



Australian Government
Australian Transport Safety Bureau

CONTRACT

[Insert contract number]

COMMONWEALTH OF AUSTRALIA

as represented by

AUSTRALIAN TRANSPORT SAFETY BUREAU

and

[insert name]

**THE PROVISION OF SERVICES FOR THE SEARCH FOR MALAYSIA
AIRLINES FLIGHT 370**

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THIS AGREEMENT is made on _____

PARTIES

COMMONWEALTH OF AUSTRALIA represented by **Australian Transport Safety Bureau** of 62 Northbourne Avenue Canberra, ACT 2601 ('**the Commonwealth**')

AND

[insert name] [insert ACN/ABN], [insert address]
(**'the Contractor'**)

INTRODUCTION

- A. The Commonwealth wishes to carry out seafloor search operations to localise, positively identify, map and obtain visual imaging of the wreckage of the Boeing 777 aircraft operated as Malaysia Airlines Flight 370 which is believed to have gone missing in the Indian Ocean on or around 8 March 2014 (**MH370**).
- B. The Commonwealth requires the provision of services for the purpose set out in paragraph A and particularly to provide Search Data and findings to the Commonwealth.
- C. The Commonwealth issued a Request for Tender in relation to the Services. The Contractor has fully informed itself on all aspects of the work required to be performed and has submitted a tender in response.
- D. The Commonwealth has selected the Contractor to provide the Services on the basis of the tender submitted by the Contractor and other material and information provided by the Contractor.
- E. The Contractor has represented that it has the skills, qualifications, experience and prescribed qualifications and competence necessary and (where appropriate) will be authorised or hold such licences, permits or registrations as are required under State, Territory or Commonwealth legislation to perform the Services to undertake and manage the Services.
- F. The Contractor agrees to perform the Services for the Commonwealth, and the Commonwealth agrees to acquire such Services on the terms and conditions of this Contract.

1. Definitions and Interpretation

1.1 In this Contract:

'**Acceptable**' means the Vessels, Equipment and Contractor Personnel fulfil the Acceptance Criteria to the satisfaction of the Commonwealth acting reasonably, and '**Acceptance**' has a similar meaning;

'**Acceptance Criteria**' means criteria or standards specified by the Commonwealth in this Contract (including the SOW) for the Vessels, Equipment and Contractor Personnel for the purpose of the performance of the Services;

'**Accommodation Services**' means the accommodation services specified in Schedule 5 (Accommodation and Hotel Services);

'**Acquisition Parameters**' means the parameters specified in Schedule 7 (Quality Assurance Control Procedures) and the SOW for the acquisition of the Search Data and include Vessel speed, direction and Equipment setting;

'**Affected Party**' has the meaning given to that term in clause 65.1;

'**Applicable Currency**' means the currency in which the Contractor paid the relevant cost;

'**Applicable Law**' means any statute, regulation and order relating to the performance of the Services;

'**Arrival Port**' means the port at which Demobilisation will occur as specified under a SOW;

'**ATSB**' means the Australian Transport Safety Bureau or any successor Commonwealth agency;

'**Business Day**' means a day that is not a Saturday, Sunday or public holiday in the Australian Capital Territory;

'**Change Proposal**' means a proposal to change the Services under this Contract made by the Commonwealth or the Contractor under clause 13;

'**Client Representative**' means the representative or representatives of the Commonwealth identified in the SOW as the 'Client Representative' and appointed to perform the responsibilities set out in clause 33.1(b), or his or her authorised representative and such other persons as notified in writing to the Contractor by the Commonwealth;

'**Commencement Date**' means the date specified in Item 1 of Schedule 1 (Contract Details);

'**Commonwealth Contract Authority**' means the representative or representatives of the Commonwealth specified in Item 4 of Schedule 1 (Contract Details) and appointed to perform the responsibilities set out in clause 33.1(a), or his or her authorised representative;

'**Commonwealth Material**' means any Material:

- (a) provided by the Commonwealth to the Contractor for the purposes of this Contract; or
- (b) derived at any time from the Material referred to in paragraph (a);

'Commonwealth Group' means the Commonwealth and its officers, employees, subcontractors, bailees, agents and invitees;

'Communication Facilities' means radio telephone facility, and satellite phone, satellite facsimile, satellite e-mail and satellite data facilities;

'Confidential Information' means information that:

- (a) is by its nature confidential;
- (b) is designated by a party as confidential (**Disclosing Party**) including any information that is described as confidential in the SOW; or
- (c) the other party knows or ought to know is confidential (**Recipient**),

and in the case of the Commonwealth, includes any Search Data (whether in the form of raw data or not), but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Contract or by any other unlawful means;
- (e) is in the possession of the Recipient without restriction in relation to disclosure before the date of receipt from the Disclosing Party; or
- (f) has been independently developed or acquired by the Recipient prior to the date of this Contract;

'Contract' means this document and any schedules or annexures to it (including the SOW);

'Contract Material' means all Material brought or required to be brought into existence as part of, or for the purpose of, this Contract or provided to the Commonwealth as part of the Services and includes but is not limited to documents, equipment, software, goods, information or data stored by any means;

'Contractor' includes the officers, employees, subcontractors, bailees, agents and invitees of the Contractor;

'Contractor Licences' means any licence, permit or consent required to be obtained under any Applicable Law in order for the Services to be performed for each Search Period;

'Contractor Personnel' means the personnel engaged by the Contractor (including subcontractors) and required to perform the Services and specified in the SOW including Key Personnel and any crew for a Vessel, but does not include the Commonwealth Representatives, Nominated Commonwealth Representatives or Stakeholder Observers;

'Contractor Personnel Rotation Period' means the period of time specified in the SOW as the Contractor Personnel Rotation Period;

'Contractor's Representative' means the representative of the Contractor with the authority to respond to any requests by the Commonwealth Contract Authority or the Client Representative and who is responsible for the Contractor's activities in the performance of this Contract as specified in the SOW;

'Contractor Warranties' means the warranties specified in Schedule 9 (Warranties and Acknowledgements);

'Deliverable' means the specific deliverables to be supplied by the Contractor under this Contract and includes the Contract Material and any specific deliverables set out in the SOW;

'Demobilisation' means all activity required to be undertaken at the Arrival Port to prepare the Vessels to a state equivalent to the state of the Vessels before Mobilisation;

'Demobilisation End Date' means the date on which Demobilisation will terminate specified in the SOW;

Demobilisation Fee means the amount specified as the Demobilisation Fee in the Payment Schedule; **[Note to Tenderers: Depending on ATSB's preferred pricing methodology, this Fee may not be applicable.]**

'Equipment' means the equipment, software and other materials required to perform the Services, including the Subsurface Equipment, Communications Equipment, Key Equipment and other Equipment described in this Contract but does not include any Commonwealth Material;

'Fees' means the amounts specified in the Payment Schedule,;

'Governmental Authority' means the Commonwealth of Australia, or any government of any State, Territory or other area of Australia, including any administrative body, governmental body, department or agency of any such government;

'Group' means:

- (a) in relation to the Commonwealth: the Commonwealth and its officers, employees, subcontractors, bailees, agents and invitees;
- (b) in relation to the Contractor: the Contractor and the officers, employees, subcontractors bailees, agents and invitees of the Contractor;

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

'Inspector' means a person appointed as such under the WHS Act;

'Intellectual Property' means all intellectual property rights, including:

- (a) inventions, patents, copyright, rights in circuit layouts, registered designs, trade marks, know how, trade secrets and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a);

'Loss' or **'Losses'** means all liabilities, losses, damages, costs and expenses (including legal costs on a full indemnity basis) whether incurred or awarded against a party and disbursements and costs of investigation, litigation, settlement, judgment, interest, fines and penalties;

'Key Equipment' means the Equipment described in the SOW as 'Key Equipment';

'**Key Personnel**' means the Contractor Personnel described in the SOW as 'Key Personnel';

'**Key Vessels**' means the Vessels described in the SOW as 'Key Vessels';

'**KPIs**' means the KPIs set out in Schedule 14 (KPIs);

'**Mapping and Optical Imaging Fee**' means the amount specified as the Mapping and Optical Imaging Fee in the Payment Schedule; **[Note to Tenderers: Depending on ATSB's preferred pricing methodology, this Fee may not be applicable.]**

'**MARPOL**' means the International Convention for the Prevention of Pollution from Ships 1973/78 and subsequent amendments;

'**Material**' includes data, property, equipment, information and the subject matter of any category of Intellectual Property rights;

'**Minimum Fee**' means the amount specified as the Minimum Fee in the Payment Schedule;

'**Minimum Search Period**' means *[To be inserted – see clause 36.2.]*;

'**Maximum Fee**' means the amount specified as the Maximum Fee in the Payment Schedule;

'**Medical Emergency**' means any incident in which the health of a Contractor Personnel member is put at serious risk while performing the Services under this Contract and includes a man overboard event;

'**MH370**' means the Boeing 777 aircraft operated as Malaysia Airlines Flight 370, believed to have gone missing in the Indian Ocean on 8 March 2014, including any:

- (a) Wreckage or parts of the aircraft;
- (b) cargo, stores, luggage or other items carried on board the aircraft; and
- (c) human remains from persons on board the aircraft;

'**Mobilisation**' means all activity (excluding any *bona fide* delays resulting from a Standby Event) required to prepare the Vessels, Equipment and Contractor Personnel for the performance of the Services including bringing the Vessels, on the date specified in the Search Timetable, to the location agreed upon by both parties as the location for the commencement of the acquisition of the Search Data;

'**Mobilisation Date**' means the date specified in the SOW;

'**Mobilisation Fee**' means the amount specified as the Mobilisation Fee in the Payment Schedule;

'**Navigation Officer**' means a deck officer with the qualifications described in Marine Order Part 3, Issue 6 Order 8 of 2004 or an equivalent qualification under any other non Australian law;

'**Nominated Commonwealth Representatives**' means the persons nominated by the Commonwealth as Nominated Commonwealth Representatives to travel on the Vessels for the purposes of overseeing the performance of the Services and includes the Client Representative;

'Notifiable Incident' has the meaning given in the WHS Act;

'Objectives' means the objectives of the Commonwealth in entering into this Contract as set out in clause 8 and the SOW;

'Off Hire Event' means:

- (a) the deficiency and/or default of officers or Contractor Personnel involved in the performance of the Services;
- (b) deficiency of stores on a Vessel;
- (c) fire on a Vessel other than fire caused by a Prescribed Event or the act or omission of any of the Nominated Commonwealth Representatives or Stakeholder Observers;
- (d) breakdown of, or damages to, a Vessel (or any part of it);
- (e) grounding of a Vessel;
- (f) accidents to a Vessel;
- (g) dry docking of a Vessel;
- (h) any boycott of a Vessel or the performance of the Services where such boycott relates to the Owner, Contractor or a Vessel;
- (i) stevedores, longshoremen, or other workmen are not permitted or refuse to work due to any failure of the Vessel Master, the Contractor or its employees, agents or contractors to prevent the occurrence of those events or circumstances described in paragraphs (a) to (h);
- (j) a Vessel is not in possession of valid and up to date certificates of efficiency;
- (k) the Contractor has failed to engage sufficient Contractor Personnel that meet the Commonwealth's requirements under this Contract;
- (l) salvage of, and assistance to, any vessel other than any salvage or assistance performed at the request of the Commonwealth;
- (m) damage to or loss of Equipment and associated time to retrieve, repair and redeploy that Equipment where that Equipment was, prior to the loss or damage, located on a Vessel;
- (n) damage to or loss of Subsurface Equipment and associated time to retrieve, repair and redeploy that Equipment where such loss or damage or associated lost time is due to:
 - (i) the Contractor's negligence;
 - (ii) the Contractor's wilful misconduct;
 - (iii) an accident brought about solely by the Contractor's operation of the Subsurface Equipment; or

- (iv) the Contractor not carrying sufficient spare Equipment (as required under this Contract) to redeploy the Subsurface Equipment to meet the Commonwealth's requirements;
- (o) Equipment breakdown;
- (p) a Vessel is arrested at the suit of any person having or purporting to have a claim against, an interest in or a right in respect of or involving the Vessel except any arrest caused by an act or omission of the Commonwealth;
- (q) any contravention of any statute or treaty or the MARPOL;
- (r) any pollution of navigable waters other than pollution caused by an act or omission of the Nominated Commonwealth Representatives or Stakeholder Observers; or
- (s) any cause whatsoever that substantially prevents the acquisition, recording, processing, analysis or transfer of the Search Data to the ATSB,

and lies within the control of the Contractor;

'Off Hire Fee' means the amount specified as the Off Hire Fee in Payment Schedule; **[Note to Tenderers: Depending on ATSB's preferred pricing methodology, this Fee may not be applicable]**

'Owner' means the owner of the Vessel;

'Party Chief' means the representative of the Contractor on each Vessel with authority to respond to any requests by the Client Representative and who is responsible for the operation of the Vessel in order to perform the Services;

