third parties) (**Related Services**). For example, Related Services may include taking over the towage in respect of a vessel which would otherwise be the subject of On Task Services.
- 13.3 For the purposes of considering the Contractor's request in clause 13.2 AMSA may require the Contractor to demonstrate that a suitable ETC will remain available within the Region during the period in which the Related Services will be performed.
- 13.4 Any request by the Contractor to use a Vessel for Related Services must be made to AMSA using the contact details set out in the Standard Operating Procedures.
- 13.5 If AMSA gives the consent referred to in clause 13.2, the Vessel is referred to as a **'Released Vessel'** for the purposes of this Contract and for the duration of the period for which it was released from providing On Task Services.
- 13.6 The Contractor will be deemed to have ceased providing On Task Services with a Vessel while any Related Services are performed using that Vessel, even if AMSA has not consented to release the Vessel to provide Related Services.
- 13.7 The Contractor must not use a Vessel to provide Related Services and On Task Services at the same time.
- 13.8 If the Contractor performs any Related Services without AMSA's consent or at the same time as On Task Services, AMSA may terminate this Contract in accordance with clause 48 (Default) as this conduct will amount to a default that cannot be remedied.
- 13.9 When a Vessel is a Released Vessel, the Daily Rate will cease to apply:
- (a) from the time agreed by AMSA or the commencement of the Related Services, whichever is the earlier; and
  - (b) until the time the Contractor notifies AMSA that the Vessel is once again available to perform the Services (at which time it ceases to be a Released Vessel) and is On Task.
- 13.10 The Contractor must keep, maintain and make available to AMSA contemporaneous written records to substantiate the time at which a Released Vessel becomes available to perform the Services.
- 13.11 The Contractor must not include any costs for any Related Services in its invoice to AMSA for On Task Services and AMSA will not be liable, for any payment or otherwise, for any Related Services performed by the Contractor.

### 14. Commercial Use of Vessels

- 14.1 This clause 14 (Commercial Use of Vessels) applies to all Vessels.
- 14.2 The Contractor must ensure that any use that the Contractor makes of its Vessels for purposes other than this Contract does not adversely affect the Contractor's ability to provide the Services in accordance with this Contract.



## 15. Harbour Master Direction Regarding Confinement to Port

- 15.1 If a Vessel is confined to a port due to the deployment of emergency powers by the Harbour Master or the activation of an applicable State or Territory emergency management plan:
- (a) the Contractor must, as soon as practicable, notify AMSA of any such confinement; and
  - (b) the confinement will be considered to be an Unforeseen Event.
- 15.2 Nothing in this Contract is intended to, or may be construed to, limit or affect the powers of the Maritime Emergency Response Commander (**MERCOM**) under Law.

## 16. Invoicing and Payment of Accounts

- 16.1 Unless expressly provided for in this Contract:
- (a) the Contractor will not be entitled to invoice AMSA for any fees, charges or disbursements other than those set out in the Work Order; and
  - (b) the Contract Price payable under this Contract may not be altered unless otherwise specified in this Contract.
- 16.2 The Contractor must submit a correctly rendered tax invoice in respect of each payment to which it is entitled pursuant to the Work Order and this Contract.
- 16.3 For the purposes of this clause 16 (Invoicing and Payment of Accounts), an invoice is correctly rendered if:
- (a) it is correctly addressed and calculated in accordance with this Contract;
  - (b) it relates only to Services that have been performed to AMSA's satisfaction in accordance with this Contract;
  - (c) it is a valid tax invoice in accordance with the GST Act;
  - (d) it specifies the reference number of this Contract;
  - (e) it is accompanied by any applicable supporting documents;
  - (f) it references any other administrative information provided by AMSA to assist with invoicing processing and payment e.g. purchase order number; and
  - (g) it is rendered to the AMSA Contract Manager.
- 16.4 AMSA will be entitled to an early settlement discount if set out in Annexure B (Pricing) of the Deed of Standing Offer. Payment of a tax invoice by electronic funds transfer will be deemed to have been made on the date on which the tax invoice amount is transferred from an AMSA account.
- 16.5 AMSA will pay the Contractor within 30 days after receipt of a correctly rendered invoice. If this period ends on a day that is not a Business Day, payment is due on the next Business Day.
- 16.6 This clause 16 (Invoicing and Payment of Accounts) will survive the expiration or termination of this Contract.

## 17. Taxes, Duties and Government Charges

- 17.1 All taxes, duties and charges imposed or levied in Australia or overseas in connection with this Contract must be borne by the Contractor or its Subcontractor, as the case requires. The Contract Price includes GST (Goods and Services Tax) for Services to be provided under this Contract which are taxable supplies within the meaning of the GST Act.



- 17.2 The Contractor must give AMSA a tax invoice in accordance with the GST Act in relation to all taxable supplies made for the benefit of AMSA under this Contract.
- 17.3 If a payment by the Contractor to satisfy a claim by AMSA under or in connection with this Contract gives rise to a liability to pay GST, the Contractor must pay, and indemnify AMSA from, the amount of that GST.
- 17.4 The amount recoverable by AMSA under or in respect of any indemnity, representation or warranty given by the Contractor under this Contract includes the amount of GST payable on the cost or expense in relation to which the indemnity, representation or warranty is paid, but must exclude the amount of any input tax credit or other credit to which AMSA is entitled in respect of the cost or expense recovered.

## 18. Deduction, Offset and Recovery by AMSA

- 18.1 AMSA may deduct from any money due to the Contractor under this Contract:
- (a) any overpayment as a result of incorrectly rendered invoice;
  - (b) any money due to AMSA under this Contract;
  - (c) any damages, costs, expenses or other monies determined under this Contract or by a court to be recoverable by AMSA from the Contractor as a consequence of the Contractor's breach of this Contract; and
  - (d) any money determined under this Contract or by a court to be payable to AMSA on account of an indemnity given by the Contractor under this Contract.
- 18.2 If the amount which AMSA may deduct under clause 18.1 exceeds the amount which is due to the Contractor under this Contract, the excess will be a debt due by the Contractor to AMSA and may be:
- (a) set off against any other money due to the Contractor by AMSA under any other contract between AMSA and the Contractor;
  - (b) satisfied by a call on the Financial Undertaking.
  - (c) recovered from the Contractor by AMSA in any court of competent jurisdiction.
- 18.3 This clause 18 (Deduction, Offset and Recovery by AMSA) will survive the expiration or termination of this Contract.

## 19. Entire Agreement and Variation

- 19.1 Not including the Deed of Standing Offer, this Contract constitutes the entire agreement between the parties for the supply of the Services and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this Contract.
- 19.2 The Contractor acknowledges that it does not rely upon any representation, warranty, condition or other conduct on the part of AMSA or any person purporting to act on behalf of AMSA in entering into this Contract other than any express warranty or condition contained in this Contract.
- 19.3 No agreement or understanding varying or extending this Contract (including in particular the scope of the Services and Vessel Requirements) will be legally binding upon either party unless it is in writing and signed by both parties.



## 20. Contract Administration

- 20.1 Each Party will at all times during the Contract Term ensure that it has nominated one suitably qualified person as its administrator for this Contract.
- 20.2 The administrators at the Contract Date will be:
- (a) the Contract Manager for the Contractor; and
  - (b) the AMSA Contract Manager.
- 20.3 The Contract Manager and the AMSA Contract Manager will be the primary points of contact regarding the administration and management of this Contract, and either may delegate any of their responsibilities under this Contract on notice to the other.
- 20.4 The Contractor must comply with any oral or written direction (which is not inconsistent with this Contract) given by AMSA within the general scope of administration of this Contract. A direction may include:
- (a) an instruction;
  - (b) an order or direction;
  - (c) a request;
  - (d) a requirement; or
  - (e) a consent or authorisation.

## 21. Contractor Personnel

- 21.1 The Contractor warrants that all Contractor Personnel performing any work under or related to this Contract:
- (a) are properly qualified for the tasks they are to perform;
  - (b) hold appropriate licences and certifications, and that these will remain current;
  - (c) will act in all circumstances in a fit and proper manner; and
  - (d) will exercise the standards of skill and care and diligence in the performance of each and every activity involved in performance of this Contract that would be expected of an expert service provider experienced in projects or activities of a similar nature to those which are the subject of this Contract.
- 21.2 The Contractor must maintain a register of Contractor Personnel, including records of all licences and certifications held.
- 21.3 The Contractor and Contractor Personnel must at all times abide by and adhere to the security procedures in place at the time at any locations associated with the performance of this Contract.
- 21.4 The Contractor must provide such information as AMSA requests for the purpose of allowing AMSA to satisfy itself of the Contractor's compliance with this clause 21(Contractor Personnel).
- 21.5 The Contractor acknowledges and agrees that AMSA may, at its absolute discretion, give notice requiring the Contractor to remove any of the Contractor Personnel (including Specified Personnel) from work in respect of the Services. The Contractor must, at its own cost, promptly arrange for the removal of such Contractor Personnel from work in respect of the Services and their replacement with Contractor Personnel acceptable to AMSA.
- 21.6 If the Contractor is unable to provide acceptable replacement Contractor Personnel, AMSA may terminate this Contract in accordance with the provisions of clause 48(Default).



