

**THE COMMONWEALTH OF AUSTRALIA
REPRESENTED BY THE AUSTRALIAN
CUSTOMS SERVICE**

PARADIGM ONE PTY LTD

**SECURE ELECTRONIC DISCLOSURES NODE
(SEDNode) SOFTWARE LICENCE AND
SERVICES AGREEMENT**

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THIS AGREEMENT is made:

BETWEEN THE COMMONWEALTH OF AUSTRALIA REPRESENTED BY THE AUSTRALIAN CUSTOMS SERVICE ABN 66 015 286 036 of Customs House, 5 Constitution Avenue, Canberra City, ACT 2601 ("**Customs**")

AND PARADIGM ONE PTY LTD ABN 80 091 808 392 of Suite 40, Upper Deck, Jones Bay Wharf, Pirrama Road, Pyrmont, NSW 2009 ("**Paradigm.One**")

RECITALS

- A. s. 37(2)(b)
- B. SEDNode has been developed under the ACIF EIE initiative.
- C. Customs wishes to obtain a SEDNode licence with support and maintenance services and the Additional Services.
- D. Paradigm.One has agreed to provide the SEDNode licence and support and maintenance services and the Additional Services on the terms and conditions of this Agreement.

OPERATIVE PROVISIONS

1 INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

"**ACIF**" means the Australian Communications Industry Forum.

"**Additional Services**" means the additional services, if any, specified in **Schedule 3**.

"s. 47" means

- (a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation (including a local authority);
- (b) a body established by the Governor-General or by a Minister of State of the Commonwealth including departments; or
- (c) an incorporated company over which the Commonwealth exercises control.

"**ANOC**" means the company that ACIF has engaged to host, support and maintain the s37(2)(b) Software.

"**Agreement**" means this agreement and all schedules and annexures to it.

"**Business Day**" means each of Monday to Friday excluding any day that is a public holiday in New South Wales.

“Change in Control” means a change in the identity of the company or other person that has the ability to exercise control (which includes the ability to remove or appoint all or a majority of the company directors) over the party.

“Commencement Date” means the date the Agreement has been executed by the last party.

“Confidential Information” of a party means information that is by its nature confidential; and

- (a) is designated by a party as confidential and is described in Schedule 4 of this Agreement; or
- (b) a party knows or ought to know is confidential,

but does not include:

- (c) information which is or becomes public knowledge other than by breach of the Agreement or any other confidentiality obligation but does not include:

“Dispute” has the meaning given in **Clause 17.1**.

s37(2)(b)

“Existing IP” means:

- (a) in the case of Paradigm.One, the Intellectual Property Rights of Paradigm.One as they exist at the Commencement Date; and
- (b) in the case of Customs, the Intellectual Property Rights of Customs as they exist at the Commencement Date.

“Fees” means, in the case of SEDNode, the charges payable as specified in **Schedule 1** and, in the case of the Additional Services, the charges payable as specified in (and subsequently varied in accordance with) **Schedule 3**.

“Force Majeure Event” means an event described in **Clause 15**.

“Insolvency Event” means the happening of any of:

- (a) an order being made for the winding up of a party except for the purposes of a voluntary reconstruction or amalgamation;
- (b) a party passing a resolution for its winding up except for the purposes of a voluntary reconstruction or amalgamation;
- (c) a receiver, provisional liquidator, trustee for creditors or in bankruptcy, an administrator or analogous person being appointed to, or the holder of a security interest taking possession of any property of, a party;

- (d) a party:
 - (i) suspending payment of its debts;
 - (ii) ceasing or threatening to cease to carry on all or a material part of its business; or
 - (iii) being or stating that it is, or is deemed by applicable law to be, unable to pay its debts; or
- (e) anything analogous or having a substantially similar direct effect to any of the events specified in (a) - (d) above which happens under the law of any applicable jurisdiction.

“Intellectual Property Rights” means:

- (a) copyright, all rights in relation to inventions (including patents), registered and unregistered trade marks, designs, semi-conductor or circuit layouts and confidential information, and all other rights (including moral rights) resulting from intellectual activity in the industrial, scientific, literary or artistic fields; and
- (b) any right to apply for registration for any of the rights referred to in paragraph (a) of this definition.

“New Release” means software produced primarily to extend, alter or improve the Software by providing additional functionality or performance enhancement (whether or not defects in the Software are also corrected) while still retaining its original designated purpose.

“Normal Business Hours” means 9:00 am to 5:00 pm Australian Eastern Standard Time on each Business Day.

“Production Date” means the date upon which the SEDNode software is installed at Customs as specified in Schedule 1.

s. 37(2)(b)

“Related Bodies Corporate” of a corporation means another corporation that is a related body corporate of the first within the meaning of the Corporations Act 2001 (Cth).

“SEDNode” or “Software” means the Secure Electronic Disclosures Node, a software application developed and owned by Paradigm.One.

“Services” means the services to be provided by Paradigm.One as per **Clause 6**.

“Service Levels” means the service levels set out in **Schedule 2**.

“Special Conditions” means the special conditions, if any, set out in **Schedule 3**.

“Software Licence” means the licence granted to Customs by Paradigm.One under **Clause 4**.

“Source Materials” means the source code of, and all relevant documentation, notes and other materials required to support the Software.

“Third Party Materials” means any materials in which a party other than Paradigm One or Customs owns the Intellectual Property Rights.

“Update” software which has been produced primarily to overcome defects in, or to improve the operation of, the Software without significantly altering the Software whether or not the Software has also been extended, altered or improved by providing additional functionality or performance enhancement.

1.2 Construction

Unless expressed to the contrary:

- (a) words importing:
 - (i) the singular include the plural and vice versa; and
 - (ii) any gender include the other genders;
- (b) if a word or phrase is defined cognate words and phrases have corresponding definitions;
- (c) a reference to:
 - (i) a person includes a firm, an unincorporated association, a corporation and a government or statutory body or authority;
 - (ii) a person includes its legal personal representatives, successors and assigns;
 - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) a right includes a benefit, remedy, discretion, authority or power;
 - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vi) provisions or terms of this document or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;
 - (vii) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties; and
 - (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmission.

1.3 Headings

Headings do not affect the interpretation of this document.

1.4 Contra proferentem

No rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.

2 TERM

2.1 This Agreement begins on the Commencement Date and continues for a period of s47 s47 from the Production Date, or such shorter period if terminated in accordance with this Agreement (the "Initial Term"), except for any clauses that are specified as continuing beyond the termination of this Agreement.

2.2 At the conclusion of the Initial Term, the Agreement shall be automatically extended for further terms each of one (1) year duration, or such shorter period if terminated in accordance with this Agreement (the "Renewal Terms"), unless prior written notice of termination is given in accordance with **Clause 13.3**.

3 PROVISION OF SEDNODE SOFTWARE LICENCE, SERVICES, AND ADDITIONAL SERVICES

3.1 Paradigm.One agrees to provide Customs with a licence to use the SEDNode Software as outlined in **Clause 4**, the Services as outlined in **Clause 6**, and the Additional Services for the term of the Agreement.

3.2 The Additional Services are subject to the Special Conditions. To the extent of any inconsistency between the Special Conditions and the other terms of this Agreement, the Special Conditions prevail.

4 LICENCE TO USE SEDNODE SOFTWARE

- 4.1 s47
- 4.2 Paradigm.One owns the Intellectual Property Rights in the SEDNode software including without limitation, the Intellectual Property Rights in any related software methodologies, and tools.
- 4.3 Customs must not use the SEDNode software except in accordance with the normal operating procedures laid down by Paradigm.One. Subject to clause 4.6, Customs must not do any of the following without the written consent of Paradigm. One:
- (a) reproduce or modify the SEDNode software;
 - (b) allow anyone else to use the SEDNode software or any related operating or user manuals and associated technical literature;

- (c) make any copy of the SEDNode software, except a single copy for back-up and security. The copy for backup and security belongs to Paradigm.One and is subject to this Agreement as if it were the licensed copy of the SEDNode software. Customs must ensure that the copy bears notice of Paradigm.One's ownership of the copyright; or
 - (d) reverse assemble or reverse engineer any part of the SEDNode software, or directly or indirectly allow anyone to do so.
- 4.4 Customs is solely responsible for the use, supervision, management and control of the SEDNode software and the Additional Services. Customs must ensure that the SEDNode software is protected from access, use, damage or destruction by an unauthorised person.
- 4.5 Paradigm.One will provide on-site installation of SEDNode on one server within Australia by the Production Date, provided all pre-requisites are met by Customs prior to that.
- 4.6 Upon written permission from Paradigm.One, Customs may:
- (a) assign the rights in clause 4.1 to other Agencies where those Agencies require the Software as a result of an Administrative Arrangements Order; and
 - (b) sublicense and/or assign to third parties the rights referred to in clause 4.1 solely for the benefit of Customs, provided that Customs secures an undertaking from the relevant third party that it will use the SEDNode software solely for that purpose.