'Payment Schedule' means the payment schedule contained in Schedule 8 (Payment Schedule);

'Positioning' means passage of the Vessel to the Search Departure Port;

'Positioning Date' means the date specified in the SOW;

'Positioning Departure Port' means the port of the city specified in the SOW;

'Prescribed Event' means any of the following events:

- (a) act of God (including epidemic, tidal wave, explosion, lightning, earthquake, hurricane);
- (b) war (whether declared or not), riot, insurrection, vandalism or sabotage;
- (c) strike, lockout, ban, limitation of work or other industrial disturbance;
- (d) law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application;
- (e) other weather conditions that constitute extreme weather conditions in the Search Zone; and
- (f) a Medical Emergency onboard the Vessel,

which:

- (g) is unforeseen by the Affected Party;
- (h) is beyond the control of the Affected Party; and
- (i) occurs without the fault or negligence of the Affected Party;

'Refuelling Rate' means the rate payable under this Contract by the Commonwealth to the Contractor for the Vessels while the Vessels are being refuelled to be calculated and payable in accordance with the Payment Schedule; **[Note to Tenderers: Depending on ATSB's preferred pricing methodology, this Fee may not be applicable.]**

'Refuelling Location' means the location at which refuelling of the relevant Vessel is carried out during the performance of the applicable Services;

'Refuelling Period' means the period during which refuelling of the relevant Vessel is carried out during the performance of the applicable Services including Transits to and from the relevant Refuelling Location;

'Related Body Corporate' has the same meaning as that specified in the *Corporations Act 2001* (Cth);

'Schedules' means the schedules to this document;

'Search Area' means the area specified in the SOW for the acquisition of the Search Data;

'Search Data' means the data and information acquired, or to be acquired, in the performance of the Services and provided to the Commonwealth under this Contract, and includes, according to the context, either or both:

- (a) the raw data as acquired and recorded ; and
- (b) the data and information as processed and analysed;

'Search Departure Port' means the port of a city from which the relevant Vessel departs for the Search Area and is as specified in the SOW;

'Search Servicing Port' means the port identified as the Refuelling Location or intermediate port between search legs as specified in the SOW;

'Search Period' means the period specified in the SOW for the conduct of the Services; **[Note to Tenderers: The application of this definition will be considered in the development of the SOW.]**

'Search Timetable' means the search timetable specified in the SOW;

'Search Zone' means the zone within the Search Area, determined by the Commonwealth for prioritised performance of the Services;

'Services' means the services described in the SOW and includes:

- (c) the Accommodation Services; and

(d) the provision to the Commonwealth of the Contract Material and any Deliverables;

'**Ship Sanitation Certificate**' has the meaning given to the term 'ship sanitation certificate' in the *Quarantine Regulations 2000* (Cth);

'**SOW**' means the statement of work:

- (a) agreed by the parties and attached as Schedule 2 (SOW) (as amended from time to time in accordance with clause 14);
- (b) relating to the conduct of the Services; and
- (c) detailing specific information relating to the search for MH370 for which the Vessels and Equipment are to be used, and such other information that is contemplated under this Contract;

Stakeholder Observers means the persons nominated by the Commonwealth as Stakeholder Observers in accordance with clause 31 to travel on the Vessels to observe the performance of the Services;

'**Standby Event**' means all times where the Services are not carried out during the Search Period due to:

- (a) the suspension of the Services by the Commonwealth in accordance with clause 58.1.
- (b) scouting hazardous areas;
- (c) avoiding obstructions;
- (d) delays caused by bad weather including rough sea conditions that materially and directly contribute to:
 - (i) excessive noise on acoustic devices;
 - (ii) unsafe back deck working conditions; or
 - (iii) any other condition that substantially limits the acquisition of Search Data;
- (e) reconfiguring (but not repairing) Equipment at the Commonwealth's request;
- (f) waiting for the Commonwealth's personnel or instructions to be provided by the Commonwealth;
- (g) any interference (including seismic interference) from other vessels, things or activities including, without limitation, that caused by fauna (including marine mammals);
- (h) damage to or loss of Subsurface Equipment including damage or loss caused by fauna and associated time to retrieve, repair and deploy that lost or damaged Equipment, which is not due to:
 - (i) the Contractor's negligence;
 - (ii) the Contractor's wilful misconduct; or

- (iii) an accident brought about solely by the Contractor's operation of the Equipment.

This will not include times where the Services are not carried out due to insufficient spare Equipment (as required under this Contract) being available to safely redeploy the Subsurface Equipment to the Commonwealth's requirements;

- (i) loss of navigation signals not caused by the act or omission of the Contractor;
- (j) salvage of, and assistance to, any vessel at the request of the Commonwealth;
- (k) any boycott of the Vessel or the performance of the Services where such boycott relates to the Commonwealth or the Objectives;
- (l) a Prescribed Event; or
- (m) waiting for tide;

'Standby Fee' means the amount specified as the Standby Fee in the Payment Schedule; **[Note to Tenderers: Depending on ATSB's preferred pricing methodology, this Fee may not be applicable.]**

'Subsurface Equipment' means Equipment which is deployed in the water to acquire Search Data;

'tax invoice' has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

'Term' means the term of this Contract specified in clause 3;

'Transit Period' means the time when the relevant Vessel is on passage from:

- (a) from a Search Zone to the Refuelling Location;
- (b) from the Refuelling Location to a Search Zone; and
- (c) from a Search Zone to the Arrival Port;

'Transit Fee' means the amount specified as the Transit Fee in the Payment Schedule; **[Note to Tenderers: Depending on ATSB's preferred pricing methodology, this Fee may not be applicable.]**

'Vessel Endurance Period' means the period specified in Schedule 3 (Search Vessel Specifications);

'Vessel Master' means the person having command or charge of the relevant Vessel;

'Vessels' means the one or more vessels specified in Schedule 3 (Search Vessel Specifications), and includes the Key Vessels;

'WHS Act' means the *Work Health and Safety Act 2011* (Cth) and any corresponding WHS law within the meaning of section 4 of the WHS Act;

'WHS Entry Permit Holder' has the same meaning as that given in the WHS Act;

'WHS Laws' means:

- (a) the WHS Act;
- (b) the WHS Regulations; and
- (c) any relevant maritime or marine safety law that is relevant to the health and safety of people at a workplace (which includes the Vessel) including, the *Occupational Health and Safety (Maritime Industry) Act 1993* (Cth);

'WHS Management Plan' has the same meaning as that given in the WHS Regulations;

'WHS Regulations' means the regulations made under:

- (a) any relevant maritime or marine safety law that is relevant to the health and safety of people at a workplace (which includes the Vessel) including the *Occupational Health and Safety (Maritime Industry) Act 1993* (Cth); and
- (b) the WHS Laws;

'WHS Regulator' means the person who is the regulator or inspectorate within the meaning of the WHS Laws;

'Wide Area Search Fee' means the amount specified as the Wide Area Search Fee in the Payment Schedule; and **[Note to Tenderers: Depending on ATSB's preferred pricing methodology, this Fee may not be applicable.]**

'Work Program' means the scheduled program that lists and describes the Services to be provided by the Contractor to the Commonwealth, as identified in the SOW and confirmed by the Commonwealth Contract Authority.

1.2 In this Contract, unless the contrary intention appears:

- (a) words importing a gender include male or female gender;
- (b) words in the singular include the plural and words in the plural include the singular;
- (c) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (d) words importing persons include a partnership and a body whether corporate or otherwise;
- (e) unless otherwise indicated, all references to dollars are to **[To be inserted]**;
- (f) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth or a State or Territory as amended or replaced from time to time;
- (g) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;

- (h) the Schedules of this Contract form part of this Contract;
- (i) where any conflict arises between the terms and conditions contained in the clauses of this Contract and any part of a Schedule to this Contract, the terms and conditions of the clauses in this Contract prevail;
- (j) reference to the *Corporations Law* in relation to bodies incorporated outside Australia, includes reference to equivalent or similar legislation in the corporate body's country of incorporation;
- (k) writing means any representation of words, figures or symbols capable of being rendered in a visible form;
- (l) a provision of this Contract must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Contract or the inclusion of the provision in this Contract;
- (m) a reference to time is to Canberra, Australia, time;
- (n) a reference to a party is to a party to this Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes; and
- (o) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions.

- 1.3 Any reading down or severance of a particular provision does not affect the other provisions of this Contract.
- 1.4 Each party acknowledges that a construction of this Contract that promotes the Objectives is to be preferred to a construction that does not do so.
- 1.5 If a party consists of more than one person, this Contract binds each of them separately and any 2 or more of them jointly.
- 1.6 An obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly.
- 1.7 A party which is a trustee is bound both personally and in its capacity as a trustee.
- 1.8 A reference in this Contract to the Commonwealth means the Commonwealth of Australia as represented by the ATSB.

2. Priority of documents

- 2.1 To the extent that there is an inconsistency between two or more documents forming a part of this Contract, those documents will be interpreted in the following order of priority:
- (a) clauses 1 to 80;
 - (b) the Schedules to this Contract (including the SOW); and
 - (c) any annexure to this Contract or an annexure to a Schedule.

3. Term

3.1 This Contract begins on the Commencement Date and continues until the Services are completed (as specified in Item 2 of Schedule 1 (Contract Details)) or earlier termination in accordance with this Contract (**Term**). **[Note to Tenderers: See Schedule 1. The end date will be the time of an event/milestone rather than a time period.]**

4. SOW

4.1 The Contractor must perform the Services in accordance with the SOW, including any amendments made to the SOW in accordance with this Contract.

4.2 The SOW includes details of the Services required by the Commonwealth: **[Note to Tenderers: The content of this clause will be developed from SOW submitted and contract negotiations.]**

(a) **[To be inserted]**; and

(b) any other specific requirements of the Commonwealth in relation to this Contract.

4.3 Any amendments or variations to the SOW must be made in accordance with clause 13 or clause 14 (as applicable).

5. No exclusivity

5.1 The Contractor acknowledges and agrees that the relationship with the Commonwealth is non-exclusive and the Commonwealth may, at any time, perform or procure, or engage or retain third parties to provide, any services or goods, or carry out any work that is the same as or similar to any part of the Services or work to be carried out by the Contractor under this Contract and that such engagement will not amount to:

(a) a reduction in the scope of this Contract;

(b) grounds for the Contractor to revise, or seek to revise the Fees;

(c) a release or waiver in respect of any of the Contractor's obligations under this Contract; or

(d) a repudiation of all or any part of this Contract by the Commonwealth.

6. Due diligence

6.1 The Contractor warrants, represents and agrees that it:

(a) has reviewed and made its own assessment of all information provided to the Contractor prior to signing this Contract (**Pre-Contract Information**);

(b) relies wholly at its own risk on any Pre-Contract Information; and

(c) does not require any further information for it to form the decision to enter into this Contract and to satisfy itself that it is able to perform its obligations under this Contract.

7. Licences

- 7.1 The Contractor must obtain the Contractor Licences on or before the Mobilisation Date for the relevant Services or another date agreed by the parties in writing and maintain the Contractor Licences for the duration of the Term.
- 7.2 The Commonwealth may terminate this Contract in accordance with clause 59 by giving notice to the Contractor and without further cost to the Commonwealth if:
- (a) the Commonwealth or the Contractor receive notice from any authority that a Contractor Licence will not be issued and that Contractor Licence is required in order for the Services to be performed in accordance with this Contract; or
 - (b) any Contractor Licence required for the Services to be performed in accordance with this Contract is withdrawn, cancelled or suspended.

8. Commonwealth's Objectives

- 8.1 The Commonwealth's objectives in relation to this Contract are as set out in paragraph A of the Introduction to this Contract.

SERVICES

9. The Services

- 9.1 The Contractor will provide the Services in a safe, proper, workmanlike and professional manner in accordance with the terms and conditions contained in this Contract.
- 9.2 The Contractor must:
- (a) provide the Services in accordance with the Commonwealth's requirements set out in this Contract, the SOW and the Acquisition Parameters (as amended from time to time in accordance with clause 33.2);
 - (b) comply with all legal, regulatory or contractual requirements applicable to the Services and utilise any safety equipment specified in clause 3 of Schedule 5 (Accommodation and Hotel Services) and Schedule 6 (Environmental Requirements);
 - (c) comply with any directions of the Client Representative made in accordance with clause 33.2 of this Contract unless a variation to the Search Zone or a Search Zone would, in the Contractor's opinion, acting reasonably, compromise the safety of the Vessels or the Contractor Personnel;
 - (d) deliver the Deliverables to the Commonwealth on the dates due for their provision to the Commonwealth under this Contract; and
 - (e) promptly and fully respond to any questions which the Commonwealth asks in relation to any of the Services or Deliverables provided by the Contractor to the Commonwealth.