21.7 If AMSA advises the Contractor that Contractor Personnel carrying out work or performing duties in respect of the Services will be required to:

- (a) enter secure areas in AMSA's buildings or places;
- (b) have access to, or be responsible for the physical custody of, Confidential Information or official, classified, sensitive or commercial information; or
- (c) hold a particular kind of security clearance;

(collectively, 'authorised work') the Contractor must provide to AMSA such information, which the Contractor is legally entitled to provide, about such persons as AMSA from time to time requests for the purpose of allowing AMSA to undertake necessary investigations of those persons. AMSA must carry out its investigations in an expeditious manner and must notify the Contractor in writing of:

- (a) the names of the Contractor Personnel authorised to perform authorised work, the type and level of clearance given in respect of each of those persons and the period during which those clearances will be effective; and
- (b) the names of the Contractor Personnel who may not perform authorised work,

and the Contractor must sign a copy of that notice and return it to AMSA as soon as possible as acknowledgment of the contents.

21.8 The Contractor must advise AMSA promptly in writing of any change in the circumstances of a Contractor Personnel performing authorised work that, in the Contractor's reasonable opinion, is likely to affect AMSA's assessment of the person as a person who is suitable to perform authorised work.

21.9 AMSA may at any time and without coming under any liability whatsoever, withdraw, limit or suspend its authorisation in respect of a particular person and must so notify the Contractor. AMSA will not be bound to give any reasons for any such withdrawal, limitation or suspension, and will not be in any way liable in respect of any claim, action or demand made by any such person for any loss including but not limited to wages or damages and the Contractor must indemnify and keep indemnified AMSA against every such claim, action or demand. The Contractor must also, if requested by AMSA, provide replacement Contractor Personnel acceptable to AMSA at no additional charge and at the earliest opportunity, to perform authorised work.

## 22. Specified Personnel

22.1 The Contractor must ensure that if the names of Specified Personnel are included in the Work Order, those persons undertake work in respect of the Services in accordance with the terms of this Contract.

22.2 If Specified Personnel are unable to undertake work in respect of the Services, the Contractor must notify AMSA immediately. The Contractor must, if so requested by AMSA, provide replacement personnel acceptable to AMSA at no additional charge and at the earliest opportunity. If the Contractor does not provide acceptable replacement personnel with suitable skills within a reasonable period, AMSA reserves the right to terminate this Contract in accordance with the provisions of clause 48 (Default).

## 23. Subcontracting

23.1 Subject to clause 23.2 the Contractor may subcontract any part, but not the whole, of this Contract.



- 23.2 The Contractor must obtain the written consent of AMSA before entering into any subcontract related to provision of the Services, and in so doing must, if requested by AMSA, provide a copy of the proposed sub-contract (excluding commercial-in-confidence financial terms).
- 23.3 AMSA may, in its absolute discretion, and without the need to provide reasons for its decision, consent to or reject any proposed subcontract.
- 23.4 AMSA may revoke of its consent to any Subcontractor if:
- (a) the Subcontractor's performance is deficient or results in a breach of any provision of this Contract;
  - (b) the Subcontractor assigns or delegates performance of its obligations under the subcontract to another entity that has not been approved by AMSA; or
  - (c) AMSA reasonably believes that the Subcontractor will not be able to render future performance.
- 23.5 Notwithstanding clause 23.1, the Contractor will:
- (a) be strictly responsible for performance of this Contract in accordance with its terms and conditions; and
  - (b) remain liable for the past acts or omissions of its subcontractors in respect of whom AMSA withdrew approval as if they were still Subcontractors.
- 23.6 The Contractor:
- (a) must, on request by AMSA, give AMSA the names of the Subcontractors;
  - (b) agrees that AMSA may disclose publicly the names of the Subcontractors and details of the subcontracts; and
  - (c) must ensure that each Subcontractor agrees that AMSA may disclose the Subcontractor's name and details of its subcontract publicly.

## 24. Reporting

- 24.1 The Contractor must submit to AMSA reports of progress requested by AMSA from time to time.
- 24.2 Reports provided in accordance with clause 24.1 must detail all relevant matters in respect of which AMSA has requested information.
- 24.3 Notwithstanding clause 24.1, the Contractor must provide AMSA with a monthly report on the seventh (7th) calendar day of each month during the contract term (**Monthly Report**).
- 24.4 The Monthly Report must include as a minimum the following information relating to the previous calendar month:
- (a) The Contractors availability to provide ETC Services
  - (b) Nominated Vessel availability and readiness;
  - (c) training drills and audits conducted;
  - (d) summary of any On Task Services provided;
  - (e) changes to the Nominated vessel,
- and any potential impacts to the Nominated Vessel availability in the month ahead.
- 24.5 Additionally, the Contractor must report immediately to AMSA on any perceived or anticipated problems that may have an effect on the Contractor's provision of the Services.



## 25. Unforeseen Event

- 25.1 If the Contractor is delayed in the performance of, or prevented from performing, any of the Services by any Unforeseen Event, the Contractor may, in writing, request AMSA to grant a request for time extension or other performance relief and must provide with the request a statement of relevant facts and any other documentation supporting the request. The Contractor must make the request as soon as practicable after the Contractor becomes aware of the delay or prevention of performance.
- 25.2 AMSA must notify the Contractor as soon as practicable of its decision whether or not to consent to a request made in accordance with clause 25.1, which consent may be given or refused in AMSA's absolute discretion.
- 25.3 AMSA may extend time for delivery or grant other performance relief to the Contractor without having received a request from the Contractor described in clause 25.1.

## 26. Performance Management

### Measuring and Monitoring Tools

- 26.1 The Contractor must ensure continuous quality assurance and quality improvements apply to the management of this Contract and the performance of the Services through:
- (a) the identification and application of proven techniques and skills that would benefit AMSA;
  - (b) the implementation of programs, practices and measures designed to ensure that this Contract is performed in accordance with good management practice and so as to improve the availability levels and response times outlined in this Contract and the Contractor's performance against the KPIs;
  - (c) gaining or maintaining the quality, management, safety and personnel certifications outlined in the Vessel Requirements;
  - (d) implementing and maintaining during the Contract Term, measuring and monitoring tools and measuring its performance against the KPIs;
  - (e) giving AMSA access to the data and information gathered by those tools;
  - (f) if requested by AMSA, demonstrating to AMSA the operation and accuracy of those tools; and
  - (g) investigating any failure to perform the Services in accordance with the KPIs.
- 26.2 AMSA and the Contractor agree that the Contractor's performance will be measured against the KPIs.

### Performance Management - General

- 26.3 AMSA will monitor the performance of the Contractor under this Contract and will evaluate the effectiveness of the Contractor's performance on an ongoing basis.
- 26.4 If AMSA determines that the Contractor's performance is not consistent with this Contract, AMSA will notify the Contractor of the failure and specify a time period within which the Contractor must remedy the failure, if capable of remedy. The Contractor must respond to this notice, in writing, providing information on the reason for the failure and the strategy it will adopt to remedy the failure and to prevent further failures.
- 26.5 Without limiting AMSA's rights, if following a notice given under clause 26.4, AMSA determines that the Contractor's performance has not improved to AMSA's satisfaction within the period of time specified in the notice, AMSA may:



- (a) require the Contractor to propose and comply with additional service levels or other measures for performance that are acceptable to AMSA;
- (b) require the Contractor to prepare and implement a remediation plan at the Contractor's cost;
- (c) withhold part or all of the Contract Price payable under this Contract until such time as the Contractor's performance has improved, or until the breach is rectified, to AMSA's satisfaction;
- (d) reduce the scope of this Contract and withhold all the Annual Performance Payment for that particular Contract Year; or
- (e) terminate this Contract.

26.6 Nothing in this clause 26 (Performance Management) is intended to, or may be construed to, limit or affect AMSA's rights to terminate this Contract.

## 27. Risk Management and Capability Availability

27.1 The Contractor must, in relation to the performance of the Services:

- (a) act in accordance with generally recognised best practice risk management standards in its industry; and
- (b) maintain an appropriate risk register, risk assessment and risk treatment schedule that include methods for mitigating risks.

27.2 The Contractor must comply with, and must ensure that all Subcontractors comply with, the Contractor's risk management strategies and plans in the performance of the Services.

### Plans

27.3 When this Contract requires the Contractor to submit a Plan or any other document for approval by AMSA:

- (a) that Plan or document will have effect from the date of approval by AMSA unless this Contract specifies otherwise or the Parties agree otherwise; and
- (b) if AMSA is not satisfied with the Plan or other document submitted, the Contractor must promptly amend the Plan or document and resubmit it for approval within the timeframe specified by AMSA.

27.4 By approving a Plan or other document, AMSA will be taken to be agreeing that the Plan or other document may be used in the performance of the Contract, but the Contractor must ensure that the Plan or other document is suitable for the purposes of this Contract and will remain liable for any inadequacy, error in or omission from the approved Plan or other document.

### Risk Management Plan

27.5 The Contractor must provide a Risk Management Plan for AMSA's approval prior to the Commencement Date. The Risk Management Plan must comply with the requirements of this clause 27 (Risk Management and Capability Availability) and any requirements set out in the Standard Operating Procedures.

