



CONTRACT FOR CIVIL MARITIME SURVEILLANCE SERVICES

BETWEEN

COMMONWEALTH OF AUSTRALIA REPRESENTED BY AUSTRALIAN CUSTOMS
SERVICE

ABN 66015 286 036

AND

AUSTRALIAN HELICOPTERS PTY LTD

ACN 011 075 460

ABN 50 011 075 460

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CONTRACT

SERVICES CONTRACT BETWEEN COMMONWEALTH OF AUSTRALIA AND
AUSTRALIAN HELICOPTERS PTY LTD

Date

29 August 2005

Parties

Commonwealth of Australia represented by the **Australian Customs Service**

(ABN 66 015 286 036) ("**Customs**")

AND

Australian Helicopters Pty Ltd (ACN 011 075 460) (ABN 50 011 075 460)
(the "Service Provider")

Recitals

- A. **Customs** wishes to procure civil maritime surveillance services ("the Services") for Coastwatch, a division of **Customs**.
- B. **Customs** wishes to have the Services provided and conducted in an efficient, timely and cost effective manner by a Service Provider who is willing to work with **Customs** to establish an environment that encourages cooperation, honesty and outstanding results.
- C. **Customs** has identified the Service Provider through a tender process as having the attributes to provide the Services and the capacity and willingness to work with **Customs**. The basis of this relationship is set out in this Contract.
- D. In particular and subject to the terms of the Contract, **Customs** seeks that the Services are provided:
- to achieve best value for money;
 - in a manner that maximises efficiencies and continues to provide business process improvements;
 - in full compliance with existing and future legislation and policy requirements (including those relating to privacy and security) which apply to **Customs** and the Services described in the Contract; and
 - in an environment that encourages excellent service by the Service Provider.

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- E. The Service Provider has conducted a due diligence process including the examination of Documents and Information provided by **Customs** and discussions with **Customs** and its advisers in relation to **Customs** requirements for the Services and has represented that it has the skills, qualifications and experience to provide the Services.
- F. The Service Provider and **Customs** have agreed to certain obligations for each Party in relation to the delivery of services as set out in the Service Level Agreement.
- G. The Service Provider has agreed to supply the Services to **Customs** on the terms and conditions set out in the Contract.

PART 1 - PRELIMINARIES

1. Interpretation

1.1. Definitions

In the Contract, including the recitals, unless the context otherwise requires:

Acceptance	means acceptance of the Services in accordance with clause 9 .
Acceptance Certificate	means a certificate provided by Customs to the Service Provider following successful completion of tests for delivery of the Services at agreed milestones during the Transition In Period.
Acceptance Test	means the tests for Acceptance of the Services specified in the Transition In Plan.
Account Director	means the person identified in Schedule 12 (Contract Personnel) for the purposes of clause 20 .
ACT	means the Australian Capital Territory.
Additional Services	means the additional services referred to in clause 36 and agreed between the Parties from time to time under the change control procedure under clause 38 .

s. 47(1)(b)

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Annual Fixed Charge	means for each component of the Services (multi engine and single engine helicopter) the fixed charge paid by Customs . It is calculated on the basis that the Service Provider will be requested to deliver services for 100% of the Annual Minimum Rate of Effort.
Annual Minimum Rate of Effort	for each component of the Services is: Single engine helicopter - 750 flying hours; and Multi engine helicopter - 500 flying hours. [Note: This definition operates in the context of the Service Level Agreement. Over the course of a year Customs may task either helicopter above the respective Annual Minimum Rate of Effort. In relation to any flying hours above the Annual Minimum Rate of Effort the Monthly Hourly Charge shall apply in accordance with the Service Level Agreement and Monthly Reimbursable Expenses shall apply; the Monthly Fixed Charge shall remain constant and not be adjusted. 'Other Services' do not come within the Annual Minimum Rate of Effort.]
Applicable Requirements	means any Law, legislation or government policy which from time to time regulates or affects the Services or the activities to which the Services relate including without limitation, the requirements referred to in Schedule 10 (Applicable Requirements).
Asset	means a resource (such as an item of Equipment) available to the Commonwealth for Surveillance and/or response purposes as described in Schedule 1 (Statement of Work).
Australian Security Vetting Service	means the business unit within the Commonwealth Attorney-General's Department established to provide security vetting services to Commonwealth agencies.

s. 47(1)(b)

Business Day	means a day on which trading banks are open for business in the ACT.
Civil Aviation Safety Authority or CASA	means the Civil Aviation Safety Authority established under section 8 of the <i>Civil Aviation Act 1988</i> (Cth) or any successor authority or agency.

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Change Control Form	means a document the form of which is set out at Schedule 7 (Change Control Form).
Classification	means the arrangement or distribution into a predetermined Target category as set by Customs . 'Classifies' has the corresponding meaning.
Coastwatch	means the division of Customs so designated.
Commencement Date	means the date of execution of the Contract by both Parties.
Commonwealth	means the Commonwealth of Australia.
Commonwealth Furnished Information	means the documentation so referenced in Schedule 3 (Contract Management Plan).
Commonwealth Record	is a Commonwealth record as defined in the <i>Archives Act 1983</i> .
Communication	means imparting knowledge of, requiring the ability to transmit, receive and acknowledge information or data.
Conditions Precedent	means the conditions set out in Schedule 19 (Conditions Precedent To Contract Taking Effect).
Confidential Information	includes Customs Confidential Information and Service Provider Confidential Information.
Contract	means this Contract for the provision of Services, including all Schedules as amended from time to time.
Contract Authority	means the person occupying the position identified in Schedule 12 (Contract Personnel) as the Customs Contract Authority and includes the duly authorised delegate of that person.
Contract Management Plan	means the plan, including any component sub-plans covering the provision of Services during the Term of the Contract, which is referred to in clause 21 as amended from time to time.
Contract Price	means the total Contract price for the Services specified in Schedule 5 (Service Charges).
Controlled Operations	means an environmental or similar regulatory task required to be performed by Customs . [Note: feral animal culling is an example of Controlled Operations.]

**Customs
Confidential
Information**

means information that:

- a. is by its nature confidential;
- b. is designated by **Customs** as confidential;
- c. the Service Provider knows or ought to know is confidential; or
- d. is personal information within the meaning of the *Privacy Act 1988*,

and includes to the extent that it is confidential:

- e. information comprised in or relating to any **Customs** Intellectual Property;
- f. information relating to the internal management and structure of **Customs**;
- g. information relating to contractors or suppliers to **Customs** or customers of **Customs**; and
- h. information relating to **Customs** Data,

but does not include information which:

- i. is or becomes public knowledge other than by breach of the Contract or any confidentiality obligation; or
- j. has been independently developed or acquired by the Service Provider as established by written evidence.

**Customs
Contract
Manager**

means the **Customs** officer occupying the position of **Customs** Contract Manager identified in **Schedule 12** (Contract Personnel).

Customs Data

means all data and information relating to **Customs**, and its operations, facilities, customers, personnel, assets or programs, in whatever form that data or information may exist and whether or not it was generated by or processed by or on behalf of **Customs** or is stored in any Commonwealth Record. **Customs** Data includes **Customs** Material and Surveillance Information.

Customs Material

means any item including Software which **Customs** owns or in which **Customs** has any Intellectual Property Rights (except materials licensed by the Service Provider) and which may be used or modified by the Service Provider in the provision of the Services.

Day

means a calendar day.

Deliverable means the items to be delivered by the Service Provider as specified in the Contract and includes all related documents.

s. 47(1)(b)

Detection means discovery by any means of the presence of a Target or Event. 'Detects' has the corresponding meaning.

Document includes:

- a. any paper or other material on which there is writing or printing or on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- b. a disc, tape or other article, or any material, from which sounds, images, writings or messages are capable of being reproduced with or without the aid of any other article or device.

Equipment means equipment, plant and machinery used by the Service Provider or a subcontractor to provide the Services and includes without limitation: helicopters, vehicles, appliances, office equipment, computer systems, computer programmes and technology.

Event means anything that has happened in the past, is presently happening, or is anticipated to happen in the future, that is of interest or concern to **Customs** or **Customs** client agencies (for example, vessel rendezvous, phenomena such as pollution, weather).

[Note: refer definition of Target.]

Extended Operational Term means any period beyond the **Initial Operation Term** required by **Customs** pursuant to **clause 4.2**.

Flexibility means the ability to respond to, and implement, variations to Mission requirements.

Financial Close means the date on which **Customs** gives notice of satisfaction of all Conditions Precedent under **clause 45** or the date on which satisfaction of all Conditions Precedent is deemed to have occurred in accordance with **clause 45**.

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Financing Agreements	means the agreements entered into by the Service Provider to finance the acquisition or the operation of the Assets necessary to provide the Services or any additions to or replacements of such agreements.
Force Majeure	means an act of God, fire, earthquake, explosions, flood, subsidence, insurrection or civil disorder or military operations or act of terrorism, expropriation, strikes, lock-outs or other industrial disputes of any kind not relating solely to the Party affected, and any other event which is not within the reasonable control of the Party affected (which in the case of the Service Provider includes the reasonable control of its permitted subcontractors) but does not include any act or omission of the other Party to the Contract or a change in Applicable Requirements over the Term of the Contract which has an increased cost effect on the delivery of the Services.
Geo location	means the latitude and longitude of a Target, Event or Asset.
Government Furnished Materials (GFM)	means the materials specified in Schedule 14 (GFM).
Handover Date	means the actual date on which the Service Provider commences to provide the full Services. The scheduled Handover Date is s. 47(1)(b)
Identification	means the recognition or establishment of an object as being a specific Target or Event. 'Identifies' has the corresponding meaning.
Information	means information in any form made available to the Service Provider or its officers, employees, agents, advisers or related entities in the RFT process in respect of the Services.
Initial Operation Term	means the initial fixed period of the Contract specified in clause 4.1 .
Intellectual Property Rights or IPR	means business names, copyrights, patents, trade marks, service marks, trade names, designs, and similar industrial, commercial and intellectual property (including semi-conductor and circuit layout rights, formulae, recipes and know how).

s. 47(1)(b)

Key Personnel means those Service Provider Personnel so identified in the Contract Management Plan as amended from time to time.

s. 47(1)(b)

Key Subcontractors mean those subcontractors who perform maintenance, support or integration work under the Contract on the Equipment or who perform work under the Contract that has a stated or estimated value that exceeds one million dollars (\$1,000,000) during any Year of the Term of the Contract. Key Subcontractors are to be listed in **Schedule 13** (Key Subcontractors) as amended from time to time.

s. 47(1)(b)

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law as applicable from time to time, and any applicable industry codes of conduct.

Logistic Support means the transport of personnel, animals, Equipment, or other tangible property and Controlled Operations as directed by **Customs**.

[Note: Logistic Support may comprise a dedicated Mission or part of a Mission.]

Loss or Losses means any loss, damage (whether direct or indirect), liability, cost or expense including legal expenses on a solicitor and own client basis.

Maritime Zones means those zones identified within the United Nations Convention on the Law of the Sea (UNCLOS) including internal waters, territorial sea, contiguous zone, exclusive economic zone and continental shelf and high seas.

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Maritime Zone Awareness	means the knowledge of activities in Maritime Zones relevant to Australia's national interests.
Mission	is a particular Logistic Support, Response or Surveillance task (or combination thereof) notified by Customs to the Service Provider by a Mission Brief.
Mission Brief	means a notice from Customs to the Service Provider which provides Mission instructions before the scheduled Mission commencement time.
Mission Completion (MC)	is a PMS Mission score (percentage) that primarily measures the extent to which the programmed task has been completed as a percentage of the programmed task. The score also takes account of CATO assessments and the completeness, timeliness and accuracy of reporting.
Mission Critical Equipment	means the Equipment so designated or nominated in the Service Level Agreement.
Month or month	means a calendar month.
Monthly Deployment Plan	means a notice provided by Customs to the Service Provider which provides Mission planning information up to two (2) weeks in advance of the month to which it refers.
Monthly Fixed Charge	means for each component of the Services (multi engine and single engine helicopter) the Annual Fixed Charge for providing the Annual Minimum Rate of Effort divided by twelve (12).
Monthly Hourly Charge	means for each component of the Services (multi engine and single engine helicopter) the variable charge paid by Customs for each hour flown by the Service Provider during the month.

s. 47(1)(b)

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Monthly Service Charge	means the Monthly Fixed Charge plus the Monthly s. 47(1)(b)
Moral Rights	means any of the rights described in the <i>Copyright Amendment (Moral Rights) Act 2000</i> or Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works 1886, being 'droit moral' or other analogous rights arising under any applicable statute (including a Law of the Commonwealth).
Official Information	means any information developed, received or collected by or on behalf of the Government, through its agencies and contracted providers.
Official Resources	include Official Information, people who work for or with the Commonwealth, and assets belonging to or in the possession of the Commonwealth. Official Resources include resources belonging to the Commonwealth but in the possession of Contractors.
Other Services	means services, not being Response, Surveillance or Logistic Support Missions, which may or may not be scheduled, as directed by Customs pursuant to clauses 15.1(a) and 15.3 . Other Services do not come within the respective Annual Minimum Rate of Effort of either helicopter.
Overall Contract Performance (OCP)	s. 47(1)(b)
Overall Mission Performance (OMP)	means a weighted average of Despatch Reliability and Mission Completion.
Party	means Customs or the Service Provider.
Performance Measurement System (PMS)	means Schedule 4 (Service Level Agreement) Annex A as the context requires. s. 47(1)(b)

s. 47(1)(b)

Plans

means the plans or sub-plans to be provided by the Service Provider or to be agreed between the Parties under the Contract.

Protective Security Manual or PSM

means the Commonwealth Protective Security Manual 2000 as may be reissued by the Attorney-General's Department from time to time and which specifies the minimum standards, policies and procedures to be applied to create and maintain an appropriate security environment for the protection of Commonwealth Government functions and Official Resources.

s. 47(1)(b)

Rate of Effort

is the number of hours flown in delivering the Services over a given period.

Rectification Plan

is the plan required to be provided by the Service Provider to **Customs** under **clause 15** s. 47(1)(b)
s. 47(1)(b)

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Reporting	means the Communication of the presence or whereabouts of Events, Targets and activities of concern or interest to Customs and Customs clients. This may require the immediate transmitting and receiving of Surveillance Information or the recording of Surveillance Information.
Response	means a reactive Mission as designated by Customs which may or may not be scheduled. [Note: Response may comprise a dedicated Mission or part of a Mission.]
RFT	means the Request for Tender issued by Customs on 30 July 2004.
RFT process	means the process undertaken by Customs to select a service provider for the Services and includes the RFT and Contract negotiation stages up to the execution of the Contract.
Security Classified Information	means Official Information that, if compromised, could have adverse consequences for the Commonwealth.
Security Incident	means a security breach, violation, contact or approach from those seeking unauthorised access to Official Resources, or any other occurrence that results in negative consequences for the Commonwealth.
Security Interest	means a mortgage, charge, pledge, lien, hypothecation or title retention arrangement, a right of set-off or right to withhold payment of a deposit or other money.
Sensor	means Equipment that Detects, Classifies or Identifies and may indicate and/or record Targets, Events, and activities.
Service B	means, wherever it appears in the Schedules to this Contract, the Services and 'Service B provider' or 'Service B Service Provider' means the Service Provider. [Note: the required Response, Surveillance and Logistic Support services in the Torres Strait were described as 'Service B' in the RFT. 'Service A' comprises the other services required by the RFT. As specified in this Contract the Service Provider will be required to liaise with and cooperate with the 'Service A Service Provider', particularly regarding the SIM requirements.]

Service Charge	means the Service Charge for the Services calculated in accordance with Schedule 5 (Service Charges). Service Charge does not include Monthly Reimbursable Expenses.
Service Director	means the person specified by the Service Provider in Schedule 12 (Contract Personnel) for the purposes of clause 79 .
Service Level Agreement	means Schedule 4 (Service Level Agreement).
Service Provider	means Australian Helicopters Pty Ltd being the Party to the Contract required to provide all or part of the Services in accordance with the Contract and includes its officers, employees, agents and subcontractors where the context so requires.
Service Provider Confidential Information	means in relation to the Service Provider the information in Schedule 17 (Service Provider Confidential Information) or information that is agreed between the Parties in writing after the Commencement Date as constituting confidential information for the purposes of this Contract and incorporated into Schedule 17 (Service Provider Confidential Information) but does not include information which: <ul style="list-style-type: none"> a. is or becomes public knowledge other than by breach of the Contract or any other confidentiality obligation; b. has been independently developed or acquired by Customs as established by written evidence; or c. is information relating to subcontractors of the Service Provider in relation to the Contract.
Service Provider Personnel	means the officers, employees, agents or subcontractors of the Service Provider or its subcontractors employed or engaged to provide the Services.
Service Provider Software	means software in which the Service Provider owns the Intellectual Property Rights.
Services	means the services (or any part of them) to be provided by the Service Provider under the Contract and described in the Service Level Agreement as changed from time to time in accordance with the Contract, including any Additional Services under clause 36 .

Software	means computer programs or software (including without limitation, utilities, embedded software, system software and application software) together with all relevant user or supporting documentation and includes Service Provider Software, and Customs Material that is software.
Surveillance	means the actions relating to the systematic observation and reporting of surface areas, places, persons or things, by active and/or passive means (that is, such as by visual, aural, electronic, photographic or other means) such that activities of concern or interest to Customs and Customs clients are detected and reported as early as possible. [Note: the ambit of the required Surveillance services are specified in the Service Level Agreement. Surveillance may comprise a dedicated Mission or part of a Mission.]
Surveillance Asset	comprises the helicopter, its Sensors and the personnel required to operate the helicopter and its Sensors, interpret the Surveillance Information and provide the required Reporting to Customs .
Surveillance Information	means information, intelligence, data or material derived from a Mission that contributes to the knowledge of activities in Maritime Zones relevant to Australia's national interests. All Surveillance Information is Official Information.
Surveillance Information Management System (SIM)	means the system specified in Schedule 1 (Statement of Work) to be provided by the Service A Service Provider which integrates helicopter Surveillance Information and manages Mission recording and information transfer to and from the Coastwatch National Surveillance Centre and other Customs data centres.

s. 47(1)(b)

Target Financial Close Date	s. 47(1)(b) as may be extended in accordance with this Contract.
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Task Notification	<p>means receipt by the Service Provider of passenger numbers, estimated passenger weights, destination and estimated freight weight (if applicable) from Customs to facilitate flight planning requirements and "Task Notice" has a corresponding meaning.</p> <p>[Note: such notification shall be given pursuant to Contract clause 84 (Notices), normally by telephone or facsimile.]</p>
Tax	<p>means any income tax, capital gains tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, profit tax, interest tax, property tax, undistributed profits tax, withholding tax, goods and services tax, consumption tax, value added tax, municipal rates, stamp duties and other charges, levies and impositions, assessed or charged, or assessable or chargeable by or payable to any governmental taxation or excise authority and includes any additional tax, interest, penalty, charge, fee or other amount imposed or made on or in relation to a failure to file a relevant return or to pay the relevant tax.</p>
Term of the Contract	<p>means the period referred to in clause 4 and includes any reduction due to early termination or extension of that period under the Contract.</p>
Third Party Interest	<p>means any legal or equitable right, interest, power or remedy (inchoate or otherwise) in favour of any person other than Customs or the Service Provider in connection with the Contract, including, without limitation, any right of repossession, receivership, control or power of sale, and any mortgage, charge, security or other interest.</p>
Torres Strait Protected Zone (TSPZ)	<p>means the Protected Zone as defined in Article 10 of the Treaty Between Australia and the Independent State of Papua New Guinea Concerning Sovereignty and the Maritime Boundaries in the Area Between the Two Countries, Including the Area Known as Torres Strait (Torres Strait Treaty) 1985.</p> <p>[Note: refer Service Level Agreement, clause 5.1.6.]</p>
Total Monthly Payment	<p>is calculated as the Monthly Service Charge plus Monthly Reimbursable Expenses.</p>
Transition In Period	<p>means the period commencing on the Commencement Date and ending on the Handover Date or as otherwise agreed in writing by the Parties.</p>

Transition In Plan

means the plan for the transition in of the Services by the Service Provider required by **clause 6** of the Contract as amended from time to time. The Transition In Plan sets out the details of how the Service Provider will take over the provision of the Services during the Transition In Period so that the Service Provider can commence providing the Services in full from the scheduled Handover Date.

Transition Out Period

means a period of ninety (90) days commencing from the date of expiry of the Term of the Contract or the date of termination of the Contract.

s. 47(1)(b)

Year or year

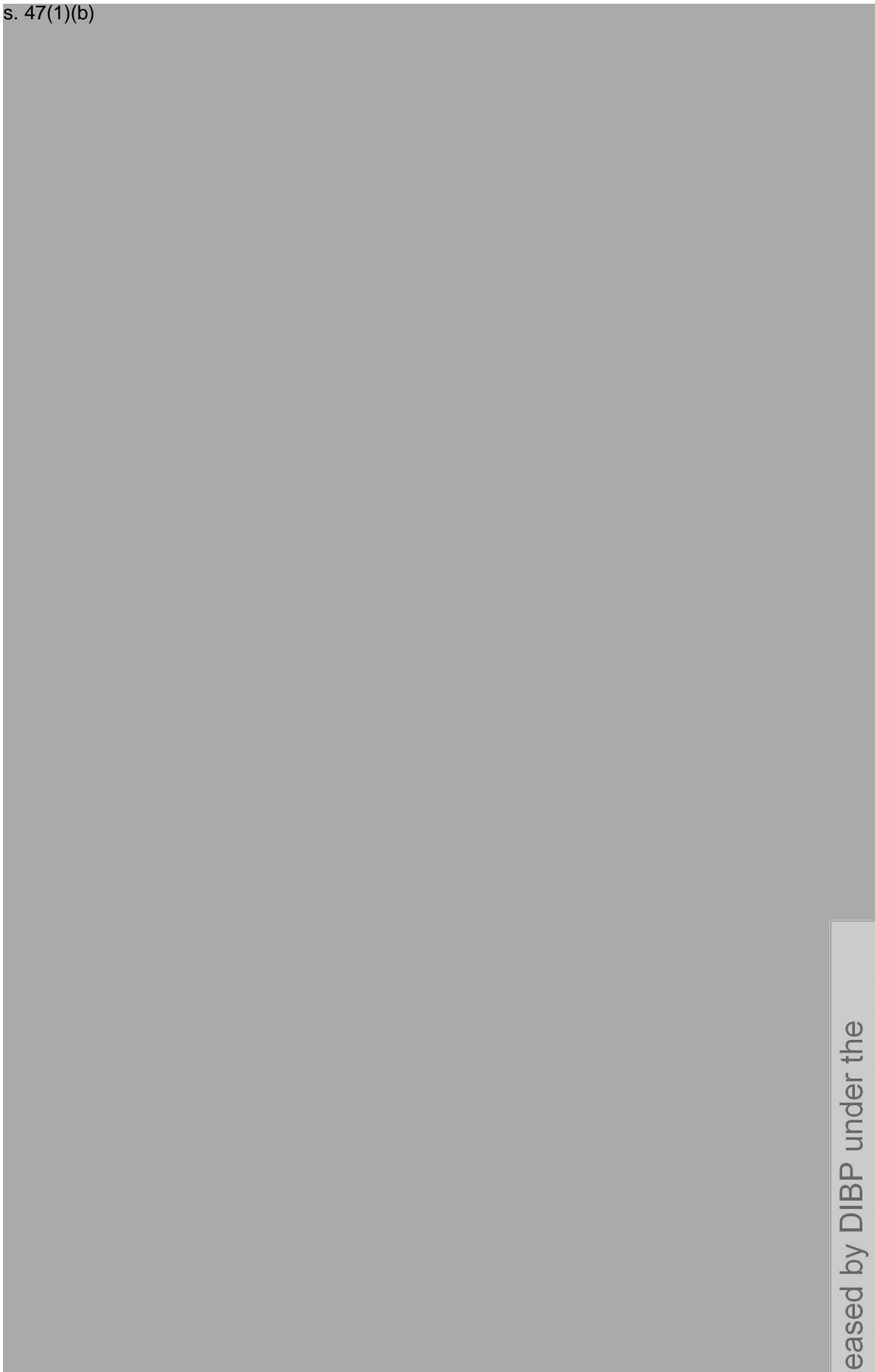
means a period of twelve (12) calendar months.

1.2.

s. 47(1)(b)

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s. 47(1)(b)



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- 1.3. In the Contract, including the recitals, unless the context otherwise requires:
- a. a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;
 - b. a word suggesting the singular includes the plural and vice versa;
 - c. a word denoting an individual or person includes a corporation, firm, authority, government or governmental authority and vice versa;
 - d. a word suggesting a gender includes all genders;
 - e. a reference to a recital, clause, schedule or annexure is to a recital, clause, schedule or annexure (as amended from time to time) of or to the Contract;
 - f. a reference to any contract or document is to that contract or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
 - g. a reference to any Party to the Contract, or any other document or arrangement, includes that Party's executors, administrators, substitutes, successors and permitted assigns;
 - h. a reference to any body is:
 - A. if that body is replaced by another organisation, deemed to refer to that organisation; and

- B. if that body ceases to exist, deemed to refer to the organisation which most nearly or substantially serves the same purposes or objects as that body;
 - i. the term "related entity" has the same meaning as in the *Corporations Act 2001*;
 - j. a reference to "includes" or "including" means without limitation unless the contrary intention appears;
 - k. a reference to monetary units are to units of Australian currency;
 - l. headings are for ease of reference only and do not affect the interpretation of the Contract;
 - m. a document will be incorporated into and form part of the Contract if the Parties sign the document and it is referred to in the Contract or the Parties expressly intend it to form part of the Contract and a reference to such a document is to that document as amended from time to time in accordance with the terms of the Contract;
 - n. where a term is defined in the Contract, another part of speech or grammatical form of that term has a corresponding meaning; and
 - o. notes do not form part of the Contract but may be used to confirm the interpretation of the Contract.
- 1.4. If there is any inconsistency between:
- a. the clauses of the Contract (these terms and conditions) and the schedules or any other document, the clauses of the Contract will prevail to the extent of any inconsistency;
 - b. the Service Level Agreement and the content of any other schedule, the Service Level Agreement will prevail to the extent of any inconsistency; and
 - c. a schedule and the content of a document incorporated as part of the Contract, the content of the schedule will prevail to the extent of any inconsistency.
- 1.5. The grant of any approval or consent by **Customs** under the Contract will not relieve the Service Provider from any liability under the Contract.

PART 2 - SCOPE OF CONTRACT

2. Objectives

- 2.1. The Contract sets out the rights and obligations of the parties in relation to the provision of the Services and has primacy in all circumstances.
- 2.2. The Parties intend to conduct themselves for the purposes of the performance of the Contract in the spirit of cooperation and good faith. For avoidance of doubt, the spirit of cooperation and good faith does not override or limit the provisions of the Contract.
- 2.3. It is the intention of the Parties that, in accordance with, and as provided for in, the Contract the Service Provider will:
- a. provide Services to support **Customs** business needs and service delivery requirements (including services pursuant to **clause 36**);
 - b. be responsive to the changing business needs and environment of **Customs**;
 - c. continuously seek to improve the quality, safety, effectiveness and efficiency of the Services and their delivery;
 - d. meet its obligations under the Service Level Agreement;
 - e. have and continue to have the skills, qualifications and experience to provide the Services in an efficient and controlled manner with a high degree of professionalism, quality and responsiveness;
 - f. work with **Customs** to seek mutually beneficial solutions to any problems relating to the Services that may arise during the Contract and to achieve a working environment between the Parties that encourages cooperation, honesty and outstanding results;
 - g. act reasonably and do all things properly and reasonably within its power to give effect to the spirit and intent of this Contract and to achieve maximum success in all respects; and
 - h. provide the Services in accordance with the other terms and conditions of the Contract.
- 2.4. It is the intention of the Parties that, in accordance with, and as provided for in, the Contract **Customs** will:
- a. pay the Service Provider for the Services provided;
 - b. work with the Service Provider to solve any problems relating to the Services that may arise during the Contract and to achieve a working environment between the parties that encourages cooperation, honesty and outstanding results;

- c. act reasonably and do all things properly and reasonably within its power to give effect to the spirit and intent of this Contract and to achieve maximum success in all respects;
- d. make available, as reasonably requested by the Service Provider, management decisions and information that is necessary for the Service Provider to provide the Services;
- e. meet its obligations under the Service Level Agreement; and
- f. set priorities for the Services.

2.5. This **clause 2** is intended to describe the intention of the Parties in entering into the Contract. It is not intended to alter the plain meaning of the terms of the Contract or to take precedence over any other terms of the Contract.

2.6. To the extent that the terms of the Contract do not address a particular circumstance or are otherwise unclear or ambiguous, those terms are to be interpreted and construed, so far as consistent with the Law, by reference to the intention of the Parties as described in this **clause 2**.

3. **Conduct**

3.1. Subject to **clause 10** the Service Provider is responsible for providing all management, human resources, Equipment, Deliverables, supplies, materials and other items necessary to provide the Services.

3.2. Each Party agrees to immediately advise the other of any actual or potential problems in the provision of the Services or the performance of other obligations under the Contract of which it becomes aware, and of a suggested method of resolution. The Parties agree to work together to seek mutually beneficial resolutions to prevent or circumvent the problem or delay and to mitigate their losses due to delay.

3.3. The Service Provider agrees to perform its obligations under the Contract to the highest professional standards and in accordance with then current industry best practice.

4. **Term Of The Contract**

4.1. The Contract will commence on the Commencement Date and will expire twelve (12) years after the scheduled Handover Date for full Service delivery (the "**Initial Operational Term**") unless the Contract is terminated or extended in accordance with the Contract.

4.2. **Customs** will have the option to extend the Contract for one or more periods that in total add up to no longer than two (2) years (the "**Extended Operational Term**"). **Customs** must give not less than 180 days prior written notice to the Service Provider of any exercise of the option to extend the Contract.

- 4.3. **Customs** is not obliged to extend the Term of the Contract under **clause 4.2** or to enter into any further contract with the Service Provider for the Services or for any other services.

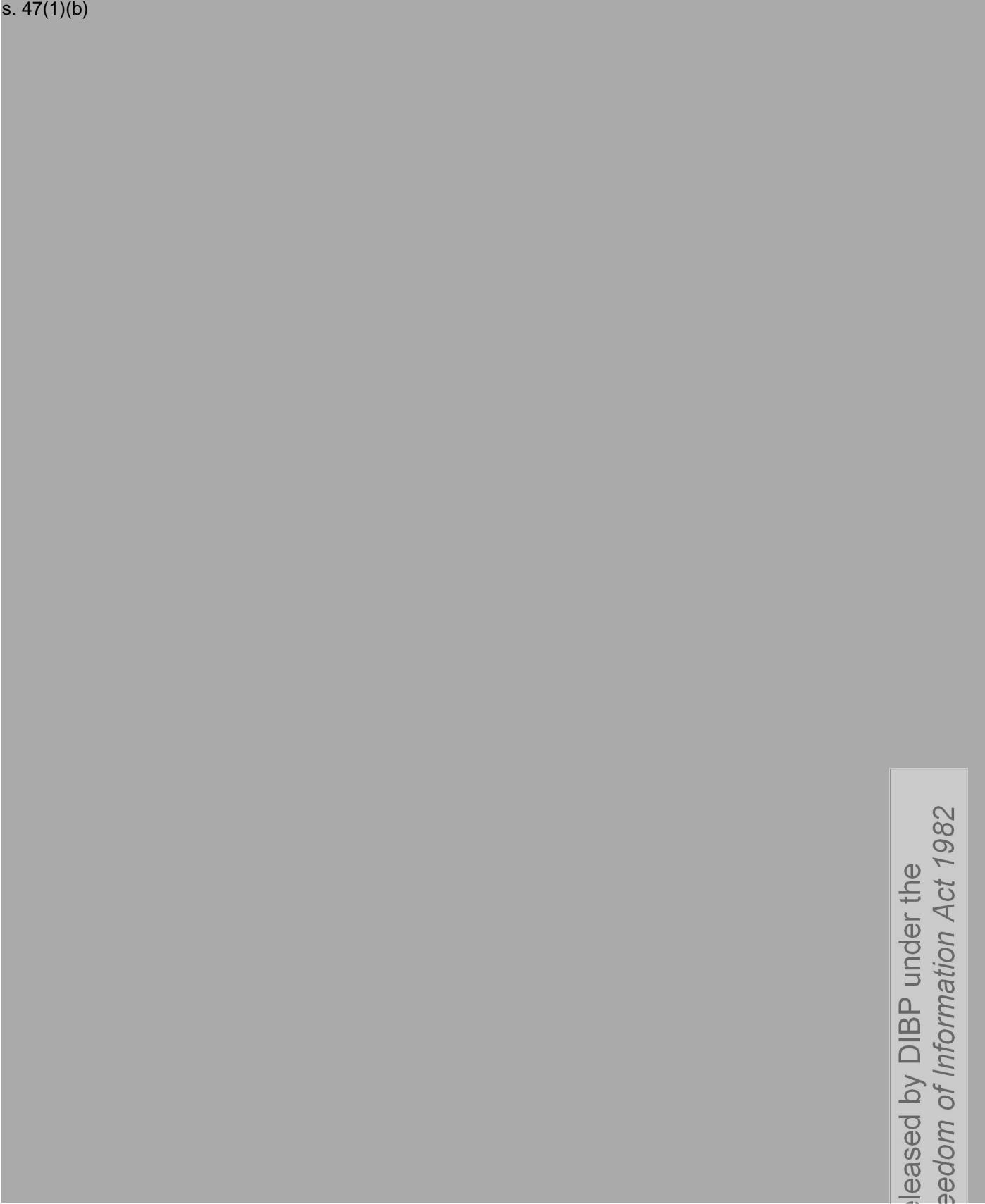
5. Other Service Providers

- 5.1. **Customs** may, at any time, perform or retain third parties to perform any services, including any of the Services.
- 5.2. To the extent **Customs** performs any Services itself or retains a third party to do so, the Service Provider must cooperate with **Customs** or the third party to ensure that all Services are able to be carried out in a coordinated, effective and timely manner.