5 DOCUMENTATION

5.1 Provision of Documentation

Paradigm.One must provide Customs with up to date technical and operator documentation (the Documentation) containing sufficient information to enable Customs to make full use of the Software at all times.

5.2 Documentation requirements

The Documentation must at the time of delivery:

- (a) be current and accurate;
- (b) adequately explain key terms and symbols; and
- (c) be in English.

5.3 Updating Documentation

- (a) Support Services include providing all necessary amendments, revisions and updates of the Documentation.
- (b) Paradigm.One must amend or substitute the Documentation periodically in order to address and adequately explain the implications of any Update or New Release.

- (c) Paradigm.One must provide or make available Documentation updated in accordance with this clause 5 to Customs within five Business Days of delivery of the Update or New Release to which the updated Documentation relates.

6 SERVICES

6.1 Support

- (a) Paradigm.One will provide the following support as part of the Services:
- (i) a helpdesk during Normal Business Hours contactable via a toll-free number s. 22(1)(a)(ii) ;
 - (ii) internet-accessible support call logging via s. 22(1)(a)(ii) ;
 - (iii) support call logging via email to s22(1)(a)(ii) ;
 - (iv) automated email notifications (via ptracker) on the status and progress of support requests, queries and escalations;
 - (v) access to appropriately skilled staff to provide this support who understand the SEDNode software and the Additional Services.
- (b) Customs will provide remote access for the environment running the SEDNode software to Paradigm.One, failing which Paradigm.One's obligations under clause 16.1(a) may cease.

6.2 Maintenance

- (a) Paradigm.One will provide the following maintenance as part of the Services:
- (i) Bug fixes for the SEDNode software;
 - (ii) On-going technology-enhancement releases for the SEDNode software;
 - (iii) Provide access to new Request and Response templates.
- (b) If Paradigm.One provides a bug fix or release, it must be installed by Customs within 15 business days, otherwise Paradigm.One's obligations under Clause 16.1(a) shall cease.

7 FEES, PAYMENT AND INVOICING

7.1 Payment of Fees

Subject to **Clause 7.2**, upon receipt of a valid tax invoice from Paradigm.One, Customs must pay Paradigm.One the fees as set out in **Schedule 1** and **Schedule 3**.

7.2 Disputed invoices

Notwithstanding any other provision of this Agreement, if Customs disputes the amount of any invoice, Customs may suspend payment on any disputed portion of the dispute.

invoice until the dispute is resolved pursuant to the dispute resolution process outlined in **Clause 17**. Customs must pay all other non-disputed amounts in accordance with this **Clause 7**.

7.3 Suspension of Additional Services

Subject to clause 7.2, if an invoice has not been paid by the due date in respect of any Additional Services then Paradigm.One, after providing 5 Business Days notice to Customs, may suspend the Additional Services until such time as the invoice is paid.

7.4 Termination of Agreement

- (a) If payment of non-disputed amounts has not been received within 30 days of the due date then Paradigm.One, after providing 5 Business Days further notice to Customs, may terminate this Agreement immediately.
- (b) For the sake of clarity, nothing in this **Clause 7.4** gives Paradigm.One the right to suspend the Software Licence and provision of the elected Services in respect to the non payment of disputed amounts which shall be resolved in accordance with the dispute resolution process outlined in **Clause 17**.

8 CHANGE MANAGEMENT

8.1 Change Control Process

- (a) If after the Commencement Date, Customs wishes to change this Agreement or a Schedule, or increase the scope of Services supplied under this Agreement, both parties agree to adopt the following procedure:
- (b) Customs will forward to Paradigm.One a document called a "Change Request" containing the following information:
 - (i) date of the Change Request;
 - (ii) detailed description of the proposed change; and
 - (iii) reason for the proposed change.
- (c) All Change Requests will be investigated and a report provided by Paradigm.One at its cost within 10 Business Days after receipt of the Change Request (the "Report").
- (d) The Report shall state the cost of the change, based on an hourly rate of ⁴⁷ [REDACTED] excl. GST, and the potential effect of the Change Request, if implemented, on the Agreement and Schedules.
- (e) If, after the Report has been analysed by Customs it agrees to implement the change then a Change Order will be prepared which states the total cost of the change and all necessary amendments to the Agreement and the Schedules caused by it. The Change Order shall be signed by representatives of both parties and once signed shall be binding upon the parties and the Agreement and the Schedules will be automatically varied to take into account those changes specified in the Change Order.

9 INTELLECTUAL PROPERTY RIGHTS

9.1 Intellectual Property Rights in Existing IP

Nothing in this Agreement alters the ownership of the Intellectual Property Rights of either party in their respective Existing IP (including, without limitation, Intellectual Property Rights in any methodologies, tools and related software).

9.2 Intellectual Property Warranties

- (a) Each party warrants to the other that:
 - (i) in complying with this Agreement, it will not infringe the Intellectual Property rights of any person; and
 - (ii) use by the other party (or its nominee) of its documentation in accordance with this Agreement will not infringe the Intellectual Property rights of any person.

10 WARRANTIES

10.1 Mutual warranties

Customs and Paradigm.One represent and warrant to each other that:

- (a) it has power and authority to carry on its business as that business is now being conducted; and
- (b) it has power to enter into and observe its obligations under this Agreement.

10.2 Paradigm.One's warranties

Paradigm.One represents and warrants to Customs that:

- (a) it has the skills, resources, expertise and personnel necessary to enable it to satisfy its obligations under this Agreement in a prompt, competent and efficient manner;
- (b) the Services and the Additional Services shall be provided
 - (i) with all due care, skill and diligence;
 - (ii) by personnel with appropriate skills, training and experience;
- (c) any materials supplied in connection with the Services and the Additional Services will be reasonably fit for the purposes for which they are supplied; and
- (d) the SEDNode software:
 - (i) will be free from material defects or material errors;
 - (ii) will not contain built-in, automatic or random expiry dates;
 - (iii) will be free from viruses at the time it is installed in Customs environment.

10.3 Other Warranties

All other conditions and warranties of any type in relation to the goods or services are excluded to the maximum extent allowed by the law. The liability of Paradigm.One for a breach of any condition or warranty implied by law (except one implied by section 69 of the Trade Practices Act 1974) is limited, to the extent that the law allows, to any one or more of the following, at the option of Paradigm.One:

- (a) in the case of a breach relating to goods:
 - the replacement of the goods or the supply of equivalent goods;
 - the repair of the goods;
 - the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - the payment of the cost of having the goods repaired; and
- (b) in the case of services:
 - the resupply of the services; or
 - the payment of the cost of having the services resupplied.

11 INDEMNITY

11.1 Indemnity by Paradigm.One

Paradigm.One indemnifies Customs and its subcontractors and personnel against loss, damage, expense (including legal costs and expenses on a solicitor and own client basis) reasonably sustained or incurred by Customs as a result of a claim made or threatened by a third party arising out of or in connection with:

- (a) any negligent, unlawful or wilfully wrong act or omission of Paradigm.One or its subcontractors or personnel; or
- (b) an allegation that any Services or SEDNode Software (including the use of any Services or SEDNode Software by Customs or its subcontractors or personnel) infringes the Intellectual Property Rights or Moral Rights of the third party. For the purposes of this clause 11, an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 96 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth) and section 25 of the *Circuit Layouts Act 1989* (Cth), constitute an infringement.

11.2 Customs obligations

Where Customs wishes to enforce an indemnity under clause 11.1 it must:

- (a) give written notice to the Paradigm.One as soon as practical;
- (b) make reasonable efforts to mitigate the relevant Loss;

- (c) subject to Paradigm.One agreeing to comply at all times with clause 11.3, permit Paradigm.One, at Paradigm.One's expense, to handle all negotiations for settlement and, as permitted by Law, to control and direct any settlement negotiation or litigation that may follow; and
- (d) in the event that Paradigm.One is permitted to handle negotiations or conduct litigation on behalf of Customs, under clause 13.2(c), provide all reasonable assistance to Paradigm.One in the handling of any negotiations and litigation.