27.6 When approved by AMSA, the Risk Management Plan will form part of this Contract. When considering whether or not to approve the Risk Management Plan, AMSA may consider the extent to which it is consistent with AS ISO 31000:2018: Risk Management - Guidelines.

27.7 The Contractor must:

- (a) implement and maintain the approved Risk Management Plan during the Contract Term;



- (b) perform its obligations under this Contract in a manner that facilitates identification, control, management and mitigation of risks in connection with this Contract, whether or not a risk is identified in the Risk Management Plan;
- (c) provide AMSA with information and documents describing the Risk Management Plan promptly on request by AMSA; and
- (d) report to AMSA on the status of the Risk Management Plan, and any significant new or changed risks during the Annual Review or otherwise as required by AMSA.

### Capability Availability Plan

- 27.8 The Contractor must provide a Capability Availability Plan for AMSA's approval prior to the Commencement Date. The Capability Availability Plan must comply with the requirements of this clause 27 (Risk Management and Capability Availability) and any requirements set out in the Standard Operating Procedures.
- 27.9 When approved by AMSA, the Capability Availability Plan will form part of this Contract. When considering whether or not to approve the Capability Availability Plan, AMSA may consider the extent to which it is consistent with AS/NZS 5050:2020: Managing Disruption Related Risk Standard.
- 27.10 The Contractor must:
- (a) implement and maintain the approved Capability Availability Plan during the Contract Term;
  - (b) ensure that the Capability Availability Plan reflects the risk assessment referred to in clause 27.1(b);
  - (c) use the Capability Availability Plan to assist the Contractor in understanding and managing the risks associated with providing the ETC Services;
  - (d) report to AMSA on the status of the Capability Availability Plan during the Annual Review or otherwise as required by AMSA.

### Contract Management Plan

- 27.11 The Contractor must provide a Contract Management Plan for AMSA's approval prior to the Commencement Date. The Contract Management Plan must comply with the requirements of this clause 27 (Risk Management and Capability Availability) and any requirements set out in the Standard Operating Procedures.
- 27.12 When approved by AMSA, the Contract Management Plan will form part of this Contract.
- 27.13 The Contractor must:
- (a) implement and maintain the approved Contract Management Plan during the Contract Term;
  - (b) provide AMSA with information and documents describing the Contract Management Plan promptly on request by AMSA; and
  - (c) report to AMSA on the status of the Contract Management Plan during the Annual Review or otherwise as required by AMSA.

## 28. Business Management System Certification

- 28.1 From the Commencement Date, and for the duration of the Contract Term, the Contractor must maintain Business management systems certified in accordance with the following Standards:
- (a) AS/NZS ISO 9001;
  - (b) AS/NZS 4801 or ISO 45001; and



- (c) AS/NZS ISO 14001.

28.2 The Contractor must implement its management systems in the delivery of the Services.

## 29. Annual Review

29.1 The Contract Manager and the AMSA Contract Manager must conduct an Annual Review of the Contractor's performance of this Contract, within 60 days after the anniversary of the Commencement Date for each year of the Contract Term.

29.2 Any review may include AMSA:

- (a) reviewing the KPIs and the Contractor's performance against the KPIs;
- (b) reviewing the Contractor's contract administration arrangements and Contract performance;
- (c) reviewing the Risk Management Plan and the Contractor's compliance with the Risk Management Plan and risk management arrangements;
- (d) reviewing the Contract Management Plan and Capability Availability Plan and the Contractor's compliance with those Plans; and
- (e) when applicable, requiring variations to the Risk Management Plan, Contract Management Plan and Capability Availability Plan.

29.3 AMSA may engage one or more third parties to assist it in the Annual Review, the costs of which will be borne by AMSA. Without limiting or qualifying AMSA's other rights under this Contract, AMSA may, at its discretion, audit or arrange for accredited third parties to audit, the Contractor's compliance with the requirements of clause 27(Risk Management and Capability Availability).

29.4 If the Parties identify, as a result of the Annual Review, a need to vary this Contract, the Parties must comply with clause 19 (Entire Agreement and Variation).

## 30. Annual Performance Payment

30.1 Within 60 days of the end of a Contract Year, AMSA must:

- (a) determine the amount of the Annual Performance Payment payable to the Contractor, being all or a portion of the Annual Performance Amount, having regard to whether the Contractor has met or exceeded the KPIs for the Contract Year and the relevant weightings relevant to each KPI; and
- (b) advise the Contractor of the amount of the Annual Performance Payment for the Contract Year.

30.2 The Contractor may then issue a tax invoice to AMSA in accordance with clause 16 (Invoicing and Payment of Accounts) for the amount of the Annual Performance Payment advised by AMSA pursuant to clause 30.1 plus applicable GST.

30.3 Where the Contract expires or is terminated prior to the end of a Contract Year, the Annual Performance Payment will only apply to the portion of the Contract Year completed and will be reduced proportionately based on the number of days in the portion of the Contract Year prior to the expiration or termination.

30.4 For clarity, AMSA's rights in this clause 30 are not intended to, and must not be construed to, limit or affect AMSA's other rights under this Contract or at Law regarding any performance failures or breaches of this Contract by the Contractor.



30.5 For the purposes of this clause 30, **Contract Year** means each twelve (12) month period of the Contract Term commencing on the Commencement Date and each anniversary thereafter.

## 31. Audit Program

31.1 As part of the Annual Review process, AMSA, in conjunction with the Contractor, will develop an annual audit program detailing ETC aspects that will be audited in the coming year. These audits are separate to, and do not limit or affect any other audit rights for AMSA or other Australian government entities as set out in the Contract or at law (e.g. rights granted to the Auditor-General).

31.2 If AMSA wishes to exercise its rights described in clause 31.1 to audit the Contractor's performance of this Contract, the Contractor must, at its own cost, provide a suitably qualified and skilled person to accompany the AMSA representative(s) conducting the audit. AMSA may use the activation drill mentioned at clause 9.3 as an audit activity.

## 32. Disengagement

### Disengagement Services

32.1 The Contractor acknowledges that it is critical for AMSA to have continuity of the ETC Services and, for that reason, AMSA may request that the Contractor provide Disengagement Services prior to the end of the Term of this Contract, immediately following the end of the Term or upon Termination or reduction in scope of this Contract in accordance with this clause 30(Disengagement) and the Disengagement Plan.

32.2 The Contractor must, at AMSA's request, provide Disengagement Services to AMSA as well as to any third party nominated by AMSA, such as a new contractor.

32.3 The Contractor must ensure that any new service provider nominated by AMSA is able to use and modify any Contract Material provided by the Contractor under this Contract.

32.4 Without limiting any of the Contractor's obligations, if requested by AMSA, the Contractor must cooperate with AMSA and any other service provider nominated by AMSA in the orderly and efficient transfer of work and materials to AMSA or that other service provider.

32.5 The Contractor's obligations under clause 32.4 include making arrangements for:

- (a) the novation or assignment (to the extent practical) of any licences and any other relevant third party agreements from the Contractor to an alternative service provider or to AMSA itself, or if so stipulated by AMSA, the transfer of management responsibility in respect of such licences and agreements from the Contractor to an alternative service provider or to AMSA itself, with the cost of any new or increased charges to be borne by AMSA (subject to prior notification to and agreement from AMSA) unless agreed by the Parties to the contrary;
- (b) an offer to sell to the alternative service provider or to AMSA itself at fair market value any equipment used by the Contractor in conjunction with and dedicated solely to the delivery of the Services;
- (c) the transfer of AMSA's data to an alternative service provider or to AMSA itself; and
- (d) the granting by the Contractor to an alternative service provider or to AMSA itself of access to all material held by the Contractor and produced in connection with and for the purposes of delivering the Services, regardless of the manner of storage, save that:
  - i. there is no requirement pursuant to this clause 32.5(d) for the Contractor to assign any Intellectual Property Rights in such material; and

- ii. AMSA must agree to comply with any reasonable security and confidentiality requirements stipulated by the Contractor in respect of access to such material.

### Disengagement Plan

- 32.6 The Contractor must, by the date reasonably directed by AMSA, submit to AMSA for approval a draft Disengagement Plan for the Services or for any part of the Services in relation to which AMSA requires the Contractor to deliver a Disengagement Plan.
- 32.7 A Disengagement Plan will have effect from the date of approval by AMSA and will form part of this Contract (**Approved Disengagement Plan**). The Contractor must comply with each Approved Disengagement Plan.
- 32.8 Upon request by AMSA, the Contractor must review and update an Approved Disengagement Plan, and any proposed changes to an Approved Disengagement Plan must be approved by AMSA.

### Disengagement Services Fee

- 32.9 The Disengagement Services Fee will be payable for the performance of the Disengagement Services provided to AMSA's reasonable satisfaction in accordance with this clause 32(Disengagement) and the Disengagement Plan.
- 32.10 If the Disengagement Services Fee is not specified in the Work Order, the Contractor must provide AMSA with a quote for the Disengagement Services requested within 5 Business Days of the request and the Contractor must not commence the Disengagement Services until:
  - (a) AMSA has accepted the quote; or
  - (b) The Parties have agreed on an alternate amount.