- 9.3 Subject to clause 9.2(c) the Contractor's Representative shall be responsible for the safety of all Contractor Personnel and the operation of all Equipment. They shall be the sole judge of whether it is prudent to conduct operations, having due regard to sea conditions or surrounding circumstances. The Contractor's Representative may reasonably refuse any instruction that, in their opinion, may endanger any person or Equipment in their charge.
- 9.4 The Contractor acknowledges that the Commonwealth's search requirements may prioritise the acquisition, recording, processing and analysis of Search Data in Search Zones within the Search Area. Subject always to clause 64 (Vessel Control), if:
- (a) Standby Events or other events result in delays in the performance of the Services; or
 - (b) the Commonwealth has information which it reasonably believes indicates that MH370 may be located in a particular part of the Search Area,

the Commonwealth reserves the right to, following consultation with the Contractor, specify the priorities for the acquisition, recording, processing and analysis of Search Data within a specified Search Zone or Zones.

- 9.5 The Contractor agrees, subject to clause 9.6, to use its best endeavours to facilitate the acquisition, recording, processing and analysis of the Search Data according to a direction by the Commonwealth under clause 9.4. The Contractor also acknowledges that the Commonwealth may, at its option, decide to exclude the acquisition of lines and/or part lines from the Search Zone.
- 9.6 The Contractor will perform the Services in accordance with the Search Timetable specified in the SOW.
- 9.7 The Contractor must actively monitor and manage the delivery of the Services, including:
- (a) anticipating and identifying potential failures to meet a date set out in the Search Timetable, SOW, KPIs or any other obligation under this Contract which has a time frame for performance (a **Delay**);
 - (b) taking reasonable steps to avoid those potential Delays; and
 - (c) immediately notify the Commonwealth of any actual or potential Delay and report the nature of the Delay and the consequences of the Delay.

10. The Commonwealth's Search Data acquisition requirements

The Contractor must:

- (a) perform the Services using Subsurface Equipment to the specifications in the SOW for delivery of the Services;
- (b) provide the Search Data in the method and on the media specified in the SOW and Quality Assurance Control Procedures in Schedule 7;
- (c) use its best efforts to hold station in a manner determined by the Client Representative following consultation between the Client Representative, the Vessel Master and the Contractor's Representative;

- (d) ensure that the Contractor Personnel operate all Equipment (including Subsurface Equipment and ancillary equipment such as cranes, lifting gear and winches) in a safe manner; and
- (e) do all things necessary, in consultation with the Client Representative to ensure the successful acquisition, recording, processing, and analysis of the Search Data and the transfer of the Search Data to the Commonwealth.

11. Performance of the Services

- 11.1 Subject to the express terms of this Contract and if required by the Commonwealth, the Contractor must perform the Services 24 hours per day.

12. Accommodation

- 12.1 The Contractor must provide the Accommodation Services for the Nominated Commonwealth Representatives and the Stakeholder Observers.

13. Variation and Services Change Proposals

13.1 Variation of the Services or Contract

- (a) Subject to clause 14, any variation to the Services must be in accordance with this clause 13.
- (b) Subject to clauses 9.5, 14, 28.5, 33.2(b) and 58, this Contract may be altered only in writing signed by each party.

13.2 Contractor to submit Change Proposal

Where the Contractor proposes a variation to the Services, including a variation to the terms and conditions on which a Service is provided or a variation to the Fees, the Contractor must submit a Services change proposal ('**Change Proposal**') substantially in the form set out in Schedule 12 (Change Proposal Template) describing all relevant details of the proposed variation and the effects of the variation on the Fees.

13.3 Commonwealth may request Change Proposal

- (a) Subject to clause 13.3(b), where the Commonwealth proposes a variation to the Services including:
 - (i) the increase, decrease or omission of any of the Services; or
 - (ii) a change to the character or quality of any of the Services,

the Commonwealth must notify the Contractor of the nature of the variation it proposes and the Contractor must, within a period of 14 days following receipt of the notice or such longer period as may be agreed, provide the Commonwealth with a Change Proposal in substantially the form of Schedule 12 (Change Proposal Template) identifying the effects of the variation on the Fees and the timeframe for delivery of the Services.
- (b) Where a variation proposed by the Commonwealth under clause 13.3:

- (i) does not adversely affect the timing of the provision of the Services;
- (ii) is permissible under the terms of any sub-contracts entered into by the Contractor in respect of the Services; and
- (iii) does not impact on the Fees,

the Commonwealth may direct the Contractor to undertake the varied Services without the requirement for a Change Proposal.

13.4 Contractor to Seek Efficiencies and Lowest Cost

- (a) In relation to the provision of Services, including whenever any Change Proposal is proposed, the Contractor will explore and identify opportunities for innovation and efficiencies in the provision of Services that will result in:
 - (i) lower fees and costs payable by the Commonwealth;
 - (ii) a reduction of the Contractor's costs; and/or
 - (iii) faster achievement of the Objectives,

in providing the Services, including efficiencies derived from any new information or technologies, such as bathymetric or other survey information provided by the Commonwealth.

- (b) Where the Contractor becomes aware of such an innovation or efficiency, the Contractor must include such measures in a Change Proposal and submit it to the Commonwealth as part of a change to the Fees and/or the KPIs that reasonably reflects that innovation or efficiency.

13.5 Effect of Change Proposal

- (a) On receipt of the Change Proposal in accordance with clause 13.2 or 13.3, the Commonwealth must evaluate the proposal acting reasonably and inform the Contractor within 3 days following receipt of the Change Proposal or such longer period as may be agreed, whether it approves or rejects the proposal.
- (b) Where the Commonwealth approves a Change Proposal, the Commonwealth must notify the Contractor in writing of the variation and of the date when it is to take effect. The variation to the Services is effective as at the date notified by the Commonwealth, being a date no later than 7 days following receipt of the Change Proposal, or such other date agreed by the parties.
- (c) The Commonwealth is not liable for any additional work undertaken or any expenditure incurred by the Contractor pursuant to a variation to the Services unless such variation has been approved by the Commonwealth in accordance with the provisions of this clause 13.

14. SOW Variation

- 14.1 The Contractor acknowledges that certain information set out in the SOW may need to be varied during the Term due to operational considerations.

- 14.2 Subject to clause 14.3, the SOW may be varied or amended as agreed between the parties in writing during the Term as long as any such amendment does not impact upon the Fees. If any change to the SOW will impact upon the Fees, the process outlined in clause 13 must be used.
- 14.3 The parties agree that if the SOW is amended in accordance with this clause 14, the revised SOW will receive a new version number. Once a revised SOW is agreed by the parties in accordance with this clause 14, the revised SOW will be automatically incorporated into this Contract as Schedule 2 (SOW) and referred to as the 'SOW'.
- 14.4 If a party requests an amendment to the SOW, the party receiving such request must, within 3 Business Days following receipt of the request, inform the requesting party in writing whether it approves or rejects the request.
- 14.5 The parties acknowledge that the SOW contains critical dates, times and locations for the Services, and any amendments agreed upon by the parties in accordance with clause 14.3 have immediate effect and time remains of the essence.
- 14.6 Unless otherwise agreed by the parties in writing, any amendments made to the SOW in accordance with this clause 14 will not incur any cost penalty for the requesting party and will not cause any variation to the Fees.
- 14.7 Without limiting clause 14.6, if the Contractor accepts a request from the Commonwealth to extend the Search Area set out in the SOW, the Contractor agrees to continue providing the Services during the Term in accordance with this Contract and at the same Fees.

INSPECTIONS

15. Inspection of Vessel and Equipment

15.1 The Contractor must permit, and (to the extent necessary) ensure the Owner permits, the Client Representative or the Commonwealth Contract Authority to:

- (a) board the Vessels;
- (b) inspect the Vessels and the Equipment; and
- (c) communicate with the Contractor Personnel,

at the following locations:

- (i) the Positioning Departure Port, no later than 7 days before the latest date specified as the Positioning Date;
- (ii) the Search Departure Port, no later than 7 days before the latest date specified as the Mobilisation Date;
- (iii) the Search Servicing Port, at a date or dates as agreed between the parties; and
- (iv) the Arrival Port, prior to the expiry or termination of this Contract,

to enable the Commonwealth to determine that the Vessels, Equipment and Contractor Personnel are Acceptable.

- 15.2 The Commonwealth is responsible for its own costs in relation to any inspection of the Vessels, Equipment and Contractor Personnel in accordance with clause 15.1.
- 15.3 The Commonwealth reserves the right to inspect the Vessels, Contractor Personnel and the Equipment at any time during the performance of the Services to ascertain whether the Vessels, Contractor Personnel and Equipment remain Acceptable.
- 15.4 The Commonwealth may require the Contractor at any time to replace immediately at the Contractor's sole expense any item of Equipment that does not comply with any specifications (including manufacturer's specifications) required to perform the Services, including those of any subcontractor of the Contractor.
- 15.5 If the Commonwealth intends to inspect the Vessels, Equipment or Contractor Personnel, it must:
- (a) inspect the Vessels, Equipment and Contractor Personnel as soon as practicable after:
 - (i) the Vessels arrive at the Positioning Departure Port, Search Departure Port or Search Servicing Port (as applicable); and
 - (ii) the Contractor notifies the Commonwealth in writing that the Vessels, Contractor Personnel and Equipment are available for inspection at the Search Departure Port; and
 - (b) inform the Contractor in writing as soon as possible of any failure by the Contractor to meet the Acceptance Criteria.

16. Termination - Inspections

- 16.1 The Commonwealth may terminate this Contract or the performance of the Services by giving notice to the Contractor if any of the following conditions are not fulfilled on or before:

[Note to Tenderers: The Acceptance Criteria will be developed based on the contract negotiations, and included in the final Contract in Schedule 2 (SOW).]

- (a) the Positioning Date:
 - (i) the Vessels, Equipment and Contractor Personnel required under this Contract for the performance of the Services must be available at the Positioning Departure Port for inspection by the Commonwealth in accordance with clause 15 unless previously agreed by the parties in writing;
 - (ii) the Vessels, Equipment and Contractor Personnel required under this Contract for the performance of the Services must be Acceptable, and provided that the Contractor has not been able to satisfy the Acceptance Criteria within a 'reasonable time' of receiving notice from the Commonwealth that the Equipment is not Acceptable; and
- (b) the Mobilisation Date:
 - (i) the Vessels, Equipment and Contractor Personnel required under this Contract for the performance of the Services must be available for inspection at the

Search Departure Port by the Commonwealth in accordance with clause 15.1; and

- (ii) the Vessels, Contractor Personnel and Equipment required under this Contract for the performance of the Services must be Acceptable; and
- (c) the arrival of the Vessels in the Search Area:
 - (i) the Vessels, Equipment and Contractor Personnel required under this Contract for the performance of the Services must be available for inspection after leaving the Search Departure Port and prior to arriving at the Search Area by the Commonwealth in accordance with clause 15.1; and
 - (ii) the Vessels, Contractor Personnel and Equipment required under this Contract for the performance of the Services must be Acceptable, including completing the practical test set out in the SOW. **[Note to Tenderers: The practical test will be developed based on the tenderer responses and contract negotiations, and included in the final Contract in the Schedule 2 (SOW).]**

16.2 For the purposes of clause 16.1(a)(ii), 'reasonable time' is to be determined by reference to (in order of priority):

- (a) the time restraints required for the Services to be performed during the Search Period in accordance with this Contract;
- (b) the industry standards to rectify any difficulties; and
- (c) the availability of spare parts.

THE VESSELS & EQUIPMENT

17. Notice of Arrival of Vessel

17.1 The Contractor must give notice to the Commonwealth of the expected arrival of the Vessels at the Search Departure Port at intervals of 14 days, 7 days and 48 hours prior to the Mobilisation Date.

17.2 The Contractor will notify the Commonwealth as soon as possible in the event that any circumstances arise which have or may have the effect of preventing or delaying the supply of the Vessels in accordance with this Contract or otherwise impact on the ability of the Contractor to perform its obligations under this Contract.

18. Operation of the Vessels and Equipment

18.1 The Contractor must use its best endeavours to ensure that in the course of preparing for, or performing, the Services the Vessels and Equipment are operated in a manner that is consistent with the reasonable requests of the Client Representative.

18.2 Notwithstanding the use of its best endeavours in accordance with clause 18.1, the Contractor must, within 7 days of any failure to comply with any request of the Client Representative given in accordance with clause 18.1, provide to the Commonwealth a written report in English of the circumstances and reasons for not complying with those directions or instructions.

19. Contractor's Equipment

19.1 All risk of loss, damage, destruction or liability in relation to the use of the Equipment or its carriage on the Vessels remain at all times with the Contractor unless otherwise agreed in writing by the parties.

20. Directions and Logs

20.1 The Contractor must ensure that the Vessel Master and Party Chief keep full and correct logs as specified in the description of the Services and that those logs are accessible at all times to the Commonwealth or its agents.

20.2 The Contractor must ensure on arrival of a Vessel at the Arrival Port the Vessel Master and Party Chief of the Vessel provide to the Commonwealth a true and legible copy of the logs (in English) referred to in clause 20.1 for each voyage undertaken in relation to the performance of the Services.