PART 3 - TRANSITION IN ARRANGEMENTS

6. Transition In

s. 47(1)(b)



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- 6.6. The Service Provider agrees to assume full responsibility for the provision of the Services from the scheduled Handover Date for the remainder of the Term of the Contract.
- 6.7. Each Party undertakes to promptly notify the other in the event any circumstance arises that will, or is likely to, prevent or delay the Service Provider meeting the scheduled Handover Date. The Parties agree to cooperate and to take all reasonable steps to prevent and minimise delay and to mitigate losses due to delay.
- 6.8. No **Customs** officers or employees are transferred to the Service Provider under or in relation to the Contract.
- 6.9. Subject to **clause 6.5**, **Customs** is not liable to pay any Service Charge or Monthly Reimbursable Expenses unless and until the issue of an Acceptance Certificate that the Service Provider is providing the Services in full or the Handover Date has been reached, whichever occurs last.

7. Third Party Contracts

- 7.1. **Customs** will not be transferring current third party contracts to the Service Provider.
- 7.2. The Service Provider is responsible for organising and securing any new agreements required by it for the provision of the Services to **Customs**.

8. Commencement

- 8.1. If the Service Provider fails to provide the Services in full on the scheduled Handover Date in accordance with the Contract and such failure is not caused in full or in part by **Customs**, **Customs**:
- a. will suffer loss and damage and the Parties agree that the amount of liquidated damages referred to in **Schedule 8** (Liquidated Damages) is a genuine pre-estimate of the damage which would be suffered by **Customs** in such event;
 - b. without limiting its rights under the Contract, is entitled to recover from the Service Provider, or deduct from moneys due to the Service Provider, as liquidated damages and not as a penalty, the amount specified in **Schedule 8** (Liquidated Damages) for each day of delay in provision of the Services for up to six (6) months after the scheduled Handover Date;
 - c. subject to **clause 6.5**, **Customs** is not liable to pay and the Service Provider will not have the right to and shall not receive any payment of Service Charges or Monthly Reimbursable Expenses until the Services are provided in full; and

- d. if the Service Provider fails to provide the Services in full in accordance with the Contract within six (6) Months of the scheduled Handover Date and such failure is not caused in full or in part by **Customs**, then **Customs** may immediately terminate the Contract in accordance with **clause 72**.

9. Acceptance Testing

- 9.1. The Service Provider will conduct the Acceptance Tests specified in the Transition In Plan to establish whether the Service Provider is providing the Services in accordance with the Contract and **Customs** may witness the conduct of the Acceptance Tests.
- 9.2. The results of the Acceptance Tests will be approved or disapproved by **Customs** in accordance with the Transition In Plan. If the Services do not pass the Acceptance Tests, the Service Provider must do all things necessary (at no cost to **Customs**) to rectify any problems and the Acceptance Tests will be repeated.
- 9.3. Subject to **clause 6.5**, **Customs** is not liable to pay any Service Charge or Monthly Reimbursable Expenses unless and until the issue of an Acceptance Certificate in respect of the relevant Service has occurred.

10. Government Furnished Materials

- 10.1. **Customs** will permit the Service Provider progressive access to the GFM specified in **Schedule 14** (GFM) from the Commencement Date, in accordance with the timetable specified in **Schedule 14** (GFM).
- 10.2. The Service Provider must, within fourteen (14) days of gaining access to the GFM, inspect the GFM for any physical damage, defects or deficiencies which will impact on the intended use of the GFM. The Service Provider must report the condition of the GFM to the **Customs** Contract Manager within a further fourteen (14) days. The Service Provider must not use GFM which has been found on inspection to be damaged, defective or deficient.
- 10.3. The Service Provider will, if requested by **Customs**, repair or replace GFM which is reported as damaged, defective or deficient after the inspection referred to in **clause 10.2**. Any such repair or replacement of GFM will be at **Customs** expense. The Service Provider must notify **Customs** of any expenses for repair or replacement of GFM and **Customs** must agree such expenses before they are incurred.
- 10.4. Any changes by the Service Provider to GFM must be fully documented and recorded and be done in accordance with the change control procedure under **clause 38** and any such changes will not alter in any way the Service Provider's obligation to provide the Services in accordance with the Contract.

- 10.5. The Service Provider must take all reasonable care of GFM. The Service Provider, or a reputable maintainer appointed by the Service Provider, must maintain GFM so that there is no disruption to, or diminution of, the level of the Services required to be provided by the Service Provider to **Customs** under the Contract.
- 10.6. The GFM remains the property of **Customs**. Any Equipment acquired by the Service Provider under **clause 10.3** to replace GFM which has reached the end of its useful life remains the property of the Service Provider.
- 10.7. The Service Provider must not:
- a. without the prior written consent of the **Customs** Contract Manager;
 - A. use the GFM other than for the purposes of performing the Services in accordance with the Contract;
 - B. subject to clause 10.4, modify the GFM;
 - C. transfer possession or control of the GFM to a third party including a subcontractor; or
 - D. disclose information included in GFM; and
 - b. create or allow to be created any Security Interest or other interest over or in any GFM.
- 10.8. **Customs** will notify the Service Provider of any IPRs applicable to the GFM and the Service Provider must not act in any way that is contrary to the existence of such notified rights.
- 10.9. The Service Provider must keep all hazardous materials or Equipment, including GFM, under proper control and safekeeping and is to ensure that all such materials or Equipment are properly and clearly labelled and managed in accordance with the instructions and/or recommendations of the supplier and/or manufacturer, and all relevant legislation and regulations.
- 10.10. The Service Provider must return any GFM not consumed in the performance of the Services to **Customs** in good condition (fair wear and tear excepted).
- 10.11. The parties shall agree an assessment of value of the GFM at the Commencement Date and the Service Provider shall reflect the availability of GFM in a reduced Service Charge at **Schedule 5** (Service Charges).

11. Export Licences And Other Approvals

- 11.1. The Service Provider must obtain all necessary valid export licenses or other approvals to meet the requirements of the Contract. The Service Provider is responsible for meeting all the conditions applying to any export license or other approval, including but not limited to through life maintenance and disposal.

The Service Provider must provide, on request by the Contract Authority, a copy of any license, or proof that such license or approval has been obtained.

- 11.2. The Service Provider shall inform the Contract Authority in writing of the occurrence of each of the following events within ten (10) Business Days:
- a. the application for;
 - b. the Service Provider becoming aware of the grant of;
 - c. the Service Provider becoming aware of the refusal or revocation of; or
 - d. the Service Provider becoming aware of any qualification of;
- an export license or other approval.
- 11.3. The Contract Authority shall, on request by the Service Provider, give the Service Provider all assistance reasonably required to facilitate the provision of an export license or other approval.
- 11.4. Nothing in **clause 11.3** shall release the Service Provider from responsibility to secure any export license or other approval required for the Equipment.

12. Imported Supplies And Customs Entry

- 12.1. The Service Provider shall, within the Service Charge specified in **Schedule 5** (Service Charges) arrange customs entry and the payment of any customs duty applicable to the Equipment.
- 12.2. The Commonwealth shall not be liable to reimburse the Service Provider for any fines or penalties imposed on the Service Provider under Australian Customs legislation from time to time in force, for any offence under the legislation.

PART 4 - SERVICES

13. Service Provision

- 13.1. The Service Provider must provide the Services to **Customs** strictly in accordance with the Contract.
- 13.2. If incidental services or functions are required for the proper performance and provision of the Services, they will be taken to be included in the scope of the Services.
- 13.3. **Customs** agrees to provide the information required by and respond within the time set out in the Service Level Agreement so as to facilitate the Service Provider's provision of the Services.
- 13.4. Without limiting its other obligations and liabilities under the Contract, each Party agrees to correct at its cost any failure by it to comply with its obligations under the Contract or the Service Level Agreement as soon as practicable after becoming aware of the failure.
- 13.5. The Service Provider must:
- a. immediately notify **Customs** if an act or omission of the Service Provider, a subcontractor or its or their officers, employees or agents causes a problem or delay that has, or is likely to have, a material impact on the Service Provider's ability to provide the Services; and
 - b. work with **Customs** to prevent or circumvent the problem or delay.

14. Industry Development

Not Used

15. Performance

- 15.1. The Service Provider must provide the Services in accordance with:
- (a) operational and policy priorities directed by **Customs**; and
 - (b) the Service Level Agreement at **Schedule 4** (Service Level Agreement).

s. 47(1)(b)

- 15.2. The Service Provider acknowledges that failure to provide the Services in accordance with the Service Level Agreement may have a material adverse impact on the business and operations of **Customs**.

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- 15.3. **Customs** may direct pursuant to **clause 15.1** that the Equipment be utilised to provide Other Services, such as search and rescue services, to other Commonwealth agencies or instrumentalities or State government agencies or instrumentalities. Any such utilisation shall be dealt with in accordance with the s. 47(1)(b)

- 15.4. s. 47(1)(b)

- 15.5. From the commencement of the fourth month following the scheduled Handover Date the Performance Measurement System shall apply in full and the Service Provider will from that time achieve s. 47(1)(b) Overall Contract Performance each month calculated in accordance with the Performance Measurement System. Where performance falls below s. 47(1)(b) there will be a deduction made in accordance with the Performance Measurement System.

- 15.6. The Service Provider will be assessed against three (3) key performance measures in accordance with the Performance Measurement System:

a. Despatch Reliability;

s. 47(1)(b)

and

c. Mission Completion.

- 15.7. If the Overall Contract Performance calculated in accordance with the Performance Measurement System is less than 75 percent in any consecutive two month period then the Service Provider shall, at its own expense, develop and provide to **Customs** within fourteen (14) days of receipt by **Customs** of the second such Monthly Performance Report a Rectification Plan to return Overall Contract Performance to at least s. 47(1)(b) within sixty (60) days. **Customs** will within fourteen (14) days of its receipt either agree this Rectification Plan or notify the Service Provider what amendments are required to the Rectification Plan. The Service Provider will implement the Rectification Plan as agreed or otherwise amended. If the Service Provider does not return Overall Contract Performance to at least s. 47(1)(b) within sixty (60) days or otherwise does not comply with the Rectification Plan then **Customs** may terminate the Contract pursuant to **clause 72**.

- 15.8. If the Overall Contract Performance calculated in accordance with the Performance Measurement System and averaged over a Year is less than 90 percent for two (2) consecutive Years then **Customs** may terminate the Contract pursuant to **clause 72**.

- 15.9. Without limiting **Customs** rights to measure the performance of the Service Provider and without limiting the information that **Customs** may seek from the Service Provider under **clause 28**, the Service Provider must provide **Customs** with information and access to its performance measurement and monitoring tools and procedures on request.
- 15.10. The Service Provider acknowledges that the performance measures specified in the Performance Measurement System may be varied in order to:
- a. reflect the Commonwealth's changing business requirements;
 - b. reflect changes in **Customs** corporate performance management arrangements; and
 - c. maintain an incentive for the Service Provider to continuously improve performance.

Any variation to the performance measures shall be dealt with under **clause 38** (Change Control).

16. Cooperation

- 16.1. **Customs** will cooperate with the Service Provider by:
- a. making available, as reasonably requested by the Service Provider, management decisions and information that is necessary for the Service Provider to provide the Services;
 - b. providing GFM in accordance with the Contract; and
 - c. setting priorities for the Services, including tasking priorities for the Assets, under **clause 15.1**.
- 16.2. **Customs** will use reasonable endeavours to require that other service providers retained by **Customs**, to the extent that they are performing work on Equipment owned by, licensed to or under the control of the Service Provider, comply with the Service Provider's reasonable security and confidentiality requirements.
- 16.3. The Service Provider must cooperate with any other service provider appointed by **Customs** (including **Customs** when it is providing services similar to or related to the Services in-house) to ensure the integrated and efficient carrying on of **Customs** operations and must provide such reasonable assistance to other service providers as **Customs** may reasonably request, within the Service Charge specified in **Schedule 5** (Service Charges).
- 16.4. In particular, the Service Provider must cooperate:
- a. with the current providers of civil maritime surveillance services to **Customs** for the purposes of ensuring:
 - A. seamless transition of the Services to the Service Provider;

- B. a cooperative and effective approach to management of service delivery, problem resolution, disaster recovery, Services continuity and risk management; and
 - C. that arrangements are put in place between the Service Provider and the current providers of civil maritime surveillance services, that are both appropriate and acceptable to **Customs**, for managing the provision of the Services by the Service Provider; and
 - b. with and ensure that arrangements are put in place (if necessary) between the Service Provider and any other **Customs** service provider, that are both appropriate and acceptable to **Customs** for **Customs** effective management of the provision of all civil maritime surveillance services.
- 16.5. To ensure maximum efficiency in the delivery of the Services, where **Customs** provides services in-house, **Customs** will cooperate with the Service Provider and where **Customs** uses another service provider, **Customs** will use its reasonable endeavours to ensure that that service provider cooperates with the Service Provider.
- 16.6. Changes in Commonwealth legislation and Commonwealth policy may significantly change the way in which **Customs** requires its corporate services function to be managed. To the extent that these changes vary the Services to a degree which cannot be accommodated within the Contract, the Service Provider and **Customs** will renegotiate the Services and Service Charge in good faith in accordance with the change control procedures under **clause 38**.

17. New Developments

- 17.1. The Service Provider must use its best endeavours to ensure **Customs** is kept up-to-date on trends and new developments, including in new or emerging technologies and methodologies, that are relevant to the Services.
- 17.2. The Service Provider must consider the effects of new developments on its provision of the Services and plan for evolution of the Services and their delivery.
- 17.3. The Service Provider must, at no additional cost to **Customs**, actively participate in and assist **Customs** in its technology service requirements or other planning activities including, as requested by **Customs**:
 - a. the provision of written analyses of new technology or services relevant to the Services;
 - b. attendance at and participation in meetings with **Customs**; and
 - c. the conducting of a Commonwealth stakeholder satisfaction survey in terms approved by **Customs** and the provision to **Customs** of survey results and the Service Provider's analysis and recommendations for change.

18. Step In Rights

Not Used

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PART 5 - SERVICE MANAGEMENT

19. Project Management

- 19.1. The Service Provider must provide all administrative and project management services necessary for the provision of the Services. The following project management services must be provided at a minimum:
- a. implementation of a planned systematic, efficient and comprehensive approach to the provision of the Services;
 - b. continuous improvement in Service delivery and cost effectiveness;
 - c. identifying and mobilising resources;
 - d. identifying who will perform the work, when it is required, and how it will be executed and validated;
 - e. coordinating all activities and the functional outputs of all relevant persons including subcontractors;
 - f. monitoring of progress;
 - g. efficient decision-making within the Service Provider's organisation and the advising of decisions required by **Customs** under the Contract;
 - h. controlling and rectifying faults or other deficiencies which may arise in, or during the performance of, the Services;
 - i. managing those risks which are the Service Provider's responsibility under the Contract;
 - j. status reporting to **Customs**;
 - k. preparing all reports required by **Customs** in a format acceptable to **Customs**; and
 - l. providing continuous, visible and adequate audit trails.

20. Contract Administration

- 20.1. Each Party will at all times during the Term of the Contract ensure that it has nominated one suitably qualified person as its administrator under the Contract.
- 20.2. The administration parties will be:
- a. the **Customs** Contract Manager for **Customs**; and
 - b. the Account Director for the Service Provider.
- 20.3. The **Customs** Contract Manager and **Customs** Coastwatch officers for **Customs** do not have authority to:
- a. agree to amend the Contract under **clause 38**; or
 - b. resolve disputes under **clause 79**.

- 20.4. The **Customs** Contract Manager and the Account Director will be responsible for the operational coordination and management between the Parties of the provision of the Services.
- 20.5. Subject to **clause 38**, the Service Provider must comply with any direction (which is not inconsistent with the Contract) given by the **Customs** Contract Manager within the general scope of administration of the Contract. For the avoidance of doubt the Service Provider acknowledges and agrees that no direction given by the **Customs** Contract Manager can constitute a variation of the terms and conditions of the Contract.
- 20.6. A direction of the **Customs** Contract Manager under **clause 20.5** may include an instruction, order, request, requirement or authorisation by him or her and may be given orally or in writing.
- 20.7. The giving of any instruction, order, request, requirement or authorisation by **Customs** (which is not inconsistent with the Contract), or **Customs** assistance in or approval of the performance of any of the Service Provider's obligations under the Contract, does not in any way reduce, diminish or otherwise affect the Service Provider's obligations under the Contract.
- 20.8. If the Service Provider is of the view that a direction under **clause 20.5** is inconsistent with the Contract or would constitute a variation of the terms and conditions of the Contract, the Service Provider must notify the **Customs** Contract Manager of this fact in writing within two (2) Business Days and the Parties must negotiate in good faith whether the direction is to be withdrawn or maintained. If the direction is inconsistent with the Contract and is to be maintained, then **Customs** and the Service Provider's obligations under the Contract will be amended appropriately pursuant to **clause 38** (Change Control).

21. Contract Management Plan

21.1. s. 47(1)(b)



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s. 47(1)(b)

- 21.2. The Contract Management Plan must include the following components in accordance with the requirements of **Schedule 3** (Contract Management Plan):
- a. Quality Plan;
 - b. Risk Management Plan;
 - c. Safety Management Plan;
 - d. Obsolescence Capability Enhancement and Technology Refresh Plan;
 - e. Security Management Plan;
 - f. Infrastructure and Operations Support Plan;
 - g. Maintenance and Supply Support Plan;
 - h. s. 47(1)(b)
 - i. Training Plan; and
 - j. Transition Out Plan. **[Note: refer also clause 76.]**
- 21.3. The Service Provider must comply with, and must ensure that all subcontractors comply with, the Contract Management Plan in the performance of the Services. **Customs** acceptance of and compliance with the Contract Management Plan does not relieve the Service Provider from its express obligations under the Contract.
- 21.4. To the extent that the Contract Management Plan imposes obligations on **Customs** then **Customs** must comply with, and must ensure that its officers, agents, advisers and other contractors (where relevant) comply with the Contract Management Plan.
- 21.5. The Contract Management Plan must be updated annually and apart from the first Contract Management Plan, must be provided by s. 47(1)(b) in each year, or any other date notified by **Customs**. The Service Provider agrees to meet with **Customs** annually to discuss and review the Contract Management Plan. The Service Provider must make changes to the Contract Management Plan as reasonably required by **Customs**.
- 22. Personnel**
- 22.1. The Service Provider must ensure that:

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- a. the Services are provided in accordance with the staffing structure and profiles and by the Key Personnel listed in the Contract Management Plan who:
 - A. are of good fame and character;
 - B. are properly qualified and competent for the tasks they are to perform; and
 - C. will act, in all the circumstances, in a fit and proper manner while they are carrying out work or performing duties under the Contract;
- b. the necessary number of Key Personnel are engaged to supply the Services, specifically the required Rates of Effort;
- c. Service Provider Personnel undergo induction and orientation training during and beyond the Transition In Period, consistent with the Training Plan;
- d. if required by **Customs**, Service Provider Personnel attend and participate in a training session conducted by **Customs** on the ethos of **Customs** and its organisation as a part of the Transition In Plan. Thereafter, the Service Provider's managers must induct and update new personnel. **Customs** must be invited to attend these update sessions;
- e. every person and organisation employed or contracted by it in relation to or connected with the provision of the Services is at all times properly and sufficiently trained and instructed, at the Service Provider's expense, with regard to:
 - A. the task or tasks that person is required to perform;
 - B. all relevant provisions of the Contract, including compliance with **Customs** OH&S policies, confidentiality, security and safety requirements;
 - C. emergency procedures applicable for the Bases; and
 - D. the need and ability to recognise situations which involve an actual or potential danger or personal injury or loss to any person, and actions to be taken to prevent or minimise such injury or loss;
- f. Service Provider Personnel engaged in the provision of the Services are adequately managed and supervised at all times and properly perform their duties;
- g. subject to **clause 15.1**, Service Provider Personnel engaged in the provision of the Services are under the control and direction of the Service Provider's own management and supervisory staff. However, while on Commonwealth premises, the Service Provider and any Service Provider Personnel are to obey all reasonable instructions (which are not inconsistent with the Contract) relating to health and safety given to them by the **Customs Contract Manager** or by any person authorised by the

Customs Contract Manager to give such instructions including in any matter occasioned by the immediate operational needs of the relevant section of **Customs** or the immediate safety or welfare of any person;

- h. Service Provider Personnel carry out their duties and behave while on **Customs** premises in such a way as to:
 - A. cause no unreasonable or unnecessary disruption to the routines, procedures and responsibilities of **Customs** staff; and
 - B. maximise the seamless interface between the delivery of the Services and the day to day activities of **Customs**;
- i. Service Provider Personnel, while on **Customs** premises, maintain a high dress standard;
- j. Service Provider Personnel, while on **Customs** premises, comply with **Customs** OH&S policies and guidelines; and
- k. Service Provider Personnel, while on **Customs** premises, comply with **Customs** security requirements.

22.2. Notwithstanding the transfer, turnover or replacement of Key Personnel involved in performing the Services or any pressing need to assign Key Personnel to other projects, the Service Provider will remain obliged at all times to perform the Services without degradation and in accordance with the Contract.

22.3. **Customs** reserves the right to require the immediate removal, at any time and without giving any reason, of any Key Personnel from the performance of the Services and following such removal the Service Provider will provide a suitable person to replace the Key Personnel as soon as practicable but no later than six (6) weeks from the date of removal.

22.4. **Customs** reserves the right to require the immediate removal, at any time and without giving any reason, of any other Service Provider Personnel from the performance of the Services and following such removal the Service Provider will provide a suitable person to replace the personnel as soon as practicable but no later than one (1) month from the date of removal.

23. Occupational Health And Safety

23.1. The Service Provider agrees to perform its obligations under the Contract in such a way that **Customs** is not thereby rendered in breach of OH&S obligations on **Customs**.

23.2. The Service Provider acknowledges and agrees to comply with its obligations under the *Occupational Health and Safety (Commonwealth Employment) Act 1991* including regulations made under the Act. The Service Provider hereby agrees to indemnify **Customs**, its officers, employees and agents (those

indemnified) against any Loss incurred by any of those indemnified arising out of a failure by the Service Provider to comply with this **clause 23**.

- 23.3. The Service Provider must notify **Customs** of all accidents occurring during the performance by the Service Provider of the Services under the contract, required to be reported in compliance with Section 68 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.
- 23.4. The Service Provider must promptly notify **Customs** of any accident, injury, property or environmental damage that occurs during the carrying out of the Services. All lost time incidents shall be immediately notified to **Customs**.
- 23.5. If during the performance of the Services, **Customs** informs the Service Provider that it is the opinion of **Customs**, that the Service Provider is:
- a. not carrying out the Services in compliance with the Service Provider's Safety Management Plan, relevant legislation or **Customs** OH&S policies and guidelines provided by **Customs** from time to time; or
 - b. carrying out the Services in such a way as to endanger the health and safety of the Service Provider's employees, or **Customs** or Service Provider's and subcontractors' employees, plant, equipment or materials,
- the Service Provider shall promptly remedy that breach of health and safety.
- 23.6. **Customs** may direct the Service Provider to suspend that part of the Services to which the breach of health and safety under **clause 23.5** relates until such time as the Service Provider satisfies **Customs** that that part of the Services will be resumed in conformity with applicable OH&S provisions.
- 23.7. During periods of suspension referred to above, **Customs** shall not be required to make any payment whatsoever to the Service Provider in respect of that part of the Services which are suspended. For the purpose of the Performance Measurement System the suspended Services shall be deemed to be non performed for the period of suspension.
- 23.8. If the Service Provider fails to rectify any breach of health and safety for which part of the Services has been suspended within a reasonable time, or if the Service Provider's performance has involved recurring breaches of health and safety in respect of part of the Services, **Customs** may terminate that part of the Services forthwith, without further obligation to the Service Provider. In this event, **Customs** liability shall be limited to payment for the work performed and costs incurred by the Service Provider up to the time of termination or an earlier suspension.

24. Employer Obligations

- 24.1. The Service Provider is responsible for all wages, salaries and other payments to its employees and for the compliance with all applicable statutory requirements in relation to its employees including, without limitation, superannuation, workers compensation, group tax, payroll tax, affirmative action, privacy, confidentiality and occupational health and safety and relevant industrial awards.
- 24.2. The Service Provider is responsible for supplying and ensuring that Service Provider Personnel who are pilots or observers wear a uniform while performing the Services which comprises the following:
- a. lightweight flying suit of Nomex or equivalent fire retardant material of a colour acceptable to **Customs**;
 - b. Nomex or equivalent fire resistant backed gloves; and
 - c. laced leather shoes or boots of plain design of a colour acceptable to **Customs**.
- 24.3. Service Provider Personnel who are pilots or observers shall wear badges bearing the **Customs** Coastwatch insignia as supplied by **Customs** and the Service Provider's insignia (if any) may also be worn in a manner acceptable to **Customs**.
- 24.4. The Service Provider is responsible for ensuring that its employees engaged in providing the Services, receive all training that is necessary in providing the Services.
- 24.5. The Service Provider is responsible for ensuring that its employees comply with the Contract Management Plan in the performance of the Services, in particular the components of the Risk Management Plan, Safety Management Plan, Security Management Plan, Personnel Plan and Training Plan.

25. Subcontractors

- 25.1. The Service Provider must not subcontract the whole of the work under the Contract.
- 25.2. All subcontractors are to be engaged subject to **Part 6** (Security and Confidentiality) of the Contract.
- 25.3. The Service Provider must not engage Key Subcontractors except:
- a. after providing a copy of the proposed subcontract for the Key Subcontractor to **Customs**;
 - b. where **Customs** does not object to the Key Subcontractor within five (5) Business Days of receiving a copy of the proposed subcontract; and

- c. on the conditions set out in **clause 25.5**.
- 25.4. Initial approved Key Subcontractors are specified in **Schedule 13** (Key Subcontractors). New approved Key Subcontractors will be added to **Schedule 13** (Key Subcontractors) in accordance with the procedure under **clause 38**.
- 25.5. The Service Provider must:
- a. obtain from the Key Subcontractor and provide **Customs** with an original of a signed confidentiality undertaking in the form of **0** (Confidentiality Undertaking) and privacy undertaking in the form of **Schedule 16** (Deed of Undertaking in Relation to Personal and Confidential Information);
 - b. ensure that the subcontract for the Key Subcontractor contains all relevant terms of the Contract including those relating to subcontracting, intellectual property, audit and access, privacy, confidentiality, security, indemnities, termination and transition out and that the Key Subcontractor complies with those terms;
 - c. not allow further subcontracting by the Key Subcontractor without the prior written approval of **Customs**; and
 - d. ensure that all Key Subcontractors comply with all Laws and the Applicable Requirements.
- 25.6. The fact that **Customs** does not object to a Key Subcontractor does not relieve the Service Provider from any liability or obligation under the Contract.
- 25.7. The Service Provider remains responsible for ensuring the suitability of a Key Subcontractor for the work proposed to be carried out and for ensuring that the work performed by the Key Subcontractor meets the requirements of the Contract. The Service Provider will be **Customs** sole point of contact regarding the Services, including with respect to payment.
- 25.8. The Service Provider is also responsible for ensuring the suitability of subcontractors other than Key Subcontractors for the work proposed to be carried out and for ensuring that the work performed by such subcontractors meets the requirements of the Contract.
- 25.9. The Service Provider must ensure that its subcontractors comply with **clause 24.1** as if the reference to the Service Provider in that clause was a reference to each subcontractor.
- 26. Revocation Of Approval Of Subcontractor**
- 26.1. **Customs** may revoke its approval of a Key Subcontractor on reasonable grounds, which include the following:

- a. an undertaking given under **clause 25.5.a** is breached or any of the conditions set out in **clause 25.5.b** to **25.5.d** is breached;
 - b. if the Key Subcontractor fails to comply in any material respect with any of its obligations under its contract;
 - c. if the Key Subcontractor's performance is materially deficient;
 - d. if the Key Subcontractor assigns or delegates performance of its obligations under the subcontract to another entity that is not approved by **Customs**;
 - e. if **Customs** is not satisfied with the Key Subcontractor's ability to render future performance;
 - f. if the Key Subcontractor contravenes any obligation of the Service Provider or any procedure or direction of **Customs** in respect of personal information, confidentiality or security (including data security);
 - g. if there have been material misrepresentations by or concerning the Key Subcontractor; or
 - h. without limiting the foregoing, if the Key Subcontractor or any of its personnel is suspected of breaching or breaches security, confidentiality, privacy or related obligations to **Customs** or the Service Provider.
- 26.2. Upon receipt of a written notice from **Customs** revoking its approval of a Key Subcontractor, the Service Provider will as soon as practicable cease using that Key Subcontractor to perform the Services unless **Customs** directs that the Key Subcontractor be replaced immediately in which case the Service Provider will comply with the direction.
- 26.3. Any subcontractor proposed by the Service Provider to replace a Key Subcontractor must be approved by **Customs** in accordance with **clause 25**.
- 26.4. The Service Provider will remain liable under the Contract for the past acts or omissions of its Key Subcontractors in respect of whom **Customs** withdraws its approval as if they were still subcontractors.
- 26.5. Any costs associated with the revocation of a Key Subcontractor and the approval of a replacement subcontractor will be borne by the Service Provider.

27. Accounts And Records

- 27.1. The Service Provider must at all times maintain full, true, separate and up to date accounts and records in relation to the Service Charge, Monthly Reimbursable Expenses and the Services. Such accounts and records must:
- a. include the matters specified in the Service Level Agreement;
 - b. include appropriate audit trails for transactions performed;

- c. separately record all receipts and expenses in relation to the Services for **Customs**;
- d. include the terms and conditions of the acquisition of the Equipment which comprise the Assets and the terms and conditions of any financing transaction related to the Assets;
- e. be kept in a manner that permits them to be conveniently and properly audited;
- f. be drawn in accordance with any applicable Australian Accounting Standards;
- g. in the case of any Services performed on a time and materials or cost plus basis, identify the time spent by Service Provider's Personnel in performing those Services, all relevant third party invoices and all other relevant details of third party transactions; and
- h. enable the extraction of all information relevant to the performance of the Contract for **Customs**.

27.2. The accounts and records to be held in accordance with this **clause 27** must be held for the Term of the Contract and for a period of seven (7) years from the date of expiry or termination of the Contract.

27.3. The Service Provider must keep full and accurate records of the location of all **Customs** Data and must include in the reports referred to in **clause 28** sufficient information to ensure **Customs** is kept fully informed about the nature and location of any database containing **Customs** Data.

28. Reports

28.1. The Service Provider must provide to **Customs** regular reports on the provision of the Services in accordance with the reporting requirements specified in the Contract Management Plan, the Transition In Plan and the Performance Measurement System.