## 33. AMSA Material

- 33.1 AMSA must provide AMSA Material to the Contractor that is required to perform the Services. The Contractor is responsible for the care of AMSA Material from the date the Contractor receives such AMSA Material.
- 33.2 Ownership of all AMSA Material remains vested at all times in AMSA, but AMSA grants to the Contractor a royalty-free, non-exclusive licence to use, reproduce and adapt AMSA Material for the purposes of this Contract.
- 33.3 Upon the expiration or earlier termination of this Contract, the Contractor must return to AMSA all AMSA Material remaining in its possession.
- 33.4 The Contractor must ensure that AMSA Material is used, copied, supplied or reproduced only for the purposes of this Contract. The Contractor must establish and maintain procedures to secure all AMSA Material against loss and unauthorised access, use, modification or disclosure.
- 33.5 The Contractor must use AMSA Material strictly in accordance with any conditions or restrictions specified in this Contract or notified from time to time in writing by AMSA.

## 34. Intellectual Property in Contract Material

- 34.1 Subject to this clause 34 (Intellectual Property in Contract Material), Intellectual Property in all Contract Material vests or will vest in AMSA.
- 34.2 Clause 34.1 does not affect the ownership of Intellectual Property in any Background Material.



- 34.3 The Contractor grants to AMSA, and must procure from a Subcontractor, on behalf of AMSA, a permanent, irrevocable, royalty-free, non-exclusive licence (including a right to sublicense) to use, reproduce, adapt and exploit such Contract Material anywhere in the world. Notwithstanding Part VII of the *Copyright Act 1968*, publication of the Contract Material in accordance with this licence will not affect such ownership.
- 34.4 If requested by AMSA, the Contractor must bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 34 (Intellectual Property in Contract Material).
- 34.5 The Contractor warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in any Contract Material in the manner provided for in this clause 34 (Intellectual Property in Contract Material).
- 34.6 The Contractor must at all times indemnify and hold harmless AMSA, its officers, employees and agents (in this clause referred to as 'those indemnified') 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 Rights by the Contractor, its officers, employees, agents or Subcontractors in connection with the performance of the Services or the use by AMSA of the Contract Material.
- 34.7 The Contractor must establish and maintain procedures to secure the Contract Material in its possession against loss and unauthorised access, use, modification or disclosure.
- 34.8 The indemnity referred to in clause 34.6 will survive the expiration or termination of this Contract.

## 35. Disclosure of Information

- 35.1 The Contractor must not, without the prior written approval of AMSA (as the case may be), disclose to any person other than AMSA, any Confidential Information contained in the AMSA Material or Contract Material. The Contractor agrees that in giving written approval, AMSA may impose such terms and conditions as it thinks fit.
- 35.2 AMSA must not, without the prior written approval of the Contractor, disclose to any person other than the Contractor, any information which is confidential to the Contractor.
- 35.3 AMSA may at any time require the Contractor to give and to arrange for its officers, employees, agents and Subcontractors engaged in the performance of the Services to give written undertakings, in a form required by AMSA, relating to the non-disclosure of such Confidential Information. The Contractor must promptly arrange for all such undertakings to be given.
- 35.4 The obligations on the parties under this clause 35 (Disclosure of Information) will not be taken to have been breached to the extent that Confidential Information:
- (a) is disclosed by a party to its personnel solely in order to comply with obligations, or to exercise rights, under this Contract;
  - (b) is disclosed to a party's internal management personnel solely to enable effective management or auditing of Contract-related activities;
  - (c) is disclosed by AMSA, in response to a request by a judicial or parliamentary body or by a governmental officeholder or agency;
  - (d) is shared by AMSA within AMSA's organisation, or with another government body or agency, where this serves AMSA's legitimate interests;
  - (e) is authorised or required by law to be disclosed; or



(f) is in the public domain otherwise than due to a breach of this clause 35 (Disclosure of Information).

35.5 If a party discloses Confidential Information to another person pursuant to clause 35.4, the disclosing party must notify the receiving person that the information is confidential.

35.6 In the circumstances referred to in paragraphs (a), (b) and (d) of clause 35.4, the disclosing party must not provide the information unless the receiving person agrees to keep the information confidential.

35.7 The Contractor and the Contractor Personnel must not make any public announcements, press releases, statements or other comments, in any form of print or online publication or media concerning this Contract without the prior approval in writing of AMSA.

35.8 This clause 35 (Disclosure of Information) will survive the expiration or termination of this Contract.

## 36. Protection of Personal Information

36.1 For the purposes of this clause 36 (Protection of Personal Information), the terms 'agency', 'Eligible Data Breach', 'Personal Information' and 'Privacy Commissioner' have the same meaning as in the Privacy Act.

36.2 The Contractor must comply with the provisions of the Privacy Act as if it were included in the definition of 'agency' under the Privacy Act. The Contractor must also comply with any directions made by the Privacy Commissioner or any privacy procedures notified to it by AMSA. The Contractor's obligations in this clause 36 (Protection of Personal Information) 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 Contractor's obligations under section 6A of the Privacy Act.

36.3 The Contractor must not do anything which may cause AMSA to breach its obligations under the Privacy Act.

36.4 If the Contractor 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 Contractor as a result of this Contract or its provision of the Services, the Contractor agrees to:

- (a) notify AMSA in writing as soon as possible, which must be no later than within three (3) Business Days; and;
- (b) unless otherwise directed by AMSA, carry out an assessment in accordance with the requirements of the Privacy Act.

36.5 Where the Contractor is aware that there are reasonable grounds to believe there has been, or where AMSA notifies the Contractor that there has been, an Eligible Data Breach in relation to any Personal Information held by the Contractor as a result of this Contract or its provision of the Services, the Contractor will:

- (a) 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;
- (b) following consultation with AMSA, take all other action necessary to comply with the requirements of the Privacy Act; and
- (c) take any other action as reasonably directed by AMSA.

36.6 The Contractor must ensure that any subcontract entered into by the Contractor for the purposes of fulfilling the Contractor's obligations under the contract imposes on the subcontractor the same obligations (where relevant) pursuant to the Privacy Act. Each



subcontract must also require the same obligations (where relevant) to be included by the Subcontractor in any secondary subcontracts.

- 36.7 The Contractor agrees to indemnify AMSA in respect of any loss, liability or expense suffered or incurred by AMSA which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause 36 (Protection of Personal Information).
- 36.8 This clause 36 will survive the expiration or termination of this Contract.

## 37. Moral Rights

- 37.1 For the purposes of this clause 37 (Moral Rights), 'Permitted Acts' means any of the following classes or types of acts or omissions:
- (a) using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution of authorship;
  - (b) supplementing the Contract Material with any other material; and
  - (c) using the Contract Material in a different context to that originally envisaged.
- but does not include false attribution of authorship.
- 37.2 If the Contractor is a natural person and the author of the Contract Material, he or she consents to the performance of the Permitted Acts by AMSA or any person claiming under or through AMSA.
- 37.3 If clause 37.2 does not apply, the Contractor must:
- (a) obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by AMSA or any person claiming under or through AMSA (whether occurring before or after the consent is given); and
  - (b) on request – provide the executed original of any such consent to AMSA.
- 37.4 This clause 37 (Moral Rights) does not apply to any AMSA Material incorporated in the Contract Material.

## 38. Access to AMSA Premises and Compliance with AMSA Policies

- 38.1 AMSA must, during the period of this Contract, provide access to AMSA premises for persons approved under clause 2123.1 (Contractor Personnel), as reasonably necessary for the Contractor's performance of its obligations under this Contract.
- 38.2 AMSA may, by notice to the Contractor, withdraw access rights to any AMSA premises, at any time, for any period.
- 38.3 The Contractor must, when using AMSA's premises or facilities, comply with all reasonable directions and AMSA procedures relating to work health and safety (including AMSA's smoke free workplace policy), and security in effect at those premises or in regard to those facilities, as notified by AMSA or as might reasonably be inferred from the use of the premises or facilities.
- 38.4 The Contractor must comply with its obligations, and ensure that any Subcontractor complies with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth) (**WGEA**) and must not enter into a subcontract under this Contract with a Subcontractor named by the Director of Affirmative Action as an employer currently not complying with that Act.
- 38.5 The Contractor must comply with all reasonable and appropriate security requirements relating to the custody of, and access to, Contract Material or AMSA Material wherever such material is held.



## 39. Liability

- 39.1 The Contractor must perform this Contract solely at its own risk and AMSA will not be liable to the Contractor or Contractor Personnel for any loss, damage, injury, disease, illness or death sustained by any person or caused to any property (referred to in this clause as "Loss") however caused, with the exception of any Loss caused by the negligence of, or breach of duty or statute by, AMSA or its officers or employees.
- 39.2 The liability of the Contractor for Loss will be reduced proportionately to the extent of AMSA's failure to comply with its obligations and responsibilities under this Contract, except to the extent such failure by AMSA is caused, or contributed to, by an act or omission of the Contractor or Contractor Personnel.
- 39.3 The liability of a Party to the other Party for breach of this Contract, or in tort or for any other common law or statutory cause of action arising out of the operation of this Contract, must be determined under the relevant law in Australia as it is recognised by and would be applied by the High Court of Australia.
- 39.4 This clause 39 (Liability) will survive the expiration or termination of this Contract.