21. Spares

21.1 The Contractor is to ensure that each Vessel carries adequate spares and Equipment to perform the Services.

22. Stores

22.1 The Contractor must ensure that:

- (a) at the time of leaving the Search Departure Port each Vessel is carrying sufficient provisions for all Contractor Personnel, Nominated Commonwealth Representatives and Stakeholder Observers aboard the Vessel for the whole of the Contractor Personnel Rotation Period; and
- (b) for the duration of the Search Period there are sufficient ordinary stores and apparatus to make drinking water for all Contractor Personnel, Nominated Commonwealth Representatives and Stakeholder Observers, allowing for any unforeseen events.

23. Fumigation and de-ratting

23.1 If a Vessel is an Australian registered Vessel, the Contractor is to provide to the Commonwealth, prior to the Mobilisation Date for the Vessel for the Search Period, valid de-ratting certificates for the Vessel. If such certificates do not cover the whole period of the Search Period and if a further de-ratting certificate(s) is required, costs of same and of any detention are to be for the Contractor's account during any period of hire.

23.2 If a Vessel is not an Australian registered Vessel, the Contractor is to provide to the Commonwealth, prior to the Mobilisation Date for the Vessel for the Search Period, a valid Ship Sanitation Certificate issued for the Vessel pursuant to Article 39 of the *International Health Regulations (2005)*. If the Vessel is over 400 gross tonnes or certified to carry more than 15 persons then the Contractor must also provide a valid International Sewage Pollution Prevention Certificate. If such certificates do not cover the whole period of the Search Period and if a further Ship Sanitation Certificate or International Sewage Pollution Prevention Certificate is required, costs of same and of any detention are to be for the Contractor's account during any period of hire.

24. The Commonwealth's communications

- 24.1 The Commonwealth is to have liberty to install on each Vessel communications equipment complying with the requirements of relevant regulatory authorities and operate any communications equipment on each Vessel provided that such equipment does not interfere with the safe operation of the Vessel.
- 24.2 Each Vessel's communications officer (if any) is:
- (a) to send communications at any time at the request of the Client Representative;
 - (b) to provide a safety communications circuit to helicopters, fixed wing aircraft and other ship-board parties as required; and
 - (c) to provide communications to stations and other vessels for the use of the Client Representative(s) and others as required.
- 24.3 All communications between the Contractor and the Commonwealth must be in the English language.

25. Communication Facilities

- 25.1 The Contractor must:
- (a) ensure that each Vessel is equipped with the Communication Facilities; and
 - (b) provide Communication Facilities to the Commonwealth for use by the Nominated Commonwealth Representative(s) on each Vessel 24 hours per day.
- 25.2 For the avoidance of doubt and subject to clause 64, the Contractor must:
- (a) provide each Nominated Commonwealth Representative who has the necessary capabilities to use the Communication Facilities with access to, and the use of, the Communication Facilities; and
 - (b) at the request of a Nominated Commonwealth Representative, operate the Communication Facilities on behalf of the Nominated Commonwealth Representative.

CONTRACTOR PERSONNEL, COMMONWEALTH REPRESENTATIVES & STAKEHOLDER OBSERVERS**26. Contractor Personnel**

- 26.1 The Contractor must employ only Contractor Personnel with the experience and qualifications specified in the SOW.
- 26.2 If the Commonwealth has any reason to be dissatisfied with the conduct of a Vessel Master or Contractor Personnel, the Contractor, on receiving written particulars of any complaint, is to investigate such complaint promptly, and, if necessary and practicable, make a change in the appointment and the costs of any changes are to be for the Contractor's account.

26.3 The Commonwealth requires that, where applicable, Contractor Personnel members hold a relevant certificate or certificate of recognition under the marine orders made under the *Navigation Act 2012* (Cth) or such similar certification that is internationally recognised and meets substantially the same standards as the certificate or certificate of recognition under the marine orders made under the *Navigation Act 2012* (Cth).

26.4 The Contractor must ensure that members of the Contractor Personnel of each Vessel are sufficiently qualified and experienced to understand and implement all instructions of the Vessel Master and authorised delegates of the Vessel Master (such as the Mates) relating to the passage and safety of the Vessel.

27. Contractor Personnel list

27.1 The Contractor Personnel list for each Vessel is set out in the SOW. Any planned changes to the Contractor Personnel are to be at the Contractor's expense and nominated to the Commonwealth as they occur.

28. Key Personnel, Vessels and Equipment

28.1 The Contractor warrants that:

- (a) it will undertake the Services with the active involvement of, and using the expertise of, the Key Personnel, Key Vessels and Key Equipment; and
- (b) each of the Key Personnel:
 - (i) will participate in the Services;
 - (ii) have sufficient time and capacity to perform their intended role(s) and responsibilities in relation to the Services; and
 - (iii) are aware of, and will comply with, the Contractor's obligations under this Contract in performing the Services; and

28.2 If a Key Personnel, Key Equipment or Key Vessel is, or will become, unable or unwilling to participate in the Services, the Contractor must:

- (a) notify the Commonwealth immediately in writing;
- (b) if requested by the Commonwealth, provide a replacement that:
 - (i) for Key Personnel, is of equivalent suitable ability and qualifications;
 - (ii) for Key Equipment or Vessels, is of equivalent suitable functionality and specification,and at no additional charge and at the earliest opportunity; and
- (c) obtain the Commonwealth's written consent prior to appointing the new person or use of the new equipment or vessel (as applicable).

28.3 The Commonwealth may, at any time, request the Contractor to remove any of the Key Personnel or any of the Contractor Personnel.

28.4 If the Commonwealth makes a request under clause 28.3, the Contractor must promptly arrange for the removal of such Personnel and their replacement in accordance with the process outlined in clauses 28.2(b) and (c). The Commonwealth agrees to consult with the Contractor prior to exercising its rights under clause 28.5.

28.5 If:

(a) a request by the Contractor to vary the Key Personnel under clause 28.2(c) is approved by the Commonwealth; or

(b) the Commonwealth exercises its rights under clause 28.3,

the Commonwealth and Contractor agree to sign and execute a variation to the SOW to give effect to that arrangement.

28.6 If:

(a) the Contractor does not comply with clauses 28.2, 28.4 or 28.5; or

(b) the Commonwealth does not approve an appointment under clause 28.2(c),

the Commonwealth may, in its absolute discretion:

(c) require the Contractor to propose a new person, equipment or vessel to perform the relevant role of the Key Personnel, Key Equipment or Key Vessel (as applicable), in accordance with clause 28.2(b); or

(d) terminate this Contract pursuant to clause 58.1.

29. Contractor Personnel medical examination

29.1 The Contractor acknowledges that it is the Contractor's responsibility to only crew the Vessels with Contractor Personnel who are fit for seagoing work appropriate to the functions of the relevant Vessel.

29.2 The Contractor must ensure that it only crews the Vessels with Contractor Personnel provided by a subcontractor where they are fit for seagoing work appropriate to the functions of the relevant Vessel.

30. Nominated Commonwealth representatives on the Vessels

30.1 The Contractor must permit the Nominated Commonwealth Representatives to:

(a) board the Vessels, as determined by the Commonwealth, at the Search Departure Port;

(b) remain on the Vessel until the Services are completed for the Search Period;

(c) have full access to the Vessel and Equipment for the purposes of overseeing the performance of the Services; and

(d) leave the Vessel at the Arrival Port or otherwise arrange for the Nominated Commonwealth Representatives to disembark, either by helicopter or picket vessel, within 5 days of completion or termination of the Services.

- 30.2 The roles of the Nominated Commonwealth Representatives include:
- (a) monitoring the data received in the course of the performance of the Services, the quality of such data, and the performance of the Services; and
 - (b) if required by the Client Representative, act as the delegate of the Client Representative as identified in the SOW.
- 30.3 The Nominated Commonwealth Representatives must comply with any reasonable direction from the Party Chief issued for the purpose of avoiding:
- (a) damage to the Vessel and the equipment on the Vessel; and
 - (b) injury to persons on board the Vessel.
- 30.4 The Nominated Commonwealth Representatives must have an up to date Commonwealth recognised Seafarers Medical certificate.
- 31. Stakeholder Observers**
- 31.1 At the request of the Commonwealth, the Contractor must permit the Stakeholder Observers to:
- (a) board the Vessels, as determined by the Commonwealth;
 - (b) remain on the Vessel until the Services are completed for the Search Period; and
 - (c) leave the Vessel as determined by the Commonwealth.
- 31.2 The roles of the Stakeholder Observers is to observe the performance of the Services, as advised by the Commonwealth.
- 31.3 The Stakeholder Observers must comply with any reasonable direction from the Party Chief issued for the purpose of avoiding:
- (a) damage to the Vessel and the equipment on the Vessel; and
 - (b) injury to persons on board to the Vessel.
- 31.4 The Stakeholder Observers do not have authority to bind or direct the Commonwealth or the Contractor in any way to any decision or action, or otherwise vary or alter this Contract or the provision of the Services. For the avoidance of doubt, Stakeholder Observers may not give a direction or require the Contractor to prioritise a Search Zone or cease searching in a Search Zone or area of the Search Area.
- 32. Work health and safety**
- 32.1 The Contractor must, and must require the Contractor Personnel to:
- (a) at all times ensure that the Services are carried out in a safe manner;
 - (b) at all times comply with the WHS Laws;

- (c) at all times ensure the health and safety of all persons on board the Vessels, or at any other workplace where the Services are performed;
- (d) inform itself of all work health and safety policies and procedures implemented or adopted by the Commonwealth;
- (e) at all times comply with the Commonwealth's work health and safety policy and procedures that are in any way applicable to this Contract or the performance of the services under this Contract;
- (f) at all times comply with any reasonable instruction from the Commonwealth relating to work health and safety;
- (g) immediately comply with directions on health and safety issued by any person having authority under the WHS Laws to do so;
- (h) where the health and safety of other persons may be affected by the Services, ensure full communication and coordination occurs on health and safety matters with those persons and the Commonwealth; and
- (i) communicate any issue or concern that it has regarding work health and safety matters, as soon as practicable, with the Commonwealth.

32.2 The Contractor must:

- (a) prepare all written policies and procedures for which it is reasonably practicable for the Contractor to prepare in order to ensure that the Contractor complies with its obligations under clause 32.1;
- (b) on the Commencement Date and at any other time when requested by the Commonwealth, provide the Commonwealth with evidence of the Contractor's ongoing compliance with its obligations under clause 32.1 and copies of any documentation prepared under clause 32.2(a). Without limiting the requirements of this obligation, the Contractor must provide reports on WHS inspections, audits or assessments, undertaken before or during the course of the Services and allow the Commonwealth officers to carry out site inspections;
- (c) if the Contractor is required by the WHS Act to report a Notifiable Incident to the WHS Regulator arising out of the Services:
 - (i) at the same time, or as soon as is possible in the circumstances, give notice of such incident, and a copy of any written notice provided to the WHS Regulator, to the Commonwealth; and
 - (ii) provide to the Commonwealth, within such time as is specified by the Commonwealth, a report detailing the circumstances of the incident, the results of investigations into its cause, and any recommendations or strategies for prevention in the future;
- (d) inform the Commonwealth of the full details of:

- (i) any suspected contravention of the WHS Laws relating to the Services or the Commonwealth workplace, within 24 hours of becoming aware of any such suspected contravention;
 - (ii) any cessation or direction to cease work, due to unsafe work, immediately upon the Contractor being informed of any such cessation or direction;
 - (iii) any workplace entry by a WHS Entry Permit Holder, or an Inspector, to any place where the Services are being performed or undertaken, within 24 hours of becoming aware of any such workplace entry; and
 - (iv) any proceedings against the Contractor or its officers, or any decision or request by the WHS Regulator given to the Contractor or its officers, under the WHS Laws, within 24 hours of becoming aware of any such proceedings, decision or request; and
- (e) provide to the Commonwealth, copies of all notices and correspondence issued to the Contractor by any person under the WHS Laws, within 24 hours of receiving any such notice or correspondence;

32.3 If, in order to comply with its obligations under clause 32.1 and 32.2(a), the Contractor is required to:

- (a) prepare, submit, supply or obtain any document, including but not limited to a WHS Management Plan, a risk assessment, a safe work method statement, a work method statement, an emergency plan, safety data sheets, a notice to the WHS Regulator, or a register (together '**WHS Safety Documents**'), or review any existing WHS Safety Documents;
- (b) obtain or sight any licence, permit, or authorisation (together '**WHS Licences**'); or
- (c) install or display any sign, or barrier;

specific to the Services, the Contractor must:

- (i) prepare or obtain any such WHS Safety Documents or WHS Licences tailored to the Services and in compliance with the WHS Laws;
- (ii) provide the Commonwealth a copy of any such WHS Safety Documents or WHS Licences with sufficient time for the Commonwealth to review the same and consult as it considers appropriate, including with the Contractor, regarding the same; and
- (iii) install or display any such sign or barrier,

before commencing any, or undertaking further, work.