11.3 Paradigm.One's obligations

In the event that Paradigm.One is permitted to handle negotiations or conduct litigation on behalf of Customs under clause 13.2(c), Paradigm.One must:

- (a) comply with government policy and obligations, as if Paradigm.One were Customs, relevant to the conduct of the litigation and any settlement negotiation (including but not limited to the Legal Services Directions) and any direction issued by the Attorney General to the Commonwealth or delegate;
- (b) keep Customs informed of any significant developments relating to the conduct of the defence or settlement of any claim; and
- (c) provide to Customs such information and documentation as are reasonably requested by Customs, to enable Customs to ascertain whether the defence or settlement by Paradigm.One of any claim is being conducted in accordance with the requirements of the Legal Services Directions, including any requirements relating to legal professional privilege and confidentiality.

12 LIABILITY OF PARTIES

To the extent permitted by law, neither party will be liable to the other for any indirect and consequential, incidental or punitive damages, lost revenue, loss of profit, business interruption, failure to realise anticipated savings or loss of data arising from or related to this Agreement, even if the other party advised the first party of the possibility of damages arising.

In no event will a party (the innocent party) be liable for any damages if and to the extent they are caused by the other party's (the defaulting party) failure to perform its obligations under this Agreement.

To the extent permitted by law:

Subject to (ii), each party's entire liability under this Agreement will be limited in the aggregate for all loss, damage, costs, expenses (on a solicitor own client basis), claims, causes of action, demands or occurrences to a maximum of ⁴⁷ [REDACTED] for each year (beginning on the Commencement Date or anniversary of the Commencement Date) over which this Agreement runs.

In relation to liability under this Agreement arising from:

personal injury, including sickness and death; and

loss of, or damage to, tangible property;

the limitation on each party's entire liability under this Agreement will be limited in the aggregate for all loss, damage, costs, expenses (on a solicitor/own client basis), claims, causes of action, demands or occurrences to a maximum of \$47 [REDACTED] for each year (beginning on the Commencement Date or anniversary of the Commencement Date) over which this Agreement runs.

The provisions of this **Clause** shall apply regardless of the cause of actions, damage, claim, liability, expense or loss, whether in contract, tort (including negligence), under statute or otherwise.

13 TERMINATION

13.1 Termination by Customs

In addition to any other rights of termination in this Agreement, Customs may terminate this Agreement by notice in writing to Paradigm.One, if there is a Change in Control of Paradigm.One without the prior written consent of Customs.

13.2 Termination for Default Event

Either party may terminate this Agreement by notice in writing to the other if the other party:

- (a) is affected by an Insolvency Event; or
- (b) fails to observe any material obligation of this Agreement and does not remedy that breach within 30 days notice clearly specifying the breach.

13.3 Termination for Convenience

- (a) Either party may terminate this Agreement for convenience at the conclusion of the Initial Term, or at the conclusion of the then current Renewal Term, by giving not less than ninety (90) days notice in writing to the other party prior to the conclusion of the Initial Term, or the conclusion of the then current Renewal Term, as the case may be.
- (b) For the sake of clarity, nothing in this **Clause 13.3** gives a party a right to terminate the Agreement for convenience prior to the expiry of the then current term of the Agreement.

14 CONSEQUENCES OF TERMINATION

14.1 No prejudice to other rights

Termination shall be without prejudice to any other rights or remedies to which either party may be entitled under this Agreement or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision of

this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

15 FORCE MAJEURE

15.1 Force Majeure Events

Neither party is liable to the other (except in respect of an obligation under **Clause 7**) for any loss or damage which may be suffered by that other party due to any act of God, abnormally inclement weather, prolonged failure or shortage of power supplies, flood, drought, lightning or fire, act or omission of Government, highways authorities, public telecommunications operators or other competent authority, war, military operations or riot to the extent that the force majeure event has caused that loss or damage.

15.2 Suspension of contractual obligations

Any dates for performance of the contractual obligations that have been delayed by a Force Majeure Event are deemed suspended only for a period of time equal to the delay caused by such event.

15.3 Notice

The party seeking to exempt itself from liability by virtue of the provisions of this clause shall give written notice to the other party as soon as possible but no later than five (5) Business Days of becoming aware of the Force Majeure Event and shall at all times use all reasonable endeavours to mitigate the severity of the Force Majeure Event.

15.4 Extended force majeure

If the delay caused by the Force Majeure Event extends for a continuous period of sixty (60) days each party has the right to terminate this Agreement immediately by notice in writing to the other party at any time after the expiry of such sixty (60) day period while such Force Majeure Event continues to be operative without thereby incurring any liability to the other party.

15.5 No entitlement to payment

The party seeking to exempt itself from liability by virtue of the provisions of this clause shall not be entitled to payment from the other party in respect of extra costs and expenses incurred by virtue of the Force Majeure Event.

16 CONFIDENTIALITY

16.1 Acknowledgment

Subject to the rights conferred on each party by this document, each party acknowledges that all Confidential Information of the other party is and shall be the sole and exclusive property of that other party.

16.2 Confidentiality

Customs and Paradigm. One must, subject to **Clauses 16.3 and 16.4**:

- (a) keep confidential all Confidential Information of the other party; and

- (b) not disclose any Confidential Information of the other party to any person, except:
 - (i) as required by law;
 - (ii) with the prior written consent of the other party; or
 - (iii) to their agents in the proper operation of this Agreement in accordance with this document.

16.3 Exceptions to Obligations

The obligations on the parties under this clause 16 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by a party to its advisers or employees solely in order to comply with obligations, or to exercise rights, under this Agreement;
- (b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of Agreement related activities;
- (c) is disclosed by Customs to the responsible Minister;
- (d) is disclosed by Customs, in response to a request by a House or a Committee of the Parliament of the Commonwealth;
- (e) is shared by Customs within Customs organisation, or with another ^{s.47} where this serves the Commonwealth's legitimate interests;
- (f) is authorised or required by law, including under this Agreement, under a licence or otherwise, to be disclosed; or
- (g) is in the public domain otherwise than due to a breach of this clause 16.

16.4 Uncertainty

In the event of any uncertainty as to whether:

- (a) any information is Confidential Information; or
- (b) any Confidential Information is lawfully within the public domain,

such information shall be deemed to be Confidential Information and such Confidential Information shall be deemed to be not within the public domain, until the party asserting that this is not the case can provide conclusive evidence to the contrary.

16.5 Use and modification

Neither party shall use or modify any Confidential Information of the other party for the benefit of any person except in accordance with this Agreement.

16.6 Security

Each party shall:

- (a) maintain proper and secure custody of all Confidential Information of the other party; and
- (b) use its best endeavours to prevent the use or disclosure of the Confidential Information of the other party by third parties except as permitted under this Agreement.

16.7 Breach of confidence

Each party shall promptly notify the other party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Confidential Information of the other party and shall give the other party all reasonable assistance in connection with any action, demand, claim or proceeding which the other party may institute against such person for breach of confidence.

17 RESOLUTION OF DISPUTES

17.1 Disputes

Customs and Paradigm. One agree to resolve any dispute, controversy or claim arising in relation to this Agreement ("**Dispute**") in good faith in the manner set out in this **Clause 17**

17.2 Appointment of representatives

Within 2 Business Days of one party notifying the other party in writing of a Dispute, each party will nominate in writing to the other party a representative authorised to settle the Dispute as between the parties on its behalf.

17.3 Resolution by representatives

Customs and Paradigm. One shall each ensure that during the 5 Business Day period after the notice under **Clause 17.2** (or such longer period as the parties may agree in writing) is given its representative uses his or her best endeavours to resolve the parties' respective liabilities and obligations (if any) with respect to the Dispute.

17.4 Resolution by managers

If after a period of 5 Business Days after the notice under **Clause 17.2** (or such longer period as the parties may agree in writing) is given the parties have not been able to resolve or agree on a process to resolve the Dispute as between the parties, the parties shall refer the matter to a senior manager of Customs and a director of Paradigm. One who must use their best endeavours to resolve the Dispute.

17.5 Resolution by mediation

If the Managers are unable to resolve the Dispute within a period of 20 Business Days, the Dispute must be referred to a mediator agreed upon between the parties. If the parties are unable to agree on a mediator, the Dispute will be referred to a mediator appointed by the

President of the Law Society of New South Wales or such body as may at that time fulfil the functions of the Law Society of New South Wales.