## 40. Indemnity

- 40.1 Subject to the provisions of this Contract, the Contractor must at all times indemnify and hold harmless AMSA, its officers, employees and agents (in this clause referred to as 'those indemnified') from and against:
- (a) any loss (including legal costs and expenses on a solicitor/own client basis), or liability, suffered or reasonably incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified; and
  - (b) any loss or damage to property of AMSA (including AMSA Material),
- where such loss or liability was caused by any breach of this Contract, or any wilful, unlawful or negligent act or omission of the Contractor, its officers, employees, agents or Subcontractors in connection with this Contract.
- 40.2 The Contractor's liability to indemnify AMSA under clause 40.1 will be reduced proportionally to the extent that any act or omission of AMSA or its officers, employees or agents contributed to the loss or liability.
- 40.3 The right of AMSA to be indemnified under this clause 40 (Indemnity) is in addition to, and not exclusive of, any other right, power or remedy provided by law.
- 40.4 This clause 40 (Indemnity) will survive the expiration or termination of this Contract.

## 41. Insurance

- 41.1 The Contractor must, for so long as any obligations remain in connection with this Contract, effect and maintain insurance as specified in Schedule 3.
- 41.2 Whenever requested, the Contractor must give AMSA a copy of any insurance policy effected in accordance with clause 41.1 and a certificate of currency.

## 42. Conflict of Interest

- 42.1 In this clause 42 (Conflict of Interest), '**conflict**' means any matter, circumstance, interest or activity affecting the Contractor (including its personnel) which may or may appear to impair the ability of the Contractor to provide the Services to AMSA, diligently and independently.



- 42.2 The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract no conflict with the interests of AMSA exists or is likely to arise in the performance of its obligations under this Contract by itself or by any of its officers, employees, agents or Subcontractors.
- 42.3 If during the term of this Contract a conflict of interest arises, or appears likely to arise, the Contractor undertakes to notify AMSA immediately in writing and to take such steps as AMSA may reasonably require to resolve or otherwise deal with the conflict. If the Contractor fails to notify AMSA or is unable or unwilling to resolve or deal with the conflict as required, AMSA may terminate this Contract for default under clause 48 (Default).
- 42.4 The Contractor must not, and must ensure that any officer, employee, agent or Subcontractor of the Contractor does not engage in any activity or obtain any interest during the course of this Contract that is likely to conflict with or restrict the Contractor in providing the Services to AMSA fairly and independently.

### 43. Access to Contractor's Premises

- 43.1 The Contractor must at all reasonable times give to the AMSA Contract Manager, or to any persons authorised in writing by the AMSA Contract Manager, access to premises occupied by the Contractor where the Services are being undertaken and must permit those persons to inspect and copy documentation and records, however stored, in the Contractor's possession or control including any AMSA Material, Contract Material or other material relevant to the Services.
- 43.2 The Contractor must ensure that the provisions of any subcontract provide to the AMSA Contract Manager, and persons authorised by the AMSA Contract Manager, similar access to the Subcontractor's premises, documentation and records in connection with the provision of the Services.

### 44. Auditor-General, ANAO and Australian Information Commissioner

- 44.1 The Auditor-General, the Australian National Audit Office and the Australian Information Commissioner, or their delegates, may for the purpose of performing their statutory functions, at reasonable times and on giving reasonable notice to the Contractor:
- (a) require the provision by the Contractor, its employees, agents or Subcontractors, of records and information which are directly related to this Contract; and/or
  - (b) have access to the premises of the Contractor for the purpose of inspecting and copying documentation and records, however stored, in the custody or under the control of the Contractor, its employees, agents or Subcontractors, which are directly related to this Contract; and where relevant inspect any AMSA Material held on the premises of the Contractor.
- 44.2 The Contractor must ensure that any subcontract entered into for the purposes of this Contract contains an equivalent clause granting the rights specified in this clause 44 (Auditor-General, ANAO and Australian Information Commissioner).
- 44.3 This clause 44 (Auditor-General, ANAO and Australian Information Commissioner) applies for the term of this Contract and for a period of seven years from the date of expiration or termination of this Contract. The Contractor and any Subcontractor must ensure that any records and documentation related to this Contract are maintained for the same period.



## 45. Negation of Employment, Partnership and Agency

- 45.1 The Contractor must not represent itself, and must ensure that its officers, employees, agents and Subcontractors do not represent themselves, as being an officer, employee, agent or partner of AMSA, or as otherwise able to bind or represent AMSA.
- 45.2 The Contractor will not by virtue of this Contract be or for any purpose be taken to be an officer, employee, agent or partner of AMSA, or as having any power or authority to bind or represent AMSA.

## 46. Termination and Reduction at Will

- 46.1 AMSA may terminate or reduce the scope of this Contract at any time and for any reason whatsoever, by giving the Contractor at least twenty eight (28) days' notice in writing.
- 46.2 The Contractor acknowledges that AMSA is not required to specify any reason if it terminates or reduces the scope of this Contract under this clause 46 (Termination and Reduction at Will).
- 46.3 If this Contract is terminated or its scope is reduced under this clause 46 (Termination and Reduction at Will), then:
- (a) this Contract or the part of this Contract referred to in the notice under clause 46.1 is terminated from the date specified in the notice;
  - (b) AMSA may give the Contractor such directions as it thinks fit in relation to subsequent performance of this Contract;
  - (c) without limiting the preceding paragraph, AMSA must pay the Contractor for the Services already provided in accordance with the terms of this Contract, in the manner prescribed by this Contract; and
  - (d) the Contractor acknowledges that AMSA is not required to pay it any amounts in respect of Services not provided under this Contract.
- 46.4 AMSA's liability to the Contractor for any loss or damage incurred by the Contractor in connection with the termination of this Contract under this clause 46 (Termination and Reduction at Will) is limited to the following loss or damage incurred as a direct consequence of termination of this Contract in accordance with this clause 46 (Termination and Reduction at Will) and to the extent that they can be reasonably substantiated and are unable to be avoided or mitigated:
- (a) lease termination costs for early termination of vehicle, vessel, plant and office accommodation leases required specifically and exclusively for performance of this Contract;
  - (b) the Contractor's unamortised start-up costs;
  - (c) the Contractor's finance termination costs associated with the provision of the Services; and
  - (d) payments already made to Nominated Subcontractors (which are not related entities of the Contractor) prior to the termination of this Contract by AMSA.
- 46.5 For the purpose of clause 46.4, loss of profit is not recoverable as an unavoidable loss.
- 46.6 The Contractor must, in each subcontract or order placed with any Nominated Subcontractor for the purpose of this Contract, reserve a right of termination to take account of AMSA's right of termination under this clause 46 (Termination and Reduction at Will) and the Contractor must, when appropriate, make use of such rights to mitigate losses in the event of termination by AMSA under the provisions of this clause.



46.7 For the avoidance of doubt, AMSA has an unfettered discretion to terminate or reduce the scope of this Contract in accordance with this clause 46 (Termination and Reduction at Will).

## 47. Reduction in Scope

47.1 If scope of this Contract is reduced in accordance with clause 46, then:

- (a) AMSA and the Contractor shall be subject to the same rights and obligations as existed prior to the reduction in scope, and subject to any alterations which necessarily result from the reduction;
- (b) the Contract Price will be adjusted in proportion to the change to the Services required as a consequence of the reduction in scope; and
- (c) the Contractor must continue to perform the remainder of this Contract.

## 48. Default

48.1 If the Contractor is in default under this Contract on account of a failure to perform or observe any obligation or undertaking to be performed or observed on its part under this Contract, AMSA may, subject to clause 48.2, by notice in writing, terminate this Contract in whole or in part without prejudice to any right of action or remedy which has accrued or which may accrue in favour of the Contractor.

48.2 If the default is capable of being remedied, AMSA must not exercise its rights of termination under clause 48.1 unless it has first given the Contractor notice in writing specifying the default and requiring the Contractor to remedy it within the time (being not less than ten (10) Business Days) specified in the notice and the default is not remedied within the time allowed.

48.3 AMSA may, by notice in writing, terminate this Contract immediately (but without prejudice to any right of action or remedy which has accrued or which may accrue in favour of either party) if the Contractor:

- (a) being a corporation, becomes insolvent or comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001*, or an order has been made for the purpose of placing the corporation under external administration;
- (b) being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors;
- (c) has reached Liquidated Damages Limit specified in for Liquidated Damages payable under this Contract;
- (d) assigns its rights otherwise than in accordance with this Contract;
- (e) any other Contract between AMSA and the Contractor formed pursuant to the Deed of Standing Offer has been terminated due to the Contractor's default.

## 49. Action on Expiration or Termination

49.1 Immediately on the termination or expiry of this Contract:

- (a) If directed by AMSA comply with its obligations under clause 3230 (Disengagement);
- (b) the Contractor must return to AMSA, as directed by AMSA and at the Contractor's cost, all AMSA Material, Contract Material and AMSA Property within the Contractor's (or Contractor Personnel's) power, possession or control;
- (c) if directed by the AMSA Representative, the Contractor must return, delete or dispose of all Personal Information, Confidential Information or AMSA Material that the Contractor acquired as a result of this Contract and is no longer required; and



- (d) unless expressly specified to the contrary in this Contract, all of the Contractor's rights, obligations and benefits under this Contract cease immediately on the termination or expiry of this Contract.