32.4 Without limiting any other right or remedy of the Commonwealth, if during the performance of any work under this Contract:

- (a) the Commonwealth notifies the Contractor in writing that the Commonwealth is not satisfied that the Contractor is:

- (i) performing the Services in compliance with its work health and safety obligations as outlined in this clause 32, relevant legislation or the Commonwealth's work health and safety policy and procedures, the Contractor will promptly remedy that breach; and
 - (ii) the Commonwealth may direct the Contractor to suspend the Services until such time as the Contractor satisfies the Commonwealth that the Services will be performed in compliance with the work health and safety obligations referred to in the clause, and during the period of suspension in accordance with this clause 32, the Commonwealth will not be required to make any payment whatsoever to the Contractor;
- (b) the Contractor fails to rectify any breach for which the Services have been suspended under this clause 32 within a reasonable period, but no later than 10 Business Days, after receiving notification from the Commonwealth to do so, the Commonwealth may, at its option, immediately terminate this Contract under clause 59.

32.5 The Commonwealth may monitor the Contractor's compliance with the WHS Laws, including but not limited to:

- (a) conducting audits of the Contractor's work health and safety performance; and
- (b) requiring the Contractor to provide it with whatever documents or other information the Commonwealth reasonably requires relating to work health and safety matters.

32.6 Without limiting this clause, the Contractor must perform its obligations under this Contract in such a way that ensures:

- (a) the Commonwealth's personnel are able to participate in any necessary inspections of work in progress and tests and evaluations of the Services; and
- (b) the Commonwealth is able to maintain, support and make full use of the Services, without the Commonwealth being in breach of any WHS Laws which apply to the Services.

32.7 The Contractor must cooperate with any investigation undertaken by the Commonwealth concerning any Notifiable Incident, or breach or alleged breach of the WHS Laws, arising out of or in respect of the Services.

32.8 Where there is any inconsistency or ambiguity between this clause and the WHS Laws, the WHS Laws will prevail.

33. Commonwealth Contract Authority and Client Representative

33.1 The Commonwealth may appoint:

- (a) a Commonwealth Contract Authority who will be responsible for exercising the responsibilities of the Commonwealth in the management of this Contract; and
- (b) one or more Client Representatives who will be responsible for exercising the responsibilities of the Commonwealth on a day-to-day basis, including consultation with the Contractor through the Party Chief.

- 33.2 The Contractor acknowledges that the Client Representative:
- (a) does not have the authority to bind the Commonwealth to any decision or action that may cause the Commonwealth further expense unless such decision or action:
 - (i) is consistent with clause 33.2(b); or
 - (ii) is necessary for the safety of a person and there is insufficient time to obtain written approval from the Commonwealth Contract Authority;
 - (b) if and to the extent advised by the Commonwealth in writing, has the authority of the Commonwealth to:
 - (i) specify or vary the Search Area and Search Zones;
 - (ii) request that the Acquisition Parameters are varied;
 - (iii) request the Contractor that the acquisition, recording, processing or analysis of Search Data cease; and
 - (iv) request the Contractor to continue the acquisition, recording, processing and analysis of data that is not in accordance with the specifications contained in the SOW or the Contract relevant to the performance of the applicable Services.
- 33.3 The Commonwealth Contract Authority must provide the Contractor with notice of the date on which any request under clause 33.2(b)(i) or 33.2(b)(ii) is to take effect within a reasonable period of time in advance of that date.
- 33.4 The Commonwealth may replace a person acting as the, the Commonwealth Contract Authority or the Client Representative at any time. The Commonwealth must notify the Contractor of any change in personnel acting as the, the Commonwealth Contract Authority or the Client Representative.
- 33.5 To the extent that the Contractor requires decisions, directions or authorisations from the Commonwealth the Contractor must establish and maintain suitable communications with the Client Representative and the Commonwealth Contract Authority and give the Commonwealth a reasonable amount of time to provide an effective answer.
- 34. Party Chief**
- 34.1 No later than 5 Business Days after the Commencement Date, the Contractor must notify the Commonwealth in writing of the name of the Party Chief and Contractor's Representative.
- 34.2 The Contractor must not engage a person to perform the role of the Party Chief or Contractor's Representative unless that person has been approved by the Commonwealth (approval not to be unreasonably withheld). The Contractor may only replace a Party Chief or Contractor's Representative by notice to the Commonwealth in writing.
- 34.3 The Party Chief may be the Vessel Master subject to agreement of the Commonwealth.
- 34.4 The Contractor's Contract Authority will be responsible for exercising the responsibilities of the Contractor in the management of this Contract. The Contractor must not replace a person acting

as the Contractor's Contract Authority without first obtaining the Commonwealth's approval to the proposed replacement Contractor's Contract Authority.

PAYMENT

35. Fee Estimates

- 35.1 At the end of each week on which the Contractor performs the Services, the Contractor must provide to the Nominated Commonwealth Representative an estimate of the maximum aggregate Fees incurred (including taxes such as GST) for that month to that day.

36. Payment

[Note to Tenderers: This clause will be developed during negotiations and updated in the final Contract to reflect the Payment Schedule.]

- 36.1 Subject to the terms of this Contract (including clause 36.3), the terms of any Contract and satisfactory performance of the Services, the Commonwealth must pay to the Contractor the Fees.

Minimum Fee

- 36.2 If this Contract ends before the end of the Minimum Search Period because MH370 has been located, the Commonwealth must pay to the Contractor the Minimum Fee subject to the Contractor fulfilling its obligations under this Contract. **[Note to Tenderers: Subject to contract negotiations]**

Maximum Fee

- 36.3 The Commonwealth is not required to pay to the Contractor, and the Contractor must not submit invoices to the Commonwealth for, any Fees (whether in aggregate or otherwise and including taxes such as GST) greater than the Maximum Fee. If weather or environment factors reduce the scope of the Work Program the Maximum Fee will be the limit of the Work Program. The Commonwealth, after negotiation with the Contractor, may extend the scope of the Work Program and increase the Maximum Fee subject to the amendments being agreed by both parties in accordance with clause 13.

Timing of Payments

[Note to Tenderers: The timing for invoicing and payment may need to be adjusted depending on the outcome of pricing negotiations, together with the finalised KPIs and any Milestones.]

- 36.4 The Contractor must submit a tax invoice for payment monthly in arrears, specifying the subject of the invoice, the amount claimed, the aggregate amount of Fees invoiced to date (including taxes), the period covered by the invoice and the contract number (if any).
- 36.5 Subject to satisfactory performance of the Services by the Contractor and any invoicing requirements specified in the Payment Schedule, the Commonwealth must pay the Contractor the amount invoiced within 30 days from receipt of a correctly rendered invoice in the manner specified in the Payment Schedule.

Deferral of Payments

[Note to Tenderers: The Commonwealth intends that this clause would be linked to the performance of the Services as specified in the SOW and KPIs, together with any relevant Milestones.]

36.6 Subject to clause 36.7, the Commonwealth may defer payment of a tax invoice in respect of all or part of the Services until the Contractor has satisfactorily performed its obligations under this Contract to which that payment relates.

36.7 If the Commonwealth disputes the whole or any portion of the claim in a tax invoice submitted by the Contractor, the Commonwealth must pay the portion of the amount stated in the tax invoice which is not in dispute and must notify the Contractor in writing (within 14 days after receipt of tax invoice) of the reasons for disputing the remainder of the tax invoice. If it is resolved that some or all of the amount in dispute ought properly to have been paid at the time it was first invoiced, then the Commonwealth must pay the amount finally resolved.

37. Goods and Services Tax

37.1 Any consideration to be paid or provided for a supply made under or in connection with this Contract, not being consideration for a supply which is specifically referred to as 'GST inclusive', does not include an amount on account of GST.

37.2 Except to the extent that clause 37 applies, but despite any other provision in this Contract, if a party (**Supplier**) makes a supply under or in connection with this Contract on which GST is imposed (not being a supply the consideration for which is described as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply under this Contract but for the application of this clause 37.2 is increased by, and subject to the issuing of a tax invoice by the supplier, the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply (**GST Amount**); and
- (b) the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

37.3 If a payment to a party under this Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

37.4 Unless the contrary intention appears, words or expressions used in this clause 37 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause 37 (**GST Act**).

38. Reverse charge for GST

[Note to Tenderers: This clause 38 will be deleted if the Contractor is a resident of Australia or carries on an enterprise in Australia.]

- 38.1 If the Contractor is, or becomes, liable to pay GST on any supply of services pursuant to this Contract, the parties agree that, where it is able to do so, the Commonwealth shall account for that GST on behalf of the Contractor in accordance with section 83-5 of the GST Act.
- 38.2 For the purposes of this clause 37:
- (i) Contractor warrants that as at the date of this Contract:
 - (A) it is not resident in Australia for the purposes of the GST Act and will immediately notify the Commonwealth in writing if this ceases to be the case; and
 - (B) it does not carry on an enterprise in Australia for the purposes of the GST Act and will immediately notify the Commonwealth in writing if this ceases to be the case.
 - (ii) the Commonwealth confirms that it is registered for GST and will immediately notify Contractor in writing if it ceases to be so registered.
- 38.3 No later than 7 days after the end of the month the Contractor must provide the Commonwealth with a calculation of the GST that is attributable to that month and is payable by the Commonwealth pursuant to section 83-5 of the GST Act.
- 38.4 The Contractor indemnifies the Commonwealth for any loss, cost or expense incurred by the Commonwealth, including but not limited to, interest and penalties imposed by the Commissioner of Taxation, as a result of the application of section 83-5 of the GST Act.
- 39. Taxes on Contractor and Vessels**
- 39.1 Other than in relation to any specific provisions referring to taxation and charges contained in this Contract (including in relation to GST), the Contractor must pay all taxes and charges imposed on, or in relation to, the Contractor, Equipment or the Vessels.
- 39.2 In this clause 39.2, 'Tax' includes any tax, withholding tax, charge, rate, duty or impost imposed by any authority, but does not include any income or capital gains tax.
- 40. Off Hire Events**
- 40.1 Subject to clause 36.3, if the Contractor is unable to perform the Services, or part of the Services, relating to the acquisition, recording, processing and analysis of Search Data during a Search Period due to an Off Hire Event, the Commonwealth's obligation to pay any fees for any of those Services that cannot be performed under this Contract as a result of the Off Hire Event is limited to the Off Hire Fees (or part thereof as a proportion of the Services that cannot be performed) until the Contractor is able to resume performance of those Services or those parts of the Services in accordance with this Contract. **[Note to Tenderers: Depending on the tender negotiations an Off Hire Fee may not be applicable.]**
- 41. Standby Events**
- 41.1 Subject to clause 36.3, if the Contractor is unable to perform the Services, or part of the Services, relating to the acquisition, recording, processing, analysis or transfer of Search Data during the Search Period due to a Standby Event, the Commonwealth is only required to pay the Standby

Fee (or part thereof as a proportion of the Services that cannot be performed) until the Contractor is able to resume performance of the Services (or the relevant part of the Services that was unable to be performed) in accordance with this Contract. **[Note to Tenderers: Depending on the tender negotiations the Standby Fee may not be applicable.]**

42. Loss of the Vessel

42.1 Should a Vessel be lost or missing, the Commonwealth is not required to pay any Fees in relation to that Vessel, or Services to be provided by that Vessel, from the date when the Vessel was lost or missing. If the date of any loss cannot be ascertained, then the Fees are to be paid up to the date that the Vessel was last reported.

43. Non Performance Due to Medical Condition

43.1 If the medical condition (including death) of any person on a Vessel should cause:

- (a) the Vessel to deviate or put back during the Search Period; or
- (b) the relevant Services not to be performed in accordance with this Contract,

the Fees and costs associated with any evacuation or medical attention (including death) of that person must be paid as follows:

	Category of person on the Vessel	Medical condition caused by the negligence of the Commonwealth Nominated Representatives or Stakeholder Observer	Medical condition caused by the negligence of persons other than the Commonwealth Nominated Representatives or Stakeholder Observer	Medical condition NOT caused by the negligence of the Commonwealth Nominated Representatives, the Stakeholder Observers, or persons other than the Commonwealth Nominated Representatives or Stakeholder Observers.
1	Commonwealth Nominated Representatives and Stakeholder Observers	Fee payable by the Commonwealth at the Standby Rate. Costs associated with any evacuation or medical attention payable by the Commonwealth	No Fee or costs are payable by the Commonwealth	Fee payable by the Commonwealth at the Standby Rate. Costs associated with any evacuation or medical attention payable by the Commonwealth

	Category of person on the Vessel	Medical condition caused by the negligence of the Commonwealth Nominated Representatives or Stakeholder Observer	Medical condition caused by the negligence of persons other than the Commonwealth Nominated Representatives or Stakeholder Observer	Medical condition NOT caused by the negligence of the Commonwealth Nominated Representatives, the Stakeholder Observers, or persons other than the Commonwealth Nominated Representatives or Stakeholder Observers.
2	Persons other than the Commonwealth Nominated Representatives or Stakeholder Observers	Fee payable by the Commonwealth at the Standby Rate. Costs associated with any evacuation or medical attention payable by the Commonwealth	No Fee or costs are payable by the Commonwealth	No Fee or costs are payable by the Commonwealth.