28.2. All reports must be provided in a format and on the media approved or requested by **Customs**.

28.3. The Service Provider must promptly provide all information required in reports to allow **Customs** to comply with its reporting and other accountability obligations to Parliament.

28.4. For the purposes of **clause 28.3**, **Customs** must provide to the Service Provider a list of required information to be provided.

28.5. Without limiting **clause 28.3**, the reports must include the following security information:

- a. all Security Incidents, including violations and breaches, including steps taken by the Service Provider to address these;
 - b. perceived security problems;
 - c. where appropriate, recommendations for security improvements;
 - d. proposed and actual personnel changes; and
 - e. any other security information specified in **Schedule 11** (Commonwealth Security Requirements) or reasonably required by **Customs** from time to time.
- 28.6. The Service Provider agrees to notify **Customs** immediately upon becoming aware of any Security Incidents. Where oral notification is provided, it must be followed by written notification within one (1) Day.
- 28.7. The Service Provider agrees that if any Security Incidents occur or perceived security problems arise, that it will comply with all directions of **Customs** in order to rectify such events.
- 28.8. The Service Provider must provide at **Customs** request to **Customs**, for the purposes of demonstrating financial capability, copies of financial reports acceptable to **Customs**. Such financial reports shall include the Service Provider's annual audited financial accounts and, where the Service Provider is a subsidiary company, the annual audited financial accounts of the parent company.

29. Commonwealth Personnel

- 29.1. Subject to **clause 29.2**, the Service Provider must not, and must ensure that its agents, subcontractors and related entities do not:
- a. solicit, entice away or attempt to solicit or entice away any **Customs** Personnel from continuing to be Engaged by **Customs**, either on behalf of the Service Provider or any other person; or
 - b. Engage any **Customs** Personnel,
- while those persons are employed in the Australian Customs Service or for a period of one (1) Year following the termination of those persons employment in the Australian Customs Service.
- 29.2. The Service Provider will not be in breach of a restraint contained in **clause 29.1** if the Chief Executive Officer of **Customs** gives his or her prior written consent (such consent not to be unreasonably withheld) to the Service Provider, its agent, subcontractor or related entities to:
- a. solicit any **Customs** Personnel; or
 - b. Engage any **Customs** Personnel,

who is specified by the Chief Executive Officer of **Customs** in giving such consent.

- 29.3. For the purposes of this **clause 29**: "**Engagement**" means to engage in any capacity including without limitation as an employee, consultant, adviser, partner, contractor or agent, and "**Engage**", "**Engaged**" and "**Engaging**" have a like meaning; "**Customs Personnel**" means the officers, employees and agents of **Customs**.

PART 6 - SECURITY AND CONFIDENTIALITY

30. Security - General

- 30.1. The Service Provider agrees to comply with **Customs** security requirements set out in **Schedule 11** (Commonwealth Security Requirements) or notified in writing by **Customs** from time to time. For the avoidance of doubt, the Service Provider acknowledges that **Customs** has the right, in its absolute discretion, to unilaterally vary the security requirements applicable to the performance of this Contract. The Service Provider agrees to comply with any such variation.
- 30.2. If a variation under **clause 30.1** is required, the Service Provider is entitled to apply to **Customs** for a price variation pursuant to **clause 38** (Change Control). In making an application, the Service Provider agrees to substantiate to **Customs** satisfaction the basis and calculation for the price variation.
- 30.3. The Service Provider acknowledges that it is aware of the effect of section 16 of the *Customs Administration Act 1985* ('section 16'). The Service Provider agrees that it will bring to the attention of its employees, agents and subcontractors the effect of section 16.

31. Service Provider Personnel

- 31.1. The Service Provider must ensure that all persons whom the Service Provider (including all subcontractors, if any) proposes to carry out work or perform duties under the Contract enter into a Confidentiality Undertaking in the form of **0** (Confidentiality Undertaking) and Privacy Undertaking in the form of **Schedule 16** (Deed of Undertaking in Relation to Personal and Confidential Information). In addition, all such persons who will be required, while carrying out some or all of that work or performing some or all of those duties, to:
- enter secure areas in **Customs** buildings or places including for the purpose of the Services;
 - work with **Customs** personnel for extended periods;
 - have access to, or be responsible for the physical custody of official, classified, sensitive, personal or commercial information, or documents or valuable assets belonging to **Customs** or a third party; or
 - hold a particular kind of security clearance the details of which have been notified to the Service Provider by **Customs**,
- are required to comply with the requirements of **Customs** as set out in **Schedule 11** (Commonwealth Security Requirements) and to be authorised by **Customs** under this **clause 31** to carry out that work or perform those duties. Authorisation costs will be at the expense of the Service Provider.
- 31.2. **Customs** agrees to carry out its investigations under this **clause 31** in accordance with the requirements of the Protective Security Manual, in an

expeditious manner and may, in carrying out its investigations, contact other organisations and government agencies, including law enforcement and national security agencies.

- 31.3. The Service Provider must, at its expense, provide to **Customs**, in the form required by **Customs**, such information as **Customs** from time to time reasonably requests for the purpose of allowing **Customs** to undertake reasonable investigations for the purposes of this **clause 31**.
- 31.4. **Customs** must not unreasonably withhold authorisation of a person and must notify the Service Provider in writing of:
- a. the names of the persons it authorises to carry out work or perform duties under the Contract (in this **clause 31** referred to as an "**Authorised Person**"), the type and level of clearance given in respect of each of those persons and the date from which, or the period during which, those clearances must be effective; and
 - b. the names of the persons it refuses to authorise to carry out such work or perform such duties,

and the Service Provider must sign a copy of that notice, and return it to **Customs** as soon as possible as acknowledgment of the receipt of the document.

- 31.5. The Service Provider must advise **Customs** promptly in writing of any change in the circumstances of an Authorised Person that, in the Service Provider's reasonable opinion, is likely to affect **Customs** assessment of the person as an Authorised Person.
- 31.6. **Customs** may at any time by notice in writing to the Service Provider, withdraw, limit or suspend its authorisation in respect of a particular Authorised Person. Where **Customs** withdraws, limits or suspends its authorisation of a particular Authorised Person then it may also require the immediate removal of that person from the performance of the Services.
- 31.7. Where **Customs** withdraws, limits or suspends the authorisation of a person under this **clause 31**, the Service Provider must, if required by **Customs** and without inconvenience or cost to **Customs**, propose another person for authorisation by **Customs** under this **clause 31** within a reasonable time. This **clause 31** is only intended to give **Customs** the right to require the Service Provider to discontinue using a particular person in the performance of the Services.
- 31.8. Provided the Service Provider gives **Customs** the names of Key Personnel within ten (10) Business Days after the Commencement Date, **Customs** must advise the Service Provider in writing before the scheduled Handover Date

whether or not it grants authorisation under this **clause 31** to the Key Personnel.

- 31.9. Where Key Personnel cease to work in respect of the Contract, the Service Provider must notify **Customs** immediately and must provide replacement personnel reasonably acceptable to **Customs** at no additional charge and at the earliest opportunity.
- 31.10. The Service Provider warrants that none of its employees or subcontractors will make any copies of material relating to:
- a. access to **Customs**' premises or particular work areas (including keys and passes); or
 - b. access to any of the **Customs** Data.

32. Security Of Official Information

- 32.1. The Service Provider agrees to comply with the security requirements for the protection of Official Information:
- a. detailed in the Protective Security Manual as minimum standards;
 - b. set out in the Contract and in **Schedule 11** (Commonwealth Security Requirements); and
 - c. as advised by **Customs** during the term of the Contract.
- 32.2. The Service Provider agrees to perform its security obligations under the Contract to the highest professional standards described or indicated in the requirements of the Protective Security Manual as amended from time to time.
- 32.3. The Service Provider shall not permit any of its employees, agents or subcontractors to have any access to Security Classified Information unless:
- a. that person(s) has been cleared, by the Australian Security Vetting Service or **Customs** security unit, to the appropriate security level;
 - b. **Customs** has given approval in writing for that person(s) to have access to security classified information; and
 - c. that person(s) has undergone the training specified in **Schedule 11** (Commonwealth Security Requirements) relating to the access to and use of Security Classified information.
- 32.4. The Service Provider will inform **Customs** immediately upon becoming aware that any unauthorised person has had access to Security Classified Information.
- 32.5. The rights and obligations arising in connection with this **clause 32** will survive any termination or expiration of the Contract.

33. Data Security

- 33.1. The Service Provider must:
- use **Customs** Data only for purposes directly in relation to the supply of the Services;
 - not purport to sell, let for hire, assign rights in or otherwise dispose of any **Customs** Data;
 - not make any **Customs** Data available to any third party other than a subcontractor and then only to the extent necessary to enable the subcontractor to perform its part of the Services; and
 - not commercially or otherwise exploit **Customs** Data.
- 33.2. The Service Provider must prevent the destruction, loss or alteration of **Customs** Data in the possession of the Service Provider, including by the establishment and maintenance of safeguards, that:
- are no less rigorous than those maintained by:
 - the Service Provider in respect of its Confidential Information; and
 - Customs**; and
 - comply with all procedures specified in **Schedule 11** (Commonwealth Security Requirements) and all Laws.
- 33.3. The Service Provider must:
- comply with all Commonwealth and **Customs** data security requirements in respect of access to, use or disclosure of **Customs** Data, including any requirements specified in **Schedule 11** (Commonwealth Security Requirements);
 - prohibit and prevent any person who does not have the appropriate level of security clearance from gaining access to **Customs** Data; and
 - notify **Customs** immediately and comply with all directions of **Customs** if the Service Provider becomes aware of any contravention of Commonwealth or **Customs** data security requirements.
- 33.4. The Service Provider acknowledges and agrees that:
- Customs** holds and deals with highly sensitive information; and
 - Customs** is concerned that such information is not improperly used or disclosed contrary to the Contract or any Laws.

34. Suspension And Termination For Security Breach

- 34.1. If during the performance of the Services, **Customs** informs the Service Provider that it is the opinion of **Customs**, that the Service Provider is not

providing part of the Services in compliance with **Customs** security requirements as set out in this Contract or advised by **Customs** pursuant to **clause 32.1** then the Service Provider must promptly remedy that breach of security requirements.

- 34.2. **Customs** may direct the Service Provider to suspend that part of the Services until such time as the Service Provider satisfies **Customs** that that part of the Services will be provided in compliance with **Customs** security requirements.
- 34.3. During periods of suspension referred to above, **Customs** shall not be required to make any payment whatsoever to the Service Provider in respect of that part of the Services which are suspended. For the purpose of the Performance Measurement System the suspended Services shall be deemed to be non performed for the period of suspension.
- 34.4. If the Service Provider fails to rectify any breach of **Customs** security requirements for which the Services have been suspended, or if the Service Provider's performance has involved recurring breaches of **Customs** security requirements, **Customs** may terminate the work forthwith, without further obligation to the Service Provider. In this event, **Customs** liability shall be limited to payment for the work performed and costs incurred by the Service Provider up to the time of termination or an earlier suspension.

35. Confidentiality

- 35.1. The Service Provider must:
- a. keep all **Customs** Confidential Information confidential and must not (except as expressly permitted under the Contract):
 - A. disclose **Customs** Confidential Information;
 - B. make copies of any material containing **Customs** Confidential Information; or
 - C. use **Customs** Confidential Information;
 - b. use due care to safeguard **Customs** Confidential Information and comply with any security requirements specified by **Customs** from time to time;
 - c. implement security practices in accordance with **clause 33** (Data Security), and **Schedule 11** (Commonwealth Security Requirements) against any unauthorised copying, use, disclosure (whether that disclosure is oral, in writing or in any other form), access to and damage or destruction of **Customs** Confidential Information;
 - d. immediately notify **Customs** if the Service Provider:
 - A. suspects or becomes aware of any unauthorised access to or, copying, use, disclosure in any form, damage or destruction of any of **Customs** Confidential Information; or

- B. is required by Law to disclose any of **Customs** Confidential Information;
- e. take all reasonable steps to enforce any obligation of confidence imposed or required to be imposed by the Contract; and
- f. do all things, execute all documents and give all assistance reasonably required by **Customs** to enforce any obligation of confidence imposed or required to be imposed by the Contract.

35.2. The Service Provider may only:

- a. use and copy **Customs** Confidential Information to:
 - A. comply with its obligations under the Contract (and then only to the extent reasonably necessary to achieve such compliance); or
 - B. the extent necessary to enable the Service Provider to exercise its rights under the Contract; and
- b. subject to **clause 35.3**, disclose **Customs** Confidential Information to:
 - A. Service Provider Personnel and the Service Provider's professional advisers on a "need to know" basis and then only for the purpose of delivering the Services; and
 - B. any other person with the **Customs** Contract Manager's prior written consent.

35.3. The Service Provider must:

- a. notify **Customs** of all persons to whom **Customs** Confidential Information will be disclosed or who may become aware of any of **Customs** Confidential Information before those persons are permitted access to **Customs** Confidential Information;
- b. arrange for all Service Provider Personnel and any other person to whom **Customs** Confidential Information is to be disclosed to give a written undertaking substantially in the form set out in **Schedule 15** (Confidentiality Undertaking); and
- c. ensure that any person to whom **Customs** Confidential Information is disclosed complies with the provisions of this **clause 35.3**.

35.4. Subject to this **clause 35.4** and **clause 35.6**, **Customs** must protect Service Provider Confidential Information. **Customs** may:

- a. use Service Provider Confidential Information for the purposes of the Contract and to obtain benefit from the Services; and
- b. disclose Service Provider Confidential Information:
 - A. to **Customs** Personnel and any advisers of **Customs**;

- B. to any Commonwealth Minister;
- C. to any other Commonwealth agency (including, without limitation, the Auditor-General);
- D. to Parliament or any Parliamentary Committee; or
- E. to **Customs** third party suppliers and service providers on a 'need to know' basis and then only for the purpose of providing goods or services to **Customs**,

as long as it makes the recipient aware of **Customs** confidentiality obligations under this **clause 35**.

- 35.5. The Parties may agree in writing after the Commencement Date that certain information is to constitute Service Provider Confidential Information for the purposes of this Contract and if the Parties so agree then that information shall be incorporated into, and becomes part of **Schedule 17** (Service Provider Confidential Information) to this Contract, on the date by which both Parties have so agreed in writing.
- 35.6. Subject to **clause 59** (Privacy), nothing in the Contract prohibits the use or disclosure of any Confidential Information by any Party to the extent that:
- a. the information has been placed in the public domain otherwise than due to a breach of an obligation of confidentiality by that Party;
 - b. the disclosure is expressly required by Law, but the Party must use its best endeavours to minimise any such disclosure;
 - c. the information has been independently developed by the Party and without reference to the Confidential Information of another Party; or
 - d. the Party claiming the Confidential Information has approved in writing the particular use or disclosure of the Confidential Information.
- 35.7. The obligations with respect to Confidential Information disclosed under the Contract will survive termination or expiry of the Contract and continue for as long as the information remains confidential.
- 35.8. Subject to **clauses 35.9** and **76**, upon termination or expiration of the Contract the Service Provider must:
- a. deliver to **Customs** (and not retain any copies of) all material forms of **Customs** Confidential Information; and
 - b. deliver to **Customs** a statutory declaration made by an authorised officer of the Service Provider declaring that to the best of that person's information and belief (after having made proper inquiries) none of the Service Provider, its officers, employees, agents, advisers or contractors have retained any **Customs** Confidential Information.

- 35.9. The Service Provider may, for a period of seven (7) years after the expiry or termination of the Contract, retain one file copy of any **Customs** Confidential Information that specifically relates to the Parties communications in relation to the administration of the Contract (including changes to the Services Level Agreement and the payment of Service Charges) so long as any such information retained does not include any personal information as defined in the *Privacy Act 1988*.
- 35.10. Upon termination or expiration of the Contract, **Customs** must:
- a. deliver to the Service Provider (and not retain any copies of) all material forms of Service Provider Confidential Information that has not been incorporated into or otherwise become a Commonwealth Record; and
 - b. deliver to the Service Provider a statutory declaration made by an authorised officer of **Customs** declaring that to the best of that person's information and belief (after having made proper enquiries) none of **Customs**, its officers, employees, agents or contractors have, subject to **clause 57**, retained any Service Provider Confidential Information.

PART 7 - CONTRACT CHANGE

36. Additional Services

- 36.1. Either Party may suggest to the other at any time an addition to the Services to be provided under the Contract ("**Additional Services**").
- 36.2. For avoidance of doubt, the Parties agree that Additional Services do not:
- a. include anything within the scope of the Services specified in the Contract, as at the Commencement Date, or anything required to remedy any failure by the Service Provider to perform those Services; and
 - b. unless otherwise agreed by the Parties under this **clause 36**, affect the Service Provider's obligations to provide the Services in accordance with the Contract.
- 36.3. **Customs** may, at any time, request the provision of Additional Services in accordance with **clause 38** (Change Control). The Service Provider must negotiate in good faith with **Customs** to agree on performance measures for the Additional Services.
- 36.4. The Service Provider must comply with any request made under **clause 36.3** and undertake all action necessary under **clause 38** to effect the change on the basis that:
- a. the Additional Services must comply with the performance measures to be specified in the Service Level Agreement as agreed between the Parties in respect of the Additional Services; and
 - b. the Service Charge for the Additional Services must be consistent with **Schedule 5** (Service Charges).

37. Change in Commonwealth Agency Arrangements

- 37.1. The Service Provider acknowledges that changes in the structure of **Customs** including a division of its functions between two or more Commonwealth agencies may occur if there is a machinery of government change. Subject to any increase in costs to the Service Provider to be dealt with in accordance with **clause 38**, if any part of **Customs**, that receives Services under the Contract, is transferred to another Commonwealth agency, the Service Provider agrees to continue to provide Services to **Customs** and, if requested by **Customs**, continue to provide the Services for the transferred operations or business to that Commonwealth agency under the Contract or a separate contract in substantially the same terms as the Contract for the remainder of the Term of the Contract.

38. Change Control

38.1. The Service Provider must not take any action or make a decision which may have an adverse effect on the function or performance of, or which decreases the efficiency of, the Services without the prior written approval of **Customs**.

38.2. s. 47(1)(b)

38.3. s. 47(1)(b)

38.4. Any potential efficiency gains in the function or performance of the Services, including through proposed amendment to any Financing Agreement by the Service Provider, are to be shared equally by the Parties and effected in accordance with the change control procedure or otherwise under this **clause 38**.

38.5. **Customs** is not liable for any additional work undertaken or expenditure incurred by the Service Provider pursuant to a change referred to in **clause 38.1** or **clause 38.2** unless such change has been effected in accordance with the change control procedure or otherwise under this **clause 38**, which must require both parties to sign the Contract amendment and the additional expenditure (if any) has been agreed to by **Customs**.

38.6. Either Party may request a change to the Contract by developing and submitting to the other a formal change proposal in the form provided in **Schedule 7** (Change Control Form). **Customs** may also require the Service Provider to develop and submit a formal change proposal in the form provided in **Schedule 7** in respect of a **Customs** required change to the Contract.

38.7. **Customs** must evaluate the change proposal submitted under this **clause 38** and, within fifteen (15) days after receipt, or such other period as may be agreed, must either:

- a. approve the change proposal through an issue of an amendment to the Contract; or
- b. reject the change proposal giving reasons for such rejection.

38.8. s. 47(1)(b)

- 38.9. Where the change is required by **Customs**, the change proposal must identify separately the cost of preparation of the change proposal, any proposed variation to **Schedule 5** (Service Charges), and, where approved, the reasonable cost of preparation shall be taken into account in calculating the varied Contract Price.
- 38.10. This Contract is deemed to be changed under the change control procedure to the extent specified in any changes effected in accordance with **clauses 36** and **38** once the formal change proposal has been executed by the Contract Authority on behalf of **Customs** and by the Service Director on behalf of the Service Provider.
- 38.11. The procedure set out in this **clause 38** applies to all variations to this Contract.

PART 8 - SPECIAL ISSUES

39. Acquisition of Equipment

- 39.1. The Service Provider will acquire by outright purchase, operating or finance lease or other arrangement the Equipment, including the Assets, necessary to perform the Services. The Service Provider shall provide the Equipment in accordance with the requirements of **Schedule 1** (Statement of Work) and shall ensure that the Equipment meets the requirements of **Schedule 1** (Statement of Work) throughout the remaining Term of the Contract from the scheduled Handover Date.
- 39.2. The Service Provider acknowledges that the terms and conditions of the acquisition of the Assets ("**the Acquisition Contracts**") and any related Financing Agreement (if any) will be provided to **Customs** on request for **Customs** approval.
- 39.3. The Service Provider will ensure that it complies with the requirements of the Acquisition Contracts and any related Financing Agreement and in particular that it does not take any action that would invalidate any provision of an Acquisition Contract or prevent the Service Provider from making any claim under the Acquisition Contract.
- 39.4. The Service Provider will immediately notify **Customs** of any breach of an Acquisition Contract or of the related Financing Agreement or any event that would with the giving of notice or the passage of time or both, become a breach of the Acquisition Contract or of the related Financing Agreement.

40. Option over assets

Not Used


PART 9 - OBLIGATIONS OF *CUSTOMS*

41. Applicable Requirements


41.1. As at the Commencement Date, a general list of Applicable Requirements is specified in **Schedule 10** (Applicable Requirements). Where the Applicable Requirements are not in the public domain ***Customs*** will provide access to the Service Provider to the Applicable Requirements relevant to the delivery of the Services by the Service Provider throughout the Term of the Contract.

41.2. The Service Provider must comply with the Applicable Requirements when providing the Services.

41.3. s. 47(1)(b)



41.4. s. 47(1)(b)




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PART 10 - PRICING ARRANGEMENTS


42. Service Charge

- 42.1. In consideration for the performance of the Services (or any Other Services) by the Service Provider, **Customs** will pay the Service Charge and Monthly Reimbursable Expenses in accordance with the Contract.
- 42.2. Except as expressly provided in the Contract, where the Service Provider is obliged to do anything under the Contract, it must do so at no additional cost to **Customs** and the only consideration the Service Provider is entitled to are the Service Charge and Monthly Reimbursable Expenses in **Schedule 5** (Service Charges).
- 42.3. Where under the Contract the Service Provider is entitled to be paid the Service Charge or Monthly Reimbursable Expenses for Services (or any Other Services) provided by it, the Service Provider is not entitled to be paid, and must not charge **Customs**, the Service Charge or Monthly Reimbursable Expenses (or any component of the Service Charge or Monthly Reimbursable Expenses) more than once for any Service (or any Other Services) provided.
- 42.4. If the Service Provider receives or is entitled to receive a refund, credit or other rebate in respect of goods or services previously provided to or paid for by **Customs**, the Service Provider must allow for the refund, credit or rebate in the next invoice submitted to **Customs**.

42.5. s. 47(1)(b)



42.6. s. 47(1)(b)



- 42.7. For the avoidance of doubt the Service Charge includes all costs incurred by the Service Provider over the Term of the Contract in:
- acquiring by purchase, lease or otherwise the Equipment (including costs associated with arranging customs entry and the payment of any customs duty applicable to the Equipment);

- b. complying with all Applicable Requirements, including establishing and maintaining the operational and regulatory systems necessary to operate the Services;
- c. installing and integrating any Equipment or GFM to be attached to the Assets;
- d. obtaining an Aircraft Operator's Certificate (AOC) or airworthiness certification and maintaining such certification;
- e. maintaining the Equipment;
- f. obtaining all necessary export licenses;
- g. maintaining and implementing the Transition In Plan and the Contract Management Plan (including all components specified in **clause 21.2**);
- h. engaging, training and retaining all Key Personnel and other personnel necessary to perform the Services; and
- i. establishing and maintaining compliance with the security, confidentiality and privacy requirements of this Contract.

This **clause 42.7** is an illustrative not an exhaustive list of costs incurred by the Service Provider that come within the Service Charge and are not Monthly Reimbursable Expenses and this **clause 42.7** does not operate to qualify any obligation or requirement in this **clause 42** or **Schedule 5** (Service Charges).

43. Invoices

- 43.1. The Service Provider must invoice **Customs** monthly in arrears for the Service Charge and Monthly Reimbursable Expenses.
- 43.2. The Service Provider must serve correctly rendered invoices on the **Customs** Contract Manager and invoices must contain the information specified in **Schedule 6** (Invoice).
- 43.3. If an invoice is found to have been rendered incorrectly, any underpayment or overpayment will be recoverable by or from the Service Provider, as the case may be, and, without limiting recourse to other available remedies, may be offset against any amount subsequently due from **Customs** to the Service Provider.

43.4. s. 47(1)(b)



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- 43.5. Any payments under the Contract will be made to a bank account nominated by the Service Provider, such nominated bank account to be specified in **Schedule 5** (Service Charges). Unless otherwise agreed, payments will be made by electronic transfer directly to the nominated bank account. Unless otherwise agreed, payments will be made in Australia.
- 43.6. Payments by electronic transfer are deemed to be made on the date of the request by **Customs** for the transfer.
- 43.7. If **Customs** in good faith disputes the whole or any portion of the amount claimed in an invoice, **Customs**:
- may withhold payment of any of the Service Charge or Monthly Reimbursable Expenses that are in dispute until the dispute is resolved;
 - must pay the portion of the amount stated in the invoice which is not in dispute; and
 - must notify the Service Provider in writing (within fifteen (15) days of receipt of the invoice) of the reasons for disputing the remainder of the invoice.

44. Payment

- 44.1. Subject to the Contract, **Customs** must:
- pay the Service Charge and Monthly Reimbursable Expenses specified in **Schedule 5** (Service Charges) for the Services, in accordance with the Performance Measurement System;
 - pay the Service Charge and Monthly Reimbursable Expenses specified in **Schedule 5** (Service Charges) in accordance with the Performance Measurement System or as agreed between the Parties for any Additional Services requested under **clause 36**; and
 - pay the Service Charge and Monthly Reimbursable Expenses specified in **Schedule 5** (Service Charges) for any Other Services,
- within fourteen (14) days of receipt of a correctly rendered Tax Invoice.
- 44.2. If a payment by the Service Provider to satisfy a claim by **Customs** under or in connection with the Contract (for example, for misleading or deceptive conduct by the Service Provider, under an indemnity given by the Service Provider or for a breach of any representation or warranty by the Service Provider) gives rise to a liability to pay GST, the Service Provider must pay, and indemnify **Customs** from, the amount of that GST.
- 44.3. The amount recoverable by **Customs** under or in respect of any indemnity, representation or warranty given by the Service Provider under the Contract includes the amount of GST payable on the cost or expense in relation to which the indemnity, representation or warranty is paid, but shall exclude the amount

of any input tax credit or other credit to which **Customs** is entitled in respect of the cost or expense recovered.

45. Conditions Precedent To Contract Taking Effect

- 45.1. The rights and obligations of the parties under this Contract will commence on the date of Financial Close.
- 45.2. The Service Provider must satisfy the Conditions Precedent specified in **Schedule 19** (Conditions Precedent To Contract Taking Effect) by the Target Financial Close Date.
- 45.3. If the Conditions Precedent have not been satisfied or waived by midnight on the Target Financial Close Date, **Customs** may, in its absolute discretion, terminate this Contract at any time after the Target Financial Close Date and this Contract will then be without further effect, except in relation to rights and obligations arising before such termination.
- 45.4. When the Service Provider is of the opinion that a Condition Precedent has been satisfied it will give **Customs** written notice and **Customs** will give written notice to the Service Provider whether or not it agrees that the Condition Precedent has been satisfied. If such notice is not given by **Customs** within ten (10) Business Days of receipt of the written notice from the Service Provider, the Condition Precedent will be deemed to have been satisfied.
- 45.5. **Customs** may, in its absolute discretion, extend the Target Financial Close Date by notice in writing to the Service Provider.

46. Right Of Customs To Recover Money

- 46.1. Without limiting **Customs** rights under any provision of the Contract, any payment or debt owed by the Service Provider to **Customs** under the Contract may be:
- a. deducted by **Customs** from:
 - A. any moneys payable or due to the Service Provider; or
 - B. any security under **clause 52** if no moneys are payable or due to the Service Provider; or
 - b. recovered from the Service Provider by **Customs** in any court of competent jurisdiction.
- 46.2. Where **Customs** deducts the amount of a debt or payment, it must advise the Service Provider in writing that it has done so.

47. Government Taxes

Subject to **clause 42**, all government, local government and semi-governmental taxes, duties and charges imposed or levied in Australia or overseas in connection with the performance of the Contract or the entry into the Contract will be borne by the Service Provider.

48. Costs And Stamp Duty

- 48.1. Except to the extent specified in **clause 48.3**, each Party must bear and is responsible for its own costs in connection with the preparation, execution and carrying into effect of the Contract.
- 48.2. The Service Provider must lodge the Contract for stamping and must bear and is responsible for all stamp duty on or in respect of:
- a. the Contract and the performance of the Services;
 - b. the sale, purchase, assignment or transfer of any property (except GFM) or contracts under the Contract; and
 - c. subject to **clause 48.3**, any instrument or transaction contemplated by or necessary to give effect to the Contract.
- 48.3. The Contract does not alter any liability of **Customs** or other person in respect of stamp duty in relation to an underlying **Customs** contract including a property lease or software licence that is managed by the Service Provider.

49. Transition Out Costs

- 49.1. Subject to **clause 76** responsibility for transition out costs and expenses will be as specified in the Transition Out Plan.

50. Monthly Reimbursable Expenses

50.1 s. 47(1)(b)

50.2

50.3

50.4

50.5

50.6

50.7

50.8 **Customs** will not be obliged to pay for any Monthly Reimbursable Expense in respect of which the Service Provider has not complied with this **clause 50** or any requirements specified in **Schedule 5** (Service Charges).

51. Interest

51.1. The Service Provider must:

- a. disclose to **Customs** any Interest it has in any Monthly Reimbursable Expenses or products or services it intends to acquire to provide the Services, and the nature of the Interest;
- b. not, without **Customs** written approval, acquire products or services in which it has an Interest ahead of any competing products or services unless the products or services are competitive in terms of all relevant factors (including product or service quality, performance, price and supply terms); and
- c. deduct from the Service Charge an amount equal to any financial benefit to which the Service Provider is entitled as a result of any supply of products or services in which the Service Provider has an Interest.

51.2. Without limitation, the Service Provider will have an "**Interest**" in products or services if:

- a. the supplier of the products or services is a related entity of the Service Provider;
- b. if there is any relationship of partnership or joint venture between the Service Provider and the supplier; or
- c. the Service Provider has a right to any form of benefit, including commission, volume discount, rebate, bonus, conjunction fee or entitlement

to products or services as a result of any supply of those products, services or their use.

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PART 11 - UNDERTAKINGS

52. Financial Undertaking

- 52.1. The Service Provider must, at its expense, provide to **Customs**, by Financial Close, security in the form of an unconditional and irrevocable financial undertaking (the "**Financial Undertaking**") which must be:
- a. executed by a financial institution approved by **Customs** (the "**Financial Institution**") and be stamped;
 - b. substantially in the form of the undertaking appearing at **Schedule 9** (Financial Undertaking); and
 - c. s. 47(1)(b) [REDACTED]
- 52.2. The Financial Undertaking is for the purpose of ensuring the due and proper performance of the Contract by the Service Provider and **Customs** may demand any sum under the Financial Undertaking from the Financial Institution in respect of:
- a. an amount is owed to **Customs** by the Service Provider s. 47(1)(b) [REDACTED]
 - b. damages suffered by **Customs**, its officers, employees, contractors and agents (other than the Service Provider) as a result of a breach of the Contract by the Service Provider; or
 - c. any Loss suffered by **Customs**, its officers, employees, contractors and agents (other than the Service Provider) s. 47(1)(b) [REDACTED]
- 52.3. The Service Provider may propose that the terms of the Financial Undertaking, including but not limited to the identity of the guarantor of the Financial Undertaking, be amended over the Term of the Contract and **Customs**, may in its absolute discretion, agree or reject any such proposed amendment.

53. Performance Guarantee

Not Used

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PART 12 - AUDIT, ACCESS AND INFORMATION MANAGEMENT

54. Audit Requirements

- 54.1. Audits under **clause 55** may be conducted of:
- a. the Service Provider's compliance with the Applicable Requirements and any Plan required by this Contract;
 - b. the Service Provider's compliance with its confidentiality, privacy and security obligations;
 - c. the Service Provider's operational practices and procedures as they relate to the Contract, including security procedures;
 - d. the efficiency of the Service Provider's operations in relation to the provision of the Services under the Contract;
 - e. the competency of the Service Provider's Key Personnel in providing the Services;
 - f. the Service Provider's costs during the Transition In Period;
 - g. the accuracy of the Service Provider's invoices and reports in relation to the provision of the Services under the Contract;
 - h. Monthly Reimbursable Expenses; and
 - i. any other matters determined by **Customs** to be relevant to the performance of the Services.