## 50. Waiver

- 50.1 A waiver by a party in respect of any breach of a condition or provision of this Contract will not be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision.
- 50.2 A failure or delay by a party to exercise any right or remedy it holds under this Contract or at law will not operate as a waiver of that right.
- 50.3 A single or partial exercise by a party of any right or remedy it holds under this Contract or at law will not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

## 51. Dispute Resolution

- 51.1 Subject to clause 51.4, before resorting to external dispute resolution mechanisms, the parties must attempt to settle by negotiation any dispute in relation to this Contract including by referring the matter to personnel who may have authority to intervene and direct some form of resolution.
- 51.2 If a dispute is not settled by the parties within ten (10) Business Days of one party first sending to the other party written notice that they are in dispute, the dispute may be the subject of court proceedings or may be submitted to some alternative dispute resolution mechanism as may be agreed in writing between the parties.
- 51.3 Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Contract.
- 51.4 A party may commence court proceedings relating to any dispute arising from this Contract at any time where that party seeks urgent interlocutory relief.
- 51.5 This clause 51 (Dispute Resolution) will survive the expiration or termination of this Contract.

## 52. Compliance with Law and Government Policies

- 52.1 In performing the Services the Contractor:
  - (a) must comply and ensure that each of the Vessels and its officers, employees, agents, approved subcontractors and Authorised Personnel complies with; and
  - (b) must not and must ensure 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, and to prescribed requirements for vessels, certificates, licences or permits to practice a profession or trade.
- 52.2 In performing the Services, using AMSA equipment and whilst on AMSA premises, the Contractor 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.



- 52.3 Even though the Contractor is not an AMSA employee, in performing the Services the Contractor must act in a manner consistent with the AMSA Code of Conduct.
- 52.4 If at any time the Contractor becomes aware of Modern Slavery practices in the operations and supply chains used in its performance of the Contract, the Contractor must as soon as reasonably practicable:
- (a) promptly notify AMSA of the Modern Slavery practices and provide any relevant information requested by AMSA;
  - (b) 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
  - (c) take all reasonable steps to remediate any adverse impacts caused or contributed to by the Contractor from these practices in accordance with the *United Nations Guiding Principles on Business and Human Rights*.
- 52.5 The Contractor 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:
- (a) complying with all applicable workplace relations, work health and safety, and workers' compensation laws;
  - (b) 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
  - (c) 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.

### Aboriginal and Torres Strait Islander Cultural Heritage

- 52.6 The Contractor must comply with all applicable Commonwealth and State laws relating to Aboriginal and Torres Strait Islander cultural heritage, including the requirements to obtain certain approvals from the Commonwealth, State or other representative body to provide the Services under this Contract.

### Workplace Gender Equality

- 52.7 The Contractor must comply with its obligations, if any, under the WGEA.
- 52.8 The Contractor must not enter into a subcontract under this Contract with a subcontractor named by the Gender Workplace Equality Agency as an employer currently not complying with the WGEA.

### Fraud

- 52.9 The Contractor must comply with the Commonwealth Fraud and Control Corruption Framework 2024, as amended from time to time set out at: [Commonwealth Fraud and Corruption Control Framework 2024 | Commonwealth Fraud Prevention Centre](#).
- 52.10 The Contractor must notify AMSA immediately if it knows or has reason to suspect that any fraud has occurred or is occurring or is likely to occur in relation to this Contract (including by the Contractor or Contractor Personnel).



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

- 52.11 The Contractor acknowledges that in providing the Services to AMSA under the Contract, it is a contracted service provider for the purposes of the *National Anti-Corruption Commission Act 2022 (Cth)* (NACC Act).
- 52.12 The Contractor 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.

## Freedom of Information

- 52.13 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 Contractor 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 Contractor to provide the document to AMSA and the Contractor 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.

## Illegal Workers

- 52.14 The Contractor must not engage Illegal Workers in any capacity to carry out any work under or in connection with this Contract and must notify AMSA immediately if it becomes aware of the involvement of an Illegal Worker in such work.
- 52.15 The Contractor must remove, or cause to be removed, any Illegal Worker from any involvement in performing its obligations under this Contract (including if engaged by a Subcontractor) and arrange for their replacement at no cost to AMSA and immediately upon becoming aware of the involvement of the Illegal Worker.
- 52.16 If requested in writing by AMSA, the Contractor must provide evidence within ten (10) Business Days that it has taken all reasonable steps to ensure that it has complied and is complying with its obligations in respect of Illegal Workers.

## Work Health and Safety

- 52.17 The Contractor must ensure that the Services are provided in a manner that does not pose any avoidable health or safety risk to the Contractor Personnel, to AMSA Personnel or to any other person.
- 52.18 Without limiting the work health and safety obligations that the Contractor has under this Contract, including those that apply due to the operation of Commonwealth and State or Territory Laws, the Contractor must:
- (a) to the extent the WHS Act applies, ensure that a person conducting a business or undertaking (PCBU as defined in the WHS Act) meets the primary duty of care requirements of section 19 of the WHS Act or corresponding State or Territory legislation;
  - (b) to the extent the WHS Act applies, ensure the regulator is notified immediately after a notifiable incident has occurred in accordance with section 38 of the WHS Act or corresponding State or Territory legislation;
  - (c) notify AMSA of:
    - i. any work related injury that causes death or serious personal injury;
    - ii. any notifiable incident as defined at sections 35, 36 and 37 of the WHS Act, or corresponding State or Territory legislation; and



- iii. each occasion it reports to, or notifies, a regulatory authority of a notifiable incident authority under any Laws including the WHS Act,
  - iv. within one Business Day after the incident has occurred or within 2 hours if the injury causes death; and
  - v. take all steps and do all things necessary to ensure that AMSA and the Commonwealth are not placed in breach of any Laws as a consequence of the Contractor's performance of the Contract; and
- (d) comply with the *Occupational Health and Safety (Marine Industry) Act 2011* (Cth) to the extent that it applies.

52.19 At AMSA's request, the Contractor must provide reasonable assistance to AMSA or Comcare (including giving AMSA, Comcare and their agents access to the Contractor's premises, files, information technology systems and personnel) in connection with any monitoring, inspection, investigation or audit of work health and safety matters arising in relation to the provision of the Services.

52.20 To the extent that performance of the Services under this Contract constitutes construction work, AMSA authorises the Contractor to have management and control of the workplace for work health and safety purposes in relation to that construction work and the Contractor is engaged as the principal contractor for the purposes of that work.

52.21 In this clause, the terms 'construction work' and 'principal contractor' have the same meanings as in the WHS Act.

### 53. International Codes

53.1 The Contractor must comply with the requirements of the *International Code for the Security of Ships and of Port Facilities* and the relevant amendments to Chapter XI of the *Safety of Life at Sea Convention (ISPS Code)* relating to the Vessels and the Company.

53.2 Upon request, the Contractor must give AMSA a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) and the full style contact details of the CSO.

53.3 Loss, damages, expense or delay caused by failure on the part of the Contractor or the Company/Owner to comply with the requirements of the ISPS Code/MTSA or this clause must be met by the Contractor, except as otherwise provided in this Contract.

53.4 AMSA may give the Contractor its contact details and, upon request, any other information the Contractor requires to comply with the ISPS Code/MTSA.

53.5 In this clause 53 (International Codes) the following terms have the same meaning as the same meaning as the ISPS Code:

- (a) Company;
- (b) Company security officer of CSO; and
- (c) Owner.

### 54. Software And Data

54.1 If the Contractor provides any software to AMSA in performing its obligations under this Contract, the Contractor:

- (a) grants to AMSA a perpetual, irrevocable, world-wide, non-exclusive, royalty-free licence to:



- i. at AMSA's discretion, install the software without affecting AMSA's entitlement to freely use the software;
  - ii. adapt and modify the software to the extent necessary to enable it to be used on AMSA's systems;
  - iii. use and communicate each part of the software, and the associated software documentation, in either hardcopy or softcopy (including online); and
  - iv. make necessary copies of the software, and the associated software documentation, for backup and security purposes;
- (b) authorises AMSA to assign the rights in this clause to another agency, at no cost, subject to prior written notice to the Contractor and subject to the other agency consenting to the terms of the licence; and
- (c) authorises AMSA to sublicense or assign to third parties the rights referred to in clause 54.1(b) solely for the benefit of AMSA, provided that AMSA secures an undertaking from the relevant third party that it will use that software and associated software documentation solely for that purpose.
- (d) must ensure the software conforms to and is managed in alignment to:
  - i. the Australian Protective Security Policy Framework (PSPF);
  - ii. the Australian Government Information Security Manual (ISM) or other recognised Security Standard (e.g. ISO 27001). This shall include ongoing security operations functions; and
  - iii. the Australian Signals Directorate (ASD) Essential Eight Strategies.

## 55. Harmful Code

- 55.1 The Contractor warrants that if it provides software to AMSA in performing its obligations under this Contract:
- (a) the software furnished will be, under normal use, free from defects in materials, design and workmanship, viruses and Harmful Code; and
  - (b) the Contractor will not, nor will it suffer or permit any third party under its direction or control to, introduce into AMSA's systems any Harmful Code.
- 55.2 If any Harmful Code is introduced, the Contractor must promptly report that introduction to AMSA and take all necessary action to eliminate the Harmful Code and, at its own cost, repair any harm or destruction caused to AMSA by that Harmful Code.
- 55.3 The Contractor must inform AMSA of a breach or attempted IT-security incident within 12 hours of it being identified in line with the OAIC guidelines.