[Note to Tenderers: Depending on the tender negotiations on the preferred pricing model, the Standby Rate may not be applicable.]

44. Refuelling re-crewing & resupply of Vessels

- 44.1 Subject to clauses 44.2 to 44.4, the Contractor is responsible for arranging and bearing the costs of:
- (a) all fuels and oils for the Vessels;
 - (b) ensuring that, at the time a Vessel departs the Search Departure Port, it is fully fuelled and capable of performing the Services for the Vessel Endurance Period without needing to refuel;
 - (c) the refuelling of all Vessels during the performance of the Services, including the direct and indirect costs of transit to enable the refuelling of the Vessels; and
 - (d) changing Contractor Personnel at normal crew rotation cycles and resupplying Vessels, including the direct and indirect costs of transit to enable the Contractor Personnel change and resupply.
- 44.2 Unless expressly permitted in the SOW, the Contractor must not refuel a Vessel at sea.
- 44.3 If a Vessel must be refuelled at the Refuelling Location during the Search Period to enable the Services to be performed during that Search Period, the Commonwealth must pay to the Contractor the Transit Fee (for the Transit Period) and the Refuelling Rate (for the Refuelling Period) in accordance with the Payment Schedule. **[Note to Tenderers: Depending on the**

tender negotiations on the preferred pricing model, the Transit Fee and Refuelling Rate may not be applicable.]

44.4 The cost of refuelling of each Vessel is the responsibility of the Contractor except as permitted in the Payment Schedule.

45. Withholding of payments

The parties acknowledge and agree that, if the Contractor fails to achieve a KPI:

- (a) the Commonwealth will suffer damage; and
- (b) all such damage may not, having regard to the nature of the Services, be able to be precisely calculated or proved,

and, therefore, the parties agree that any amount withheld by the Commonwealth or not paid to the Contractor as specified in Schedule 14 (KPIs) is a genuine pre-estimate of the damage which would be suffered by the Commonwealth in such event.

INFORMATION AND ACCESS

46. Commonwealth Material

46.1 Any Commonwealth Material that comprises data or information and provided to the Contractor is confidential information and subject to clause 48.

46.2 Subject to the consent of the Contractor, which consent shall not be unreasonably withheld, the Commonwealth at its own cost may install such Commonwealth Material as it requires on the Vessels. At the end of this Contract, the Commonwealth at its own expense must return those parts of the Vessels on which Commonwealth Material was installed to a state equivalent to the state of the Vessel before Mobilisation.

46.3 If requested by the Commonwealth, the Contractor must operate the Commonwealth Material but only if:

- (a) the Contractor has personnel available to operate the Commonwealth Material; and
- (b) the Contractor Personnel are qualified and trained to operate the Commonwealth Material.

46.4 The Commonwealth grants to the Contractor a royalty-free, non-exclusive licence to use the Commonwealth Material for the purposes of this Contract but not otherwise.

46.5 The Contractor must not provide the Commonwealth Material to any person without the prior written consent of the Commonwealth. The Commonwealth may impose such conditions as it sees fit in granting that consent.

46.6 The Contractor must ensure that it uses Commonwealth Material strictly in accordance with this Contract and any conditions, restrictions or direction by the Commonwealth.

46.7 The Contractor must ensure that all of the Commonwealth Material is kept secure and safe to the same standard and in accordance with the same procedures as the Contractor applies to its own

equipment and material. The Contractor will bear the risk in any Commonwealth Material provided to the Contractor (including any such Commonwealth Material on a Vessel).

47. Contract Material

- 47.1 The title to, and all Intellectual Property rights in or in relation to, the Contract Material vest on their creation in the Commonwealth and if requested by the Commonwealth to do so, the Contractor must bring into existence, sign, execute or otherwise deal with any document which may be necessary to enable the vesting of such title or right to the Commonwealth. To avoid doubt, all and any data or information obtained by the Contractor and its subcontractors in the performance of the Services is Contract material and is owned by the Commonwealth.
- 47.2 On expiration or early termination of this Contract, the Contractor must:
- (a) deliver to the Commonwealth all Contract Material; and
 - (b) if necessary, complete any documentation necessary to transfer any Intellectual Property rights in or in relation to the Contract Material to the Commonwealth,
- but no later than 30 days of the date of the expiry or early termination.
- 47.3 Subject to clause 47.5, the Contractor must not use, copy or reproduce Intellectual Property provided by the Commonwealth or created under this Contract except for the purposes of this Contract.
- 47.4 The Contractor must provide all reasonable assistance required by the Commonwealth to protect or obtain registration of the Intellectual Property in the Contract Material, including the execution of any document which is necessary to vest title in the Commonwealth.
- 47.5 Nothing in this clause 47 prevents the Contractor from using any Contract Material that is published by the Commonwealth (including being made available to the public online) after the Search Period in accordance with the Intellectual Property rights that apply to such publication(s).

48. Confidentiality

- 48.1 A Recipient must keep all of a Disclosing Party's Confidential Information confidential and must not, except as expressly permitted under this Contract, disclose, copy or use any of a Disclosing Party's Confidential Information.
- 48.2 A party must immediately notify the other party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure of any of the other party's Confidential Information and take all reasonable steps to enforce any obligation of confidence imposed or required to be imposed by this Contract.
- 48.3 A Disclosing Party may at any time require a Recipient to give and to arrange for its officers, employees, agents and subcontractors (including their respective employees and contractors) engaged in the provision of the Services to give undertakings in writing in the form set out in Schedule 11 (Confidentiality Deed), relating to the non-disclosure of Confidential Information.
- 48.4 A Recipient may only:

- (a) use and copy a Disclosing Party's Confidential Information to comply with its obligations under this Contract (and then only to the extent reasonably necessary to achieve such compliance) or to the extent necessary to enable the Recipient to exercise its rights under this Contract; and
- (b) disclose a Disclosing Party's Confidential Information to the Recipient's officers, employees, agents and subcontractors engaged in the provision of the Services, its professional advisers and any other person approved in writing by the Commonwealth Contract Authority on a 'need to know' basis for the purpose identified in clause 48.4(a).

48.5 The Recipient acknowledges that:

- (a) a breach of its confidentiality obligations under this clause 48 may result in ATSB suffering damage, for which damages may not be an adequate remedy; and
- (b) in the event of a suspected or actual breach of this Contract or any obligation of confidentiality under this Contract, ATSB is entitled to seek and obtain injunctive relief.

48.6 Subject to clause 48.8, a Recipient must not, without the prior written consent of the Disclosing Party, disclose any Confidential Information of a Disclosing Party to a third party. In giving written consent to the disclosure of Confidential Information, the Disclosing Party may impose such conditions as it thinks fit, and the Recipient agrees to comply with these conditions.

48.7 If a Recipient receives a request under clause 48.3 it must promptly arrange for all such undertakings to be given.

48.8 The obligations on a Recipient under this clause 48 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by the Recipient to its advisers or employees solely in order to comply with obligations, or to exercise rights, under this Contract;
- (b) is authorised or required by Applicable Law, including under this Contract, under a licence or otherwise to be disclosed;
- (c) is disclosed for use by any Minister of the Australian Government;
- (d) without limiting the application of this clause 48.8, is disclosed in order to respond to a request or direction of a house of Parliament, or a request by a committee, of a Parliament of the Commonwealth, for information; or
- (e) is in the public domain otherwise than due to a breach of this clause 48.

48.9 Where a Recipient discloses Confidential Information to another person pursuant to clause 48 the Recipient must notify the receiving person that the information is Confidential Information.

48.10 The parties may agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract.

48.11 Where the parties agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract, this

documentation is incorporated into, and becomes part of this Contract on the date by which both parties have signed this documentation.

- 48.12 Subject to clause 48.8, the Contractor shall obtain the prior written consent of the Commonwealth before any public or media statement is issued concerning the provision of the Services or this Contract.
- 48.13 The obligations under this clause 48 continue, notwithstanding the expiry or termination of this Contract.
- 48.14 At the Commonwealth's request or on termination or expiry of this Contract, the Contractor must promptly return the Commonwealth's data, material and all physical and written records containing the Commonwealth's Confidential Information, and all documentation relating to that Confidential Information (including copies), to the Commonwealth in a form reasonably requested by the Commonwealth. Alternatively, if requested by the Commonwealth, the Contractor must destroy such items in the manner specified by the Commonwealth and promptly certify to the Commonwealth in writing that it has done so.

49. Privacy

49.1 Application of the clause

This clause 49 applies only where the Contractor deals with personal information when, and for the purpose of, providing the Services.

49.2 Definitions

(a) In this clause 49:

- (i) the terms 'agency', 'APP privacy policy', 'Australian Privacy Principles' (**APPs**), 'disclosure', 'personal information', 'sensitive information', 'subcontract' and 'use' have the same meaning as they have in the *Privacy Act 1988* (Cth); and
- (ii) for the avoidance of doubt, the term 'personal information' includes 'sensitive information'.

49.3 Obligations

- (a) The Contractor acknowledges that it is a contracted service provider and agrees in respect of performing this Contract that it will:
 - (i) use, disclose and otherwise handle personal information obtained during the course of performing this Contract, only for the purposes of this Contract;
 - (ii) not do, or fail to do, any act, or engage or fail to engage in any practice, which if done or engaged in by the ATSB, would be:
 - (A) be inconsistent with the ATSB's APP privacy policy published on the ATSB's website; or
 - (B) if the Contractor was an agency, constitute a breach of an APP;

- (iii) carry out and discharge the obligations contained in the APPs as if it were an agency;
 - (iv) immediately notify the Commonwealth if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in this clause 49 or the APPs, whether by the Contractor or any subcontractor;
 - (v) comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are consistent with the requirements of this clause 49; and
 - (vi) ensure that all officers, employees and agents of the Contractor who are required to deal with personal information for the purposes of this Contract are made aware of the obligations of the Contractor specified in this clause 49.
- (b) The Contractor agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract imposes on the subcontractor the same obligations as the Contractor has under this clause 49, including the requirement in relation to subcontracts.
- (c) The Contractor's obligations under this clause 49 are in addition to, and do not restrict, any obligations it may have under the Privacy Act or any privacy codes or privacy principles contained in, authorised by, made or registered under the Privacy Act (as amended from time to time) that would apply to the Contractor but for the application of this clause 49.

49.4 This clause 49 survives the expiration or termination of this Contract.

50. Freedom of Information Act

50.1 Where the Commonwealth has received a request for access to a document created by, or in the possession of, the Contractor or any subcontractor that relates to the performance of this Contract (and not to the entry into this Contract), the Commonwealth may at any time by written notice require the Contractor to provide the document to the Commonwealth and the Contractor must, at no additional cost to the Commonwealth, promptly comply with the notice.

50.2 The Contractor must include in any subcontract relating to the performance of this Contract provisions that will enable the Contractor to comply with its obligations under this clause 50.

50.3 This clause 50 continues for a period of 7 years from the date of expiration or termination of this Contract.

51. Audit

51.1 Subject to clause 51.2, the Commonwealth or its auditor may, on the giving of reasonable notice, have access to and copy all records (in connection with the performance of the Services) of the Contractor and its subcontractors.

51.2 Audits may be conducted of:

- (a) the Contractor's operational practices and procedures as they relate to this Contract, including security procedures;

- (b) the accuracy of the Contractor's invoices and reports in relation to the provision of the Services under this Contract;
- (c) the Contractor's compliance with its confidentiality, privacy obligations and security obligations under this Contract;
- (d) the Contractor's compliance with all its obligations under this Contract;
- (e) material (including books and records) in the possession of the Contractor relevant to the Services or Contract; and
- (f) any other matters determined by the Customer to be relevant to the Services or Contract.

51.3 Any person appointed by the Commonwealth to access and copy the records of the Contractor must be an officer of the Commonwealth. The Commonwealth may appoint a person who is not a Commonwealth officer if the Contractor consents in writing to that appointment.

51.4 The Contractor must provide all reasonable assistance to allow the Commonwealth or its auditors access to all of its records and personnel in order to undertake audits of and reviews of the Contractor's performance of the Services.

51.5 The Contractor must:

- (a) keep complete accounts and records, and any particular accounts specified by the Commonwealth, relating to all work carried out under this Contract;
- (b) retain for a period of 6 years after termination or expiration of this Contract, whichever is the latest, copies of all accounts and records of all work and services performed under this Contract;
- (c) ensure that all expenditure and revenue concerning the performance of the Services is correctly recorded and accounted for; and
- (d) provide any accounts or records required by the Commonwealth within 10 Business Days of the Commonwealth making a request for such accounts or records.

51.6 Subject to clause 13, the requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.

51.7 The Contractor must promptly take, at no additional cost to the Commonwealth, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit in the way the Contractor has under this Contract:

- (a) supplied any goods or component of the Services; or
- (b) calculated Fees, or any other amounts or charges billed to the Commonwealth.