17.6 Injunctive Relief

Nothing in this **Clause 17** will limit a party's ability to seek urgent equitable relief from a court. Otherwise a party must not seek any relief from a court in relation to the matters in dispute until the procedures set out in this **Clause 17** have been completed.

17.7 Cost of Dispute

Each party must bear its own costs of resolving a Dispute under this clause and the parties to the Dispute must bear equally the costs of any appointed person and independent premises used for resolving or attempting to resolve a Dispute.

17.8 Performance and payment during Dispute

Pending resolution of a Dispute

- (a) Customs must pay the parts of an invoice not involved in the dispute; and
- (b) Subject to **Clause 7.4** (except where the unpaid invoice specifically forms part of the Dispute), Paradigm.One must not suspend performance of its obligations under this Agreement including without limitation supplying the Services.

18 INSURANCE

Paradigm.One must:

- (a) maintain public liability insurance for an indemnity cover of not less than s47
- (b) maintain contractor's liability insurance for an amount of at least equal to s47 ;
- (c) maintain adequate professional indemnity insurance in relation to its performance of the Services for an amount at least equal to s47 ;
- (d) maintain adequate workers compensation insurance; and
- (e) provide, upon Custom's request, a certificate of currency in respect of the insurances specified in this **Clause 18**.

19 ASSIGNMENT AND SUBCONTRACTING

19.1 Consent required

Subject to clause 4.6, each party agrees that it must not:

- (a) assign its rights under this Agreement; nor
- (b) sub-contract or otherwise arrange for anyone else to perform its obligations in accordance with this Agreement,

without first obtaining the written consent of the other party, which must not be unreasonably withheld.

19.2 Effect of assignment or sub-contracting

If a party assigns its rights under this Agreement, or sub-contracts all, or some part, of its obligations under this Agreement, it is not relieved of its liabilities or obligations under this Agreement.

20 NOTICES

20.1 Method of service

A notice, consent, approval or other communication ("**Notice**") under this Agreement must be signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) delivered to that party's address;
- (b) sent by pre-paid mail to that party's address;
- (c) transmitted by facsimile to that party's address; or
- (d) transmitted by email to that party's representative.

20.2 Deemed acceptance of Notices

A Notice given to a party in accordance with **Clause 20.1** is treated as having been given and received:

- (a) on the day of delivery, if delivered to a party's address, before 5.00 pm AEST on a Business Day;
- (b) on the next Business Day, if delivered to a party's address after 5.00 pm AEST on a Business Day or delivered at any time on a non-Business Day;
- (c) on the third Business Day after posting if sent by pre-paid mail;
- (d) on the day of transmission, if transmitted by facsimile to a party's address before 5.00 pm AEST on a Business Day, and the transmitting facsimile machine generates a transmission report showing that the correct number of pages was sent to the facsimile number of the recipient and the result of the transmission is "OK" (or an equivalent expression) unless the recipient notifies the sender within two hours of transmission that the facsimile was not received in its entirety in a legible form;
- (e) on the next Business Day, if transmitted by facsimile to a party's address after 5.00 pm AEST on a Business Day or transmitted on a non-Business Day, and the transmitting facsimile machine generates a transmission report showing that the correct number of pages was sent to the facsimile number of the recipient and the result of the transmission is "OK" (or an equivalent expression) unless the recipient notifies the sender within two hours of the commencement of business on the next Business Day following the day of transmission that the facsimile was not received in its entirety in a legible form;

- (f) on the day of transmission, if transmitted by email to a party's representative before 5.00 pm AEST on a Business Day, and no error is returned by the email server to the sending party within 5 elapsed days; or
- (g) on the next Business Day, if transmitted by email to a party's representative after 5.00 pm AEST on a Business Day or transmitted on a non-Business Day, and no error is returned by the email server to the sending party within 5 elapsed days.

20.3 Parties' addresses

For the purposes of **Clauses 20.1** and **20.2**, each party's address is as follows:

- (a) in the case of Customs:

Address: Customs House, 5 Constitution Avenue, Canberra City, ACT

2601

s. 22(1)(a)(iii)

Attention:

Facsimile:

Email:

- (b) in the case of Paradigm.One:

Address: Suite 40, Upper Deck, Jones Bay Wharf, Pirrama Road,
Pyrmont, NSW 2009

s47F

Attention:

Facsimile:

Email:

21 GOVERNMENT TAXES, DUTIES AND CHARGES

21.1 General

Paradigm.One agrees that:

- (a) Unless otherwise agreed by the Parties in writing, all taxes, duties, imposts, excises and charges imposed or levied in Australia or another country in connection with the performance of this Agreement and anything provided or supplied under it must be borne by Customs.
- (b) If there is any change to any Commonwealth, State or Territory tax, duty or government charge in Australia after the date of this Agreement, which change directly effects amounts payable under this Agreement, Paradigm.One will, upon proof to the reasonable satisfaction of Customs of the amount of any such change, be entitled to vary the relevant amount payable by a corresponding amount.

21.2 GST

- (a) Except for defined terms in this Agreement, capitalised expressions set out in this **Clause 21.2** bear the same meaning as those expressions in the GST Act.
- (b) Any amount that may be payable under this Agreement is exclusive of any GST. If a Party makes a Taxable Supply in connection with this Agreement for a Consideration which represents its Value, then the Recipient of the Taxable Supply must also pay, at the same time and in the same manner as the Value is

otherwise payable, the amount of any GST payable in respect of the Taxable Supply. The Recipient's obligation to pay GST is subject to a valid Tax Invoice being delivered.

22 MISCELLANEOUS

22.1 Legal costs

Subject to any express provision in this Agreement to the contrary, each party shall bear its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Agreement.

22.2 Survival of obligations

The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of this Agreement shall remain in full force and effect following the expiration of this Agreement.

22.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

22.4 Amendment

This Agreement may only be amended or supplemented in writing, signed by the parties.

22.5 Severability

Any provision in this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

22.6 Counterparts

This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

22.7 Further assurance

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

22.8 Rights cumulative

Subject to any express provision in this document to the contrary, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

22.9 Governing law and jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws in force in New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

22.10 Entire agreement

- (a) This Agreement embodies the entire understanding and agreement between the parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement and shall be of no force or effect whatever and no party shall be liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by either party to the other shall:
 - (i) affect the meaning or interpretation of this Agreement, or
 - (ii) constitute any collateral agreement, warranty or understanding between the parties.

EXECUTED as an agreement.

**EXECUTED by AUSTRALIAN
CUSTOMS**

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

Signature of Witness

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

Name of Witness (print)

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

Signature of Authorised Person

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

Name of Authorised Person (print)

**EXECUTED by PARADIGM ONE PTY
LTD**

s47F

Signature of Witness

s47F

Name of Witness (print)

s47F

Signature of Authorised Person

s47F

Name of Authorised Person (print)

SCHEDULE 1 – SEDNODE FEES AND PAYMENT TERMS

LICENCE AND SERVICE FEES

The following fees apply:

Description	Amount
One-off Setup fee ¹	\$47
Monthly SEDNode Licence and Service fee	

TIME AND MATERIAL RATES

The time and materials rate is discounted to \$47 per hour, chargeable in 30-minutes increments.

PAYMENT SCHEDULE

1. The One-off Setup fee becomes payable at the Commencement Date.

PAYMENT TERMS AND CONDITIONS

1. The fees set out in this Schedule are exclusive of GST.
2. Payment is due 30 days from the date of the tax invoice issued by Paradigm.One.

PRODUCTION DATE

[Insert]

¹ Plus for installation outside Sydney, reimbursement of return economy air travel from Sydney.