## 56. Public Interest Disclosure

- 56.1 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* (Cth).
- 56.2 The Contractor 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 Contractor or to any supervisor of the Contractor are:
- (a) handled in accordance with the requirements of the *Public Interest Disclosure Act 2013* (Cth), including all requirements of confidentiality and protections from reprisals contained therein;



- (b) 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* (Cth); and
- (c) following notification, the Contractor must assist AMSA with any ensuing investigation into the disclosable conduct if the disclosable conduct relates to the Contractor at no additional cost to AMSA.

## 57. Commonwealth Supplier Code of Conduct

- 57.1 For the purposes of this clause, 'Commonwealth Supplier Code of Conduct' or 'Code' means the *Commonwealth Supplier Code of Conduct*, as published on 1 July 2024 and as updated from time to time.
- 57.2 The Contractor must comply with, and ensure that its officers, employees, agents and subcontractors comply with, the Code in connection with the performance of this Contract.
- 57.3 The Contractor must:
- (a) periodically monitor and assess its, and its officers', employees', and agents' compliance with the Code; and
  - (b) on request from AMSA, promptly provide information regarding:
    - i. the policies, frameworks, or systems it has established to monitor and assess compliance with the Code, and
    - ii. the Contractor's compliance with clause 57.2.
- 57.4 The Contractor must immediately issue AMSA a notice on becoming aware of any breach of clause 57.2. The notice must include a summary of the breach, the date that the breach occurred, and details of the personnel involved.
- 57.5 Where AMSA identifies a possible breach of clause 57.2, it may issue the Contractor a notice, and the Contractor must, within three (3) Business Days of receiving the notice, either:
- (a) where the Contractor considers a breach has not occurred: advise AMSA that there has not been a breach and provide information supporting that determination; or
  - (b) where the Contractor considers that a breach has occurred:
    - i. issue a Notice under clause 57.4; and
    - ii. otherwise comply with its obligations under this clause 57.
- 57.6 Notwithstanding clause 57.5, AMSA may notify the Contractor in writing that it considers that the Contractor has breached clause 57.2, in which case the Contractor must issue a notice under clause 57.4 and otherwise comply with its obligations under this clause 57.
- 57.7 If the Contractor fails to comply with its obligations under any part of this clause 57 AMSA may terminate this Contract in accordance with clause 48 (Default).
- 57.8 Nothing in this clause or the Code limits, reduces, or derogates from the Contractor's other obligations under the Contract. AMSA's rights under this clause are in addition to and do not otherwise limit any other rights AMSA may have under the Contract. The performance by the Contractor of its obligations under this clause will be at no additional cost to AMSA.
- 57.9 The Contractor agrees that AMSA or any other Commonwealth agency may take into account the Contractor's compliance with the Code in any future approach to market or procurement process.



## 58. Environmental Protection

- 58.1 The Contractor must cooperate with AMSA in ensuring that the Services are supplied in a manner which avoids or minimises damage to the environment. For the purposes of this clause 58.1, damage to the environment includes any reduction in the quality, productivity and amenity of the land, waters or air on or off an AMSA location and any threat to the sustainability of any animal, plant or other biological species.
- 58.2 The Contractor must not, in providing the Services, use any substance which is proscribed by the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth), without the prior written consent of the AMSA Contract Manager. AMSA may reject Services offered by the Contractor for the benefit of AMSA using an ozone-depleting substance.
- 58.3 When carrying out work in performance of this Contract at AMSA locations, the Contractor must:
- (a) comply with AMSA's energy, recycling, and waste management policy guidelines, copies of such guidelines to be provided to the Contractor; and
  - (b) use energy and office resources efficiently at all times in carrying out such work.

## 59. Hazardous Substances

- 59.1 For the purposes of this clause 59.1 (Hazardous Substances), '**Hazardous Substance**' means a substance, which by its chemical and physical properties, has the potential through being used at work to harm the health or safety of persons in or near the workplace, as identified by the Work Safe Australia.
- 59.2 The Contractor must not use in the performance of the Services, nor introduce or store at AMSA locations any Hazardous Substance except where necessary for the performance of this Contract, and after the prior written consent of the AMSA Contract Manager, other than those Hazardous Substances approved for use or storage within an AMSA location by the AMSA Contract Manager. Any Hazardous Substances which cannot be avoided are to be fully identified to users and handlers, and the nature and extent of the associated hazard clearly displayed.
- 59.3 The Contractor must, in respect of each Hazardous Substance for which approval has been given pursuant to clause 59.2:
- (a) provide full details to the AMSA Contract Manager of that substance (including location, protective covering or packaging provided and other relevant details) in the format reasonably required by the AMSA Contract Manager;
  - (b) ensure that all documentation, including (without limitation of generality) that related to operation, maintenance, assembly, shipping and handling, is clearly written to identify the presence and nature of the hazard;
  - (c) ensure that all goods, equipment and materials containing that substance bear appropriate labels which clearly identify the nature of the substance, its associated hazards and appropriate safeguards;
  - (d) comply with all relevant legislation of the Commonwealth or of a State, Territory or local authority and with all industry standards and practices that relate to the safe usage, storage, control or disposal of Hazardous Substances; and
  - (e) be responsible for imposing and enforcing the obligations set out in this clause 59 (Hazardous Substances) on its Subcontractors, as well as for ensuring the observance of those obligations by its servants, employees and agents and those of its Subcontractors.



- 59.4 The Contractor must promptly (and no later than ten (10) Business Days after discovery) notify the AMSA Contract Manager if it becomes aware of a non-hazardous substance which could be substituted for a Hazardous Substance without significant detriment to the performance of the Services.
- 59.5 In no circumstances may the performance of the Services give rise to the emission of gases, liquids, solids, electromagnetic radiation, heat or noise which could be detrimental to personnel, the environment or the operation of other equipment, except where this is consistent with the performance of the Services and is within normal tolerances as stipulated in the relevant industry standards.

## General provisions

### 60. Assignment and Novation

- 60.1 The Contractor must not assign, novate or subcontract, in whole or in part, its benefits or rights under this Contract without the prior written approval of AMSA.
- 60.2 The Contractor must not consult with any other person or body for the purpose of entering into an arrangement which may involve a proposed novation of this Contract without first consulting AMSA.
- 60.3 AMSA must not withhold approval of an assignment to a wholly owned subsidiary of the Contractor if:
- the proposed assignee is sufficiently capitalised to meet all of the Contractor's obligations under this Contract, including indemnities;
  - the Specified Personnel continue to provide the Services, subject to the terms of this Contract;
  - the Contractor guarantees the performance of this Contract by the assignee and any liability on the part of the assignee arising under this Contract;
  - the proposed assignee fully complies with all criteria applied to the Contractor as a tenderer for provision of the Services; and
  - the Contractor provides to AMSA all information reasonably required to determine compliance under this clause 60.3.

### 61. Severability

- 61.1 Each provision of this Contract 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.

### 62. Applicable Law

- 62.1 This Contract is governed by and construed in accordance with the laws in force in the Australian Capital Territory, and the parties agree that the Courts of that Territory have jurisdiction to entertain any action in respect of, or arising out of, this Contract.

### 63. Notices

- 63.1 Any notice, request or other communication to be given or served pursuant to this Contract must be in writing and dealt with as follows:



- (a) if given by the Contractor to AMSA addressed and forwarded to AMSA for the attention of the AMSA Contract Manager at the address specified in the Work Order or as otherwise notified by the AMSA Contract Manager;
- (b) if given by AMSA to the Contractor signed by the AMSA Contract Manager and addressed and forwarded to the Contract Manager at the address specified in the Work Order.

63.2 Any such notice, request or other communication must be delivered by hand or sent by pre-paid security post or email, to the address of the party to which it is sent.

63.3 Any notice, request or other communication will be deemed to be received:

- (a) if delivered personally, on the date of delivery;
- (b) if sent by prepaid security post, on the day that the acknowledgment of delivery is completed by the recipient;
- (c) if sent by email, when the email enters an information system accessible to the recipient.

## 64. Survival

64.1 Unless the contrary intention appears, the expiration or termination of this Contract will not affect the continued operation of any provision relating to:

- (a) licensing of Intellectual Property;
- (b) Confidential Information;
- (c) protection of Personal Information;
- (d) an indemnity;
- (e) audit;
- (f) dispute resolution;
- (g) any warranty;
- (h) security;
- (i) disengagement services; or
- (j) any other provision which expressly or by implication from its nature is intended to continue.

## 65. Electronic Signatures

65.1 The Parties consent to this Contract being signed by or on behalf of a party by an Electronic Signature.

65.2 The Parties intend that any:

- (a) copy of this Contract that has been electronically signed by or on behalf of a party will constitute an original counterpart executed by that party; and
- (b) print-out of this Contract with the relevant Electronic Signatures appearing will also constitute an original counterpart executed by that party.

65.3 Each signatory that signs this Contract using an Electronic Signature confirms that their signature appearing in the Contract including any such print-out (irrespective of which party printed it), is their personal signature authenticating it.