51.8 This clause 51 continues for a period of 7 years from the date of expiration or termination of this Contract.

51.9 Subject to any express provisions in this Contract to the contrary each party must bear its own costs of any audits.

- 51.10 Without limiting any of its other obligations under this Contract, the Contractor must, at its costs, ensure that it keeps full and complete records in accordance with all applicable Australian Accounting Standards and that data, information and records relating to this Contract or its performance are maintained in such a form and manner to facilitate access and inspection under clauses 51 and 52.
- 51.11 If recognising the obligation in clause 51.9 and the rights under clauses 51 and 52, the Contractor reasonably believes that the exercise of the rights under clauses 51 and 52, will cause the Contractor to incur direct expenses which, having regard to the value of this Contract, are substantial and materially exceed those which it would otherwise have to incur in meetings its obligations under clause 51.9, it may give reasonable notice of the exercise of those rights by notifying the Commonwealth. If the Contractor substantiates that its direct expenses in complying with the exercise of the rights in such circumstances are excessive, the Commonwealth and the Contractor shall negotiate an appropriate reimbursement, but in no circumstances shall any reimbursement be greater than the direct expenses involved.

52. Access to Contractor's premises and records - Australian Auditor-General

- 52.1 The Auditor-General, the Privacy Commissioner, the Information Commissioner and/or the Freedom of Information Commissioner or his or her respective delegates, for the purpose of performing the Auditor-General's, the Privacy Commissioner's, the Information Commissioner's and/or the Freedom of Information Commissioner's statutory functions, may, at reasonable times and on giving reasonable notice to the Contractor:
- (a) access the premises of the Contractor to the extent relevant to the performance of this Contract;
 - (b) require the provision by the Contractor, its employees, agents or subcontractors, of records and information related to the Services or this Contract;
 - (c) inspect and copy, at the sole cost and expense of the Commonwealth, documentation, books and records, however stored, in the custody or under control of the Contractor, its employees, agents or subcontractors related to the Services; and
 - (d) require the Contractor to provide full and accurate answers to any questions the Auditor-General, Privacy Commissioner, the Information Commissioner and/or Freedom of Information Commissioner or his or her delegate may have concerning records or information related to the Services or this Contract.
- 52.2 The Contractor must do all things necessary to comply with the Auditor-General's, Privacy Commissioner's, the Information Commissioner's and/or Freedom of Information Commissioner's requirements notified under clause 52.1, provided such requirements are legally enforceable and within the power of the Auditor-General, the Privacy Commissioner, the Information Commissioner and/or the Freedom of Information Commissioner, or his or her respective delegate.
- 52.3 The requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.
- 52.4 Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General, the Privacy Commissioner, the Information Commissioner and/or the Freedom of Information Commissioner, or his or her respective delegate. The rights of

the Commonwealth under this Contract are in addition to any other power, right or entitlement of the Auditor-General, the Privacy Commissioner, the Information Commissioner and/or the Freedom of Information Commissioner or his or her respective delegate.

- 52.5 The Contractor must ensure that any sub-contract entered into after the Commencement Date with a subcontractor for the purpose of this Contract contains provisions allowing the rights specified in this clause 52.
- 52.6 This clause 52 applies for the Term and a period of 7 years from the date termination or expiration of this Contract.

INDEMNITIES WARRANTIES AND INSURANCE

53. Warranties, acknowledgments and notification requirements

- 53.1 The Contractor acknowledges the matters set out in Schedule 9 (Warranties and Acknowledgements).
- 53.2 The Contractor represents and warrants to the Commonwealth that each of the Contractor Warranties is true and correct as at the date of this Contract and at all times during the Term.

54. Liability and Indemnity

- 54.1 Liability for the Contractor's equipment, Vessels and the Contractor's personnel

The Contractor shall indemnify and hold the Commonwealth Group harmless from and against all Losses of whatsoever kind or nature and howsoever caused, in connection with this Contract relating to:

- (a) the Vessels;
- (b) the Equipment provided by the Contractor in connection with the Services (whether owned by the Contractor or not);
- (c) the use of the Search Data by the Commonwealth Group;
- (d) personal injury (including but not limited to sickness and death) to the Contractor's employees, agents, invitees and subcontractors, and their employees, agents and invitees; or
- (e) subject to clause 54.3, third parties and third party property where caused by the Contractor or its officers, employees, agents, representatives or subcontractors.

- 54.2 Liability for the Commonwealth's equipment and the Commonwealth's personnel

The Commonwealth shall indemnify and hold the Contractor and its respective officers, employees, agents, representatives, subcontractors and Stakeholder Observers harmless from and against all Losses of whatsoever kind or nature and howsoever caused, in connection with this Contract caused by:

- (a) Commonwealth Material, whether owned by the Commonwealth or not but excluding the Equipment and Material provided by the Contractor; and

- (b) subject to clause 54.3, third parties and third party property where caused by the Commonwealth or its officers, employees, agents, representatives or other contractors.

54.3 Third Party Liability - Reduction

The liability of a party (**Party A**) for Losses of whatsoever kind or nature in connection with this Contract incurred by another party (**Party B**) in relation to a third party pursuant to clause 54.1(e) or 54.2(b), will be reduced proportionately to the extent that:

- (a) any negligent act or omission of Party B (including Party B's officers, employees, agents, representatives and contractors, except the Contractor with respect to the Commonwealth); or
- (b) any failure by Party B to comply with its obligations and responsibilities under this Contract,

contributed to those losses, regardless of whether legal proceedings are brought by Party A for negligence or breach of contract.

54.4 Indemnity for IP, Confidentiality or Privacy

- (a) Each party (the **Indemnifying Party**) shall indemnify and hold harmless the other Party and its respective Group (the **Indemnified Party**) from and against all Losses claimed by a third party for or in connection with:
 - (i) a breach by the Indemnifying Party of its confidentiality, security and privacy obligations or warranties contained in or given under this Contract; or
 - (ii) an infringement (actual or asserted) of Intellectual Property rights with respect to Intellectual Property provided by the Indemnifying Party and used for, or in connection with, this Contract
- (b) To avoid doubt, the liability of each party under clause 54.4(a) is unlimited notwithstanding anything to the contrary in this Contract other than clause 55.

54.5 Liability for loss or damage to the Search Data

- (a) Subject to clause 54.3, the Contractor shall indemnify and hold the Commonwealth Group harmless for any loss or damage to the Search Data howsoever caused from the moment it is created until it is delivered to the Commonwealth.
- (b) Subject to clause 54.3, the Commonwealth shall indemnify and hold the Contractor harmless for any loss or damage to Search Data howsoever caused from the moment the raw and unprocessed Search Data is delivered to the Commonwealth.

54.6 Liability for Pollution Emanating from the Vessels

Subject to clause 55, the Contractor shall indemnify the Commonwealth and hold the Commonwealth Group harmless from and against all Losses for or in connection with the discharge of any substance (excluding for the avoidance of doubt soundwaves) by the Vessels, the Equipment (whether owned by the Contractor or not), the Vessel Master or any servant or agent of the Contractor.

54.7 Survival

This clause 54 will survive the expiration or termination of this Contract.

55. Liability

55.1 Subject to clause 54, the liability of a party and any of their respective Group members for breach of this Contract, or in tort, or for any other common law or statutory cause of action arising out of the operation of this Contract, will be determined under the relevant law in Australia that is recognised, and would be applied, by the High Court of Australia.

55.2 A party's liability under clause 54 will be reduced proportionately to the extent that any negligent act or omission of the other party or their Group contributed to the relevant Loss.

55.3 The liability of each party arising out of or in connection with this Contract (including under any indemnity) is, subject to clauses 55.4 and 55.5, limited to the amount specified in Item 8 of Schedule 1 (Contract Details).

55.4 Subject to clause 55.5, any limit on the liability of each party under clause 55.3 does not apply in relation to liability relating to:

- (a) an infringement of Intellectual Property Rights;
- (b) a breach of any obligation of confidentiality, security matter or privacy;
- (c) personal injury (including death); or
- (d) damage to third party property.

55.5 If the *Limitation of Liability for Maritime Claims Act 1989* (Cth) and/or the *Convention on Limitation of Liability for Maritime Claims 1976* (for the purposes of this clause 55.5, the Convention) applies to a party's liability in respect of a claim mentioned in Article 2 of the Convention, then, clause 55.3 does not apply and the liability of each party arising out of or in connection with this Contract is calculated in accordance with the *Convention on Limitation of Liability for Maritime Claims 1976*.

55.6 The limitation of liability specified in clause 55.3 applies in respect of each single occurrence or a series of related occurrences arising from a single cause.

55.7 Review of limitation

- (a) The parties acknowledge that the limitation of liability specified in clause 55.3 of this Contract will be subject to review in the event that this Contract is varied or extended.
- (b) For the avoidance of doubt, a party may require a review of the limitation of liability specified in clause 55.3 as a condition of its acceptance to a variation or Change Proposal under clause 13, but only for the purpose of achieving a proportionate adjustment to reflect any alteration to that party's risk exposure arising out of that variation.

55.8 This clause 55 will survive the expiration or termination of this Contract.

56. Insurance

- 56.1 The Contractor must take out and maintain for the Term, valid and enforceable insurance policies with insurers approved by the Commonwealth as specified in this Contract (including to insure against all risks of collision and damage to each Vessel), including those insurance policies specified in Schedule 4 (Maritime Certificates and Search Vessel).
- 56.2 All insurance on the Vessels is to be for the Contractor's account.
- 56.3 The Contractor must on demand produce a copy of any insurance policy required to be taken out under this Contract.
- 56.4 To the extent of liabilities undertaken by the Contractor under this Contract, the Contractor must ensure that the Commonwealth is named as an additional insured under the Contractor's insurance cover, except for the workers' compensation and, to a level of cover that is the same as the cover for the Contractor with respect to the Services and the Contractor's obligations that are connected with this Contract.

57. Guarantees

Note to Tenderers: The provision of a bank or parent company guarantee, and the amount of the bank guarantee will be discussed with the preferred Tenderer(s).

57.1 Bank guarantee

- (a) The Commonwealth may require the Contractor to provide to the Commonwealth, at any time, a security in the form of an unconditional and irrevocable bank guarantee for \$[INSERT] executed by a financial institution acceptable to the Commonwealth, in a form approved by the Commonwealth.
- (b) The bank guarantee provided in accordance with clause 57.1(a) must remain in place until the Commonwealth notifies the Contractor that it is no longer required.

57.2 Parent company guarantee

- (a) The Commonwealth may require the Contractor to provide to the Commonwealth, at any time, a guarantee executed by its parent company and in the form set out in Schedule 13 (Parent Company Guarantee).
- (b) The parent company guarantee provided in accordance with clause 57.2(a) must remain in place until the Commonwealth notifies the Contractor that it is no longer required.

57.3 Exercising the guarantees

The guarantees provided under clauses 57.1 and 57.2 will be exercisable by the Commonwealth for either or both of the following, to the extent required:

- (a) to obtain compensation for the Loss suffered by the Commonwealth if the Contractor fails to perform any or all of its obligations under the Contract, including on the termination of the Contract in accordance with clause 59; or

- (b) to recover any debts due to the Commonwealth under or in connection with the Contract.

57.4 Replacement of bank guarantee

If the Commonwealth exercises its rights under clause 57.3 in relation to the bank guarantee then the Contractor must within five Business Days of the exercise of such rights provide a replacement security to the Commonwealth in the same form and amount as required by clause 57.1.

57.5 Notification

Where the Commonwealth deducts the amount of a debt from any payment or the security, it must advise the Contractor in writing that it has done so.

57.6 Failure to provide or maintain

Without limiting any of the Commonwealth's other rights under the Contract or otherwise, if the Contractor fails to provide or maintain the guarantees required by clauses 57.1 and 57.2, the Commonwealth may withhold all or part of any payment under the Contract until the Contractor meets those obligations.

57.7 Release

If the Commonwealth exercises any or all of its rights under the guarantees provided under this clause 57, the Commonwealth will not be liable for, and the Contractor releases the Commonwealth from liability for, any resultant loss or damage to the Contractor.

57.8 Other remedies

The Commonwealth's rights to recover from the Contractor the balance of Losses suffered by the Commonwealth after exercise of the securities provided under this clause 57 will not be limited by the Commonwealth's exercise of the security.

TERMINATION

58. Termination, suspension and reduction for convenience

58.1 The Commonwealth may, at any time and for any reason, terminate, suspend or reduce the scope of this Contract by notice to the Contractor.

58.2 Upon receipt of a notice of termination, suspension or reduction the Contractor must immediately:

- (a) stop work as specified in the notice;
- (b) if specified in the notice, leave any region of the Search Zone as specified in the notice;
- (c) take all available steps to minimise loss resulting from that termination, suspension or reduction; and

(d) continue work on any part of its obligations not affected by the notice.