SCHEDULE 2 – SERVICE LEVELS

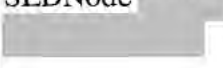



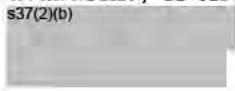
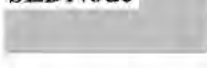



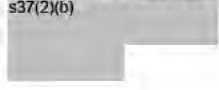
Paradigm.One will respond to the issues raised via the helpdesk for the SEDNode software based on the following table:

Defect Resolution Response Times

Category	Definition	Time to affect a by-pass	Regular status update frequency	Permanent problem resolution target
1	Software not functioning Defects which prevent Customs making use of a critical part of the SEDNode software.	4 hours	Daily	2 Business Days
2	Severe Impact Software inconsistency which significantly decreases productivity (e.g. periodic work stoppages, crashes)	8 hours	Daily	4 Business Days
3	Degraded Operations Software inconsistency which slightly impairs productivity (users can work around problem)	2 days	Daily	8 Business Days

SCHEDULE 3 - ADDITIONAL SERVICES

SERVICES

Service	Description	Fees	Special conditions
SEDNode ^{s37(2)(b)} 	The service will allow Customs via SEDNode to ^{s37(2)(b)} 	Pay-per use basis ^{s47}  If Paradigm.One wishes to increase the above fees, it must give at least sixty (60) days' prior written notice to Customs.	Customs acknowledges that ^{s37(2)(b)}  , and that Paradigm.One excludes all liability for the non-availability or errors ^{s37(2)(b)} 
SEDNode ^{s37(2)(b)} 	The service allows an ^{s37(2)(b)} 	Pay-per use basis ^{s47}  If Paradigm.One wishes to increase the above fees, it must give at least sixty (60) days' prior written notice to Customs.	Customs acknowledges that the ^{s37(2)(b)}  , and that Paradigm.One excludes all liability for the non-availability or errors ^{s37(2)(b)} 

PAYMENT SCHEDULE

Charges for SEDNode ^{s37(2)(b)} [REDACTED] and SEDNode ^{s37(2)(b)} [REDACTED] are invoiced at the end of each month.

PAYMENT TERMS AND CONDITIONS

1. The fees set out in this Schedule are exclusive of GST.
2. Payment is due 30 days from the date of the tax invoice issued by Paradigm.One.

SCHEDULE 4 - CONFIDENTIAL INFORMATION

Not Applicable

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

From: s. 22(1)(a)(ii)
Sent: Wednesday, 21 November 2018 4:11 PM
To: s. 47F(1)
Cc: s. 22(1)(a)(ii); s. 22(1)(a)(ii) s. 22(1)(a)(ii) Andrew WARNES; s. 22(1)(a)(ii)
Subject: Contract Variation Letter - Agreed Support and Maintenance Fee Terms [SEC=UNCLASSIFIED]
Attachments: SEDNode Service and Maintenance Fee_Agreed Terms Letter.pdf

UNCLASSIFIED

Dear s. 47F(1),

Further to our telephone conversation of 29 October 2018, please see attached letter signed by a/g Assistant Secretary s. 22(1)(a)(ii) on behalf of the s. 47 summarising agreed terms for SEDNode support and maintenance fees.

The letter reflects the understanding that the s. 47 and Paradigm.One agree to a formal fee variation under Clause 6.2 of the model SEDNode Software Licence and Services Agreement, in accordance with terms outlined in the letter.

Please do not hesitate to contact s. 22(1)(a)(ii) on s. 22(1)(a)(ii) or s. 22(1)(a)(ii) on s. 22(1)(a)(ii) to discuss the letter further.

Regards,

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

A/g Senior Policy Officer | Office of Communications Access and Cybercrime
 National Security Policy Branch | National Security and Law Enforcement Division
 Department of Home Affairs

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

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

UNCLASSIFIED

Released by the Department of Home Affairs
 under the *Freedom of Information Act 1982*



Australian Government
Department of Home Affairs

Document #2

s. 47F(1)

Principal
Paradigm.One
Suite 40, Upper Deck, Jones Bay Wharf
Pyrmont, Sydney NSW 2009

Dear s. 47F(1),

I am writing to confirm the outcome of negotiations between Paradigm.One and the s. 47 relating to the proposed support and maintenance fee for change requests made to the Secure Electronic Disclosures Node (SEDNode) system.

I am writing on behalf of Andrew Warnes who is currently out of office. Further to your meeting with Andrew on 29 October 2018, I confirm, on behalf of the 47G, that Paradigm.One and the Department agree to a formal fee variation under Clause 6.2 of the model SEDNode Software Licence and Services agreement, in accordance with the following terms:

1. Paradigm.One will charge a support and maintenance fee on top of its base fee and in addition to individual change request charges.
2. The support and maintenance fee will be calculated at the end of each financial year (FY).
3. The support and maintenance fee will constitute s. 47(1)(a) of the costs of substantive change requests finalised in the previous FY.

Substantive change requests are those that require ongoing support or maintenance. For example, one-off or minimal changes—such as updating a word or adding an extra line on a template—are not substantive change requests and therefore will not be taken into account in calculating the yearly support and maintenance fee. On the other hand, changes that increase the complexity of the system, or require considerable and ongoing support to implement—such as the previously discussed java script upgrade—are substantive change requests and will be taken into account in calculating the fee.

Whether or not a change request constitutes a substantive change request for the purposes of calculating a FY's support and maintenance fee will be negotiated between Paradigm.One and a representative of the s. 47 (based on recommendations from the s. 47). I note that you have confirmed that Paradigm.One will provide the 47G with an opinion regarding whether a particular change request constitutes a substantive change request, when each change request is submitted to the 47G for funding approval.

As discussed at the 29 October meeting, s. 47C(1) not being serviced under the model SEDNode Software Licence and Services agreement will need to implement these support and maintenance fee terms under their own contractual arrangements.

I thank you for your proactive engagement on this matter and your patience as we have sought agreement from agencies on the terms above. Please do not hesitate to contact s. 22(1)(a)(ii) Director, Office of Communications Access and Cybercrime on s. 22(1)(a)(ii) should you wish to discuss details of the fee variation further.

Yours sincerely

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

Acting Assistant Secretary, National Security Policy Branch
Department of Home Affairs

21 November 2018

Released by the Department of Home Affairs
under the Freedom of Information Act 1982

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

From: s. 22(1)(a)(ii)
Sent: Tuesday, 19 June 2018 10:11 AM
To: s. 22(1)(a)(ii)
Subject: FW: SEDNode fees [DLM=For-Official-Use-Only]
Attachments: SEDNode Fee Schedule 2018-19.xlsx

For-Official-Use-Only

From: s. 47F(1) [mailto:s. 47F(1)]
Sent: Tuesday, 19 June 2018 10:04 AM
To: Andrew WARNES s. 22(1)(a)(ii)
Cc: s. 22(1)(a)(ii)
Subject: Re: SEDNode fees [DLM=For-Official-Use-Only]

Good Morning Andrew, s. 22(1)(a)(ii)

We have prepared the spreadsheet based on the total fee below.

If we don't hear otherwise the invoices will be sent out as per this sheet. s. 47C(1)

Thanks

s. 47F(1)



s. 47F(1) | s. 47F(1) | paradigmone.com.au

Suite 40, Upper Deck, Jones Bay Wharf, Pyrmont, Sydney, NSW 2009

On 18/06/2018 12:45 PM, s. 47F(1) wrote:

Good Afternoon Andrew,

A one-off charge for the change requests even if it is s47 is not viable for us as mentioned below. We simply cannot take responsibility of a system that is constantly becoming more complex, but an adequate compensation not being offered.

We are getting emails from s. 47C(1). While these discussions are still in progress, and may take some time to resolve we propose that for the time being the **fee for 2018-19** is calculated as follows:

s47

If you agree with this, we will prepare the spreadsheet and email you.

Thanks
s. 47F(1)



s. 47F(1) | s. 47F(1) | paradigmone.com.au
Suite 40, Upper Deck, Jones Bay Wharf, Pyrmont, Sydney, NSW 2009

On 17/06/2018 10:50 PM, Andrew WARNES wrote:

For-Official-Use-Only

Dear s. 47F(1),

Thank you for your email.

Following our discussion on 1 June 2018, my position remains that s. 47C(1) of the agreed support and maintenance fee in FY17-18 and the balance s. 47C(1) should not be included in the fee allocation table for FY 18-19. Also, the support and maintenance fee should remain as a separate component based on the costs of change requests processed each year, and the fee should not be added to the fee allocation table in subsequent financial years. You will appreciate my difficulty in now seeking s. 47C(1) s. 47C(1) of the support and maintenance fee for FY16-17 to be paid in the next financial year and for that fee to compound year-on-year.

As a possible way forward, I propose that until the 2019-2020FY:

- the support and maintenance fee of s. 47C(1) of the previous FY's change requests is levied as a one-off charge each FY,
- P1 only levy s. 47C(1) in FY17-18 of the cost of the change requests processed in FY16-17,
- For the FY18-19, P1 levy s. 47C(1) of the cost of change requests processed in FY17-18 as a standalone fee,
- For the FY19-20, P1 levy s. 47C(1) of the cost of change requests processed in FY18-19 as a standalone fee, and
- The support and maintenance fee of one year is not added to an s. 47C(1) s. 47C(1) in the following of the FY.