55. Audits

- 55.1. The Service Provider must participate in audits of the Contract at the frequency and in relation to the matters specified by **Customs**, including on an "open book" and ad hoc basis if requested by **Customs**, for the purposes of ensuring that the Contract is being properly performed and administered by the Service Provider and that the Services are being delivered in an effective and efficient manner that represents value for money for the Commonwealth. **Customs** may appoint an independent person to assist in the audits. Audits will consider all aspects of the Service Provider's performance including Coastwatch stakeholder satisfaction, the achievement of the performance measures, security performance monitoring, security reviews and the accuracy of reports and invoices.
- 55.2. The Service Provider must participate cooperatively in any audits conducted by **Customs** or its nominee.
- 55.3. Except for those circumstances in which notice is not practicable (for example, caused by a regulatory request with shorter notice or investigation of theft or breach of Contract), **Customs** must give the Service Provider not less than ten

(10) Business Days notice of an audit and a list of the documents which the auditor will reasonably require.

- 55.4. Each Party must bear its own costs of any audits, provided that if an audit uncovers any material inconsistency or inaccuracy in the Service Provider's reports or invoices then the Service Provider shall meet **Customs** reasonable costs of the audit.
- 55.5. Subject to **clauses 55.6** and **56.6**, the requirement for, and participation in, audits does not in any way reduce the Service Provider's responsibility to perform its obligations in accordance with the Contract.
- 55.6. **Customs** must use reasonable endeavours to ensure that audits do not unreasonably delay or disrupt in any material respect the Service Provider's performance of the Services.
- 55.7. Amendments to the Contract resulting from audits must be effected by agreement in writing between the Parties in accordance with **clause 38**.
- 55.8. The Service Provider must promptly take, at no additional cost to **Customs**, corrective action to rectify any error identified in any audit report in the way the Service Provider has contrary to the Contract:
- a. supplied the Services;
 - b. failed to comply with the confidentiality, privacy, security or IPRs requirements; or
 - c. calculated Service Charge, Monthly Reimbursable Expenses or any other charges billed to **Customs**.

56. Access To The Service Provider's Premises And Records

- 56.1. For the purposes of **clause 55** and this **clause 56**, the Service Provider must, and must ensure that its Key Subcontractors, grant **Customs** and its nominees access as required by **Customs** to the Service Provider's premises, Equipment, Software data and **Customs** Data, records, accounts and other financial material or material relevant to the Services, however and wherever stored, under the Service Provider's or its Key Subcontractors' custody, possession or control for inspection and copying. For the avoidance of doubt **clause 55** and this **clause 56** apply to the accounts and records required to be maintained by the Service Provider pursuant to **clause 27.1**.
- 56.2. In the case of documents or records stored on a medium other than in writing, the Service Provider must make available on request at no additional cost to **Customs** such reasonable facilities as may be necessary to enable a legible reproduction to be created.

- 56.3. The Service Provider agrees that pursuant to **clause 56.1**, the Australian Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner, for the purpose of performing the Auditor-General's or Privacy Commissioner's statutory functions respectively, may, at reasonable times:
- a. access the premises of the Service Provider;
 - b. require the provision by the Service Provider, its officers, employees, agents or Key Subcontractors, of records and information which are related to the Contract; and
 - c. inspect and copy documentation and records, however stored, in the custody or under the control of the Service Provider, its officers, employees, agents or Key Subcontractors which are related to the Contract.
- 56.4. The Service Provider must ensure that any subcontract entered into with a Key Subcontractor for the purpose of the Contract contains an equivalent clause granting the rights specified in this **clause 56** and **clause 55.1**.
- 56.5. This **clause 56** applies for the Term of the Contract and for a period of seven (7) years from the date of its expiration or termination.
- 56.6. In the exercise of the general rights granted by **clause 56.1**, **Customs** must use reasonable endeavours not to interfere with the Service Provider's performance under the Contract in any material respect. If in the Service Provider's reasonable opinion there is likely to be a material adverse affect in the Service Provider discharging an obligation under the Contract because of a cause beyond the reasonable control of the Service Provider and as a direct result of **Customs** action under **clause 56.1**, the Service Provider may request an appropriate amendment to the Service Level Agreement to deal with the issue. The Service Provider must substantiate its request by evidence. **Customs** must grant a request under this **clause 56** unless the Service Provider fails to substantiate the request to the reasonable satisfaction of **Customs**.
- 56.7. **Customs** must not unreasonably refuse a request pursuant to **clause 56.6** where the Service Provider substantiates the request, within a reasonable time, to the satisfaction of **Customs**, provided that:
- a. the Service Provider has advised **Customs** of the delay within fourteen (14) days of the exercise of the rights and the delay occurring;
 - b. the delay could not have been reasonably contemplated or allowed for by the Service Provider before entering the Contract; and
 - c. the Service Provider has taken or takes all reasonable steps to minimise any delay.

- 56.8. In no circumstances will any extension of time granted exceed the length of any delay directly arising from the exercise of the rights under **clause 56.3**.
- 56.9. If, recognising the obligation in **clause 27.1**, the Service Provider reasonably believes that the exercise of the rights granted under **clause 56.3** will cause the Service Provider to incur direct expenses which, having regard to the value of the Contract, are substantial and materially exceed those which it would otherwise have to incur in meeting its obligations under **clause 56.3** ('excessive direct expenses'), it may notify **Customs** and seek to negotiate an appropriate reimbursement, but in no circumstances will any reimbursement be greater than the direct expenses incurred.
- 56.10. Nothing in the Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Commonwealth Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner. The rights of the Commonwealth under the Contract are in addition to any other power, right or entitlement of the Commonwealth Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner.

57. Commonwealth Records

- 57.1. In this **clause 57**, "Commonwealth Record" has the same meaning as in section 3 of the *Archives Act 1983* and "National Archives of Australia" means the organisation established by section 5 of the *Archives Act 1983*.
- 57.2. The Service Provider must maintain a register of Commonwealth Records in its possession or under its control.
- 57.3. Subject to the transfer of custody of Commonwealth Records in the performance of the Services and **clause 57.6** the Service Provider must not arrange for, nor effect, a transfer of custody or ownership of any Commonwealth Record without the prior written approval of the National Archives of Australia.
- 57.4. Where National Archives of Australia authorises the transfer of custody of a Commonwealth Record to the Service Provider, the Service Provider must comply in every respect with the requirements of the *Archives Act 1983*.
- 57.5. The Service Provider must comply with any reasonable direction given by **Customs** for the purpose of transferring a Commonwealth Record to National Archives of Australia or providing the National Archives of Australia with full and free access to those records at the cost of **Customs**.
- 57.6. The Service Provider must ensure that **Customs** has access at all times and in any manner to Commonwealth Records whilst they are in the possession or

under the control of the Service Provider. Such access must be available to **Customs**:

- a. unconditionally;
- b. without prior notice; and
- c. at **Customs** reasonable expense.

57.7. Without limiting **clause 35**, the Service Provider must provide and observe such security measures in connection with Commonwealth Records as are specified in **Schedule 11** (Commonwealth Security Requirements) or as may be reasonably requested by **Customs** from time to time at no additional charge except that for any expenditure of a capital nature which is not insubstantial, the Parties will agree on appropriate payments to the Service Provider, under the change control provisions of **clause 38**, in respect of that capital expenditure.

57.8. The Service Provider must protect Commonwealth Records from unauthorised disclosure and must ensure that third parties do not gain on-line or physical access to Commonwealth Records without the prior consent in writing of **Customs**.

57.9. To facilitate the maintenance of Commonwealth Records and **Customs** access to those records the Service Provider must on a regular basis and no less than weekly back up all of its records in electronic form relating to the Bases.

58. Publicity

58.1. The Service Provider must not make any press or other announcements or releases relating to the Contract and the Services without the prior approval of **Customs** unless that announcement or release is required to be made by Law or by a stock exchange. The Service Provider shall notify any announcement or release required to be made by Law or by a stock exchange to the **Customs** Contract Manager forthwith. Nothing in this **clause 58.1** prohibits either Party from disclosing to its employees and officers the fact of the Contract and its subject matter provided that **clause 35** is complied with by those employees and officers.

58.2. The Service Provider may not, without the express approval of **Customs**, make reference to its relationship with **Customs** or use any **Customs** logo or symbol identifying **Customs** in any advertising or promotional material, including on Service Provider stationery or other products, or on Equipment in use by the Service Provider. Provided that certain Equipment used by the Service Provider to perform the Services shall, as required by **Customs** in its sole discretion, bear the **Customs** livery or other **Customs** logo or symbol identifying **Customs**.

- 58.3. The Service Provider may not state or imply, either orally or in writing, that the business operations, policies or actions of the Service Provider have been endorsed by **Customs**.

59. Privacy - Protection Of Personal Information

- 59.1. The Service Provider acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act) and agrees in respect of the provision of services under this Contract:
- a. not to do any act or engage in any practice that would breach an Information Privacy Principle (IPP) contained in section 14 of the Privacy Act which if done or engaged in by **Customs** would amount to a breach;
 - b. to carry out and discharge the obligations contained in the IPPs in section 14 of the Privacy Act as if it were an agency under that Act and in particular to comply with the requirements relating to collection, storage, access, alteration, use and disclosure of personal information created or obtained as a result of services provided under this Contract;
 - c. not to engage in an act or practice that would breach the *Privacy Amendment (Private Sector) Act 2000*. This includes:
 - A. an act or practice that would be a breach of a National Privacy Principle (NPP) contained in Schedule 3 of the Privacy Act where applicable (or an approved privacy code binding a party to this Contract) and in particular NPPs 7 to 10 except where that act or practice is authorised by this Contract; and
 - B. using or disclosing any personal information obtained in the performance of this Contract for direct marketing purposes, unless that use or disclosure is necessary to meet an obligation under this Contract;
 - d. to carry out and discharge the Service Provider's obligations contained in the NPPs (or an approved privacy code binding a party to this Contract) except where an act or practice in an NPP (or Code) obligation is authorised by and inconsistent with this Contract;
 - e. to inform in writing any person who requests to be informed of the content of provisions of this Contract that are inconsistent with a NPP or an approved privacy code binding a party to this Contract;
 - f. to immediately notify **Customs** if the Service Provider becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this **clause 59** whether by the Service Provider or any subcontractor;
 - g. to indemnify the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth arising out of or in connection with a breach of any of the obligations of the Service Provider or a subcontractor under this **clause 59**; and

- h. to comply with any **Customs** notified directions, guidelines, determinations or recommendations relating to the protection of personal information.
- 59.2. The Service Provider will not enter into any subcontract for the purpose of directly or indirectly fulfilling its obligations under this Contract unless such a subcontract obliges the subcontractor to comply with equivalent provisions to those contained in this **clause 59**.
- 59.3. The provisions of this **clause 59** survive termination or expiration of this Contract.

PART 13 - INTELLECTUAL PROPERTY

60. Existing IPR

- 60.1. The Contract does not assign any IPRs existing at the Commencement Date and neither Party may assert ownership of all or part of the other Party's then existing IPRs.

61. IPR Register

- 61.1. The Service Provider must:
- a. within the Transition In Period, produce a register setting out all IPRs which are to be used in providing the Services, the owner of those rights and, where the IPRs are licensed, the licensee and licensor of those rights;
 - b. review and update that IPRs register as necessary to reflect all changes from time to time in the IPRs used in providing the Services; and
 - c. make that register available to **Customs** on its request.

62. Service Provider and Third Party Material

- 62.1. The Service Provider warrants that it owns, holds or will obtain prior to the scheduled Handover Date licenses to use, reproduce and adapt (including the right to sub-license) all IPRs (excepting IPRs in **Customs** Material) necessary to provide the Services. The Service Provider grants to **Customs** for the Term of the Contract (including any Extended Operational Term) plus two (2) years after the end of the Term of the Contract an irrevocable, royalty free, non-exclusive (but including a right to sublicense to **Customs** contractors) licence to use, reproduce and adapt any IPRs owned or licensed by the Service Provider and used to provide the Services. For the avoidance of doubt, on termination, in whole or part, removal of Services, or expiration of the Contract, **Customs** may license its contractors to use the IPRs referred to in this **clause 62.1** for the purpose of providing services similar to the Services to **Customs**.
- 62.2. The IPRs referred to in **clause 62.1** include IPRs in tools and methodologies used for providing the Services, including without limitation tools, methods, formats, protocols and interfaces relating to the management, processing, display, storage, retrieval and communication of Surveillance Information and other data and information passing between the Service Provider and **Customs**.
- 62.3. After the expiry of the licence provided for in **clause 62.1**, the Service Provider grants **Customs**, should **Customs** require such a licence, a perpetual, irrevocable, non-exclusive licence (including a right to sub-license) to use, reproduce and adapt the IPRs owned by the Service Provider at a fee based on then commercial rates for the kind of intellectual property in question for the

purpose of **Customs** performing services similar to the Services or utilising those services.

- 62.4. **Customs** must not do anything which would prejudice the Service Provider's right, title and interest in any of the Service Provider's IPRs.

63. IPR In **Customs** Material

- 63.1. The Service Provider acknowledges and agrees that **Customs** Material remains the property of **Customs** and that all IPRs existing:
- a. in **Customs** Material;
 - b. in any **Customs** database provided to, or created or modified by the Service Provider; or
 - c. in any modifications or enhancements made to **Customs** Material,
- remain or are from the date of creation vested in **Customs**.
- 63.2. The Service Provider must ensure that **Customs** Material is, to the extent practicable, signified as the property of **Customs** and that **Customs** Material remains at all times free of any Security Interest.
- 63.3. For the Term of the Contract, **Customs** grants the Service Provider a revocable, royalty free, non-exclusive, non-transferable licence (other than to sublicense to its subcontractors) to use and modify **Customs** Material only for the purposes of providing the Services in accordance with the Contract.
- 63.4. The Service Provider must not make any modification, enhancement or addition to **Customs** Material except in accordance with the **Customs** Contract Manager's prior written permission.
- 63.5. Where any Service Provider Personnel creates, modifies or enhances **Customs** Material then the Service Provider transfers all title to and assigns all IPRs in the **Customs** Material and all material created in designing and making the **Customs** Material (or modification or enhancement) to **Customs**. The Service Provider must do all things necessary, including (as appropriate) complying with **clause 63.2**, to confirm that ownership of that modification, material and IPRs passes to **Customs** on the date of creation of the modification and material.
- 63.6. As between the Parties, **Customs** owns the IPRs in the Contract. The Service Provider may make a reasonable number of copies of the Contract for the purposes only of supplying the Services.
- 63.7. The Service Provider must not do anything which would prejudice **Customs** right, title and interest in any of **Customs** IPRs with respect to any **Customs** Data.

64. New Material

- 64.1. Subject to **clause 60** and unless otherwise agreed by the Parties, all IPRs which may be created under the Contract on or after the Commencement Date and which are fully or partly or directly or indirectly funded by **Customs** are vested in **Customs** from the date of creation and the Service Provider must supply relevant documentation and source code to **Customs** on request. **Customs** grants the Service Provider a revocable, royalty free, non-exclusive licence to use such IPRs for the purpose of delivering the Services to **Customs**.
- 64.2. Prior to a subcontractor commencing any work under the Contract, the Service Provider will obtain from that subcontractor and provide to **Customs** a written assignment or licence in accordance with **clause 64.1** (as the case may be) to **Customs** of IPRs created as a result of the subcontractor performing the work.
- 64.3. If requested by **Customs** to do so, the Service Provider must at its own cost, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this **clause 64**.

65. Intellectual Property Rights Issues

- 65.1. The Service Provider warrants that, except in relation to **Customs** Material provided to the Service Provider by **Customs**, acts done by the Service Provider, or Service Provider Personnel in relation to the Services including use of any Software or other IPRs in the performance of the Services or any use of the Services by **Customs** or **Customs** personnel do not infringe the IPRs of any person.
- 65.2. Subject to **clause 65.1**, the Service Provider must at all times indemnify **Customs** and its officers, employees and agents (other than the Service Provider) (in this **clause 65** referred to as "**those indemnified**") from and against any Loss incurred by any of those indemnified arising from any claim, demand, suit, action or proceeding by any person against any of those indemnified where such Loss arose out of an infringement, or an alleged infringement, of the IPRs of any person, which occurred by reason of the use or provision of, or access to, the Services or any Deliverable. The indemnity in this **clause 65.2** will survive the expiration or termination of the Contract.
- 65.3. **Customs** must notify the Service Provider in writing as soon as practicable of any claim or demand made, or action, suit or proceedings threatened or brought, against **Customs**, arising from the infringement or alleged infringement referred to in **clause 65.2**.
- 65.4. In the event of any claim, demand, suit, action or proceedings being made, brought or threatened in respect of the infringement or alleged infringement of any of the rights referred to in **clause 65.2**, the Service Provider must at its own expense and with the written consent of **Customs**, use its best endeavours to:

- a. procure for **Customs**, on reasonable commercial terms, the right to continue to use the IPRs in question for the provision of the Services; or
- b. replace or modify the Services in a manner acceptable to **Customs** such that the quality, performance (including the performance measures) or usefulness of the Services is not degraded and so that the infringement or alleged infringement ceases.

65.5. For the purposes of this **clause 65**, "infringement" includes unauthorised acts which would, but for the operation or section 163 of the *Patents Act 1990*, section 40A of the *Designs Act 1906*, section 183 of the *Copyright Act 1968* and section 25 of the *Circuits Layout Act 1989* (or any sections that replace those sections from time to time), constitute an infringement.

65.6. **Customs** warrants that the Service Provider's use of **Customs** Materials (that have been provided by **Customs** to the Service Provider) in accordance with any terms and conditions provided to the Service Provider by **Customs** will not infringe the IPRs of any person. This warranty does not apply to any modifications to **Customs** Material made by or on behalf of the Service Provider.

65.7. To the extent permitted by applicable Laws and for the benefit of **Customs**, the Service Provider:

- a. waives all of its Moral Rights and gives all approvals or consents required to be given by applicable Laws regarding its Moral Rights; and
- b. will use its best endeavours to procure that each of the Service Provider Personnel waives all their Moral Rights and gives all approvals or consents required to be given by applicable Laws regarding their Moral Rights,

in relation to the performance of the Services or any material arising out of the performance of the Services (including modifications to **Customs** Data and any other material owned by or licensed to the Service Provider or any other person).

PART 14 - WARRANTIES AND INDEMNITIES

66. Warranties

- 66.1. In addition to the express warranties otherwise contained in this Contract, the Service Provider represents and warrants that:
- a. it has and will continue to have and to use, the skills, qualifications and experience to provide the Services in an efficient and controlled manner with a high degree of quality and responsiveness and to a standard that complies with the Contract;
 - b. it will meet s. 47(1)(b) of Overall Contract Performance calculated in accordance with the Performance Measurement System from the commencement of the fourth month following the scheduled Handover Date and it will seek to meet 100 percent of Overall Contract Performance calculated in accordance with the Performance Measurement System at all times during the Term of the Contract; s. 47(1)(b)
 - c. it will provide the necessary resources to provide the Services and use those resources to provide the Services; and
 - d. it will maintain the accuracy and completeness of the IPR Register at all times during the Term of the Contract.
- 66.2. The Service Provider represents and warrants that:
- a. it has full corporate power and authority to enter into, perform and observe its obligations under the Contract;
 - b. that the execution, delivery and performance of the Contract has been duly and validly authorised by all necessary corporate action; and
 - c. the Service Provider's signing, delivery and performance of the Contract does not constitute:
 - A. a violation of any judgment, order or decree;
 - B. a material default under any contract which relates in any way to the delivery of the Services by which it or any of its assets are bound; or
 - C. an event that would, with notice or lapse of time, or both, constitute such a default.
- 66.3. It is a condition of the Contract that the Service Provider has disclosed in writing to **Customs** prior to the Contract:
- a. any litigation or proceeding whatsoever, actual or threatened, against the Service Provider; and

- b. any material matters relating to the commercial, technical or financial capacity of the Service Provider or of any Key Subcontractor proposed to be engaged in respect of the Contract including the existence of any breach or default or alleged breach or default of any agreement, order or award binding upon the Service Provider,

being matters affecting the Service Provider's ability to perform any of its obligations under the Contract and the Service Provider must promptly notify and fully disclose to **Customs** in writing any event or occurrence actual or threatened during the Term of the Contract which would materially affect the Service Provider's ability to perform any of its obligations under the Contract.

- 66.4. The Service Provider warrants that at the date the Contract is entered into there is no Interest (as defined in **clause 51**) or Third Party Interest that has not been disclosed in writing to **Customs**.
- 66.5. The Service Provider undertakes that it will not at any time create, or arrange with any third party to create, any Third Party Interest without first obtaining **Customs** written approval.
- 66.6. In giving any approval under **clause 66.5**, **Customs** may impose any conditions it sees fit, including, without limitation:
 - a. conditions requiring that **Customs** be a party to any arrangement creating a Third Party Interest;
 - b. conditions requiring the Service Provider to procure written undertakings of a nature and form acceptable to **Customs** from any third party that it will:
 - A. not exercise any right or power in relation to the Equipment or any **Customs** Data stored or contained in that Equipment, without first notifying **Customs**, and first offering **Customs** a right to act as the Service Provider's agent in respect of the arrangement;
 - B. in exercising any power or right in relation to the Equipment, at all times use its best efforts to ensure that no disclosure, corruption or loss of **Customs** Data, or discontinuity of the Services occurs; and
 - C. observe all **Customs** Data related obligations imposed on the Service Provider under the Contract; and
 - c. conditions requiring the Service Provider to irrevocably authorise **Customs** to do anything contemplated in **clause 66.6.b** above.
- 66.7. The Service Provider shall warrant when required by **Customs** that it has complied with **clause 66.5**.
- 66.8. **Customs** warrants that it has authority to enter into the Contract.

67. Disclaimer

67.1. The Service Provider:

- a. acknowledges that the information provided to the Service Provider prior to the signing of the Contract by **Customs**, or any of its officers, employees, agents or advisers and relating to the Contract ("**Pre-Contract Information**") has not been verified or checked by **Customs**, or any of its officers, employees, agents or advisers, or independently audited;
- b. agrees that it has made its own assessment of all the Pre-Contract Information and has sought appropriate professional advice about:
 - A. any information, statements, or representations contained in any Pre-Contract Information;
 - B. the regulatory regime applicable to the provision of the Services to **Customs**;
 - C. the financial condition, business affairs, and operations of **Customs**;
 - D. the assumptions, uncertainties and contingencies which may affect the future business of **Customs**; and
 - E. the impact that a variation in future outcomes may have on any Services;
- c. acknowledges that, subject to any Law to the contrary, and to the maximum extent permitted by Law, **Customs**, its officers, employees, agents and advisers each disclaim all liability for any loss or damage (whether foreseeable or not) suffered by any other person acting on any part of the Pre-Contract Information, whether or not the loss or damage arises in connection with any negligence, default or lack of care on the part of **Customs**, its officers, employees, agents or advisers or any other person or any misrepresentation or any other cause;
- d. agrees to be bound (to the maximum extent permitted by Law) by any disclaimer contained in or accompanying any Pre-Contract Information;
- e. waives (to the maximum extent permitted by Law) all claims or rights of action against **Customs**, its officers, employees, agents and advisers in relation to the conduct of the process relating to the Pre-Contract Information and the tender process and documents in respect of the Contract and the Services; and
- f. agrees that neither **Customs** nor its officers, employees, agents or advisers (to the extent permitted by Law):
 - A. subject to any express provision in the Contract to the contrary, makes or gives any representation, assurance or warranty, express or implied, that any part of the Pre-Contract Information is or will be current, accurate, reliable or complete;

- B. subject to any express provision in the Contract to the contrary, is under any obligation to notify the Service Provider or any other person, or to provide any further information to the Service Provider or any other person, if they or any of them become aware of an inaccuracy, incompleteness or change in the Pre-Contract Information;
- C. is under any obligation or duty in relation to the Pre-Contract Information, either to the Service Provider, or to any person obtaining information from the Service Provider;
- D. professes any expertise, or represents any willingness to apply any expertise, for the benefit of the Service Provider;
- E. makes any express or implied representation or warranty that any estimate or forecast will be achieved or that any statements as to future matters will prove correct;
- F. represents that the assumptions on which any forecast is based are accurate, complete or reasonable;
- G. (except so far as liability under any statute cannot be excluded) accepts responsibility arising in any way for errors in, or omissions from, the Pre-Contract Information, or in negligence;
- H. accepts any liability for any loss or damage suffered by any person as a result of that person or any other person placing any reliance on any Pre-Contract Information; or
- I. assumes any duty of disclosure or fiduciary duty to any interested party.

67.2. **Clause 67** of the Contract is intended to benefit and is to be interpreted as benefiting **Customs** and each of its officers, employees, agents and advisers and to be enforceable by each of those persons. To that extent, **Customs** has entered the Contract on its own behalf and on behalf of each of those persons.

67.3. **Customs** is not responsible or liable to the Service Provider in respect of any Losses the Service Provider may incur as a consequence of the transmission of business provisions of the *Workplace Relations Act 1996* applying to the Services. For the purposes of this **clause 67.3**, a reference to the transmission of business provisions of the *Workplace Relations Act 1996* is a reference to sections 149(1)(d), 170MB, and 170VS of the *Workplace Relations Act 1996*.

67.4. Nothing in **clause 67.3** is to be construed as an acknowledgment or acceptance by the parties that the transmission of business provisions of the *Workplace Relations Act 1996* apply as a result of the execution of this Contract.

68. Indemnity

- 68.1. The Service Provider must at all times indemnify **Customs** and its officers, employees, agents or advisers (other than the Service Provider) ("**those indemnified**") from and against any Loss incurred by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified to the extent such Loss was caused or contributed to in any way by any unlawful, wilfully wrongful or negligent act or omission of the Service Provider, or any Service Provider Personnel in the performance of the Contract or the failure to perform the Contract in accordance with its terms.
- 68.2. The Service Provider agrees that **Customs** may enforce the indemnity in favour of the persons specified in **clause 68.1** for the benefit of each of such persons in the name of **Customs** or of such persons.
- 68.3. The Service Provider's liability to those indemnified under **clause 68.1** will be reduced proportionally to the extent that any unlawful, wilfully wrongful or negligent act or omission of those indemnified caused or contributed to the Loss.
- 68.4. This indemnity will survive the expiration or termination of the Contract.
- 68.5. It is not necessary for **Customs** to have incurred any expense or made any payment before enforcing an indemnity under the Contract.

69. Liability Cap

- 69.1. Each Party's liability to the other for all Losses in respect of or arising out of any common law or statutory cause of action arising out of the operation of the Contract ("**Cause of Action**") relating to:
- a. personal injury, including sickness and death;
 - b. loss of, or damage to, tangible property; or
 - c. infringement of IPR or a breach of any confidentiality or privacy obligations,
- is unlimited.
- 69.2. Each Party's liability to the other for all Losses relating to Causes of Action (other than those Causes of Action specified in **clause 69.1** is capped to the s. 47(1)(b) for the Initial Operational Term.
- 69.3. The Parties will negotiate in good faith using a methodology similar to that used to calculate the cap for the Initial Operational Term to agree a liability cap to cover any Extended Operational Term.

70. Insurance

- 70.1. The Service Provider must take out and maintain during the Term of the Contract the types of insurance policies specified at **Schedule 18** (Insurance) with a reputable insurance company, and on terms acceptable to **Customs**.
- 70.2. The Service Provider must in respect of insurance referred to in **clause 70.1**:
- a. if requested by **Customs**, promptly provide to **Customs** a certificate of currency and a copy of the policy;
 - b. take out insurance policies that are primary and without any right of contribution from any insurance effected by **Customs**;
 - c. have **Customs** interest noted on the insurance policies;
 - d. ensure that every insurance policy provides for the proceeds of any insurance claim to be applied to the replacement, reinstatement or repair of the Equipment in respect of which the proceeds were received, provided that the application of the proceeds of any insurance claim may be otherwise agreed by the Parties; and
 - e. ensure that any approved Key Subcontractors take out and maintain valid and enforceable insurance policies of the types and for the coverage specified in **clause 70.1** as appropriate given the nature of the work to be carried out. Without limiting the Service Provider's responsibility for acts or omissions of its subcontractors, any deficiencies in the coverage or policy limits of the Key Subcontractor's insurance is the sole responsibility of the Service Provider.
- 70.3. The taking out and maintaining of insurance as required by this **clause 70** does not in any way limit the responsibilities, obligations or liabilities of the Service Provider under other provisions of the Contract.
- 70.4. The Service Provider will be responsible for risk of loss of, and damage to, any property, including GFM or other materials used by it to provide the Services, except to the extent that any loss of, or damage to, any such property, or other materials is caused by an unlawful, wilfully wrongful or negligent act or omission of **Customs**, its officers, employees or agents (other than the Service Provider).
- 70.5. If the Service Provider fails to satisfy its obligations under **clauses 70.1** and **70.2**, **Customs** is entitled to take out and maintain such insurance policies and pay the premiums as necessary and then deduct such amounts from any Service Charge or other moneys that are or may become due to the Service Provider, recover the same as a debt or exercise any right it has under a financial undertaking provided under **clause 52**.
- 70.6. In the event of a claim under any of the policies referred to in this **clause 70**, the Service Provider will be liable for any excess applicable except to the extent

that the claim is due to the unlawful, wilfully wrongful or negligent act or omission of or breach of the Contract by **Customs**.

s. 47(1)(b)

70.7.

70.8.

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PART 15 - TERMINATION

71. Mitigation

- 71.1. Each Party must seek to minimise its Losses in the event of the occurrence of a force majeure event, termination (in whole or part) or expiration of the Contract.

72. Termination For Default Of Service Provider

- 72.1. Without prejudice to its rights at common law or otherwise, **Customs** may, by notice in writing to the Service Provider, terminate the Contract in whole or in part by notice in writing with effect on and from the date specified in the notice ("**date of termination**") if:
- a. the Service Provider becomes insolvent;
 - b. the Service Provider makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver and manager appointed on behalf of debenture holders or creditors;
 - c. the Service Provider goes into liquidation or passes a resolution to go into liquidation, otherwise than for the purpose of reconstruction, or becomes subject to any petition or proceedings in a court for its compulsory winding-up or becomes subject to supervision of a court either voluntarily or otherwise;
 - d. the Service Provider suffers any execution against its assets having a material adverse effect on its ability to perform the Contract;
 - e. the Service Provider ceases, or threatens to cease, to carry on its business or a substantial part of its business;
 - f. the Service Provider fails to comply with the Contract (which failure is capable of remedy) and the Service Provider does not commence to remedy a failure within ten (10) Business Days of being given notice by **Customs** (or such other notice period as allowed by **Customs**) requiring the Service Provider to remedy the failure or the Service Provider fails to remedy the failure within thirty (30) Business Days of being given that notice;
 - g. the Service Provider assigns its rights otherwise than in accordance with the requirements of the Contract;
 - h. **Customs** is entitled to terminate the Contract under **clause 8** (Commencement);
 - i. **Customs** is entitled to terminate the Contract under **clause 15** (Performance);
 - j. **Customs** is entitled to terminate the Contract under **clause 23** (Occupational Health and Safety);

- k. **Customs** is entitled to terminate the Contract under **clause 34** (Suspension and Termination for Security Breach);
- l. **Customs** is entitled to terminate the Contract under **clause 45** (Conditions Precedent to Contract Taking Effect);
- m. **Customs** is entitled to terminate the Contract under **clause 81** (Change in ownership) or under **clause 82** (Conversion to Publicly Listed Company);
- n. the Service Provider breaches any confidentiality requirements under the Contract, where the breach has a material adverse affect on **Customs** as determined by **Customs** acting reasonably;
- o. the Service Provider breaches **clause 51** (Interest) or **clause 77** (Conflict of Interest) and where the breach has a material adverse affect on **Customs** as determined by **Customs** acting reasonably; or
- p. without limiting this **clause 72**, commits any breach or breaches of the Contract that at common law entitles the Commonwealth to terminate the Contract.