65.4 For the purposes of this Contract, 'Electronic Signature' means a digital signature or a visual representation of a person's handwritten signature or mark which is placed on a physical or



electronic copy of this Contract by electronic means or mechanical means and indicates the person's intention to sign this Contract. Electronically Signed has a corresponding meaning.



## Schedule 1 Additional Terms

The following additional terms apply to the Contract:

### 1. Financial Undertaking

- 1.1 This Additional Term 1 applies if a Financial Undertaking is specified as being required in the Work Order.
- 1.2 For the purposes of this Contract, **Financial Undertaking** means a financial undertaking on the terms set out in this Additional Term 1.
- 1.3 The Contractor must provide to AMSA a Financial Undertaking substantially in the same form as Schedule 4.
- 1.4 Notwithstanding any other provision of this Contract, AMSA is not required to make any payments to the Contractor until the Contractor has provided the Financial Undertaking referred to in this Additional Term 1 (Financial Undertaking)
- 1.5 Unless otherwise indicated in the Work Order, the Financial Undertaking must be:
  - (a) irrevocable and unconditional;
  - (b) issued by an Australian financial institution acceptable to AMSA;
  - (c) in the amount set out in the Work Order;
  - (d) provided to AMSA prior to commencement of the Services;
  - (e) effective from the date provided; and
  - (f) in a form consistent with that provided at Schedule 4 or such other form agreed by AMSA in writing.
- 1.6 The Financial Undertaking must be released in accordance with the release details set out in the Work Order.
- 1.7 AMSA may call on the Financial Undertaking:
  - (a) to obtain compensation for loss suffered if the Contractor fails to properly perform this Contract, including to meet the liability of the Contractor for any Liquidated Damages owed and upon termination of this Contract in accordance with clause 48 (Default); and
  - (b) to recover debts in relation to this Contract.
- 1.8 If the Contractor fails to provide the Financial Undertaking prior to commencing the Services, AMSA may terminate this Contract in accordance with 48 (Default).



## Schedule 2 Key Performance Indicators

No	Item	Key Performance Indicator	Requirements	Performance Measure	Weighting Total
<b>1</b>	<b>State of Readiness</b>				<b>50%</b>
1.1	Availability	Availability to provide ETC Services	The Contractor must be available to respond upon receipt of a Tasking, 24 hours per day, 7 days a week.	Audit of monthly availability report.	
1.2	Crew availability	Crew composition, qualifications and competency	The Contractor must provide qualified and competent crew for each Nominated Vessel, including being capable of conducting operations outside of port limits to 200NM from shore.	Audit of Contractors crew qualification and training records.	
1.3	Capability Availability Plan	Compliance with the Capability Availability Plan	The Contractor must comply with its Capability Availability Plan (CAP). The CAP describes how the Contractor will manage their availability to provide ETC Services pursuant to a Tasking.	Audit of compliance with the CAP.	
1.4	Nominated Vessel availability	Fuel management	The Contractor must always maintain the minimum fuel levels for the Nominated Vessels.	Audit of the Nominated Vessels minimum fuel level requirements specified in the Standard Operating Procedures. (Monthly reports and fuel reporting documentation).	
1.5	Timeliness of response to Tasking	Response timeliness.	The Nominated Vessel must be operationally ready to provide On Task Services following a Tasking	Audit response times when providing On Task Services and training drills.	



No	Item	Key Performance Indicator	Requirements	Performance Measure	Weighting Total
			within the timeframe set out in clause 11.1(a) of the Contract.		
<b>2</b>	<b>Equipment</b>				<b>20%</b>
2.1	Equipment availability	Availability and condition of towage and other equipment.	The Contractor must ensure the Nominated Vessel is fitted or equipped with the equipment required by this Contract. The equipment must be in good working order.	Audit of the Vessels equipment, including confirming equipment is operational and maintenance records confirm all maintenance is up to date.	
<b>3</b>	<b>Training and Drills</b>				<b>20%</b>
3.1	Skills, training and competence matrix	The Skills, Training and Competence Matrix is accurate.	The Contractor must maintain an accurate skills, training and competence matrix for all crew.	Audit of the skills, training and competence matrix for the crew.	
3.2	Training delivery	ETC training program delivered within the required timeframes.	The Contractor must deliver the ETC Training Program within the timeframes set out in this Contract and meet ETC training program deliverable requirements.	Annual review and audit of the Contractor's ETC training program.	
3.3	ETC activation drills	Training drills successfully completed.	The Contractor must demonstrate Emergency Towage Capability in a safe, efficient and timely manner.	Audit during provision of On Task Services or ETC activation drills.	
3.4	SOPs	Compliance with SOPs.	The Contractor must comply with the SOPs.	Audit of compliance with SOPs during the provision of On Task Services or training drills.	
<b>4</b>	<b>Reporting and Plans</b>				<b>10%</b>



No	Item	Key Performance Indicator	Requirements	Performance Measure	Weighting Total
4.1	Quality and timeliness of reporting updates	Reporting failures.	The Contractor must comply with the reporting requirements in the Contract and Standard Operating Procedures.	Review of the quality, accuracy and timeliness of the Contractor's reporting.	
4.2	Compliance with Plans	Update and use of Plans	The Contractor must develop and maintain a range of Plans and documentation, including: <ul style="list-style-type: none"> <li>• Contract management plan</li> <li>• Risk management plan</li> <li>• Transition plan</li> <li>• Capability availability plan</li> </ul>	Review of the quality and accuracy of the Contractors Plans.  Audit of the Contractors compliance with its Plans.	



## Schedule 3 Insurance

	Coverage	Amount	Period of Cover
<b>General Liability</b>	Public and products liability	\$50 Million (excl. GST) per occurrence.	Contract Term
<b>Property</b>	For replacement of assets, inventory, buildings and equipment used to provide the Services	\$20 million (excl. GST) per occurrence	Contract Term
<b>Workers Compensation</b>		As required by Law	Contract Term
<b>Hull and Machinery</b>		Appropriate value for vessel or vessels being provided to deliver the services	Contract Term
<b>Protection and Indemnity</b>	including cover for oil pollution liability up to the maximum limits available through the International Group of P&I Clubs, such cover to be obtained from a member of the International Group of P&I Clubs	\$500 million (excl. GST) per occurrence	Contract Term



## Schedule 4 Form of Financial Undertaking

The financial undertaking must be given by a financial institution acceptable to AMSA and must be substantially in the following form:

To: **Australian Maritime Safety Authority**, a body corporate established under the Commonwealth Australian Maritime Safety Authority Act 1990 (**AMSA**)

**Bank Name ACN/ABN (the Bank)** requests AMSA to accept this undertaking in connection with the provision of the Services referred to in the [INSERT DETAILS OF CONTRACT] dated (Contract) between AMSA and

[Contractor Name] ABN [insert ABN] (**Contractor**).

In consideration of AMSA accepting this undertaking in connection with the Contract, the Bank agrees to give this undertaking to AMSA on the following terms and conditions:

1. The Bank unconditionally undertakes to pay AMSA on demand from time to time amounts which in total do not exceed A\$ [INSERT AMOUNT REQUIRED BY THE CONTRACT] in the aggregate.
2. This undertaking will remain in force until the first to occur of:
  - (a) AMSA notifying the Bank in writing that the undertaking is no longer required; or
  - (b) the Bank paying AMSA the full amount referred to above.
3. The Bank must pay pursuant to this undertaking:
  - (a) without reference to the Contractor;
  - (b) whether or not the Contractor has directed the Bank not to pay pursuant to the undertaking; and
  - (c) without regard to whether the Contractor and AMSA have or have not performed their obligations under the Contract.
4. Any alterations to the terms of the Contract or any extensions of time or other forbearance by the Contractor or by AMSA in relation to the Contract will not impair or discharge the obligations of the Bank under this undertaking.
5. This undertaking constitutes a principal obligation of the Bank and will not be treated as ancillary or collateral to any obligation of the Contractor.
6. All payments by the Bank pursuant to this undertaking must be made in Australian dollars in freely transferable funds forthwith upon the receipt by the Bank of a written demand signed by or on behalf of AMSA.
7. This undertaking is governed by the laws of the Australian Capital Territory.
8. The Bank reserves the right to terminate its liability hereunder at any time upon payment to AMSA of the sum of A\$[INSERT AMOUNT REQUIRED BY CONTRACT] or such lesser amount as may be required and specified in writing by AMSA.
9. Unless by statutory reconstitution of AMSA, AMSA may not assign or transfer all or any part of its rights under this undertaking without the prior written authorisation of the Bank.
10. Should the Bank at its option consent to the assignment or transfer of the benefit of this undertaking by AMSA in the manner provided above then, except to the extent that such interpretation is excluded by or repugnant to the context, whenever the word AMSA is used in this undertaking, it will include the assigns and the executors, administrators or successors of AMSA.



Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2025

SIGNED SEALED AND DELIVERED for and on  
) behalf of [ \_\_\_\_\_ ]:  
| \_\_\_\_\_ )

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

.....  
By [ \_\_\_\_\_ ]  
it's duly constituted Attorney who is personally  
known to me

.....  
[ \_\_\_\_\_ ]

**[amsa.gov.au](http://amsa.gov.au)**