I look forward to continuing our constructive engagement with you to resolve this issue.

Kind regards,
Andrew

Andrew Warnes | Assistant Secretary
National Security Policy Branch
Department of Home Affairs
Tel s. 22(1)(a)(ii) s. 22(1)(a)(ii)

From: s. 47F(1) [mailto:s. 47F(1)]
Sent: Thursday, 7 June 2018 11:34 AM
To: Warnes, Andrew
Cc: s. 22(1)(a)(ii) s. 22(1)(a)(ii)
Subject: Re: SEDNode fees [DLM=For-Official-Use-Only]

Good Morning Andrew,

Thank you for your time last Friday, specifically to discuss our different interpretations in relation to the s47 increase upon the License and Services fee.

Subsequent to the meeting, I have gone back through all correspondence going back to March 2016 in order to gain some insight into where communication failed us. The concept has always been clear, i.e. the License and Service fee to be annually reviewed in line with CPI and software complexity. Our approach is also consistent with every project we have undertaken in the last 18 years and is also typical in this industry, specifically the more complex software becomes the more costly it becomes to support, maintain and enhance further.

Nonetheless, as you know we have been keen to move this process forward, including agreeing to a reduction from s47. However, a one-off s47 increase would make change requests non-viable for us. Change requests increase the functionality of SEDNode, and in lock step it's complexity. The additional functionality (and complexity) is not one-off, but stays as part of SEDNode perpetually.

We have always tried our best to communicate clearly and move things forward (this has been ongoing since March 2016). In all honestly we do feel the discussion has been muddled somewhat because two separate issues have become entangled: the first is the annual increase in License and Services fee, and the second is s. 47C(1).

We have no control over the second issue, and are doing our best to help with the first.

We are happy to continue discussions with your team.

Regards

s. 47F(1)



s. 47F(1) | s. 47F(1) | paradigmone.com.au
 Suite 40, Upper Deck, Jones Bay Wharf, Pyrmont, Sydney, NSW 2009

On 30/05/2018 10:11 PM, Warnes, Andrew wrote:

For Official Use Only

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

Apologies for the delay in responding, I've just recently got back from an overseas work trip. Firstly thank you for your ongoing engagement to resolve matters that affect the operation of SEDNode.

I was disappointed to learn that there appears to be some confusion about our agreement on support and maintenance fees.

You initially proposed charging a support and maintenance fee of s47 of the total cost of all change requests in FY 2016/2017.

In our telephone conversation of 22 March 2018, we understood the support and maintenance fee to be agreed as follows:

- the support and maintenance fee would be charged at s47 per annum of the costs of change requests completed in the previous FY, and
- P1 would levy this fee up to the 2019-2020 FY; and
- For the current FY, this fee would only be s47 of the agreed total, and would therefore be s47

In a subsequent conversation with s. 22(1)(a)(ii) on 4 May 2018, you indicated your understanding that the arrangement for the support and maintenance fee would not be implemented as a single charge that would change each year. Instead, you consider the support and maintenance fee arrangement to work as follows:

- s47 support and maintenance fee, with s47 of that fee to be paid in the first year, to mean that s. 47C(1) s47 of that fee this year,
- adding CPI to that remaining s47 of this year's fee and invoicing it next year,
- cumulatively increasing each year's base fee by the previous year's support and maintenance fee, and
- adding the new s47 support and maintenance fee on top of that base fee each year.

You will appreciate there is inconsistency between us in understanding how the support and maintenance fee arrangements will operate. My initial view is that s.47 are unlikely to support the addition of the support and maintenance fees to their base fee in the next FY. During our negotiations, we understood the support and maintenance fee to be a one-off charge which would vary each year based on the change requests costs of the previous financial year (FY). We did not understand your proposal to mean that the support and maintenance fee from each FY would be added to the s.47 base fee in next FY, with an additional support and maintenance fee to also be added each year. While we acknowledge that some change requests may require ongoing support, many would not, and increased fees for this reason each year would not be consistent with market standards.

We also consider the arrangement to charge s47 of the support and maintenance fee for 2016-2017 FY in the 2018-2019 FY is an exceptional circumstance, mainly to reflect that the expense to be incurred this year is unbudgeted expenditure. It was not intended that an additional s47 be levied in the second year.

As a possible way forward, I propose that until the 2019-2020FY:

- the support and maintenance fee of s47 of the previous FY's change requests is levied as a one-off charge each FY,
- P1 only levy s47 of this fee in 2017-2018FY, and the balance s47 in the 2018-2019 FY (with CPI), and
- The support and maintenance fee of s47 is not added to an agency's base fee in the following FY.

After you have considered our proposal, I would appreciate your willingness to renegotiate the terms of the support and maintenance fees as soon as possible.

I look forward to continuing our constructive engagement with you to resolve this issue. I would be happy to meet to discuss this proposal should you wish.

Kind regards,
Andrew

Andrew Warnes | Assistant Secretary
Communications Security & Intelligence Branch
Attorney-General's Department
Tel s. 22(1)(a)(ii) s. 22(1)(a)(ii)

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under the *Freedom of Information Act 1982*

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

From: s. 22(1)(a)(ii)
Sent: Friday, 13 July 2018 3:13 PM
To: s. 47F(1)
Cc: s. 22(1)(a)(ii); Andrew WARNES; s. 22(1)(a)(ii); s. 22(1)(a)(ii); s. 22(1)(a)(ii)
Subject: RE: FW: SEDNode fees [DLM=For-Official-Use-Only]
Attachments: SEDNode Fee Schedule 2018-19.xlsx

For-Official-Use-Only

Good afternoon s. 47F(1),

Andrew is out of the office this week and next.

As he has previously advised, we need to work with s. 47C(1)
 s. 47C(1)

However, I am pleased to confirm that s. 47C(1) and s. 37(2)(b) to the fee structure, consistent with your previous proposals fee of s. 47C(1), with s. 37(2)(b) as a s. 37(2)(b) and s. 37(2)(b) fee of s. 47C(1), with s. 37(2)(b) s. 47C(1) and s. 37(2)(b) proportional contribution reduced to s. 47C(1). We understand this is consistent with the spreadsheet you most recently provided for invoicing the 2018-19 fees (attached).

We welcome continued engagement to resolve the outstanding issues, and will be in touch when Andrew returns.

Kind regards,

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

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

A/g Director, Office of Communications Access and Cybercrime
 National Security Policy Branch | National Security and Law Enforcement Policy Division
 Policy Group
 Department of Home Affairs
 P: s. 22(1)(a)(ii) | M: s. 22(1)(a)(ii)
 E: s. 22(1)(a)(ii)

For-Official-Use-Only

From: s. 47F(1) [mailto:s. 47F(1)]
Sent: Thursday, 12 July 2018 11:52 AM
To: Andrew WARNES s. 22(1)(a)(ii)
Cc: s. 22(1)(a)(ii); s. 22(1)(a)(ii); s. 22(1)(a)(ii)
Subject: Re: FW: SEDNode fees [DLM=For-Official-Use-Only]

Dear Andrew,

Hope you are well. Would it be possible to have a chat some time? The change request list is growing and hurting the user community. We should be able to agree on an arrangement quickly, given we are only talking about s. 47(1)(a)

Please let me know what suits you.

Thanks

s. 47F(1)



s. 47F(1) | s. 47F(1) | paradigmone.com.au
Suite 40, Upper Deck, Jones Bay Wharf, Pyrmont, Sydney, NSW 2009

On 6/07/2018 9:05 AM, s. 47F(1) wrote:

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

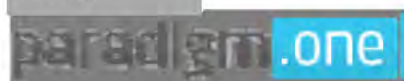
s. 47C(1) (as these change requests do not increase software complexity), an alternative way could be that Paradigm.One specify the fee increase as part of the quote for each change request. That will give full transparency to the s. 47C(1). The fee increase will apply from the date that particular CR is implemented. Just to be clear, that fee increase will be permanent, the rationale being the software complexity has permanently increased.

s. 47C(1) Please let me know what you think.

I am sure you are aware that all change requests are again on hold until the topic of fee increase is resolved.