72.2. Where, before termination of the Contract, **Customs** has made any payment in advance to the Service Provider for which it has not received any Services, the amount of that payment must be repaid by the Service Provider to **Customs** immediately on termination and, if not repaid, is recoverable by **Customs** from the Service Provider as a debt.

72.3. If the Contract is terminated in whole or in part under this **clause 72**:

- a. subject to the Contract and **clause 76** (Transition Out) in particular, the Parties are relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
- b. subject to the requirements of the Service Provider in order to perform Services in accordance with **clause 76** (Transition Out), all licences and authorisations relating to or concerning the Contract granted to the Service Provider by **Customs** terminate immediately despite anything to the contrary contained in the relevant licence or authorisation;
- c. the Service Provider must comply with **clause 76** (Transition Out); and
- d. **Customs** must pay the Service Provider for any Services that were properly performed to the requisite standard in accordance with the Contract prior to the date of termination.

72.4. The Service Provider acknowledges that the performance of the Services are critical to the performance of the functions of **Customs**, that **Customs** will incur expenses in seeking a new service provider and transferring the Services to a new service provider and that **Customs** has the right to recover such expenses from the Service Provider.

73. Termination For Default Of *Customs*

- 73.1. The Service Provider may, by twenty (20) Business Days notice in writing, terminate the Contract if ***Customs*** has not, within twenty (20) Business Days after a notice from the Service Provider being delivered, requiring ***Customs*** to pay a Service Charge due under the Contract, paid the Service Charge.
- 73.2. **Clause 73.1** provides the only basis on which the Service Provider may terminate the Contract.

74. Termination With Compensation

- 74.1. In addition to any other rights it has under the Contract, ***Customs*** may terminate the Contract, in whole or in part, by giving not less than ninety (90) days notice in writing to the Service Provider that the Contract, or a part of the Contract, is terminated from the date specified in the notice ("**date of termination**") and, in that event, ***Customs*** may give to the Service Provider such directions as it thinks fit in relation to subsequent performance of the Contract.
- 74.2. Notwithstanding that the Service Provider may have received a notice under **clause 74.1** the Service Provider must comply with its obligations under **clause 76** and with any directions given by the ***Customs*** Contract Manager.
- 74.3. ***Customs*** must pay the Service Provider for any Services that were performed in accordance with the Contract prior to the date of termination and any Transition Out costs under **clause 76**.
- 74.4. ***Customs*** is liable to the Service Provider for any substantiated unavoidable Loss incurred by the Service Provider in connection with the Contract to the extent that the unavoidable Loss was incurred as a direct consequence of termination of the Contract in accordance with this **clause 74**.
- 74.5. For the purposes of **clause 74.4** unavoidable Loss is limited to reasonable wind-down expenses (for example, redundancy expenses). Loss of profit is not recoverable as an unavoidable Loss. The amount payable for unavoidable Loss cannot in any event result in total payments to the Service Provider under the Contract exceeding the total Contract Price.
- 74.6. The Service Provider must, in each subcontract or order to the value of one million dollars (\$1,000,000) or more placed with any Key Subcontractor for the purpose of the Contract, reserve a right of termination to take account of ***Customs*** right of termination under this **clause 74** and the Service Provider must, where appropriate, make use of such rights to mitigate Losses in the event of termination by ***Customs*** under the provisions of this **clause 74**.

- 74.7. For the avoidance of doubt, **Customs** has an unfettered discretion to terminate the Contract in accordance with this **clause 74**.

75. Deemed Termination For Convenience

- 75.1. If a purported termination for cause by **Customs** under **clause 72** is determined by a competent authority not to be properly a termination for cause, then that termination by **Customs** will be deemed to be a termination for convenience under **clause 74** which termination has effect from the date of the notice of termination.

76. Transition Out

- 76.1. Within six (6) months after the Commencement Date, the Service Provider must develop, in consultation with and for approval by **Customs**, a Transition Out Plan that will provide for the phased transition out of Services from the Service Provider to **Customs** or its nominee at the expiration or termination of the Contract (in whole or part). The Transition Out Plan must, without limitation, provide for:
- a. continuation of provision of the Services, for up to ninety (90) Business Days after the termination or expiry of the Contract or such other date as is agreed by the Parties, so as to ensure an orderly transition of services as requested by **Customs**;
 - b. whether the Service Charge shall apply to any Services performed by the Service Provider during any transition out period or what alternative charging regime shall apply; and
 - c. all other matters referred to in this **clause 76** and in **Schedule 3** (Contract Management Plan).
- 76.2. If the Service Provider proposes an alternative charging regime for the Services for any transition out period then such charging regime shall be dealt with under **clause 38** (Change Control).
- 76.3. The Transition Out Plan must set out the obligations to be performed by each Party in connection with the orderly transition of Service delivery from the Service Provider to **Customs** or to an alternative service provider nominated by **Customs**.
- 76.4. The Service Provider must comply with the Transition Out Plan and provide all reasonable assistance and cooperation necessary, prior to or during any termination notice period and on and from expiration or termination of the Contract (in whole or part) for any reason, to transfer the Services to **Customs** or an alternative service provider in a manner which ensures continued provision of the Services or services similar to the Services (as the case may be) in accordance with the Service Level Agreement. In particular the Service Provider must in accordance with a direction from **Customs** in writing:

- a. deliver to **Customs** complete Commonwealth Records and any other **Customs** property including **Customs** Materials and GFM;
- b. deliver to **Customs** any **Customs** Data which **Customs** requests or destroy any **Customs** Data as directed by **Customs**;
- c. to ensure, where the **Customs** Data referred to in paragraph b above is Security Classified Information, that the **Customs** Data is destroyed in accordance with the minimum requirements for destruction of such information, as set out in the Protective Security Manual;
- d. deliver to **Customs** all **Customs** Confidential Information;
- e. except with the consent of **Customs** or as required to comply with **clause 76** cease accessing any of the GFM, or **Customs** systems including communications links;
- f. provide all information including procedures, manuals and other documentation, and training relating to the Services at the Service Charge specified in **Schedule 5** (Service Charges), necessary for **Customs** or an alternative service provider to assume provision of services similar to the Services;
- g. deliver to **Customs** all documents which are necessary to enable services similar to the Services to be provided by **Customs** internally or by another service provider in a manner which ensures orderly transition and continuity of service;
- h. perform its other obligations under the Transition Out Plan;
- i. allow **Customs** to audit compliance with this **clause 76**; and
- j. allow new service providers to access its premises where relevant to assist in the orderly transition of the Services.

76.5. If the Contract is terminated only in part, the obligations of the Service Provider under **clause 76.4** in respect of that termination, apply only to the extent necessary to ensure the orderly transition to **Customs** or other service provider of services similar to the Services which are the subject of the terminated part of the Contract.

76.6. The Service Provider must regularly update the Transition Out Plan to ensure it is at all times consistent with the Services and the Service Level Agreement and facilitates the most efficient succession to an alternative service provider.

76.7. The Parties will review the Transition Out Plan in the annual Contract Management Plan review and not less than six (6) months prior to the scheduled expiration of the Contract to ensure that the Transition Out Plan remains appropriate to the circumstances of **Customs**.

- 76.8. Where the Contract is terminated but without limiting any damages that **Customs** may be entitled to, **Customs** will pay the Service Provider the Service Charge, or other applicable charges pursuant to **clause 76.2.** for the Services that the Service Provider provides in complying with its obligations under this **clause 76.**
- 76.9. Subject to **clause 76.2** the Parties agree that the terms and conditions of the Contract apply to any Services performed by the Service Provider during any Transition Out Period under this **clause 76.**
- 76.10. The Service Provider agrees that it will not hinder in any way, the transition of the provision of services similar to the Services to a new Service Provider upon termination or expiration of the Contract or part of the Contract.

PART 16 - GENERAL OBLIGATIONS

77. Conflict Of Interest

77.1. The Service Provider:

- a. warrants that to the best of its knowledge no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract by itself or by any Service Provider Personnel;
- b. must not, during the course of the Contract, engage in any activity likely to compromise the ability of the Service Provider to perform its obligations under the Contract fairly and independently. The Service Provider must immediately disclose to **Customs** any activity which constitutes or may constitute a conflict of interest;
- c. must not violate any Laws or **Customs** policies of which the Service Provider has been given notice regarding the offering of unlawful or improper inducements in connection with the Contract; and
- d. must use its best endeavours to ensure that Service Provider Personnel do not engage in any activity or obtain any interest likely to conflict with or restrict the Service Provider in performing its obligations under the Contract fairly and independently and must immediately disclose to **Customs** any such activity or interest.

77.2. Should the Service Provider inform **Customs** of an actual or potential conflict of interest or should **Customs** otherwise become aware of such an actual or potential conflict of interest, **Customs** may by written notice to the Service Provider seek the removal of that conflict within a reasonable time specified in the notice, and failure by the Service Provider to remove the conflict shall constitute a breach of the Contract entitling **Customs** to terminate the whole Contract or that part of the Services in respect of which there is such an actual or potential conflict of interest under this **clause 77**.

78. Negation Of Employment And Agency

- 78.1. Neither Party must represent itself, and must ensure that its employees do not represent themselves, as being employees, partners or agents of the other Party.
- 78.2. The Service Provider or any Service Provider Personnel will not by virtue of the Contract be or for any purpose be deemed to be, an employee, partner or agent of **Customs**.
- 78.3. **Customs**, its officers, employees or agents will not by virtue of the Contract be or for any purpose be deemed to be an employee, partner or agent of the Service Provider.

- 78.4. Nothing in the Contract or any circumstances associated with it or its performance give rise to any relationship of joint venture, partnerships and agencies or any other fiduciary relationship between **Customs** and the Service Provider or between **Customs** and any subcontractor of the Service Provider.

79. Dispute Resolution

- 79.1. The Parties undertake to use all reasonable efforts in good faith to resolve any disputes which arise between them in connection with the Contract. A Party must not start court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of or concerning the Contract ("**Dispute**") unless it has complied with this **clause 79**.
- 79.2. A Party may give the other Party a notice of dispute ("**dispute notice**") in connection with the Contract. The dispute notice must be in writing and must contain full details of the dispute. Following the giving of a dispute notice, the dispute must initially be referred to the Contract Authority and Service Director, who must both use reasonable endeavours to resolve the dispute within ten (10) Business Days of the giving of the dispute notice.
- 79.3. If the dispute is not resolved under the procedure in **clause 79.2**, then the dispute must be referred to the Chief Executive Officer, **Customs** and the Chairman of the Board of the Service Provider, who must both use reasonable endeavours to resolve the dispute within a further five (5) Business Days or such other period as is agreed by the Parties.
- 79.4. If the Parties have not been able to resolve the dispute in accordance with **clauses 79.2** or **79.3**, then either Party may refer the dispute to mediation, to be conducted:
- by a mediator mutually selected by the Parties (or failing agreement, selected by the President of the Australian Capital Territory Law Society from the advanced panel of LEADR (Lawyers Engaged in Alternative Dispute Resolution));
 - under the rules for the conduct of commercial mediators issued from time to time by the Institute of Arbitrators and Mediators Australia; and
 - with the costs of such mediation to be borne by the Parties in equal shares.
- 79.5. The Parties acknowledge that the purpose of any exchange of information or documents, or the making of any offer of settlements under this **clause 79** is to attempt to settle the dispute between the parties and, subject to any Law to the contrary, neither Party may use any information or documents obtained through the dispute resolution process established by this **clause 79** for any purpose other than in an attempt to settle a dispute between the Parties.

- 79.6. In the event that the dispute, controversy or claim has not been resolved within thirty (30) Business Days (or such other period as agreed between the Parties in writing) after the appointment of the mediator in accordance with **clause 79.4**, then either Party is entitled to treat the mediation process as terminated and may, if it wishes, commence legal proceedings.
- 79.7. Where a Party fails to comply with this **clause 79**, the other Party need not comply with this **clause 79** before commencing legal proceedings relating to the dispute.
- 79.8. Subject to **clause 43.7**, the Parties must continue to perform their obligations under the Contract despite the existence or alleged existence of a dispute.
- 79.9. The Service Provider must have comparable dispute resolution procedures in place with its Key Subcontractors.

80. Compliance With Laws

- 80.1. The Service Provider must in carrying out the Services comply with all Applicable Requirements and Laws.
- 80.2. The Service Provider must take all reasonable steps to ensure that it is aware of developments in Commonwealth legislation and policy, in order to fulfil properly its obligations under this **clause 80**.

81. Change in Ownership

- 81.1. The Service Provider is a corporation whose shareholding is not publicly listed but has been disclosed to **Customs** at the Commencement Date. Subject to **clause 82**, any change in the shareholding of the Service Provider shall be subject to the approval of **Customs**, which shall not be unreasonably withheld. **Customs** may terminate the Contract for default under **clause 72** if the Service Provider fails to obtain **Customs** approval under this **clause 81** to any change in its shareholding.

s. 47(1)(b)

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83. Assignment

- 83.1. Subject to **clauses 37.1** and **83.3**, neither Party may assign or transfer any of its rights or obligations under the Contract without the prior consent in writing of the other Party, such consent not to be unreasonably withheld.

- 83.2. The Service Provider must not consult with any other person for the purposes of entering into an arrangement which requires novation of the Contract without first consulting **Customs**.
- 83.3. The Service Provider hereby consents to and agrees to undertake all necessary action to enable **Customs** to transfer the Contract or part of the Services to an appropriate person where:
- a. there is a change in the structure of **Customs**, including a division of its functions between two or more Commonwealth agencies or an abolition of some of its functions; or
 - b. because part or all of the activities of **Customs** are to be outsourced to another Commonwealth agency.

84. Notices

- 84.1. With the exception of Tasking Notices which may be transmitted by **Customs** by telephone, a notice required or permitted to be given by one Party to another under the Contract must be in writing and is treated as being duly given if it is:
- a. delivered to that other Party's address;
 - b. sent by pre-paid mail to that other Party's address; or
 - c. transmitted by facsimile to that other Party's address.
- 84.2. With the exception of a Tasking Notice transmitted by **Customs** by telephone, a notice given to a Party in accordance with this **clause 84** is treated as having been duly given and received:
- a. when delivered (if left at that Party's address);
 - b. on the third Business Day after posting (if sent by pre-paid mail); or
 - c. on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and no intimation has been received that the notice had not been received, whether that intimation comes from that Party or from the operation of facsimile machinery or otherwise).
- 84.3. The address of a Party is the address set out below or another address of which that Party may from time to time give notice to each other Party:

To: **Customs** Contract Manager
Attention: s. 22(1)(a)(ii)
Address: Australian Customs Service
5 Constitution Avenue
CANBERRA CITY ACT 2603
Telephone: s. 22(1)(a)(ii)
Facsimile: s. 22(1)(a)(ii)
Email: s. 22(1)(a)(ii)l@customs.gov.au'

Service Provider

To: Account Director
Attention: s. 47F(1)
Address:

Telephone:
Facsimile:
Email:

85. Force Majeure

- 85.1. Neither Party is liable to the other Party in respect of the results of any delay or failure to perform its obligations pursuant to the Contract if and to the extent such delay or failure is caused by an event of Force Majeure provided that the non-performing Party is without fault in causing the failure or delay, and the failure or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non performing Party at its expense through the use of alternate sources, work around plans or other means.
- 85.2. When a Force Majeure event has occurred, the non-performing Party will be excused from further performance of the obligations affected for as long as the circumstances prevail provided the non-performing Party continues to use its best endeavours to recommence performance whenever and to whatever extent possible without delay. Any Party so delayed in its performance will immediately notify the Party to whom performance is due and describe at a reasonable level of detail the circumstances causing the delay.
- 85.3. The Service Provider will not have the right to and shall not receive any payment of the Service Charges or Monthly Reimbursable Expenses from **Customs** for Services not performed as a result of any Force Majeure event. For the avoidance of doubt the Service Provider has the right to receive any Service Charge or Monthly Reimbursable Expenses that are payable for Services performed prior to the Force Majeure event.
- 85.4. If a delay or failure of the Service Provider to perform its obligations due to an event of Force Majeure that is not caused by **Customs** exceeds forty five (45) Business Days, **Customs** may immediately terminate the Contract on providing notice in writing to the Service Provider.
- 85.5. If the Contract is terminated under **clause 85.4**:
- a. the Service Provider must refund moneys previously paid by **Customs** pursuant to the Contract for Services not provided by the Service Provider to **Customs** as at the date of termination and both the Service Provider and

Customs must comply with their respective obligations under **clause 76**; and

- b. **Customs** may recover from the Service Provider the difference between the fees paid to a third party service provider and the Fees that would have been paid to the Service Provider for the Services that would have been performed except for the Force Majeure event.

85.6. The failure of a subcontractor or the Service Provider's suppliers to perform any obligation owed to the Service Provider will only constitute a Force Majeure event with respect to the Service Provider's performance of the Services if and to the extent that the failure by the subcontractor or supplier is caused by an event of Force Majeure in accordance with **clause 85.1**.

86. General

86.1. Waiver

The failure, delay, relaxation or indulgence on the part of any Party in exercising any power or right conferred upon that Party by the Contract does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right under the Contract.

86.2. Entire Contract

The Contract constitutes the sole and entire agreement between the Parties in relation to the subject matter of the Contract and a warranty, representation, guarantee or other term or condition of any nature not contained or recorded in the Contract is of no force or effect.

86.3. Severance

If any provision of the Contract is invalid or not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of separate enforcement with regard to the invalid or unenforceable provision are, and continue to be, valid and enforceable in accordance with their terms.

86.4. Preservation of Rights

Termination of the Contract for any reason does not extinguish or otherwise affect:

- a. any rights of either Party against the other which:
 - A. accrued prior to the time of termination; or

- B. otherwise relate to or may arise at any future time from any breach or non-observance of obligations under the Contract which arose prior to the time of termination; and
- b. the provisions of the Contract, which are expressed to or which by their nature survive termination, including without limitation, clauses that relate to the maintaining of confidentiality, privacy, IPRs, insurance, indemnity, audit, transition out, dispute resolution, liability cap, and all clauses required to give effect to these clauses.

86.5. Further Assurance

Each Party must do, sign, execute and deliver and must procure that each of its employees, contractors and agents does, signs, executes and delivers all deeds, documents, instruments and acts reasonably required of it or them by notice from another Party effectively to carry out and give full effect to the Contract and the rights and obligations of the Party under it.

86.6. Counterparts

The Contract may be executed by any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

86.7. Attorneys

Where the Contract is executed on behalf of a Party by an attorney, that attorney by executing declares that the attorney has no notice of the revocation of the power of attorney under the authority of which the attorney executes the Contract on behalf of that Party.

86.8. Governing Law and Jurisdiction

The Contract is governed by, and is to be construed in accordance with, the law of the ACT and the Parties submit to the non-exclusive jurisdiction of the courts of the ACT and any court hearing appeals from those courts.

86.9. Remedies are Cumulative

The rights, powers and remedies provided in the Contract are cumulative and are not exclusive of the rights, powers or remedies provided by law independently of the Contract.

86.10. No Security

The Service Provider must not, without **Customs** prior written consent, give or purport to give any security interest over any of its present and future right, title and interest to receive payment from **Customs** at any time under the Contract.


86.11. Contra Proferentum

No rule of construction will apply in the interpretation of the Contract to the disadvantage of one Party on the basis that that Party put forward or drafted the Contract or any part of it.

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SCHEDULE 1 - STATEMENT OF WORK

s. 47(1)(b)




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SCHEDULE 2 - TRANSITION IN PLAN

(Clauses 1.1, 6, 9.1, s. 47(1)(b))

s. 47(1)(b)




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SCHEDULE 3 - CONTRACT MANAGEMENT PLAN

(Clauses ^{s. 47(1)(b)}, 21, s. 47(1)(b))


s. 47(1)(b)



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SCHEDULE 4 - SERVICE LEVEL AGREEMENT


s. 47(1)(b)



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SCHEDULE 5 - SERVICE CHARGES

s. 47(1)(b)

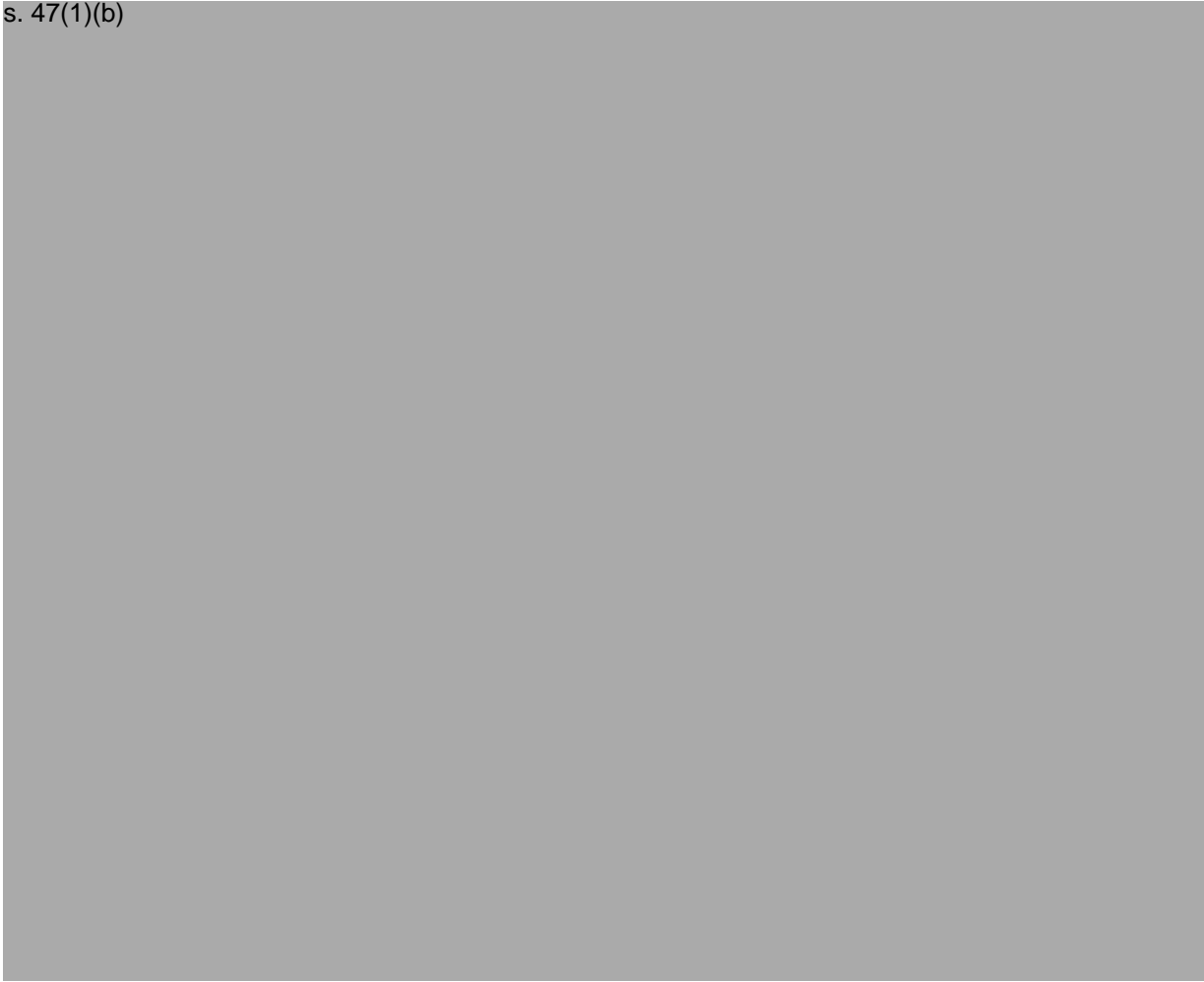


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SCHEDULE 6 - INVOICE

(Clause 43)

s. 47(1)(b)



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SCHEDULE 7 - CHANGE CONTROL FORM

(Clauses ^{s.47(1)b}, 38)

Format for Change Control Proposals

Agreement Variation Proposal Notice

Parties:	THE COMMONWEALTH OF AUSTRALIA (" Customs ") [SERVICE PROVIDER]
Agreement Details:	Services Contract between the Commonwealth of Australia (" Customs ") and [Service Provider]
Addressee:	
Date:	
Sequential Identification Number	
Proposal Title:	
Operative provisions:	This <i>Change Proposal</i> is given pursuant to clause 38 (Change Control) of the Contract. The Party issuing this <i>Change Proposal</i> proposes the variations to the Contract specified in the schedule to this <i>Change Proposal</i> .
Enquiries:	Any questions in relation to this notice should be directed to the officer issuing this notice as specified below:
Issuing Officer: [Insert details of person authorised to give the Notice]
Party proposing change	[SERVICE PROVIDER NAME] or Customs
Facsimile No:	

Schedule to Change Proposal

1. The variations proposed are as follows:

[Insert details of the proposed variation(s) to the Contract including:

- a statement of reasons for proposing the change;
- variations to the Contract and Schedule clauses in format of old clause and marked up new clause;

- an impact analysis (where appropriate) covering:
- the Services including nature, scope, scale and technology employed;
- budget and full cost breakdown;
- performance measures;
- management arrangements; and
- risk.]

2. Additional Information

3. Additional Information is provided as follows:

Service Provider Certification <i>(Certification that Service Provider and any subcontractor costs are reasonable.)</i>	
Comments from the Account Director	
Comments from the Customs Contract Manager	
Other relevant documentation <i>(Other information relevant to the proposal is attached.)</i>	

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4. Execution of Change Proposal

Pursuant to **clause 38.5** changes are effected once the formal change proposal has been executed by the Contract Authority on behalf of **Customs** and by the relevant authorised person on behalf of the Service Provider as follows:

Signed for **Customs**:

Name: _____

Title: Director General, Coastwatch
as Contract Authority

Witness Signature: _____

Date: _____

Signed for Contractor: _____

Name: _____

Title: Service Director

Witness Signature: _____

Date: _____

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SCHEDULE 8 - LIQUIDATED DAMAGES

(Clause 8.1)

s. 47(1)(b)

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SCHEDULE 9 - FINANCIAL UNDERTAKING

(Clause 52.1)

THIS DEED ("Undertaking") is made the day of 2005

BETWEEN Commonwealth of Australia represented by the Australian
Customs Service ("**Customs**") of the one part

AND [] ACN [] ABN []
("Guarantor") of the second part.

Agreement:

1. At the request of [REDACTED] ("**Service Provider**") and in consideration of **Customs** accepting this Undertaking, the Guarantor unconditionally and irrevocably, as a primary obligation, undertakes and covenants to pay to **Customs**, on written demand, and without reference to the Service Provider and notwithstanding any notice given by the Service Provider to the Guarantor not to pay same, any sum or sums which may from time to time be demanded in writing by **Customs** to a maximum aggregate sum of s. 47(1)(b) [REDACTED]
[REDACTED]
[REDACTED]
2. The Guarantor's liability under this Undertaking is a continuing liability and continues until payment is made under this Undertaking of the Maximum Liability or **Customs** notifies the Guarantor that this Undertaking is no longer required and returns this undertaking to the Guarantor or **Customs** returns this Undertaking to the Guarantor without demand. The obligations of the Guarantor under this Undertaking are not affected by anything which, but for this provision, might operate to exonerate it from that liability in whole or in part and this Undertaking may be enforced against the Guarantor without **Customs** being required to exhaust any remedy it may have against the Service Provider. The Guarantor agrees that it is not to be discharged or released from this Undertaking by any arrangement made between the Service Provider and **Customs**.
3. The Guarantor acknowledges that it has received valuable consideration for entering into this Undertaking.
4. The Guarantor must make payments to **Customs** under this Undertaking no later than 11:00am Canberra time on the due date to the account of **Customs** which **Customs** designates by notice, s. 47(1)(b) [REDACTED]

5. If a Law requires the Guarantor to withhold or deduct taxes from a payment so that **Customs** would not actually receive for its own benefit on the due date the full amount demanded under this Undertaking, then:
- (a) the amount payable is increased so that, after that deduction and deductions applicable to additional amounts payable, **Customs** is entitled to receive the amount it would have received if no deduction had been required;
 - (b) the Guarantor must make the deduction; and
 - (c) the Guarantor must pay the full amount deducted to the relevant authority in accordance with applicable Law,

s. 47(1)(b)

6. The benefit of this undertaking is not assignable by the **Commonwealth of Australia**.
7. This Undertaking is governed by, and is to be construed in accordance with, the laws for the time being of the Australian Capital Territory and the parties agree that the courts of that territory shall have jurisdiction to entertain any action in respect of, or arising out of, this Undertaking and hereby submit themselves to the jurisdiction of those courts.

s. 47(1)(b)

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SIGNED for and on behalf of the)
Commonwealth of Australia by:)

_____)

[^]Name of signatory[^]

Signature

In the presence of:

[^]Name of witness[^]

Signature of witness

SIGNED for and on behalf of)
National Australia Bank Limited)
ABN 12 004 044 937 by:)

_____)

[^]Name of signatory[^]

Signature

who is authorised by Power of
Attorney No. K616743M and who
declares that [^]he/she[^] has at the
time of execution of this document
no notice of its revocation.

In the presence of:

[^]Name of witness[^]

Signature of witness

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SCHEDULE 10 - APPLICABLE REQUIREMENTS

(Clauses 1.1, 41.1)

1. Compliance with Laws

- 1.1 The Service Provider must comply with all Laws relevant to the performance of the Services. In particular, the Service Provider must at all times during the Term maintain the permits, licenses, accreditations, certifications and standards relating to the performance of the Services required or imposed by the Civil Aviation Safety Authority or any successor organisation under the *Civil Aviation Act 1988*. Maintenance of these permits, licenses, accreditations and certifications is an essential term of this Contract. The Service Provider must provide evidence of the currency of the licenses, accreditations and certifications to the Contract Authority upon request.
- 1.2 Without limiting paragraph 1.1, in performing the Services the Service Provider must comply with:
- (a) the *Civil Aviation Act 1988* (Cth);
 - (b) the Civil Aviation Regulations 1988 ("CARs") made under the *Civil Aviation Act 1988* (Cth); and
 - (c) Civil Aviation Orders ("CAOs") made under the *Civil Aviation Act 1988* (Cth) or Civil Aviation Regulations 1988.
- 1.3 Without limiting paragraph 1.1, the Service Provider must notify the Contract Manager immediately if the Service Provider's Air Operator's Certificate ("AOC"), or an authorisation contained in the AOC or any other certificate or approval that is required to conduct the Services is varied, suspended or cancelled.
- 1.4 Without limiting paragraph 1.1, the Service Provider must provide the Contract Manager with:
- (a) a copy of any report made by the Service Provider to the Civil Aviation Safety Authority under the *Civil Aviation Act 1988* (including the CARs and CAOs) in relation to the Assets, the Service Provider's Personnel or the operation of the Services, within two (2) Business Days of the report being made;
 - (b) a copy of any document given to the Service Provider by the Civil Aviation Safety Authority in relation to scheduled or unscheduled regulatory surveillance of, or compliance and enforcement activity in relation to, the Service Provider, the Assets, the Service Provider's Personnel or the operation of the Services,

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within two (2) Business Days of the document being received by the Service Provider; and

(c) subject to the *Transport Safety Investigation Act 2003* (Cth) and Transport Safety Investigation Regulations 2003, with a copy of any report made to the Executive Director of the Transport Safety Investigation by the Service Provider or the Service Provider's Personnel in relation to the Assets, the Service Provider's Personnel or the operation of the Services, within two (2) Business Days of the report being made.

2. Commonwealth policies

2.1 The Service Provider must also comply with all Commonwealth policies notified to the Service Provider.

2.2. Without limiting paragraph 2.1, the Service Provider must comply with:

- (a) where appropriate, all Commonwealth policies referred to in the Commonwealth Procurement Guidelines: Core Policies and Principles and with any Commonwealth purchasing policies in existence from time to time;
- (b) policies and practices of the Australian Public Service;
- (c) all relevant Commonwealth and **Customs** policies and procedures including, in particular:
 - A. Commonwealth Protective Security Manual;
 - B. **Customs** Protective Security Manual;
 - C. **Customs** OH&S Guidelines; and
 - D. **Customs** Confidentiality requirements including Section 16 of the *Customs Administration Act 1985*; and
- (d) all other Commonwealth and/or **Customs** policies notified to the Service Provider by **Customs**.

3. Affirmative Action

3.1 The Service Provider must comply with its obligations, if any, under the *Equal Opportunity for Women in the Workplace Act 1999* and must not enter into a subcontract under the Contract with a subcontractor named by the Director of Affirmative Action as an employer currently not complying with the Act.

4. Occupational Health and Safety

4.1 Without limiting **clause 80** the Service Provider must at all times comply with **Customs**, State and Local Government Laws and regulations on occupational health and safety. Any failure by the Service Provider to so comply will entitle **Customs** to terminate the Contract under **clause 72**.

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- 4.2 The Service Provider will not be liable and **Customs** will not have a right to terminate, where the Service Provider is unable to comply with all Commonwealth, State or Local Government Laws and regulations due to an act or omission of **Customs** in relation to any buildings, fixtures or fittings.
- 4.3 In respect of any part of a Base within the control of the Service Provider, the Service Provider must comply with the obligations imposed on **Customs** for occupational health and safety.
- 4.4 The Service Provider must comply with and enforce in respect of its employees, agents and subcontractors, Commonwealth policy and all reasonable directions and procedures relating to safety on the Base or any part occupied or used by the Service Provider under the Contract.
- 4.5 **Customs** may at any time monitor environmental conditions at the Service Provider's premises in respect of amongst other things, light, noise, temperature, or the presence of hazardous substances. **Customs** must bear the costs of such monitoring.
- 4.6 The Service Provider must comply with all reasonable directions given by the **Customs** Contract Manager in respect of work practices or use of Equipment in order to eliminate or mitigate any condition contrary to published environmental standards which apply to **Customs**.
- 4.7 The Service Provider must comply with any fire instructions for any Base and shall ensure that employees, agents and subcontractors are fully conversant with them.
- 4.8 The Service Provider's procedures for complying with this clause must be specified in the Safety Management Plan.

5. Environmental Laws

- 5.1 Without limiting **clause 80**, the Service Provider must at all times comply with:
- (a) all laws (whether Commonwealth, State or Local Government) applicable to the Services in respect of environmental protection obligations;
 - (b) any environmental management plan applicable to a Base;
 - (c) any policy of the **Customs** relating to the environment in relation to the Services or a Base;
 - (d) any reasonable directions of the **Customs** in relation to the prevention or minimisation of impacts of the Services on the environment; and
 - (e) any notices, orders, or directions served by a government authority on the Service Provider or relating to the impacts of the environment by the activities of the Service Provider.

- 5.2 The Service Provider must promptly notify the **Customs** if it breaches any law in respect of environmental protection obligations or its activities result in an incident which causes or may cause harm to the environment including where the Service Provider causes or permits contamination.
- 5.3 The Service Provider must rectify, abate, remediate or otherwise make good any harm to the environment caused by the Service Provider in relation to the provision of the Services including, without limitation, remediate any contamination caused by or permitted by the Service Provider or its subcontractors.
- 5.4 The Service Provider must use its best endeavours to ensure that its contractors comply with each of the requirements in this clause.

Annex A CASA Consent Forms

AOC HOLDER'S CONSENT TO DISCLOSURE OF DOCUMENTS AND INFORMATION BY CIVIL AVIATION SAFETY AUTHORITY

I _____, (name) _____
(position/title)

on behalf of _____ (AOC holder's name and ACN or
ABN)

("the **AOC holder**") whose Aviation Reference Number is _____ -

and who is the holder of AOC number

request and authorise the Civil Aviation Safety Authority ("**CASA**") to disclose to
Customs copies of all or any of the following documents for the period
[...insert duration of contract...] after the date of this Notice of Consent:

1. a notice to show cause issued by CASA to the AOC holder;
2. a notice to show cause issued by CASA in relation to the approval of the appointment of the Chief Pilot of the AOC holder;
3. a non-compliance notice issued by CASA to the AOC holder;
4. an infringement notice issued by CASA to the AOC holder;
5. any response to CASA by the AOC holder or Chief Pilot, or on behalf of the AOC holder or Chief Pilot, to a non-compliance notice, infringement notice or show cause notice issued to it;
6. reports of any scheduled or unscheduled surveillance or audits conducted by CASA of the AOC holder; and
7. any other document held by CASA that relates to the compliance by the AOC holder with its obligations under the Civil Aviation Act, Regulations and Orders.

FURTHER I acknowledge that the AOC holder is aware that **Customs** will take any information provided to it by CASA in accordance with this Notice of Consent into account in assessing whether the AOC holder is complying with its contractual obligations to **Customs**.

FURTHER I authorise CASA to answer any questions asked by **Customs** expressly relating to the documents mentioned above.

Customs is not authorised to use information contained in disclosed documents or answers from CASA, for any purposes other than for the purposes referred to above.

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I warrant that I have the authority of the AOC holder to give this consent on behalf of the AOC holder.

(name)

(signature)

Date

(witness name)

(witness signature)

Date

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INDIVIDUAL'S CONSENT TO DISCLOSURE BY CIVIL AVIATION SAFETY AUTHORITY

I _____ (name) of _____
(address)

whose Aviation Reference Number is _____

request and authorise the Civil Aviation Safety Authority ("**CASA**") to disclose to **Customs** copies of all or any of the following documents for the period [...insert duration of contract...] after the date of this Notice of Consent:

1. a notice to show cause issued by CASA to me;
2. a non-compliance notice issued by CASA to me;
3. an infringement notice issued by CASA to me;
4. any response to CASA by me, or on my behalf, to a non-compliance notice, infringement notice or show cause notice issued to me;
5. reports of any scheduled or unscheduled surveillance or audits conducted by CASA of me; and
6. any other document held by CASA that relates to the compliance by me with my obligations under the Civil Aviation Act, Regulations and Orders.

FURTHER I acknowledge that I am aware that **Customs** will take any information provided to it by CASA in accordance with this Notice of Consent into account in assessing whether my employer is complying with its contractual obligations to **Customs**.

FURTHER I authorise CASA to answer any questions asked by **Customs** expressly relating to the documents mentioned above.

Customs is not authorised to use information contained in disclosed documents or answers from CASA, for any purposes other than for the above purposes.

(name)

Date

(witness name)

Date

(signature)

(witness signature)

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SCHEDULE 11 - COMMONWEALTH SECURITY REQUIREMENTS

(Clauses 28.5, 30-34, 35.1, 57.7)

[Note: The specific physical security requirements to apply to the Service Provider's Base will be agreed by the Parties.]

A. Commonwealth Protective Security Manual

The Service Provider must comply with the provisions of the Commonwealth Protective Security Manual 2005.

B. Security Requirements

Relating to physical issues - without limitation:

- *Crimes Act 1914*; and
- *Privacy Act 1988*.

Relating to Commonwealth Records – without limitation:

- *Archives Act 1983*;
- *Copyright Act 1968*; and
- *Section 16 of the Customs Administration Act 1985*.

C. Security Clearances

Service Provider employees, including any subcontractor's employees will be required to obtain a Character Assessment and Proof of Identity check.

Where security clearances are required, the Service Provider will be required to pay full clearance costs, and at a minimum, the cost of obtaining a State/Federal Police record check will be met by the Service Provider.

The Commonwealth reserves the right to review from time to time and vary the level of security checks/clearances required for Service Provider staff.

The Service Provider will not employ or continue to employ any person to perform Services under the Contract against whom **Customs** has notified to the Service Provider a formal objection in relation to the person's suitability.

All subcontracts entered into, or managed by the Service Provider on behalf of the Commonwealth, shall include identical security obligations as those set out in this Contract and this Schedule.

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D. Training

Service Provider's employees will be required to attend security awareness sessions conducted by the **Customs** Security Section.

Subcontractors will also be required to attend these security awareness sessions.

The Commonwealth reserves the right to review from time to time and vary the security awareness sessions provided to the Service Provider and Subcontractors.

E. Access to Customs premises

If Service Provider employees are required to have access to **Customs** premises then this will occur only during normal working hours of the facility or at other times as required by **Customs** and subject to the supervision by **Customs**.

F. Security Incidents

For the purposes of this contract, a Security Incident can be either an actual incident or a perceived incident. An examples of Security Incidents is theft or loss of protected information.

The Service Provider will comply with all directions from **Customs** regarding Security Incidents.

G. Customs specific Security requirements

The Service Provider's Surveillance Information Management (SIM) System shall be certified to handle communications to the PROTECTED security level including all data communications links and all connected surveillance asset systems. All data and imagery communications shall be protected via commercial grade encryption affording PROTECTED level of security. At least one voice communications channel to the NSC will have the ability to encrypt (via commercial grade encryption) to PROTECTED level.

Service Providers shall undertake the provision of screening and security clearances for employees, as follows:

- a. Pre-commencement screening or verification of all employees' suitability ("Police checks").

b. Security clearance to PROTECTED level of personnel directly involved with Surveillance Operations.

c. Personnel not directly involved with Surveillance Operations should hold as a minimum a security clearance to PROTECTED level or be supervised by personnel who hold a clearance to PROTECTED level.

Note: Due to the remoteness of Horn Island there may be times when AHPL assets have to be maintained at locations other than their home base. If AHPL assets are to be maintained away from their normal operating base then all classified equipment or material must be removed and secured in an appropriate secure location by personnel who hold the appropriate security clearance. Once the asset is clear of all classified equipment or material maintenance personnel who have complied with the regulations as determined by the Department of Transport and Regional Services (DoTaRS) may maintain the assets.

d. Security clearance to SECRET level of senior management, including home Base managers or equivalent.


The Service Provider's Base shall have a specific area possessing a certified capability to hold information at the CONFIDENTIAL security level. This requirement is in addition to security requirements relating to PROTECTED equipment.

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SCHEDULE 12 - CONTRACT PERSONNEL

(Clauses 1.1, 22)


s. 47(1)(b)



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SCHEDULE 13 - KEY SUBCONTRACTORS

s. 47(1)(b)




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SCHEDULE 14 - GFM

(Clauses 1.1, 10, 16.1, 70.4)

s. 47(1)(b)



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SCHEDULE 15 - CONFIDENTIALITY UNDERTAKING FOR SERVICE PROVIDER PERSONNEL

(Clauses 25.5, 31)

THIS DEED POLL is made the _____ day of _____
in favour of the **COMMONWEALTH OF AUSTRALIA** represented by the
Australian Customs Service ("**Customs**")

BY [*Insert name and address of Recipient*] (the "**Recipient**")

Recitals

- A. **Customs** requires the provision of Services.
- B. The performance of the Services requires access to information confidential to **Customs**.
- C. **Customs** and [*insert Service Provider*] (the "**Service Provider**") have entered into a contract under which the Service Provider will perform the Services.
- D. The Recipient will be performing Services.

THE RECIPIENT DECLARES AS FOLLOWS:

A. Interpretation

- A.1. All terms used in this Deed have the same meaning as is given to them in the Contract, and in particular, the following terms have the following meaning:

Contract	means the Contract between Customs and the Service Provider for the provision of the Services dated [].
Customs Confidential Information	<p>means information that:</p> <ul style="list-style-type: none">a. is by its nature confidential;b. is designated by Customs as confidential;c. the Recipient knows or ought to know is confidential; ord. is Personal Information within the meaning of the <i>Privacy Act 1988</i>,<p>and includes to the extent that it is confidential:</p><ul style="list-style-type: none">e. information comprised in or relating to any Customs

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Intellectual Property;

- f. information relating to the internal management and structure of **Customs**;
 - g. information relating to contractors or suppliers to **Customs**; and
 - h. information relating to **Customs** Data,
- but does not include information which:
- i. is or becomes public knowledge other than by breach of the Contract or any other confidentiality obligation; or
 - j. has been independently developed or acquired by the Recipient as established by written evidence.

**Customs
Material**

means any item including Software which **Customs** owns or in which **Customs** has any Intellectual Property rights (except materials licensed by the Service Provider) and which may be used or modified by the Service Provider in the provision of the Services.

**Intellectual
Property**

means business names, copyrights, patents, trade marks, service marks, trade names, designs, and similar industrial, commercial and intellectual property (including semi-conductor and circuit layout rights, formulae, recipes and know how).

**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.

Services

means the civil maritime surveillance services specified in the Contract.

B. Non Disclosure

- B.1. The Recipient must not copy, reproduce or disclose any of **Customs** Confidential Information without the prior written consent of **Customs**, which consent **Customs** may grant or withhold in its absolute discretion.

C. Restriction On Use

- C.1. The Recipient must use **Customs** Confidential Information only for the purpose of performing the Services. In particular the Recipient must not access, use, modify, disclose or retain any personal information the Recipient has acquired

through the performance of the Services except for the purpose of performing the Services.

D. Privacy

- D.1. The Recipient agrees with respect to all **Customs** Confidential Information that comprises personal information as defined in the *Privacy Act 1988* about persons who are or have been officers, employees, contractors or clients of **Customs**:
- D.1.1. to comply with those provisions of the *Privacy Act 1988* as if he was an agency bound by that Act concerning the security, use and disclosure of information to which **Customs** is subject in respect of that information and which affects the Services;
 - D.1.2. to cooperate with any reasonable demands or enquiries made by the Privacy Commissioner;
 - D.1.3. to ensure that any person who has an access level which would enable that person to obtain access to any information in respect of which **Customs** has obligations under the *Privacy Act 1988* is made aware of, and undertakes in writing, to observe the provisions referred to in clause D.1.1. above;
 - D.1.4. to take all reasonable measures to ensure that such information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only authorised representatives, employees and officers of the Service Provider have access to it;
 - D.1.5. not to transfer such information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of **Customs**;
 - D.1.6. immediately to notify **Customs** when the Service Provider becomes aware of a breach of any obligation concerning security, use and disclosure of personal information relating to an officer or employee of the Commonwealth by itself or any representative, employee or officer; and
 - D.1.7. to notify **Customs** of, and cooperate with **Customs** in the resolution of, any complaint alleging an interference with privacy.

E. Crimes Act

- E.1. The Recipient acknowledges that section 3(1) of the *Crimes Act 1914* states that the term "Commonwealth officer" includes a person who "performs services for or on behalf of the Commonwealth".
- E.2. The Recipient acknowledges that:

- E.2.1. any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of personal information stored in any computer in the course of performing, a contract with the Commonwealth is an offence under Part VIA of the *Crimes Act 1914* to which may attract a substantial penalty, including imprisonment; and
- E.2.2. the publication or communication by the Recipient of any fact or document which has come to their knowledge or into their possession or custody by virtue of the performance of the Contract (other than to a person to whom the Recipient is authorised to publish or disclose the fact or document) may be an offence under section 70 of the *Crimes Act 1914*, punishment for which may be a maximum of two years (section 70) or seven years (section 79) imprisonment.

F. Customs Administration Act

- F.1. The Recipient acknowledges that it is aware of the effect of section 16 of the *Customs Administration Act 1986*.

G. Delivery Up Of Documents

- G.1. **Customs** may, at any time and without notice, demand, either orally or in writing, the delivery to **Customs** of all documents in the possession or control of the Recipient which contain **Customs** Confidential Information.

H. Conflict Of Interest

- H.1. The Recipient warrants that no conflict of interest exists or is likely to arise in the performance of the Services.
- H.2. The Recipient warrants that he will not permit any situation to arise or engage in any activity during the performance of the Services which may result in a conflict of interest.

I. Survival Of Obligations

- I.1. The obligations in this Deed are perpetual.

J. Indemnity

- J.1. The Recipient indemnifies **Customs** against any claim, loss, liability or expense incurred by **Customs** which is caused or contributed to by:
 - J.1.1. the Recipient's failure to comply with this Deed; or
 - J.1.2. the act or omission of the Recipient's employees, agents or subcontractors in relation to **Customs** Confidential Information.

SIGNED, SEALED AND DELIVERED for
and on behalf of the Recipient by:

.....

in the presence of:

)

)

)

.....

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**SCHEDULE 16 - DEED OF UNDERTAKING IN RELATION TO
PERSONAL AND CONFIDENTIAL INFORMATION**

(Clauses 25, 31)

THIS DEED POLL is dated the day of

I, *[Insert name, address and relationship to the Service Provider of the person giving the undertaking]*, irrevocably covenant and agree for the benefit of each and all of **COMMONWEALTH OF AUSTRALIA** acting through the Australian Customs Service (**Customs**) that:

1. I understand that in the course of performing duties in relation to an agreement between **Customs** and *[insert name of Service Provider]* ('**Service Provider**') dated [] ('**Contract**') for *[insert details of the service being provided]*, I may have access to:
 - a. personal information, being 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 an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion; and
 - b. confidential information, being information or an opinion (including information or an opinion forming part of a database) which is by its nature confidential, which is designated by **Customs** or any Law as confidential or is provided to **Customs** in confidence, and includes commercial, financial and taxation information of corporations and other entities.
2. I acknowledge and agree that I may not access, use, disclose, publish, communicate or retain, or otherwise deal in any way, with personal information or confidential information except in the course of performing my duties in relation to the Services Agreement.
3. I agree to abide by the provisions of the *Privacy Act 1988*, including the Information Privacy Principles set out in that Act, in respect of both personal information and confidential information, whether or not I am legally bound to comply with that Act and as if the definition of personal information in that Act includes confidential information.
4. I acknowledge that failure by me to comply with the obligations under the *Privacy Act 1988* in accordance with **clause 59** of the contract may result in the Service Provider taking action against me (including, without limitation, disciplinary action).
5. I acknowledge in respect of personal information and confidential information that:

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- a. the *Crimes Act 1914* makes it an offence for a person to unlawfully obtain, access, destroy, erase, alter or add to, data stored in a computer on behalf of the Commonwealth and that a penalty of up to 10 years imprisonment may be imposed (Part VIA of the *Crimes Act 1914*);
 - b. the *Crimes Act 1914* makes it an offence for an employee of a person who has contracted with the Commonwealth to unlawfully disclose or otherwise deal with information, documents or data entrusted to them, or to fail to comply with a lawful direction in respect of the retention or disposal of such information, and that serious penalties for a breach apply (section 79 of the *Crimes Act 1914*). If I am not an employee of the Service Provider, I agree to act in accordance with the obligations in section 79 of the *Crimes Act 1914* as if I was bound by that provision; and
 - c. section 16 of the *Customs Administration Act 1985* prohibits unauthorised disclosure and recording of information held by **Customs**. I agree to act in accordance with the obligations in section 16 of the *Customs Administration Act 1985*. A person who is or has been an 'authorised person' as defined in section 16(1A) of the *Customs Administration Act 1985* must not make a record of any 'protected information' (defined in section 16(1A) of the *Customs Administration Act 1985* as information that directly or indirectly comes to the knowledge of, or into the possession of, an authorised person while that person is performing his or her duties) or disclose to any person any 'protected information' except as authorised by section 16 of the *Customs Administration Act 1985*; or required or authorised by any other law; or in the course of performing the person's duties, may be guilty of an offence under section 16(2) of the *Customs Administration Act 1985 (Cth)* for which the maximum penalty is two years imprisonment.
6. I agree to treat all personal information and confidential information with the utmost care and to protect that information at all times.
 7. I acknowledge and agree that this deed poll survives the termination or expiry of my contract providing for the performance of services by me (whether directly or indirectly) in relation to the Services Agreement.
 8. This deed poll shall be governed by, and construed in all respects in accordance with, the law of the Australian Capital Territory and I agree to submit to the applicable jurisdiction of the Courts of that Territory in respect of all matters arising under, or in relation to, this deed poll.
 9. Without limiting the rights of **Customs** to enforce this deed poll, **Customs** may also enforce this deed poll against me.

EXECUTED as a deed poll

SIGNED, SEALED AND DELIVERED by
[name of person giving undertaking] in the
presence of:

.....

Signature of witness

.....

*[Signature of person giving
undertaking]*

.....

Name of witness (print)

.....


Name of officer (print)

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SCHEDULE 17 - SERVICE PROVIDER CONFIDENTIAL INFORMATION

(Clause ^{s. 47(1)(b)} 35)

s. 47(1)(b)



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SCHEDULE 18 - INSURANCE

s. 47(1)(b)

The Service Provider must take out and maintain:

- a. Aviation Hull Insurance (including surveillance and communication equipment and stock of aviation spare parts) (London AVN 1C type policy);
- b. Aviation Third Party Insurance, including liability to passengers and liability for freight carried (London AVN 1C type policy):
 - A. These insurances must have the following Extensions and Endorsements:
 - Extended coverages for hijacking, malicious acts, riots strikes etc or separate war and Allied Perils policy);
 - Unlicensed Landing Ground Suitability Clause;
 - Agreed Value;
 - Cross Liability Clause;
 - Search and Rescue Expense;
 - Finance/Lease Contract Endorsement;
 - Additional Insured Endorsement (Liabilities) [Commonwealth];
 - Additional Insureds Limitation of Liability;
 - Civil Aviation (Carriers Liability) Act 1959 Endorsement; and
 - Cargo Legal Liability Endorsement.
 - B. Sums Insured under these insurances:
 - Aviation Hull - Agreed Value; and
 - Aviation Third Party including Passenger Liability - \$50,000,000;
- c. Consequential Loss Insurance;
- d. General and Products Liability Insurance:
 - A. Sums Insured under this insurance: \$50,000,000 per event;
- e. Motor Third Party Property Liability insurance:
 - A. Sums Insured under this insurance: \$20,000,000 per event;

- f. Industrial Special Risks insurance (in respect of any land installations):
 - A. Sums Insured under this insurance: Replacement value;
- g. Worker's Compensation Insurance as required by Law; and
- h. Other insurance (to be specified by the Service Provider).

SCHEDULE 19 - CONDITIONS PRECEDENT TO CONTRACT TAKING EFFECT

s. 47(1)(b)

- c. **Customs** has received names and specimen signatures of the authorised officers of the Service Provider, including any person authorised to take action or give notices for or on behalf of the Service Provider under the Contract.
- d. **Customs** has received evidence that the corporate structure and the equity and/or subordinated debt arrangements between the Service Provider and its shareholders are in accordance with the information provided to **Customs** prior to the execution of this Contract, including certifications regarding shareholdings.
- e. The Service Provider has provided to **Customs** the Unconditional Financial Undertaking in accordance with **clause 52** of the Contract.

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EXECUTED as an agreement

**SIGNED for and on behalf of the
Commonwealth of Australia by:**

The Australian Customs Service

Lionel Barrie Woodward

Chief Executive Officer
Australian Customs Service

Signature

In the presence of:

Russell Harry Crane

Signature of witness

**The seal of Australian
Helicopters Pty Ltd (AHPL) is
affixed in accordance with its
constitution by:**

s. 47F(1)



Signature of director

Signature of signatory

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SCHEDULE 1. STATEMENT OF WORK

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Annex A: Function and Performance Specification

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1. Statement of Work

1.1. Scope

s. 47(1)(b)

1.1.1.

1.1.2.

1.2. Standards and Specifications

1.2.1. The Applicable Requirements are considered in **Schedule 10** (Applicable Requirements) of the Contract.

1.2.2. Commonwealth Furnished Information provided by **Customs** and Service Provider deliverables provided by the Service Provider is identified at **Schedule 3** (Contract Management Plan) Annex A. Both the Service Provider and **Customs** shall notify each other of version changes to their listed documents.

1.3. Operational and Environmental Factors

1.3.1. The factors affecting Response, Surveillance and Logistic Support activities in the Torres Strait and Cape York Peninsula include:

- a. a diverse range of Target types – for example, dugout canoes, fast fibreglass boats (known locally as banana boats), international yachts, all commercial fishing vessels and merchant vessels;
- b. high traffic density of both vessels and aircraft, with confined areas for both marine and aerial navigation;
- c. high frequency of Search and Rescue (SAR) alerts;
- d. quarantine concerns that are inherent in all vessel and aircraft movements, such as movements of people, animals and goods across the border;
- e. geography - multiple small islands with hills to 300 metres above sea level and hazardous waters including extensive coral reefs, shallow, uncharted waters presenting dangers to navigation;
- f. multiple legislative boundaries amid close international borders - complex limits on legal responsibility for immigration and quarantine control, fisheries and sub-surface resource management, issues of international cooperation with bordering nations; and
- g. distinctive cultural and political sensitivities.

- 1.3.2. Torres Strait represents the narrowest sea/air gap between Australia and the territory of a foreign country (that is, Papua New Guinea (PNG)). Torres Strait poses a high and on-going quarantine risk due to the potential introduction of exotic animal and plant diseases that may cause extreme and enduring economic harm.

1.4. Work to be Performed

- s. 47(1)(b)
1.4.1.

- 1.4.2.

2. Detailed work requirements

2.1. Transition In Plan

- 2.1.1. The Service Provider shall transition to the scheduled Handover Date in accordance with the requirements of the Transition In Plan at **Schedule 2** (Transition In Plan) of the Contract.

2.2. Contract Management Plan

2.2.1. The Service Provider shall manage and administer the Contract in accordance with the Contract Management Plan and component plan requirements at **Schedule 3** (Contract Management Plan) of the Contract.

2.3. Service Level Agreement

2.3.1. The Service Provider shall deliver the operational Services in accordance with the requirements of the Service Level Agreement at **Schedule 4** (Service Level Agreement) of the Contract.

2.4. Transition Out Plan

2.4.1. The Service Provider shall deliver the Services to be provided under the Contract in the period leading up to and following expiry or termination of the Contract in accordance with the requirements of the Transition Out Plan at **Schedule 3** (Contract Management Plan) of the Contract.

2.5. System Specification

2.5.1.

2.5.2.

2.5.3.

2.5.4.

s. 47(1)(b)

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s. 47(1)(b)

2.5.5.

2.5.6.

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SCHEDULE 2. TRANSITION IN PLAN

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2.	Key Transition In Events	4
3.	Test and Evaluation Requirements	5
4.	Test and Evaluation Progress Reporting	7

Annex A: Key Milestones for the Transition In Period

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1. Transition In Plan Requirements

1.1.1. s. 47(1)(b)

1.1.2.

1.1.3.

1.1.4.

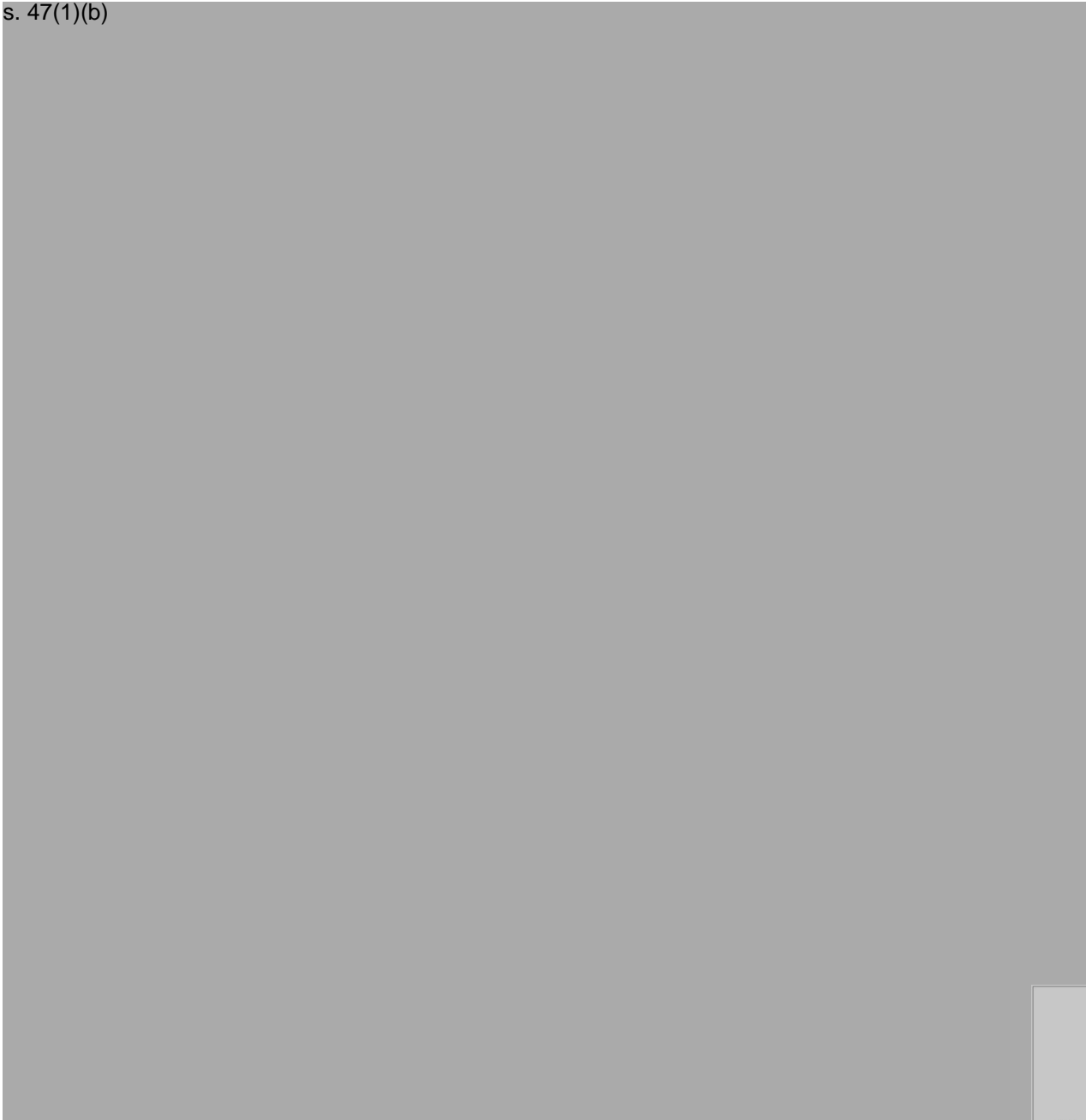
1.1.5.

1.1.6.

1.1.7.

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s. 47(1)(b)



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2. Key Transition In Events

2.1.1. The following table documents key transition in events.

s. 47(1)(b)

A
A1
A2
A3
A4
A5
A6
A7
A8
A9
A10
B
B1
B2
B3
B4
B5
B6

	s. 47(1)(b)
B7	
B8	
B9	
B10	
B11	
C	
C1	
C2	
C3	
C4	
D	

- 2.1.2 Where the Service Provider is experiencing difficulty satisfying a Key Milestone, **Customs** is to be advised as soon as practicable. The Service Provider shall provide details in writing of the delay, its expected duration and the effect on the transition in timeline.

3. Test and Evaluation Requirements

- 3.1.1. s. 47(1)(b)



s. 47(1)(b)

3.1.2.

3.1.3.


3.1.4.

3.1.5.

3.1.6.

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s. 47(1)(b)



4. Test and Evaluation Progress Reporting

4.1.1. Progress reporting requirements are:

s. 47(1)(b)



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SCHEDULE 2. TRANSITION IN PLAN
ANNEX A: KEY MILESTONES FOR THE TRANSITION IN PERIOD

CONTENTS

1.	Key Milestones for the Transition In Period	2
-----------	--	----------

1. Key Milestones for the Transition In Period

1.1.1. The following table documents the Key Milestones for the Transition In Period:

Table 2A-1: Key Milestones for the Transition In Period

	Key Milestone	Planned Date
1	s. 47(1)(b)	
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		

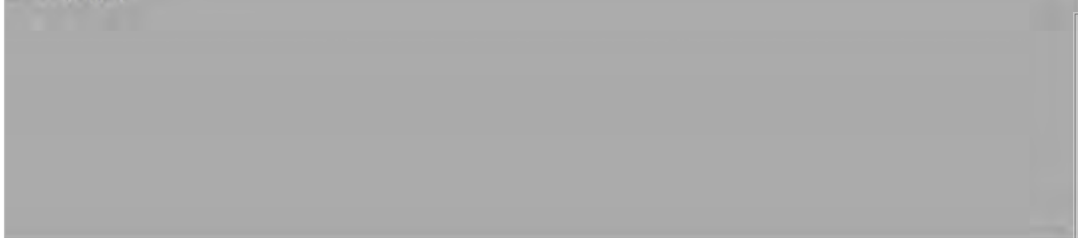
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	Key Milestone	Planned Date
19	s. 47(1)(b)	
20		
21		
22		
23		
24		
25		
26		
27		
28		
29		
30		
31		
32		
33		
34		
35		

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	Key Milestone	Planned Date
36	s. 47(1)(b)	
37		
38		
39		
40		
41		
42		
43		
44		
45		

s. 47(1)(b)



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SCHEDULE 3. CONTRACT MANAGEMENT PLAN

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1.6.	Organisational Structure and Personnel Plan Requirements	7
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1.8.	Risk Management Plan Requirements	9
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Annex A: Commonwealth Furnished Information

Annex B: Service Provider Deliverables

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1. Plan Requirements List

1.1. Introduction

1.1.1. As specified at **clauses 6 and 21** of the Contract, the Service Provider shall develop, deliver and update the following plans in accordance with the Plan Requirements List (PRL):

- a. Contract Management Plan (CMP);
- b. CMP component plans:
 - A. Infrastructure and Operations Support Plan;
 - B. Maintenance and Supply Support Plan;
 - C. Obsolescence, Capability, Enhancement and Technology Refresh Plan;
 - D. s. 47(1)(b)
 - E. Quality Plan;
 - F. Risk Management Plan;
 - G. Safety Management Plan;
 - H. Security Management Plan;
 - I. Training Plan;
 - J. Transition Out Plan;
- c. Transition In Plan; and
- d. Transition In Plan component plan:
 - A. Test and Evaluation Plan.