Regards

s. 47F(1)



s. 47F(1) | s. 47F(1) | paradigmone.com.au
Suite 40, Upper Deck, Jones Bay Wharf, Pyrmont, Sydney, NSW 2009

On 27/06/2018 6:11 PM, s. 22(1)(a)(ii) wrote:

For-Official-Use-Only

Dear s. 47F(1),

Thank you for your email and touching base with me on these matters.

s. 47C(1) on the arrangements for the support and maintenance fee, we are working through that at the moment.

As you know, I am of the view that a s. 47C(1) will be much easier to manage, but that is a conversation to have with s. 47 after we sort out the fees issue.

s. 47C(1) [redacted], I anticipate
that discussions may take a little while. s. 47C(1) [redacted]
[redacted] as quickly as possible.

Regards,

Andrew

Andrew Warnes | A/g First Assistant Secretary
National Security and Law Enforcement Policy Division
Department of Home Affairs
Tel s. 22(1)(a)(ii) [redacted] s. 22(1)(a)(ii) [redacted]

From: s. 47F(1) [redacted] [mailto:s. 47F(1) [redacted]]
Sent: Tuesday, 26 June 2018 12:04 PM
To: Andrew WARNES s. 22(1)(a)(ii) [redacted]
[redacted] s. 22(1)(a)(ii) [redacted] >
Subject: Re: FW: SEDNode fees [DLM=For-Official-Use-Only]

Good Morning Andrew,

Hope you have had further discussions with the s. 47 [redacted] regarding the fee.
Please advise when would you like to resume the discussion.

You indicated your preference for a s. 47C(1) [redacted] with Paradigm.One.
Perhaps we should focus our efforts in achieving that outcome in the next
couple of months. s. 47C(1) [redacted]
[redacted]

Look forward to hearing from you.

Thanks

s. 47F(1) [redacted]



s. 47F(1) [redacted] | s. 47F(1) [redacted] | paradigmone.com.au
Suite 40, Upper Deck, Jones Bay Wharf, Pyrmont, Sydney, NSW 2009

On 20/06/2018 11:49 AM, Andrew WARNES wrote:

For-Official-Use-Only

Dear s. 47F(1) [redacted],

Thank you for your emails.

It is disappointing that we have not been able to reach an
agreement on the support and maintenance fee arrangement. As
indicated in our last conversation, I will need to reach out to

s. 47C(1)

In the meanwhile, I agree that we should attempt to resolve the fees for the next financial year, to the extent that we can, so that s.47 are able to be invoiced.

As we have been unable to agree to a s47 support and maintenance fee, as a standalone charge, I propose that P1 charge s.47 s47 as a support and maintenance fee for the change requests processed in 2017 – 2018 financial year. My proposal reflects the understanding of our initial telephone conversation on this issue on 22 March 2018, and s. 47C(1)

We can then continue work to resolve the outstanding additional issues as soon as possible.

I look forward to hearing back from you on my proposal.

Regards,

Andrew

Andrew Warnes | A/g First Assistant Secretary
National Security and Law Enforcement Policy Division
Department of Home Affairs
Tel s. 22(1)(a)(ii) s. 22(1)(a)(ii)

From: s. 47F(1) [mailto:s. 47F(1)]
Sent: Tuesday, 19 June 2018 10:04 AM
To: Andrew WARNES
s. 22(1)(a)(ii)
Cc: s. 22(1)(a)(ii)
s. 22(1)(a)(ii)
Subject: Re: SEDNode fees [DLM=For-Official-Use-Only]

Good Morning Andrew, s. 22(1)(a)(ii)

We have prepared the spreadsheet based on the total fee below.

If we don't hear otherwise the invoices will be sent out as per this sheet. s. 47C(1)

Thanks

s. 47F(1)



s. 47F(1) | s. 47F(1) | paradigmone.com.au
Suite 40, Upper Deck, Jones Bay Wharf, Pyrmont, Sydney, NSW 2009
On 18/06/2018 12:45 PM, s. 47F(1) wrote:

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

A one-off charge for the change requests even if it is ^{s47} is not viable for us as mentioned below. We simply cannot take responsibility of a system that is constantly becoming more complex, but an adequate compensation not being offered.

s. 47C(1)

While these discussions are still in progress, and may take some time to resolve we propose that for the time being the **fee for 2018-19** is calculated as follows:

^{s47}

If you agree with this, we will prepare the spreadsheet and email you.

Thanks

s. 47F(1)



s. 47F(1)

s. 47F(1)

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Suite 40, Upper Deck, Jones Bay Wharf, Pyrmont, Sydney, NSW 2009

On 17/06/2018 10:50 PM, Andrew WARNES wrote:

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Dear ^{s. 47F(1)}

Thank you for your email.

Following our discussion on 1 June 2018, my position remains that ^{s.47} should only be levied ^{s47} of the agreed support and maintenance fee in FY17-18 and the balance ^{s47} should not be included in the fee allocation table for FY 18-19. Also, the support and maintenance fee should remain as a separate component based on the costs of change requests processed each year, and the fee should not be added to the fee allocation table in subsequent financial years. You

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will appreciate my difficulty in now seeking s. 47C(1) of the support and maintenance fee for FY16-17 to be paid in the next financial year and for that fee to compound year-on-year.

As a possible way forward, I propose that until the 2019-2020FY:

- the support and maintenance fee of s47 of the previous FY's change requests is levied as a one-off charge each FY,
- P1 only levy s47 in FY17-18 of the cost of the change requests processed in FY16-17,
- For the FY18-19, P1 levy s47 of the cost of change requests processed in FY17-18 as a standalone fee,
- For the FY19-20, P1 levy s47 of the cost of change requests processed in FY18-19 as a standalone fee, and
- The support and maintenance fee of one year is not added to an agency's base fee in the following of the FY.

I look forward to continuing our constructive engagement with you to resolve this issue.

Kind regards,
Andrew

Andrew Warnes | Assistant
Secretary
National Security Policy Branch
Department of Home Affairs
Tel s. 22(1)(a)(ii)
s. 22(1)(a)(ii)

From: s. 47F(1) [mailto:s. 47F(1)]
Sent: Thursday, 7 June 2018 11:34 AM
To: Warnes, Andrew
Cc: s. 22(1)(a)(ii); s. 22(1)(a)(ii)
Subject: Re: SEDNode fees
[DLM=For-Official-Use-Only]

Good Morning Andrew,

Thank you for your time last Friday, specifically to discuss our different interpretations in relation to the ^{s47} increase upon the License and Services fee.

Subsequent to the meeting, I have gone back through all correspondence going back to March 2016 in order to gain some insight into where communication failed us. The concept has always been clear, i.e. the License and Service fee to be annually reviewed in line with CPI and software complexity. Our approach is also consistent with every project we have undertaken in the last 18 years and is also typical in this industry, specifically the more complex software becomes the more costly it becomes to support, maintain and enhance further.

Nonetheless, as you know we have been keen to move this process forward, including agreeing to a reduction from ^{s47} to ^{s47}. However, a one-off ^{s47} increase would make change requests non-viable for us. Change requests increase the functionality of SEDNode, and in lock step it's complexity. The additional functionality (and complexity) is not one-off, but stays as part of SEDNode perpetually.

We have always tried our best to communicate clearly and move things forward (this has been ongoing since March 2016). In all honestly we do feel the discussion has been muddled somewhat because two separate issues have become entangled: the first is the annual increase in License and Services fee, and the second is s. 47C(1)

We have no control over the second issue, and are doing our best to help with the first.

We are happy to continue discussions with your team.

Regards

s. 47F(1)



s. 47F(1)

s. 47F(1)

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Suite 40, Upper Deck, Jones Bay Wharf, Pyrmont, Sydney, NSW 2009

On 30/05/2018 10:11 PM, Warnes, Andrew wrote:

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Dear s. 47F(1)

Apologies for the delay in responding, I've just recently got back from an overseas work trip. Firstly thank you for your ongoing engagement to resolve matters that affect the operation of SEDNode.

I was disappointed to learn that there appears to be some confusion about our agreement on support and maintenance fees.

You initially proposed charging a support and maintenance fee of s47 of the total cost of all change requests in FY 2016/2017.

In our telephone conversation of 22 March 2018, we understood the support and maintenance fee to be agreed as follows:

- the support and maintenance fee would be charged at s47 per annum of the costs of change requests completed in the previous FY, and
- P1 would levy this fee up to the 2019-2020 FY; and
- For the current FY, this fee would only be s47 of the agreed

total, and
would
therefore
be s47.