1.2. Contract Management Plan Requirements

1.2.1. s. 47(1)(b)

1.2.2.

1.2.3.

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3. Development and Submission of Plans

3.1. Review, Acceptance or Non-Acceptance of Plans

3.1.1. Without limiting **clause 21** of the Contract, the **Customs** Contract Manager shall:

- a. Review; and
- b. Accept or not Accept the plans at Table 3-1 in accordance with the PRL and this clause 3.1.1.

3.1.2. "Review" in relation to each plan means the process of verifying that the plan complies with its PRL requirements.

3.1.3. "Accept" in relation to each plan means the act of the **Customs** Contract Manager in accepting the plan as the basis for further work in delivering Services under the Contract. "Acceptance" has a corresponding meaning.

3.1.4. Acceptance of a plan shall:

- a. be construed as no more than an indication that the plan appears to the **Customs** Contract Manager to be capable of being used as a basis for ongoing delivery of the Services;

- b. not be construed as limiting the Service Provider's responsibility to provide Services in accordance with the requirements of the Contract; and
- c. not be construed as a waiver of any right under the Contract or any cause of action arising out of any act or omission of the Service Provider or its servants, agents or employees.

3.2. Plan Review

3.2.1. In reviewing each plan, the **Customs** Contract Manager may provide the Service Provider with such comment, information or advice as s/he considers appropriate to provide. Any comment, information or advice provided:

- a. is intended to be of assistance to the Service Provider and shall not be construed as a direction from the **Customs** Contract Manager to the Service Provider;
- b. shall not be taken as approval or acceptance of Services or work that do not conform to the Contract; and
- c. shall not waive any provisions of, or release the Service Provider from its obligations under the Contract.

3.3. Plan Acceptance

3.3.1. In respect of each plan submitted by the Service Provider for Acceptance, the **Customs** Contract Manager shall, within the action period specified in **clauses 6 and 21.1** of the Contract (or otherwise agreed by the parties), notify the Service Provider in writing that the plan is either Accepted or not Accepted.

3.3.2. If the **Customs** Contract Manager determines that any plan submitted by the Service Provider is not in accordance with the requirements of the Contract, the **Customs** Contract Manager shall notify the Service Provider accordingly in writing. In such event, the plan shall not be considered to have been submitted and the plan shall be rectified at no additional cost to the Commonwealth.

3.3.3. If, under clause 3.3.2, the **Customs** Contract Manager provides the Service Provider with notice of non-Acceptance of a plan, then the **Customs** Contract Manager shall notify the Service Provider in writing of the reasons for non-Acceptance and may provide details of any corrective action that may be taken by the Service Provider before the plan is resubmitted for Acceptance.

3.3.4. The **Customs** Contract Manager's reasons for non-Acceptance of a plan shall be limited to the context of any or all of the following criteria; being that, in the judgement of the **Customs** Contract Manager, the plan submitted by the Service Provider:

- a. is not clearly understandable;
- b. does not provide adequate detail;

- c. is inconsistent with the Contract or is inconsistent with related component plans; or
 - d. does not meet the objective of the plan as stated in the PRL.
- 3.3.5. The **Customs** Contract Manager may not withhold Acceptance of a plan for minor omissions or defects in the plan which are identified in writing to the Service Provider. In addition to the criteria for non-Acceptance detailed in clause 3.3.4, any subsequent Acceptance of an update to a plan that was previously Accepted with minor omissions or defects shall be subject to the Service Provider addressing those identified omissions or defects in the proposed update to the satisfaction of the **Customs** Contract Manager.
- 3.3.6. When the **Customs** Contract Manager provides the Service Provider with notice of non-Acceptance in accordance with 3.3.1, the Service Provider shall, within fourteen (14) days of receipt of the notice (or within such further period as the **Customs** Contract Manager may allow), deliver the revised plan for Acceptance.
- 3.3.7. If, within the time specified under clause 3.3.6, the Service Provider submits the revised plan as conforming to the requirements of the Contract, the **Customs** Contract Manager shall be entitled to exercise the rights provided by this clause 3.3 as if the plan had been submitted by the Service Provider for the first time.
- 3.3.8. If, under clause 3.3.1, the **Customs** Contract Manager provides the Service Provider with notice of Acceptance, then the plan shall have effect in accordance with that Acceptance (refer clause 3.1.4) and the task comprising the development or update of that plan shall be deemed to be accomplished.
- 3.3.9. If the **Customs** Contract Manager fails to furnish to the Service Provider notice, in writing, of Acceptance or non-Acceptance, under clause 3.3.1, within the twenty one (21) days period specified in **clauses 6 and 21.1** of the Contract (or otherwise agreed by the parties), then any delay shall be considered to be delay caused by the Commonwealth but shall not entitle the Service Provider to claim a postponement of the date for delivery of Services under the Contract.
- 3.4. **Plan Updates**
- 3.4.1. The Service Provider shall maintain the accuracy, completeness and currency of the plans delivered under the Contract in accordance with **clauses 6 and 21** of the Contract and the PRL.
- 3.4.2. An updated plan shall be subject to the same Review and Acceptance processes specified in clause 3.3 to the extent of the effect of any proposed amendments.

- 3.4.3. Until an updated plan is Accepted, the original updated plan shall remain in effect.
- 3.4.4. The Service Provider shall be liable for all costs associated with plan maintenance, except in those circumstances when the need for maintenance is generated by some action for which the Commonwealth has agreed, in writing, that it accepts responsibility.

3.5. Actioning of Plans

- 3.5.1. The Service Provider acknowledges and agrees that:
- a. the Commonwealth's obligations to action the plans within the timeframe specified in **clauses 6.1** and **21.1** of the Contract (or otherwise agreed by the parties) is subject to the Service Provider delivering the plans in accordance with the PRL; and
 - b. any delay of the Service Provider in meeting its obligations under the Contract may result in the Commonwealth not being able to action the plans within the timeframe specified in **clauses 6.1** and **21.1** of the Contract (or otherwise agreed by the parties).
- 3.5.2. If at any time the Service Provider's delivery of an updated plan changes because of a delay in the Service Provider meeting its obligations under the Contract, the Commonwealth:
- a. shall use reasonable endeavours to action the updated plan within the timeframe specified in **clauses 6.1** and **21.1** of the Contract (or otherwise agreed by the parties); and
 - b. is only required to action the updated plan delivered by the Service Provider at the time Commonwealth resources become available to action the updated plan.
- 3.5.3. The Commonwealth's inability to action the updated plan within the timeframe specified in **clauses 6.1** and **21.1** of the Contract (or otherwise agreed by the parties) in the circumstances described in clause 3.5.2 is not an event beyond the reasonable control of the Service Provider for the purposes of **clause 85** (Force Majeure) of the Contract.

4. Delivery of Services in accordance with the Accepted plans

- 4.1.1. The Service Provider shall manage and deliver the Services in accordance with the Accepted plans.
- 4.1.2. The Service Provider shall ensure that maintenance activities are performed in accordance with the Maintenance and Supply Support Plan and the Applicable Requirements.

- 4.1.3. The Service Provider is accountable under the Contract and to the industry regulator (the Civil Aviation Safety Authority) to ensure that all maintenance activities provided by Subcontractors are performed in accordance with the applicable technical regulatory framework requirements.
- 4.1.4. The Service Provider shall manage its quality program for the Services in accordance with the Accepted Quality Plan.
- 4.1.5. The Service Provider shall conduct the risk management program for the Services in accordance with the Accepted RMP.
- 4.1.6. The Service Provider shall provide all facilities and assistance reasonably required by the Commonwealth in order for the Commonwealth to access the Risk Register during the Term of the Contract.
- 4.1.7. The Service Provider shall conduct all safety-related activities for the Contract in accordance with the Accepted SMP and all Applicable Requirements.

SCHEDULE 3. CONTRACT MANAGEMENT PLAN
ANNEX A: COMMONWEALTH FURNISHED INFORMATION

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1.	Commonwealth Furnished Information	2
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1. Commonwealth Furnished Information

- 1.1.1. The following table documents the Commonwealth Furnished Information and provides deadlines for its delivery by *Customs* to the Service Provider:

Table 3A-1: Commonwealth Furnished Information

	Contract Reference Document Title	Initial version	Date for first revised version
A	Coastwatch Contract Operating Instructions (CCOIs)	May 2005	01 September 2006
B	Coastwatch Manual for Surveillance Units	February 2005	01 September 2006
C	Coastwatch Operational Concept Document	July 2004	

SCHEDULE 3. CONTRACT MANAGEMENT PLAN
ANNEX B: SERVICE PROVIDER DELIVERABLES

CONTENTS

1.	Service Provider Deliverables	2
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1. Service Provider Deliverables

1.1.1. The Service Provider shall deliver the plans listed in Contract **Schedule 3** (Contract Management Plan) Table 3-1: Plan Delivery Schedule.

1.1.2. The following table documents the initial Contract Deliverables:

Table 3B-1: Initial Contract Deliverables

	Item description
1	s. 47(1)(b)
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	

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	Item description
16	s. 47(1)(b)

SCHEDULE 4. SERVICE LEVEL AGREEMENT

CONTENTS

1.	Scope	2
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3.	Role of <i>Customs</i>	2
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Annex A: Performance Measurement System

Annex B: Operational Assessment

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1. Scope

- 1.1.1. This Service Level Agreement (SLA) establishes the obligations of the Service Provider for delivery of the Services. It specifies the Rate of Effort to be provided and permitted variations to the Rate of Effort. It identifies the Response, Surveillance and Logistic Support performance standards to be maintained by the Service Provider.
- 1.1.2. The SLA specifies arrangements between **Customs** and the Service Provider for the conduct of the Services. Other effort to be provided by the Service Provider under the Contract is addressed at **Schedule 1** (Statement of Work).
- 1.1.3. **Customs** and the Service Provider will operate in the spirit of cooperation and good faith to provide an effective and professional Civil Maritime Surveillance Service that meets the Australian Government's requirements.
- 1.1.4. Annex A to the SLA provides the Performance Measurement System for the Services.
- 1.1.5. Annex B to the SLA provides arrangements for operational assessments of the Service Provider's performance.
- 1.1.6. The SLA does not address the full spectrum of rights and obligations of the parties under the Contract or the administration of the Contract.

2. Services Required

- 2.1.1. In summary the Services are a Torres Strait Helicopter Service with Response, Surveillance and Logistic Support components in the Torres Strait and adjacent areas.

3. Role of Customs

- 3.1.1. As provided by **clause 15** of the Contract, **Customs** is responsible for tasking the Service Provider to deliver the Response, Surveillance, and Logistic Support components of the Services.
- 3.1.2. **Customs** retains command and control of Civil Maritime Surveillance (CMS) operations at all times.
- 3.1.3. **Customs** will conduct assessments of the Service Provider's performance against the operational Surveillance or Response requirements.
- 3.1.4. **Customs** will oversee the development of training material and delivery of training by the Service Provider.

- 3.1.5. **Customs** will task the Service Provider in accordance with this Contract and in particular the Statement of Work and this Service Level Agreement.

4. **Role of the Service Provider**

- 4.1.1. The Service Provider shall deliver the Services in accordance with the Contract terms and conditions and Schedules, including this SLA, and in accordance with **Customs** tasking.
- 4.1.2. The Service Provider shall have responsibility for the provision of training, including the coordination of input from **Customs**.
- 4.1.3. The Service Provider shall conduct the Services in accordance with the procedures documented in its company Operations Manual including safety and fatigue management procedures. The Operations Manual shall include and describe the operational procedures that the Service Provider shall apply in order to fulfil the **Customs** requirements as detailed in this Contract, and in particular the Service Level Agreement.
- 4.1.4. The Service Provider shall provide Qualified Aircrew in accordance with arrangements outlined in **Schedule 1** (Statement of Work), Annex A.

5. **Scope of Operational Services**

- 5.1.1.

s. 47(1)(b)

- 5.1.2.

- 5.1.3.

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SCHEDULE 4: SERVICE LEVEL AGREEMENT
ANNEX A: PERFORMANCE MEASUREMENT SYSTEM

2 CUSTOMS COASTWATCH PLANNING PROCESS..... 2

s. 47(1)(b)



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1. INTRODUCTION

- 1.1.1 This Annex sets out the Performance Measurement System (PMS) that **Customs** will apply for the delivery of the Services, excluding Other Services. It:
- a. specifies Contract performance management criteria; and
 - b. determines the approach for any Performance Deductions to be made throughout the Term of the Contract.
- 1.1.2 The Contract requires:
- a. an output based payment regime, based on payment for delivery to Customs of a high quality Response, Surveillance and Logistic Support Service;
 - b. operational flexibility for Customs at a reasonable cost;
 - c. an appropriate allocation of risk between Customs and the Service Provider; and
 - d. a scaleable solution which provides for growth within the Service Provider's solution and for options to increase or decrease the service level requirements to respond to any changes in Customs client service requirements.

2 Customs Coastwatch Planning Process


- 2.1.1 Coastwatch Mission planning is a tiered process that is progressively refined in the lead up to the conduct of a particular Mission. Tasking Notification for Response Missions may occur at any time outside this planning process. The key planning components are:
- a. Annual Minimum Rate of Effort;
 - b. Monthly Deployment Plan; and
 - c. Mission Brief.
- 2.1.2 The planning processes associated with each key component are discussed below.
- 2.1.3 The Payment Regime is based on a Service Charge for the delivery of Services up to the Annual Minimum Rate of Effort which is:
- a. 500 flying hours per annum for the multi engine helicopter; and
 - b. 750 flying hours per annum for the single engine helicopter.
- 2.1.4 The maximum number of hours that may be flown at the Service Charge outlined in Schedule 5 (Service Charges) is:
- a. 1,000 hours per annum for the multi engine helicopter; and
 - b. 1,200 hours per annum for the single engine helicopter.
- 2.1.5 The Service Provider shall provide Customs with details of its Planned Maintenance for each helicopter a month in advance of the month to

which it refers. Customs will account for the agreed Planned Maintenance in the Monthly Deployment Plan.

- 2.1.6 Customs will provide the Service Provider with a Monthly Deployment Plan that provides Mission planning information at least two weeks in advance of the month to which it refers. This will inform the Service Provider's planning for the delivery of the Services and will identify the expected requirement for Surveillance and Logistic Support Missions, and for Response Missions to the extent that these are known in advance.
- 2.1.7 The Monthly Deployment Plan will identify:
- a. type of Mission;
 - b. Mission date;
 - c. approximate Mission time;
 - d. Mission route or Surveillance area (if applicable);
 - e. Mission location (originating and landing); and
 - f. agreed Planned Maintenance.
- 2.1.8 The Service Provider shall advise Customs, within five (5) working days of its receipt, if the Monthly Deployment Plan should be revised to meet contractual requirements.
- 2.1.9 Once the Monthly Deployment Plan has been received by the Service Provider, Customs changes to the plan, resulting from business priority changes, will be dealt with as follows:
- a. Customs will advise the Service Provider of the change in the Monthly Deployment Plan giving as much notice as possible in the circumstances. Such changes include:
 - A. cancellation of a Mission;
 - B. change to type of Mission;
 - C. replacement of Mission with another Mission of similar duration and timing;
 - D. minor adjustments to Mission timing or duration; or
 - E. change to route or surveillance area; and
 - b. the change in the Monthly Deployment Plan must be agreed (and agreement not to be unreasonably withheld) by both Customs and the Service Provider if the change:
 - A. alters crewing requirements;
 - B. impinges on agreed Planned Maintenance activities; or
 - C. increases the number of Missions for the month.

- 2.1.10 If as a result of the change the Service Provider identifies consequential effects to the Monthly Deployment Plan, the Service Provider shall report these impacts immediately to Customs.
- 2.1.11 For Surveillance, Logistical and known Response Missions, Customs will provide the Service Provider with a current Mission Brief before the planned Mission Wheels Up time.
- 2.1.12 The Mission Brief will include:
- a. Mission duration (hours/minutes);
 - b. Wheels Up time;
 - c. Mission type (if applicable);
 - d. area details (if applicable);
 - e. programmed waypoints (if applicable);
 - f. primary and secondary mission task/objective;
 - g. passenger requests and relevant details;
 - h. supplementary aircrew (for example CATO);
 - i. freight requests; and
 - j. Mission performance criteria.

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SCHEDULE 4. SERVICE LEVEL AGREEMENT
ANNEX B: OPERATIONAL ASSESSMENT

CONTENTS

1. Introduction

2

s. 47(1)(b)

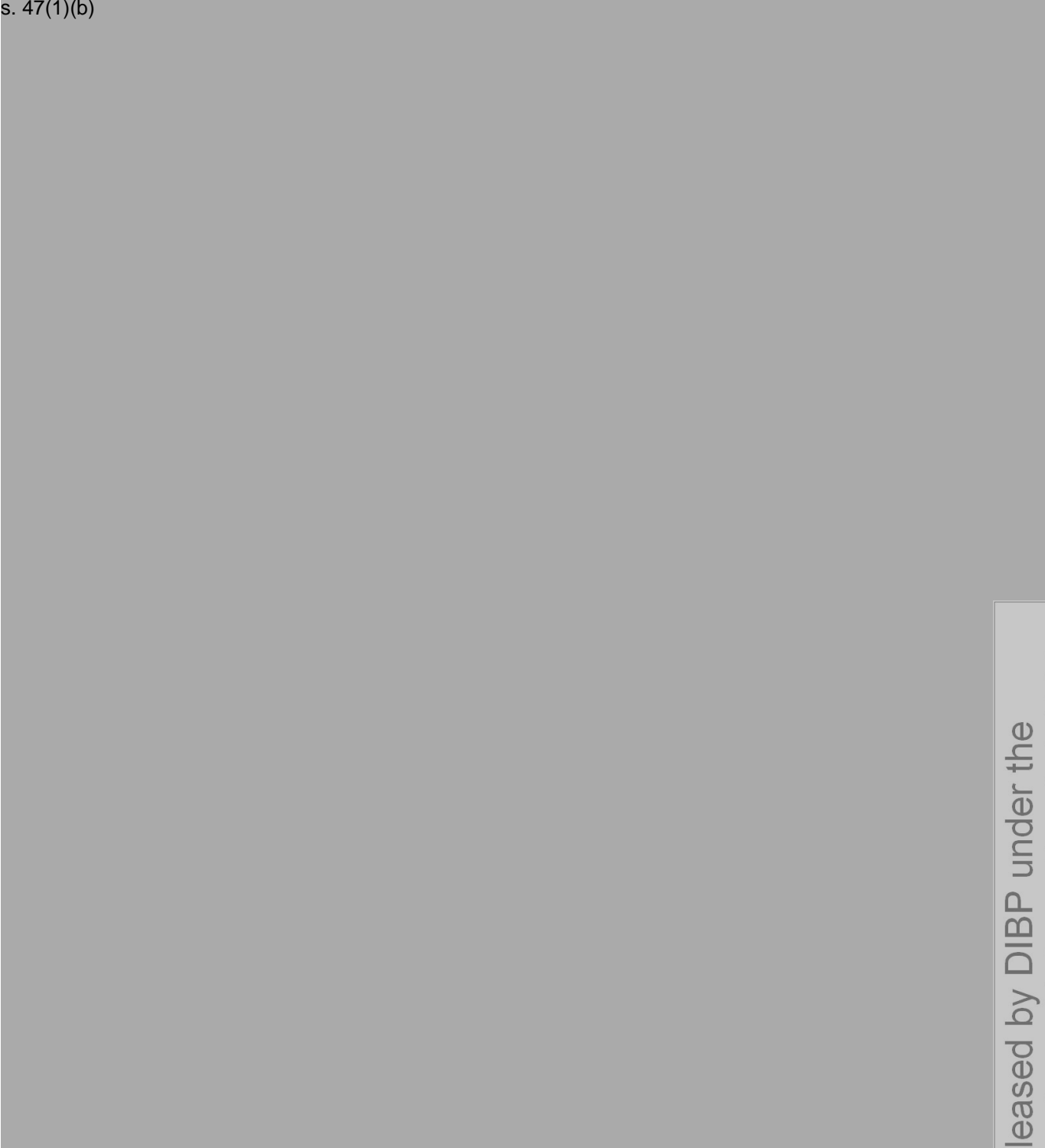


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1. Introduction

- 1.1.1. **Customs** Competency Assessment and Training Officers (CATOs) will conduct assessments of the Service Provider's performance pursuant to **clause 15** of the Contract. The CATO roles, method of operation and powers regarding the delivery of the Services are outlined in this Annex. The CATOs role and powers are primarily directed to **Customs** specific operational requirements.

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SCHEDULE 5. SERVICE CHARGES

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CHANGE CONTROL FORM

(Clauses 1.1, 38)

Format for Change Control Proposals**Agreement Variation Proposal Notice**

Parties: THE COMMONWEALTH OF AUSTRALIA ("Customs")
and Australian Helicopters Proprietary Limited

Agreement Details: Services Contract between the Commonwealth of Australia
Customs and Australian Helicopters Proprietary Limited
(AHPL) dated 29 August 2005.

Addressee: Australian Customs Service
Customs House
5 Constitution Avenue
Canberra
ACT

Date: 27 June 2007

**Sequential
Identification Number** CCP 001

Proposal Title: Security Levels

Operative provisions: This *Change Proposal* is given pursuant to **clause 38**
(Change Control) of the Contract.
The Party issuing this *Change Proposal* proposes the
variations to the Contract specified in the schedule to this
Change Proposal.

Enquiries: Any questions in relation to this notice should be directed
to the officer issuing this notice as specified below:

Issuing Officer: s. 47F(1) Director Government Services

**Party proposing
change** AHPL

Facsimile No: s. 47F(1)

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Service Provider Certification

(Certification that Service Provider and any subcontractor costs are reasonable.)

Comments from Account Director(s)

Comments from the Customs Contract Manager

Other relevant documentation

(Other information relevant to the proposal is attached.)

5. Execution of Change Proposal

Pursuant to clause 38 changes are effected once the formal change proposal has been executed by the Contract Authority on behalf of Customs and by the relevant authorised person on behalf of the Service Provider as follows:

Signed for *Customs* :

Name:

Title:

James Goldrick
JAMES GOLDRICK
Rear Admiral

Commander Border Protection

Witness Signature:

Date:

Signed for AHPL:

Name:

Title:

Witness Signature:

Date:

s. 47F(1)



Service Director

SCHEDULE 1 1 COMMONWEALTH SECURITY REQUIREMENTS

(Clauses 28.5, 30-34, 35.1, 57.7)

[Note: The specific physical security requirements to apply to the Service Provider's Base will be agreed by the Parties.]

A. Commonwealth Protective Security Manual

The Service Provider must comply with the provisions of the Commonwealth Protective Security Manual 2005.

B. Security Requirements

Relating to physical issues - without limitation:

- *Crimes Act 1914*; and
- *Privacy Act 1988*.

Relating to Commonwealth Records – without limitation:

- *Archives Act 1983*;
- *Copyright Act 1968*; and
- *Section 16 of the Customs Administration Act 1985*.

C. Security Clearances

Service Provider employees, including any subcontractor's employees will be required to obtain a Character Assessment and Proof of Identity check.

Where security clearances are required, the Service Provider will be required to pay full clearance costs, and at a minimum, the cost of obtaining a State/Federal Police record check will be met by the Service Provider.

The Commonwealth reserves the right to review from time to time and vary the level of security checks/clearances required for Service Provider staff.

The Service Provider will not employ or continue to employ any person to perform Services under the Contract against whom **Customs** has notified to the Service Provider a formal objection in relation to the person's suitability.

All subcontracts entered into, or managed by the Service Provider on behalf of the Commonwealth, shall include identical security obligations as those set out in this Contract and this Schedule.

D. Training

Service Provider's employees will be required to attend security awareness sessions conducted by the **Customs** Security Section.

Subcontractors will also be required to attend these security awareness sessions.

The Commonwealth reserves the right to review from time to time and vary the security awareness sessions provided to the Service Provider and Subcontractors.

E. Access to *Customs* premises

If Service Provider employees are required to have access to ***Customs*** premises then this will occur only during normal working hours of the facility or at other times as required by ***Customs*** and subject to the supervision by ***Customs***.

F. Security Incidents

For the purposes of this contract, a Security Incident can be either an actual incident or a perceived incident. An examples of Security Incidents is theft or loss of protected information.

The Service Provider will comply with all directions from ***Customs*** regarding Security Incidents.

G. *Customs* specific Security requirements

The Service Provider's Surveillance Information Management (SIM) System shall be certified to handle communications to the PROTECTED security level including all data communications links and all connected surveillance asset systems. All data and imagery communications shall be protected via commercial grade encryption affording PROTECTED level of security. At least one voice communications channel to the NSC will have the ability to encrypt (via commercial grade encryption) to PROTECTED level.

Service Providers shall be undertake the provision of screening and security clearances for employees, as follows:

- a. Pre-commencement screening or verification of all employees' suitability ("Police checks").
- b. Security clearance to PROTECTED level of personnel directly involved with Surveillance operations.
- c. Security clearance to SECRET level of senior management, including home Base managers or equivalent.

The Service Provider's Base shall have a specific area possessing a certified capability to hold information at the CONFIDENTIAL security level. This requirement is in addition to security requirements relating to PROTECTED equipment.

CHANGE CONTROL FORM

(Clauses 1.1, 38)

Format for Change Control Proposals

Agreement Variation Proposal Notice

Parties:	THE COMMONWEALTH OF AUSTRALIA ("Customs") and Australian Helicopters Proprietary Limited
Agreement Details:	Services Contract between the Commonwealth of Australia Customs and Australian Helicopters Proprietary Limited (AHPL) on 29 August 2005.
Addressee:	Australian Customs Service Customs House 5 Constitution Avenue Canberra ACT
Date:	06 May 2007
Sequential Identification Number	CCP 002
Proposal Title:	Performance Measurement System
Operative provisions:	This <i>Change Proposal</i> is given pursuant to clause 38 (Change Control) of the Contract. The Party issuing this <i>Change Proposal</i> proposes the variations to the Contract specified in the schedule to this <i>Change Proposal</i> .
Enquiries:	Any questions in relation to this notice should be directed to the officer issuing this notice as specified below:
Issuing Officer:	s. 47F(1) Director Government Services
Party proposing change	AHPL
Facsimile No:	s. 47F(1)

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Service Provider Certification <i>(Certification that Service Provider and any subcontractor costs are reasonable.)</i>	
Comments from Account Director(s)	
Comments from the Customs Contract Manager	
Other relevant documentation <i>(Other information relevant to the proposal is attached.)</i>	

7. Execution of Change Proposal

Pursuant to clause 38 changes are effected once the formal change proposal has been executed by the Contract Authority on behalf of Customs and by the relevant authorised person on behalf of the Service Provider as follows:

Signed for *Customs* :

Name:

Title:

James Goldrick
James Goldrick
Rear Admiral

Commander Border Protection

Witness Signature:

Date:

s. 47F(1)

Signed for AHPL:

Name:

Title:

Witness Signature:

Date:

Service Director



CHANGE CONTROL FORM

(Clauses 1.1, 38)

Format for Change Control Proposals

Agreement Variation Proposal Notice

Parties:	THE COMMONWEALTH OF AUSTRALIA ("Customs") and Australian Helicopters Proprietary Limited
Agreement Details:	Services Contract between the Commonwealth of Australia Customs and Australian Helicopters Proprietary Limited (AHPL) on 29 August 2005.
Addressee:	Australian Customs Service Customs House 5 Constitution Avenue Canberra ACT
Date:	06 May 2007
Sequential Identification Number	CCP 003
Proposal Title:	Technical Configuration
Operative provisions:	This <i>Change Proposal</i> is given pursuant to clause 38 (Change Control) of the Contract. The Party issuing this <i>Change Proposal</i> proposes the variations to the Contract specified in the schedule to this <i>Change Proposal</i> .
Enquiries:	Any questions in relation to this notice should be directed to the officer issuing this notice as specified below:
Issuing Officer:	s. 47F(1) Director Government Services
Party proposing change	AHPL
Facsimile No:	s. 47F(1)

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Service Provider Certification

(Certification that Service Provider and any subcontractor costs are reasonable.)

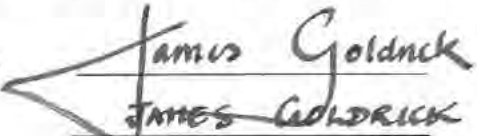
Comments from Account Director(s)**Comments from the Customs Contract Manager****Other relevant documentation**



(Other information relevant to the proposal is attached.)





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7. Execution of Change Proposal

Pursuant to clause 38 changes are effected once the formal change proposal has been executed by the Contract Authority on behalf of Customs and by the relevant authorised person on behalf of the Service Provider as follows:

Signed for *Customs* : 
Name: JAMES GOLDRICK
Title: Rear Admiral Commander Border Protection

Witness Signature:  s. 47F(1)
Date: 

Signed for AHPL:
Name: 
Title:  Director Services
Witness Signature: 
Date: 

AHPL Contract Change Proposal - Service B.

Document Reference Number	CCP 004
Controlled Process	Yes
Version	2.0
Status	Agreed
Created	s. 22(1)(a)(ii)
Modified	
Approval Status	Agreed
Process Owner	Director Government Services – s. 47F(1)
Prepared By	s. 22(1)(a)(ii)
Company	AHPL
Branch	Border Protection Command

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CHANGE CONTROL FORM

(Clauses 1.1, 38)

Format for Change Control Proposals

Agreement Variation Proposal Notice

Parties:	THE COMMONWEALTH OF AUSTRALIA ("Customs") and Australian Helicopters Proprietary Limited
Agreement Details:	Services Contract between the Commonwealth of Australia Customs and Australian Helicopters Proprietary Limited (AHPL)
Addressee:	Australian Customs Service Customs House 5 Constitution Avenue Canberra ACT
Date:	18 July 2007
Sequential Identification Number	CCP 004
Proposal Title:	Labour Submission
Operative provisions:	This <i>Change Proposal</i> is given pursuant to clause 38 (Change Control) of the Contract. The Party issuing this <i>Change Proposal</i> proposes the variations to the Contract specified in the schedule to this <i>Change Proposal</i> .
Enquiries:	Any questions in relation to this notice should be directed to the officer issuing this notice as specified below:
Issuing Officer:	s. 47F(1) Director Government Services
Party proposing change	AHPL
Facsimile No:	s. 47F(1)

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Service Provider Certification

(Certification that Service Provider and any subcontractor costs are reasonable.)

Comments from Account Director(s)

Comments from the Customs Contract Manager

Other relevant documentation

(Other information relevant to the proposal is attached.)