In a subsequent conversation with s. 22(1)(a)(iii) on 4 May 2018, you indicated your understanding that the arrangement for the support and maintenance fee would not be implemented as a single charge that would change each year. Instead, you consider the support and maintenance fee arrangement to work as follows:

- s47 support and maintenance fee, with s47 of that fee to be paid in the first year, to mean that s.47 would pay s47 of that fee this year,
- adding CPI to that remaining s47 of this year's fee and invoicing it next year,
- cumulatively increasing

each year's
base fee by
the
previous
year's
support
and
maintenanc
e fee, and

- adding the
new ^{s47}
support
and
maintenanc
e fee on
top of that
base fee
each year.

You will appreciate
there is
inconsistency
between us in
understanding how
the support and
maintenance fee
arrangements will
operate. My initial
view is that

s. 47C(1)

During

our negotiations,
we understood the
support and
maintenance fee to
be a one-off charge
which would vary
each year based on
the change
requests costs of
the previous
financial year
(FY). We did not
understand your
proposal to mean
that the support

and maintenance fee from each FY would be added to the s. 47C(1) with an additional support and maintenance fee to also be added each year. While we acknowledge that some change requests may require ongoing support, many would not, and increased fees for this reason each year would not be consistent with market standards.

We also consider the arrangement to charge s47 of the support and maintenance fee for 2016-2017 FY in the 2018-2019 FY is an exceptional circumstance, mainly to reflect that the expense to be incurred this year is unbudgeted expenditure. It was not intended that an additional s47 be levied in the second year.

As a possible way forward, I propose that until the 2019-2020FY:

- the support and maintenance fee of s47 of the

previous
FY's change
requests is
levied as a
one-off
charge
each FY,

- P1 only
levy ^{s47} of
this fee in
2017-
2018FY,
and the
balance
^{s47} in the
2018-2019
FY (with
CPI), and
- The
support
and
maintenanc
e fee of one
year is not
added to an
agency's
base fee in
the
following
FY.

After you have
considered our
proposal, I would
appreciate your
willingness to
renegotiate the
terms of the
support and
maintenance fees
as soon as possible.

I look forward to
continuing our
constructive
engagement with
you to resolve this
issue. I would be
happy to meet to
discuss this

proposal should
you wish.

Kind regards,
Andrew

Andrew Warnes |
Assistant Secretary
Communications
Security &
Intelligence Branch
Attorney-General's
Department
Tel s. 22(1)(a)(ii)

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

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

From: s. 47F(1) s. 47F(1)
Sent: Tuesday, 5 June 2018 8:29 AM
To: Warnes, Andrew
Cc: s. 22(1)(a)(ii); s. 22(1)(a)(ii)
Subject: Re: SEDNode fees [DLM=For-Official-Use-Only]

Good Morning Andrew,

We didn't discuss the topic of 2016-17 fee on Friday. You said in your email below:

P1 only levy^{s47} of this fee in 2017-2018FY, and the balance^{s47} in the 2018-2019 FY (with CPI)

Are you referring to^{s47} that we will be invoicing in July?

Thanks

s. 47F(1)



s. 47F(1) | s. 47F(1) | paradigmone.com.au
 Suite 40, Upper Deck, Jones Bay Wharf, Pyrmont, Sydney, NSW 2009

On 31/05/2018 12:43 PM, Warnes, Andrew wrote:

Of course. Would tomorrow at 2pm work?

Thanks

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

Sent with BlackBerry Work
www.blackberry.com

From: s. 47F(1) s. 47F(1)
Date: Thursday, 31 May 2018, 10:43 am
To: Warnes, Andrew s. 22(1)(a)(ii)
Cc: s. 22(1)(a)(ii) s. 22(1)(a)(ii), s. 22(1)(a)(ii) s. 22(1)(a)(ii)
Subject: Re: SEDNode fees [DLM=For-Official-Use-Only]

Morning Andrew,

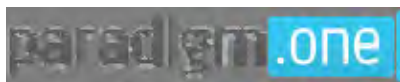
Thanks for your email. Could we arrange for a time to have a chat so we can discuss this?

I am available any time today and tomorrow.

Thanks

s. 47F(1)

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Suite 40, Upper Deck, Jones Bay Wharf, Pyrmont, Sydney, NSW 2009

On 30/05/2018 10:11 PM, Warnes, Andrew wrote:

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Dear s. 47F(1)

Apologies for the delay in responding, I've just recently got back from an overseas work trip. Firstly thank you for your ongoing engagement to resolve matters that affect the operation of SEDNode.

I was disappointed to learn that there appears to be some confusion about our agreement on support and maintenance fees.

You initially proposed charging a support and maintenance fee of 18% of the total cost of all change requests in FY 2016/2017.

In our telephone conversation of 22 March 2018, we understood the support and maintenance fee to be agreed as follows:

- the support and maintenance fee would be charged at s.47 per annum of the costs of change requests completed in the previous FY, and
- P1 would levy this fee up to the 2019-2020 FY; and
- For the current FY, this fee would only be s.47 of the agreed total, and would therefore be s.47

In a subsequent conversation with s. 22(1)(a)(ii) on 4 May 2018, you indicated your understanding that the arrangement for the support and maintenance fee would not be implemented as a single charge that would change each year. Instead, you consider the support and maintenance fee arrangement to work as follows:

- s.47 support and maintenance fee, with s.47 of that fee to be paid in the first year, to mean that s.47 would pay s.47 of that fee this year,
- adding CPI to that remaining s.47 of this year's fee and invoicing it next year,
- cumulatively increasing each year's base fee by the previous year's support and maintenance fee, and
- adding the new s.47 support and maintenance fee on top of that base fee each year.

You will appreciate there is inconsistency between us in understanding how the support and maintenance fee arrangements will operate. My initial view is that s.47 are unlikely to support the addition of the support and maintenance fees to their base fee in the next FY. During our negotiations, we understood the support and maintenance fee to be a one-off charge which would vary each year based on the change requests costs of the previous financial year (FY). We did not understand your proposal to mean that the support and maintenance fee from each FY would be added to the s.47 base fee in next FY, with an additional support and maintenance fee to also be added each year. While we acknowledge that some change requests may require ongoing support, many would not, and increased fees for this reason each year would not be consistent with market standards.

We also consider the arrangement to charge s.47 of the support and maintenance fee for 2016-2017 FY in the 2018-2019 FY is an exceptional circumstance, mainly to

reflect that the expense to be incurred this year is unbudgeted expenditure. It was not intended that an additional s47 be levied in the second year.

As a possible way forward, I propose that until the 2019-2020FY:

- the support and maintenance fee of 12% of the previous FY's change requests is levied as a one-off charge each FY,
- P1 only levy s47 of this fee in 2017-2018FY, and the balance s47 in the 2018-2019 FY (with CPI), and
- The support and maintenance fee of one year is not added to an agency's base fee in the following FY.

After you have considered our proposal, I would appreciate your willingness to renegotiate the terms of the support and maintenance fees as soon as possible.

I look forward to continuing our constructive engagement with you to resolve this issue. I would be happy to meet to discuss this proposal should you wish.

Kind regards,

Andrew

Andrew Warnes | Assistant Secretary
Communications Security & Intelligence Branch
Attorney-General's Department
Tel s. 22(1)(a)(ii) s. 22(1)(a)(ii)

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

From: s. 47F(1) s. 47F(1)
Sent: Monday, 29 October 2018 9:26 AM
To: Andrew WARNES
Cc: s. 22(1)(a)(ii) s. 22(1)(a)(ii) s. 22(1)(a)(ii) s. 22(1)(a)(ii)
Subject: Re: SEDNode Support and Maintenance Fee [DLM=For-Official-Use-Only]

Good Morning Andrew,

Thanks for your email We are glad that the s. 47C(1), which aligns with our proposal. We are happy to progress on this basis.

As for which change requests are substantive, we will indicate our position in the response for each change requests. From there the ^{47G} can form its opinion and negotiate with us.

I am happy to discuss further on phone today any time. Please let me know what time suits you.

Please also let me know how you would like to formalize this arrangement. Amending each agency's agreement will be a lot of administrative work for everyone, so a more practical and simple approach will be appreciated.

Thanks

s. 47F(1)



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 Suite 40, Upper Deck, Jones Bay Wharf, Pyrmont, Sydney, NSW 2009

On 26/10/2018 9:27 AM, Andrew WARNES wrote:

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s. 47C(1) Hi s. 47F(1)



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Andrew
Andrew Warnes | Assistant Secretary
National Security Policy Branch
Department of Home Affairs

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