5. Execution of Change Proposal

Pursuant to clause 38 changes are effected once the formal change proposal has been executed by the Contract Authority on behalf of Customs and by the relevant authorised person on behalf of the Service Provider as follows:

s. 22(1)(a)(ii)

Signed for *Customs* :

Name:

Title:

Protection

Witness Signature:

Date:

Signed for AHPL:

Name:

Title:

~~Services~~ *m*

Witness Signature:

Date:

s. 47F(1)

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SCHEDULE 7 - CHANGE CONTROL FORM

(Clauses 1.1, 38)

Format for Change Control Proposals

Agreement Variation Proposal Notice

Parties:	THE COMMONWEALTH OF AUSTRALIA (" Customs ") Australian Helicopters Pty Ltd (AHPL)
Agreement Details:	Services Contract between the Commonwealth of Australia (" Customs ") and [Service Provider]
Addressee:	
Date:	26 September 2011
Sequential Identification Number	CCP005
Proposal Title:	Surveillance Information Management System (SIM) Contract Requirements
Operative provisions:	This <i>Change Proposal</i> is given pursuant to clause 38 (Change Control) of the Contract. The Party issuing this <i>Change Proposal</i> proposes the variations to the Contract specified in the schedule to this <i>Change Proposal</i> .
Enquiries:	Any questions in relation to this notice should be directed to the officer issuing this notice as specified below:
Issuing Officer:	s. 22(1)(a)(ii)
Party proposing change	Customs
Facsimile No:	s. 22(1)(a)(ii)

A. Schedule to Change Proposal

s. 47(1)(b)

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s. 47(1)(b)

“

4. Execution of Change Proposal

Pursuant to **clause 38.5** changes are effected once the formal change proposal has been executed by the Contract Authority on behalf of **Customs** and by the relevant authorised person on behalf of the Service Provider as follows:

Signed for **Customs**:

Name: _____

Title: Director General, Coastwatch
as Contract Authority

Witness Signature: _____

Date: _____

Signed for Contractor:

Name: _____

Title: Service Director

Witness Signature: _____

Date: _____

“

Replace with the following Section 4 (Execution of Change Proposal) at
Schedule 7 – Change Control Form

“

4. Execution of Change Proposal

Pursuant to **clause 38.5** changes are effected once the formal change proposal has been executed by the Contract Authority on behalf of **Customs** and by the relevant authorised person on behalf of the Service Provider as follows:

Signed for *Customs*:

Name: _____

National Director
Maritime Operations Support Division
as Contract Authority

Title:

Witness Signature: _____

Date: _____

Signed for Contractor:

Name: _____

Title: Service Director

Witness Signature: _____

Date: _____

“

A.3.10. Delete the following Schedule 12 – Contract Personnel

“SCHEDULE 12 – CONTRACT PERSONNEL

(Clauses 1.1, 22)

A. Service Provider:

— Account Director is the Service Provider's Director Government Services s. 47F(1) [REDACTED] at the Commencement Date).

— Service Director is the Service Provider's General Manager s. 47F(1) [REDACTED] s. 47F(1) [REDACTED] at the Commencement Date).

B. Customs:

— Contract Authority is the Director General, Coastwatch (Rear Admiral Russell Crane at the Commencement Date).


— **Customs** Contract Manager is the Director Contract and Change Management s. 22(1)(a)(ii) [REDACTED] at the Commencement Date).

“

Replace with the following Schedule 12 – Contract Personnel

“SCHEDULE 12 – CONTRACT PERSONNEL

s. 47(1)(b)



B. Customs:

- **Contract Authority** is the National Director, Maritime Operations Support Division
- **Customs Contract Manager** is the Director, Aviation Unit, Maritime Operations Support Branch

“

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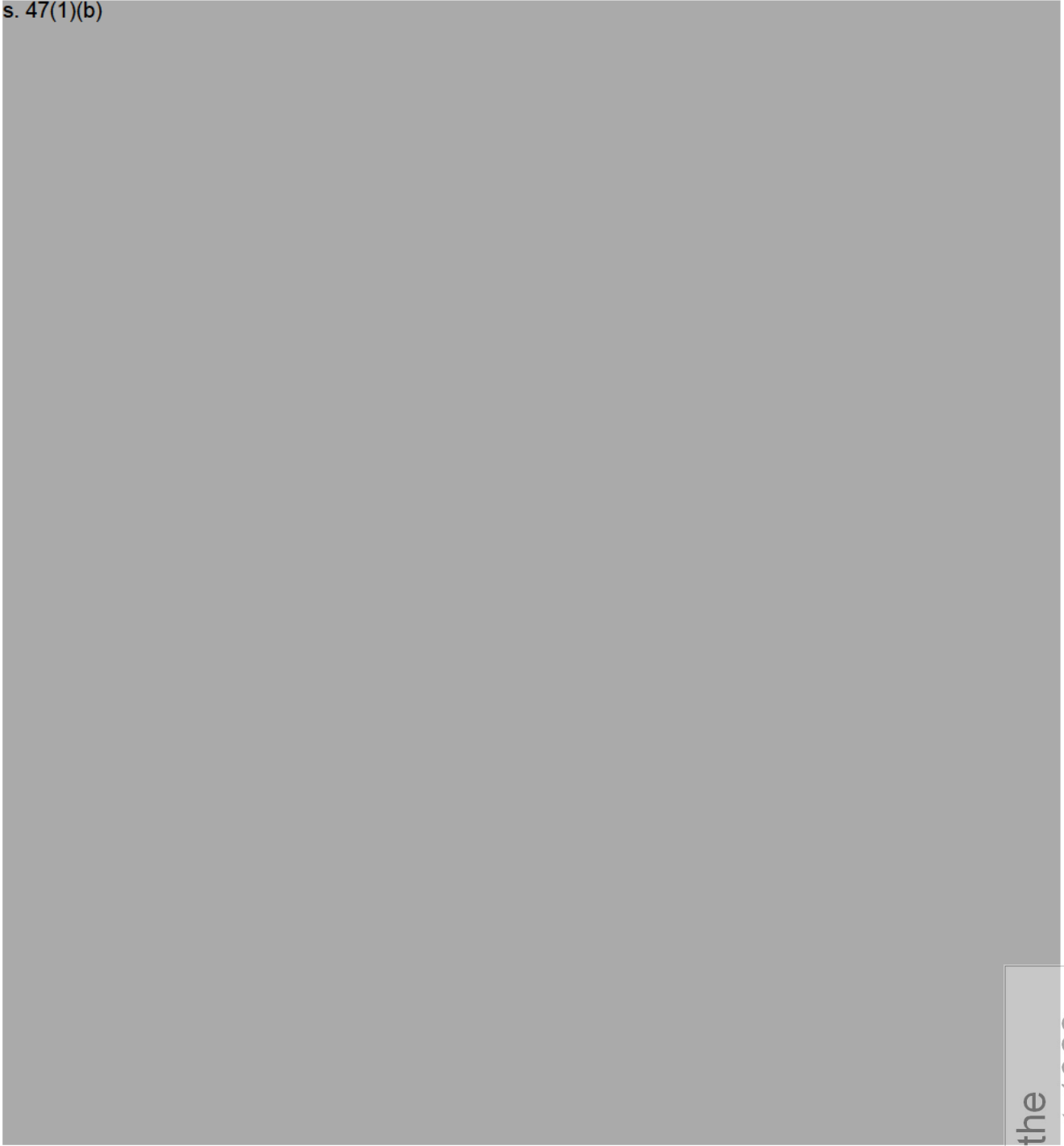
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s. 47(1)(b)



2. Additional Information

Nil

3. Execution of Change Proposal

Pursuant to **clause 38.5** changes are effected once the formal change proposal has been executed by the Contract Authority on behalf of **Customs** and by the relevant authorised person on behalf of the Service Provider as follows:

Signed for **Customs**:

s. 22(1)(a)(ii)

Name:

Title:

National Director

Maritime Operations Support Division

s. 47F(1)

Witness Signature:

Date:

Signed for Contractor:

Name:

Title:

Witness Signature:

Date:

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CHANGE CONTROL FORM

(Clauses 1.1, 38)

Format for Change Control Proposals

Agreement Variation Proposal Notice

Parties:	THE COMMONWEALTH OF AUSTRALIA ("Customs") and Australian Helicopters Proprietary Limited
Agreement Details:	Services Contract between the Commonwealth of Australia Customs and Australian Helicopters Proprietary Limited (AHPL)
Addressee:	Australian Customs and Border Protection Service Customs House 5 Constitution Avenue Canberra ACT
Date:	9 June 2009
Sequential Identification Number	CCP 005
Proposal Title:	Contract Personnel
Operative provisions:	This <i>Change Proposal</i> is given pursuant to clause 38 (Change Control) of the Contract. The Party issuing this <i>Change Proposal</i> proposes the variations to the Contract specified in the schedule to this <i>Change Proposal</i> .
Enquiries:	Any questions in relation to this notice should be directed to the officer issuing this notice as specified below:
Issuing Officer:	s. 22(1)(a)(ii) Maritime Operations Support Division
Party proposing change	Customs and Border Protection Service
Facsimile No:	s. 22(1)(a)(ii)

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Service Provider

To: Account Director
Attention: s. 47F(1)
Address:

Telephone:
Facsimile:
Email:

With

- 84.3. The address of a Party is the address set out below or another address of which that Party may from time to time give notice to each other Party:

To: **Customs** Contract Manager

Attention: Director Aviation Support Unit

Maritime Operations Support Division

Address: Customs and Border Protection Service

5 Constitution Avenue

CANBERRA CITY ACT 2601

Telephone: s. 22(1)(a)(ii)

Facsimile:

Service Provider

To: Account Director
Attention: s. 47F(1)

Address:

Telephone:
Mobile:
Facsimile:
Email:



Replace the following Schedule 12 – Contract Personnel

SCHEDULE 12 CONTRACT PERSONNEL

(Clauses 1.1, 22)

A. Service Provider:

- Account Director is the Service Provider's Director Government Services s. 47F(1) at the Commencement Date).
- Service Director is the Service Provider's General Manager s. 47F(1) s. 47F(1) at the Commencement Date).

B. Customs:

- Contract Authority is the Director General, Coastwatch (Rear Admiral Russell Crane at the Commencement Date).
- **Customs** Contract Manager is the Director Contract and Change Management s. 22(1)(a)(ii) at the Commencement Date). "

With

SCHEDULE 12 CONTRACT PERSONNEL

(Clauses 1.1, 22)

A. Service Provider:

- Account Director is the Service Provider's Director Government Services s. 47F(1) at the Commencement Date).
- Service Director is the Service Provider's Chief Executive Officer.

B. Customs:

- Contract Authority is the National Director Maritime Operations Support Division
- **Customs** Contract Manager is the Director Aviation Support Unit Maritime Operations Support Division. "

4. Budget and full cost breakdown:

Not applicable.

5. Risk:

This change control proposal is required to reflect revised contract management and administration arrangements outlined at item 2 above. Accordingly there is no impact on risk.

Service Provider Certification

(Certification that Service Provider and any subcontractor costs are reasonable.)

Not applicable – there are no additional costs involved with this Contract Change Proposal

Comments from Account Director(s)

Comments from the Customs Contract Manager

The changes listed in the Contract Change Proposal are required for contract administration purposes only – there are no changes to Service Provider deliverables, the Services or costs.

Other relevant documentation

(Other information relevant to the proposal is attached.)

Nil

6. Execution of Change Proposal

Pursuant to clause 38 changes are effected once the formal change proposal has been executed by the Contract Authority on behalf of Customs and by the relevant authorised person on behalf of the Service Provider as follows:

Signed for *Customs* :

Name:

Title:

s. 47F(1)

Commander Border Protection

Witness Signature:

Date:

s. 47F(1)

10/6/09

Signed for AHPL:

Name:

Title:

Witness Signature:

Date:

s. 47F(1)

Director Government Services

s. 47F(1)

Format for Change Control Proposals

Agreement Variation Proposal Notice

Parties: THE COMMONWEALTH OF AUSTRALIA ("**Customs**")
And Australian Helicopters Proprietary Limited

Agreement Details: Services Contract between the Commonwealth of Australia ("**Customs**") and Australian Helicopters Proprietary Limited.

Addressee: Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
Canberra
ACT

Date: 28 April 2011

Sequential Identification Number CCP 006

Proposal Title: Variation Mechanism – Fuel and Spare Parts

Operative provisions: This *Change Proposal* is given pursuant to **clause 38** (Change Control) of the Contract.
The Party issuing this *Change Proposal* proposes the variations to the Contract specified in the schedule to this *Change Proposal*.

Enquiries: Any questions in relation to this notice should be directed to the officer issuing this notice as specified below:

Issuing Officer: s. 47F(1) General Manager Commercial

Party proposing change Australian Helicopters Proprietary Limited

Schedule to Change Proposal

s. 47(1)(b)


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s. 47(1)(b)



Comments from the Account Director Nil

Comments from the Customs Contract Manager Nil

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3. Execution of Change Proposal

Pursuant to **clause 38.5** changes are effected once the formal change proposal has been executed by the Contract Authority on behalf of **Customs** and by the relevant authorised person on behalf of the Service Provider as follows:

Signed for **Customs**:

s. 22(1)(a)(ii)

Name:

Title:

National Director,
Maritime Operations Support Division
as Contract Authority

Witness Signature:

s. 47F(1)

Date:

Signed for Contractor:

Name:

Title:

Witness Signature:

Date:

SCHEDULE 7 - CHANGE CONTROL FORM

(Clauses 1.1, 38)

Format for Change Control Proposals

Agreement Variation Proposal Notice

Parties:	THE COMMONWEALTH OF AUSTRALIA (" Customs ") Australian Helicopters Pty Ltd (AHPL)
Agreement Details:	Services Contract between the Commonwealth of Australia (" Customs ") and Australian Helicopters
Addressee:	Australian Customs and Border Protection Service Customs House 5 Constitution Avenue Canberra ACT
Date:	12 September 2011
Sequential Identification Number	CCP007
Proposal Title:	Costs for an additional Surveillance Aircrewman
Operative provisions:	This <i>Change Proposal</i> is given pursuant to clause 38 (Change Control) of the Contract. The Party issuing this <i>Change Proposal</i> proposes the variations to the Contract specified in the schedule to this <i>Change Proposal</i> .
Enquiries:	Any questions in relation to this notice should be directed to the officer issuing this notice as specified below:
Issuing Officer:	s. 22(1)(a)(ii)
Party proposing change	AHPL
Facsimile No:	s. 22(1)(a)(ii)

s. 47(1)(b)

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Comments from the Account Director

s. 47(1)(b)

Comments from the Customs Contract Manager

Other relevant documentation
(Other information relevant to the proposal is attached.)

4. Execution of Change Proposal

Pursuant to **clause 38.5** changes are effected once the formal change proposal has been executed by the Contract Authority on behalf of **Customs** and by the relevant authorised person on behalf of the Service Provider as follows:

Signed for **Customs**:

Name:

Title:

Witness Signature:

Date:

Signed for Contractor:

Name:

Title:

Witness Signature:

Date:

s. 22(1)(a)(ii)

A/3 National Director, Maritime Operations Support
Division
s. 47F(1)

SCHEDULE 7 -**(Clauses 1.1, 38)****Format for Change Control Proposals**

Agreement Variation Proposal Notice

Parties:	THE COMMONWEALTH OF AUSTRALIA (" Customs ") And Australian Helicopters Proprietary Limited (" AHPL ")
Agreement Details:	Services Contract between the Commonwealth of Australia (" Customs ") and Australian Helicopters Proprietary Limited.
Addressee:	Australian Helicopters Pty Ltd Level 1, 1 Abbotsford Road, Bowen Hills Queensland 4006 QLD
Date:	6 September 2013
Sequential Identification Number	CCP 011
Proposal Title:	Contract Administration – WHS, Security, Key Personnel, Schedule 12 and Safety Management, Security Management, the Organisational Structure & Key Personnel and Schedule 5.
Operative provisions:	This <i>Change Proposal</i> is given pursuant to clause 38 (Change Control) of the Contract. The Party issuing this <i>Change Proposal</i> proposes the variations to the Contract specified in the schedule to this <i>Change Proposal</i> .
Enquiries:	Any questions in relation to this notice should be directed to the officer issuing this notice as specified below:
Issuing Officer:	s. 22(1)(a)(ii)
Party proposing change	Australian Customs and Border Protection Service
Facsimile No	s. 22(1)(a)(ii)
Attachments	Attachment A – Replacement Clause 23 Attachment B – Replacement Schedule 5

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I) In Clause 84.3 remove the following:

"84.3. The address of Party is the address set out below or another address of which that Party may from time to time give notice to each other Party:

To: **Customs Contract Manager**
Attention: Director Aviation Support Unit
Address: Australian Customs and Border Protection Service
5 Constitution Avenue
CANBERRA CITY ACT 2601

Telephone: s. 22(1)(a)(ii)
Facsimile: 

Service Provider

To: Account Director
Attention: s. 47F(1)
Address: Director Government Services
Australian Helicopters Pty Ltd
Level 1, 1 Abbotsford Rd
BOWEN HILLS QUEENSLAND 4006
Telephone: s. 47F(1)
Facsimile: 
Email:

And replace with the following:

"84.3. The address of Party is the address set out below or another address of which that Party may from time to time give notice to each other Party:

To: **Customs Contract Manager**
Attention: **Director Maritime Materiel**
Address: **Australian Customs and Border Protection Service**
5 Constitution Avenue
CANBERRA CITY ACT 2601
Telephone: s. 22(1)(a)(ii)
Facsimile:

Service Provider

To: s. 47F(1)
Attention: **Customer Relationship Manager**
Address: **Australian Helicopters Pty Ltd**
Level 1, 1 Abbotsford Rd
BOWEN HILLS QUEENSLAND 4006
Telephone: s. 47F(1)
Facsimile:
Email:

s. 47(1)(b)

Signed for *Customs*:

Name: _____

Title: National Director
Maritime Operations Support Division
As Contract Authority

Witness Signature: _____

Date: _____

Signed for Contractor: _____

Name: _____

Title: Service Director

Witness Signature: _____

Date: _____”

And replace with the following:

“4. Execution of Change Proposal

Pursuant to **clause 38.5** changes are effected once the formal change proposal has been executed by the Contract Authority on behalf of **Customs** and by the relevant authorised person on behalf of the Service Provider as follows:

Signed for **Customs**:

Name: _____

Title: National Director
Maritime Division
As Contract Authority

Witness Signature: _____

Date: _____

Signed for Contractor: _____

Name:

Title: Service Director

Witness Signature: _____

Date: _____”

- t) In Schedule 10 Clause 2.2.c remove the following;

- “A Commonwealth Protective Security Manual”
- B **Customs** Protective Security Manual;
- C **Customs** OH&S guidelines
- D **Customs** Confidentiality requirements including Section 16 of the *Customs Administration Act 1985*; and”;

And replace with the following;

- “A Australian Government Protective Security Policy Framework or Customs and Border Protection Security Policies
- B **Customs** Protective Security Policy Framework;
- C **Customs** WHS Guidelines
- D **Customs** Confidentiality requirements including Section 16 of the *Customs Administration Act 1985*; and”;

- u) In Schedule 10 Clause 4 remove the title “Occupational Health and Safety” and replace with “Work Health and Safety”

A. 3 Additional Information as required

Service Provider Certification (Certification that Service Provider and any subcontractor costs are reasonable.)	No additional costs associated with this change request.
Comments from the Account Director	Nil
Comments from the Customs Contract Manager	Nil
Other relevant documentation (Other information relevant to the proposal is attached.)	Nil

A.4 Execution of Change Proposal

Pursuant to **clause 38.5** changes are effected once the formal change proposal has been executed by the Contract Authority on behalf of **Customs** and by the relevant authorised person on behalf of the Service Provider as follows:

Signed for **Customs**:

Name:

Title:

National Director s. 22(1)(a)(ii)

Maritime Operations Support Division
as Contract Authority

Witness Signature:

Date:

Signed for Contractor:

Name:

Title:

Witness Signature:

Date:

23. Work Health and Safety

- 23.1. The main object of Work Health and Safety Legislation is to protect people against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work. People must be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from the Service Provider's performance of Services
- 23.2. The Service Provider must update the Safety Management Plan approved by Customs under clause 21 to ensure compliance with WHS Legislation, in accordance with clause 21.5.
- 23.3. The Service Provider must carry out the work under this Contract safely and so as to protect persons and property in accordance with the Safety Management Plan approved by Customs under clause 21.
- 23.4. The Service Provider must comply with all Statutory Requirements, the Australian Government Building and Construction OHS Accreditation Scheme when applicable, codes of practice, and standards (including Australian Standards) in relation to OHS. If the Scheme applies to the Contract, as the builder, the Service Provider must maintain accreditation under the Scheme while building work under the Contract is carried out. The builder must also comply with all accreditation conditions of the Scheme.
- 23.5. Where there is conflict between any Statutory Requirements, codes of practice or standards (including Australian Standards) relating to OHS, the Service Provider will comply with those policies and procedures that produce the highest level of health and safety.
- 23.6. Without limiting the obligation on the Service Provider to comply with and to achieve the object of Work Health and Safety Legislation, the Service Provider must:
- a. follow and perform all of the Services under the Contract in a safe manner at all times;
 - b. instruct its Personnel take reasonable care for their own safety;
 - c. ensure its Personnel wear appropriate protective clothing when providing the Services;
 - d. perform the Services under the Contract in a way that is without risk to the health, safety or welfare of any person;
 - e. ensure all OHS and WHS Legislation requirements are complied with;
 - f. ensure that in the way the Services are provided under the Contract, all subcontractors who are engaged in connection with performing the Services comply with the requirements in this clause;

- g. at all times have documented safe work practices and procedures in place to provide the Services in a manner that is safe and without risk to the health or welfare of any person;
 - h. ensure that there are processes in place to identify, assess and proactively control risks in the way that Services under the Contract are performed and provided;
 - i. cooperate with and do all of the things that are necessary to enable Customs and Border Protection to comply with its OHS and WHS Legislation obligations;
 - j. ensure that its employees, agents and all subcontractors are properly inducted where Services under the Contract are to be provided and also ensure that all those persons are provided with information, instruction, training or supervision to ensure their own health and safety and that their acts or omissions do not adversely affect the health and safety of other persons whilst at a place where Services are provided;
 - k. when requested by Customs and Border Protection provide evidence and demonstrate compliance with OHS and WHS Legislation obligations;
 - l. when requested by Customs and Border Protection, provide information about and verification of the safety systems in place where Services under the Contract are being provided. This includes the site specific safe work practices, policies and procedures in use for the work that is required in connection with the Services and how compliance with the safety system is audited and monitored;
 - m. immediately inform Customs and Border Protection if as a result of performing any of the Services under the Contract the Service Provider was required to report any notifiable incident, safety related accident or incident, work related exposure or near miss incident to a safety regulator under OHS and WHS Legislation; and
 - n. promptly inform Customs and Border Protection where an inspector appointed under OHS and WHS Legislation or any delegate or union representative entered or attended a site in relation to a work health or safety matter where Services under the Contract are being provided.
- 23.7. Without limiting the generality of this clause 23, to assist in meeting the object of WHS Legislation to eliminate or minimise risk arising from the way Services under this Contract are provided, when requested by Customs and Border Protection, the Service Provider must conduct an audit of the way the Services are being carried out without risk to the health, safety or welfare of any person. The audit will be undertaken in a way that has been specified by Customs and Border Protection. The Service Provider agrees to perform the audit in the required manner and within the time specified by Customs and Border Protection.

SCHEDULE 5. SERVICE CHARGES**CONTENTS**

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s. 47(1)(b)



SCHEDULE 7 - CHANGE CONTROL

Parties:	THE COMMONWEALTH OF AUSTRALIA as represented by the Department of Immigration and Border Protection ("DIBP") and Babcock Mission Critical Services Australasia Proprietary Limited (" Babcock ")
Agreement Details:	Services Contract between the Commonwealth of Australia Department of Immigration and Border Protection ("DIBP") and Babcock Mission Critical Services Australasia Proprietary Limited.
Addressee:	Babcock Mission Critical Services Australasia Proprietary Limited Level 1, 1 Abbotsford Road Bowen Hills QLD 4006
Date:	30 August 2016
Sequential Identification Number	CCP 015
Proposal Title:	CCP 015 – Administrative - Livery
Operative provisions:	<p>This <i>Contract Change Proposal</i> is given pursuant to clause 38 (Change Control) of the Contract.</p> <p>The Party issuing this <i>Change Proposal</i> proposes the variations to the Contract specified in the schedule to this <i>Change Proposal</i>.</p>
Enquiries:	Any questions in relation to this notice should be directed to the officer issuing this notice as specified below:
Issuing Officer:	DIBP Contract Manager s. 22(1)(a)(ii) Border Force Superintendent, Aviation and Aerospace, Air and Marine, Border Force Capability Division, Australian Border Force Support Group Australian Border Force 2 Constitution Avenue Canberra ACT 2601 s. 22(1)(a)(ii) @border.gov.au
Party proposing change	Department of Immigration and Border Protection
Facsimile No.	N/A
Attachments:	1 – Appendix 1 Colour and Typeface Specifications as per Australian Customs and Border Protection Style Guide

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EXECUTION OF CONTRACT CHANGE PROPOSAL

Pursuant to **clause 38.9** of the Contract, changes are effected once the formal Contract Change Proposal has been executed by the Contract Authority on behalf of **DIBP** and by the relevant authorised person on behalf of the Service Provider as follows:

Signed for DIBP

Name:



Title:

Peter Docwra

Assistant Commissioner, Border Force Capability Division

As Contract Authority

s. 47F(1)

Witness Signature:

Date:

2 Sep 16

Signed for Contractor:

Name:

Title:

Account Director

Babcock Mission Critical Services

Australasia Pty Ltd

As Contract Authority

Witness Signature:

Date:

30/08/16

COMMENTS

Service Provider Certification <i>(Certification that Service Provider and any subcontractor costs are reasonable.)</i>	
Comments from the Account Director	Nil
Comments from the <i>DIBP</i> Contract Manager	
Other relevant documentation	

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**APPENDIX 1 COLOUR AND TYPEFACE SPECIFICATIONS AS PER AUSTRALIAN
CUSTOMS AND BORDER PROTECTION STYLE GUIDE**

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Colour palette

COLOURS

Colour plays an important role in establishing a brand. These colours must be used consistently across all Customs and Border Protection branding elements.

Corporate
Colour
Palette

Customs and Border Protection Blue






Customs and Border Protection Red



Customs and Border Protection Grey



	PANTONE	CMYK	RGB	HTML	WEB SAFE
	PMS2965	C:100 M:38 Y:0 K:64	R:0 G:43 B:70	#002b45	#000033
	PMS201	C:0 M:100 Y:63 K:29	R:158 G:27 B:50	#9e1b32	#990000
	PMS Warm Grey 9	C:0 M:11 Y:20 K:47	R:131 G:120 B:112	#837870	#996666

Typography

Helvetica Neue Condensed Black is the preferred logo typeface.

abcdefghijklmnopqrstuvwxyz
ABCDEFGHIJKLMNOPQRSTUVWXYZ
1234567890

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SCHEDULE 7 - CHANGE CONTROL

Parties:	THE COMMONWEALTH OF AUSTRALIA as represented by the Department of Immigration and Border Protection ("DIBP") and Babcock Mission Critical Services Australasia Pty Ltd (" Babcock ").
Agreement Details:	Services Contract between the Commonwealth of Australia Department of Immigration and Border Protection and Babcock Mission Critical Services Australasia Pty Ltd.
Addressee:	Babcock Mission Critical Services Australasia Pty Ltd Level 1, 1 Abbotsford Road Bowen Hills QLD 4006
Date:	02 September 2016
Sequential Identification Number	CCP 016
Proposal Title:	CCP 016 – Back of Cabin Night Vision Goggles
Operative provisions:	<p>This <i>Contract Change Proposal</i> is given pursuant to clause 38 (Change Control) of the Contract.</p> <p>The Party issuing this <i>Change Proposal</i> proposes the variations to the Contract specified in the schedule to this <i>Change Proposal</i>.</p>
Enquiries:	Any questions in relation to this notice should be directed to the officer issuing this notice as specified below:
Issuing Officer:	Account Director s. 47F(1) Director of Commercial Babcock Mission Critical Services Australasia Pty Ltd Level 1, 1 Abbotsford Rd Bowen Hills Queensland 4006 s. 47F(1)
Party proposing change	<i>Babcock Mission Critical Services Australasia Pty Ltd</i>
Facsimile No.	N/A
Attachments:	N/A

3. PRICE AND COST BASIS

Nil costs are associated to this change for DIBP.

COMMENTS

Service Provider Certification (Certification that Service Provider and any subcontractor costs are reasonable.)	Nil
Comments from the Account Director	Nil
Comments from the DIBP Contract Manager	
Other relevant documentation (Other information relevant to the proposal is attached.)	N/A

EXECUTION OF CONTRACT CHANGE PROPOSAL

Pursuant to **clause 38.9** of the Contract, changes are effected once the formal Contract Change Proposal has been executed by the Contract Authority on behalf of **DIBP** and by the relevant authorised person on behalf of the Service Provider as follows:

Signed for DIBP

s. 22(1)(a)(ii)

Name:

Title:

Pete Docwra, Assistant Commissioner, Air & Marine, ABF

As Contract Authority
s. 47F(1)

Witness Signature:

Date:

2 Sep 16

s. 47F(1)

Signed for Contractor:

Name:

Title:

Account Director

Babcock Mission Critical Services Australasia Pty Ltd

As Contract Authority
s. 47F(1)

Witness Signature:

Date:

02/09/16

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Freedom of Information Act 1982


SCHEDULE 7 - CHANGE CONTROL

Parties:	THE COMMONWEALTH OF AUSTRALIA as represented by the Department of Immigration and Border Protection ("DIBP") and Babcock Mission Critical Services Australasia Pty Ltd ("Babcock").
Agreement Details:	Services Contract between the Commonwealth of Australia Department of Immigration and Border Protection and Babcock Mission Critical Services Australasia Pty Ltd.
Addressee:	Babcock Mission Critical Services Australasia Pty Ltd Level 1, 1 Abbotsford Road Bowen Hills QLD 4006
Date:	23 November 2016
Sequential Identification Number	CCP 017
Proposal Title:	CCP 017 – Gyro Stabilised Binoculars
Operative provisions:	<p>This <i>Contract Change Proposal</i> is given pursuant to clause 38 (Change Control) of the Contract.</p> <p>The Party issuing this <i>Change Proposal</i> proposes the variations to the Contract specified in the schedule to this <i>Change Proposal</i>.</p>
Enquiries:	Any questions in relation to this notice should be directed to the officer issuing this notice as specified below:
Issuing Officer:	Account Director s. 47F(1) Director of Commercial Babcock Mission Critical Services Australasia Pty Ltd Level 1, 1 Abbotsford Rd Bowen Hills Queensland 4006 s. 47F(1) s. 47F(1)
Party proposing change	Babcock Mission Critical Services Australasia Pty Ltd
Facsimile No.	N/A
Attachments:	N/A

SCHEDULE TO CHANGE PROPOSAL


1. REASONS FOR PROPOSING THE CHANGE

In 2006 Babcock (formally Australian Helicopters) and DIBP (formerly Australian Customs Service)
s. 47(1)(b)




2. VARIATION

s. 47(1)(b)



3. PRICE AND COST BASIS

s. 47(1)(b)



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COMMENTS

Service Provider Certification

Nil

(Certification that Service Provider and any subcontractor costs are reasonable.)

Comments from the Account Director

Nil

Comments from the DIBP Contract Manager

Other relevant documentation

N/A

(Other information relevant to the proposal is attached.)

EXECUTION OF CONTRACT CHANGE PROPOSAL

Pursuant to **clause 38.9** of the Contract, changes are effected once the formal Contract Change Proposal has been executed by the Contract Authority on behalf of **DIBP** and by the relevant authorised person on behalf of the Service Provider as follows:

Signed for DIBP

Name:

Title:

s.22(1)(a)(ii)

SUPERINTENDENT AVIATION AND AIRSPACE

Witness Signature:

Date:

As Contract Authority
s.22(1)(a)(ii)

13 DEC 2016

Signed for Contractor:

Name:

Title:

s.22(1)(a)(ii)

Account Director

Babcock Mission Critical Services Australasia Pty Ltd

Witness Signature:

Date:

As Contract Authority
s.22(1)(a)(ii)

24 November 2016



Australian Government

**Australian Customs and
Border Protection Service**

Customs House
5 Constitution Ave
CANBERRA ACT 2600

18 November 2014

s. 47F(1)

Customer Relationship Manager
Australian Helicopters Pty Ltd
GPO Box 826, Brisbane
QLD 4001


Dear s. 47F(1)

**RE: MINOR WORDING CHANGES REGARDING DIGITAL CAMERA
SPECIFICATIONS TO AVOID REPEATED CONTRACT CHANGE PROPOSALS**

s. 47(1)(b)


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Freedom of Information Act 1982

s. 47(1)(b)




If the amended wording is agreeable, please sign the letter below and return a copy to:
s. 22(1)(a)(ii) via: s. 22(1)(a)(ii) @customs.gov.au.

Regards,
s. 22(1)(a)(ii)



A/g Director Operational Materiel
Air and Marine
Border Force Division
Australian Customs and Border Protection Service
s. 22(1)(a)(ii)
@customs.gov.au

s. 22(1)(a)(ii)



A/g Director, Operational Materiel,
Air and Marine, Border Force Division
Australian Customs and Border Protection Service
Date: 19 November 2014

Agreed
s. 47F(1)



Customer Relationship Manager
Australian Helicopters Pty Ltd
Date: 19 November 2014

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