58.3 Where there has been a termination under clause 58.1 relating to the performance of the Services, the Commonwealth will be liable only for the lesser of:

(a) the Minimum Fee; and

(b) the aggregate of:

(i) the Fees payable up to the date of termination; and

(ii) any additional costs incurred by the Contractor that result directly from:

(A) the Commonwealth's decision to terminate under clause 58.1; and

(B) the time taken for each Vessel to transit from the location of the Vessel at the time of receiving notice of termination, to the Arrival Port, that is greater than the transit time reasonably expected to have been incurred had the Services been completed.

58.4 The Contractor must mitigate any loss, liability, expense or damage incurred arising from the termination, suspension or reduction of the scope of this Contract or reduction of the scope of this Contract in respect of the performance of the Services.

58.5 Subject to clause 58.3, where there has been a reduction in the scope of this Contract, the Commonwealth's liability to make payments under this Contract will, unless there is an agreement in writing to the contrary, abate in accordance with the reduction.

58.6 The Contractor will not be entitled to compensation for loss of prospective profits.

58.7 Termination, suspension or reduction under this clause 58 is without prejudice to any prior right of action or remedy which either party has or may have.

59. Termination for default

59.1 Where Contractor fails to satisfy any of its obligations under this, the Commonwealth may, if it considers that the failure is:

(a) not capable of remedy, terminate this Contract immediately by notice;

(b) capable of remedy, issue a notice requiring that the failure be remedied within a specified reasonable time, and if not remedied within that time, may terminate this Contract immediately by giving a second notice.

59.2 Notwithstanding any other right to terminate this Contract in accordance with this Contract, the Commonwealth may also terminate this Contract immediately by notice if any event referred to in clause 59.3 happens to the Contractor.

59.3 The Contractor must notify the Commonwealth immediately if:

(a) there is a change greater than 49% in the direct or indirect beneficial ownership or control of the Contractor;

- (b) it disposes of the whole or any part of its assets, operations or business (other than in the ordinary course of business) that would affect the performance of the Services in accordance with this Contract;
- (c) it ceases to carry on business;
- (d) it ceases to be able to pay its debts as they become due;
- (e) any step is taken by a mortgagee to take possession or dispose of the whole or any part of assets, operations or business of the Contractor;
- (f) any step is taken to enter into any arrangement between the Contractor and its creditors;
- (g) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the assets or business of the Contractor;
- (h) where the Contractor is a partnership, any step is taken to dissolve that partnership or a partner dies or becomes insolvent;
- (i) a Contractor Licence that is required for the Contractor to acquire geoscience information or navigation information is not issued or is withdrawn, cancelled or suspended;
- (j) the Contractor commences the Services before the Commonwealth Licences are finalised;
- (k) any Approved Subcontractor ceases to be involved in the performance of the Services for any reason;
- (l) the Contractor receives or issues a notice:
 - (i) to terminate or suspend the contractual arrangement between the Contractor and the Owner;
 - (ii) that the charter or other contractual arrangement between the Contractor and the Owner will not be renewed; or
 - (iii) or has any reason to believe, that a Vessel will not be available for the performance of the Services;

59.4 To avoid doubt, if the Contractor fails to immediately notify the Commonwealth as required under clause 59.3 and the Commonwealth has reasonable grounds to believe an event referred to in clause 59.3 has occurred, the Commonwealth may immediately terminate this Contract in accordance with clause 59.2.

59.5 Termination under this Contract is without prejudice to any prior right of action or remedy which either party has or may have.

60. Consequences of termination

60.1 On termination of this Contract for any reason:

- (a) the Contractor must provide to the Commonwealth within 7 days of the notice of termination all Contract Material and Commonwealth Material;
- (b) the Contractor must, at the option and request of the Commonwealth and at the Contractor's own cost, destroy any copies of any Contract Material and Commonwealth Material remaining with the Contractor; and
- (c) the Contractor must ensure that the Nominated Commonwealth Representatives and Stakeholder Representatives are safely returned to the Arrival Port or such other port as the Commonwealth may direct.

GENERAL

61. Resolutions of disputes - International arbitration

- 61.1 Any dispute, controversy or claim arising out of or relating to this Contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules.
- 61.2 The appointing authority shall be the Australian Centre for International Commercial Arbitration.
- 61.3 The number of arbitrators shall be one (1).
- 61.4 The place of arbitration will be Canberra, Australia.
- 61.5 The language to be used in the arbitral proceedings of the arbitration will be English.

62. Compliance with laws

- 62.1 The Contractor shall, and shall ensure that the Contractor Personnel, comply with all Applicable Laws.

63. Charter

- 63.1 Nothing in this Contract is to be construed as:
 - (a) a demise of any of the Vessels or the Equipment to the Commonwealth; or
 - (b) a charter of any of the Vessels to the Commonwealth.

64. Vessel Control

- 64.1 Notwithstanding anything contained in this Contract, the operation and control of each Vessel, and the ultimate safety of each Vessel, the Contractor Personnel, and any other person present on a Vessel, remains at all times the responsibility of the Vessel Master.
- 64.2 Notwithstanding any right of the Commonwealth to:
 - (a) make requests as to the operation of the Vessels and Equipment;

- (b) make requests relating to the health, safety and security of the Vessels and all persons present on a Vessel; or
- (c) otherwise give directions under this Contract,

compliance with any such direction or request where it might impact the safety of a Vessel, the Contractor Personnel, or any other persons present on a Vessel, is ultimately a decision for the Vessel Master.

64.3 For clarification, if the Vessel Master exercises a right set out in clause 64.1 or clause 64.2:

- (a) the indemnity granted by the Contractor in clause 54.1 shall apply;
- (b) notwithstanding anything contained in this Contract, the Commonwealth will not be liable for any Losses arising from the acts or omissions of the Vessel Master in exercising a right set out in clause 64.1 or clause 64.2, and
- (c) without limiting 64.3(b), the Commonwealth will not be required to comply with the indemnity obligations set out in clauses 54.2, 54.3, 54.4 or 54.5.

65. Force Majeure

65.1 If a party (**Affected Party**):

- (a) is prevented from or delayed in performing an obligation by a Prescribed Event;
- (b) as soon as possible after the Prescribed Event occurs, notifies the other party of full particulars of:
 - (i) the Prescribed Event;
 - (ii) the effect of the Prescribed Event on performance of the Affected Party's obligations;
 - (iii) the anticipated period of delay; and
 - (iv) the action (if any) the Affected Party intends to take to mitigate or remove the effect and delay; and
- (c) promptly and diligently take reasonable action to mitigate or remove the Prescribed Event and its effect;

then:

- (d) unless there is an express provision in this Contract to the contrary, the obligation is suspended during, but for no longer than, the period the Prescribed Event continues and such further period as is reasonable in the circumstances; and
- (e) if the Affected Party is prevented from or delayed in performing the obligation by the Prescribed Event for a continuous period of at least 14 days:
 - (v) any party may by notice to the other party terminate this Contract; or

- (vi) to the extent that the delay relates to one part of the Services only, any party may terminate that part of this Contract relating to those Services.

65.2 Nothing in clause 65.1(c) obliges either party to settle any strike, lockout, ban, limitation of work or other industrial dispute.

65.3 If this Contract is terminated in accordance with clause 65.1(e), the Commonwealth will be liable only for the Fees payable up to the effective date of termination.

66. Negation of employment, partnership and agency

66.1 The Contractor agrees not to represent itself, and to use its best endeavours to ensure that its officers, employees, agents and subcontractors do not represent themselves as being an officer, employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

66.2 The Contractor is not by virtue of this Contract, an officer, employee, partner or agent of the Commonwealth, nor does the Contractor have any power or authority to bind or represent the Commonwealth.

67. Waiver

67.1 If a party does not exercise (or delays exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.

67.2 A single or partial exercise by a party of any of its rights does not prevent the further exercise of any right.

67.3 In this clause 67, 'rights' means rights or remedies provided by this Contract, or at law.

68. Assignment and novation

68.1 The Contractor cannot assign its obligations, and agrees not to assign its rights, under this Contract without, in either case, prior approval in writing from the Commonwealth.

68.2 The Contractor agrees not to consult with any other person for the purposes of entering into an arrangement that will require novation of this Contract without first consulting the Commonwealth.

68.3 The Commonwealth cannot assign its obligations, and agrees not to assign its rights, under this Contract without, in either case, prior approval in writing from the Contractor.

69. Subcontracting

69.1 The Contractor must not subcontract or otherwise deal with the whole or any part of this Contract except with the Commonwealth's prior written consent.

69.2 The details of any subcontractor to be used by the Contractor (including a description of the services to be provided by the subcontractor) are set out in the SOW (**Approved Subcontractor**).

69.3 The Contractor is responsible for ensuring the suitability of an Approved Subcontractor for the work proposed to be carried out and for ensuring that the work and any materials, equipment or

facilities performed or provided by the Approved Subcontractor meets the requirements of this Contract.

- 69.4 Notwithstanding any subcontract, the Contractor remains fully responsible for performing its obligations under this Contract.
- 69.5 The Contractor must not enter into a subcontract under this Contract with a subcontractor named by the Workplace Gender equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012 (Cth)*.
- 69.6 The Contractor must ensure that each Approved Subcontractor meets with the Commonwealth, as and when reasonably required by the Commonwealth, for the purposes of discussing those parts of the Services being provided by the Approved Subcontractor.
- 69.7 The Contractor must procure the novation to the Commonwealth of any subcontract with an Approved Subcontractor on the Commonwealth's request.
- 69.8 The Contractor must enter into a written subcontract with each Approved Subcontractor, and unless otherwise agreed by the Commonwealth, the Contractor must ensure that the written subcontract includes a requirement to comply with:
- (a) all Applicable Laws; and
 - (b) clauses 32 (Work health and safety), 47 (Contract Material), 48 (Confidentiality), 49 (Privacy), 51 (Audit), and 52 (Access by Auditor-General, Privacy Commissioner, Information Commission, and Freedom of Information Commissioner).

70. Governing law

- 70.1 This Contract is governed by and construed in accordance with the law in force in the Australian Capital Territory.
- 70.2 The parties submit to the non-exclusive jurisdiction of the courts of Australian Capital Territory, 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.

71. Further assurance

- 71.1 Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Contract.

72. Notices

- 72.1 Any notice, request or other communication to be given under this Contract is to be in writing and dealt with as follows:
- (a) if given by the Contractor to the Commonwealth – marked for the attention of the Commonwealth Contract Authority, at the address specified in Item 6 of Schedule 1 (Contract Details) unless otherwise notified by the Contractor; or
 - (b) if given by the Commonwealth to the Contractor – signed by the Commonwealth Contract Authority or his or her nominee and marked with the address specified in Item 7 of Schedule 1 (Contract Details) unless otherwise notified by the Contractor.

- 72.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted by facsimile or electronically, and if it is sent or transmitted electronically a copy is to be sent to the addressee by pre-paid post.
- 72.3 A notice, request or other communication will be deemed to be received:
- (a) if delivered by hand, upon delivery;
 - (b) if sent by pre-paid ordinary post within Australia, upon the expiration of two Business Days after the date on which it was sent;
 - (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within 24 hours after that transmission, the recipient informs the sender that it has not received the entire notice; and
 - (d) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

73. Pollution liability

- 73.1 Subject to clause 73.2, the Contractor agrees to indemnify the Commonwealth and its agents or any other party against any liability that may be imposed on them or that they may incur under statute or treaty regarding liability for pollution of navigable waters by disposal of oil, noxious liquid substances, ballast water, bilge water, washdown water from the main and helicopter decks, incinerator emissions, harmful packaged substances, freight containers, plastic packaging bands and garbage, galley waste, sewage and plastics, by reason of any contravention of any statute or treaty or MARPOL by any Vessel, the Vessel Master or any servant or agent of the Contractor, except to the extent that such contravention has been caused or contributed to by the Commonwealth and provided that the facts and matters giving rise to the contravention do not constitute a defence under MARPOL.
- 73.2 The Contractor's aggregate liability to the Commonwealth in respect of any incident listed in clause 73.1 shall under no circumstances exceed the amount set out in Item 9 of Schedule 1 (Contract Details), but always subject to the Contractor's rights of limitation available to it in accordance with the relevant statute or treaty and the extent of the indemnity of this clause 73 shall be limited to the difference between any cost and expense incurred directly by the Contractor and the amount set out in Item 9 of Schedule 1 (Contract Details).
- 73.3 The Contractor warrants that each Vessel will at all times be entered in a Protection and Indemnity Association for all of its liabilities under this clause 73 arising out of any contravention as aforesaid.
- 73.4 The Contractor warrants that each Vessel has on board a certificate of financial responsibility for oil pollution and that the certificate shall remain valid throughout the Term. Loss of time or detention due to failure to comply with the warranties contained in this clause 73 will constitute an Off-Hire Event.

74. Pollution protection

- 74.1 The Contractor must comply with the provisions of MARPOL performing its obligations under this Contract, and shall act in such a manner that the disposal of oil, noxious liquid substances,

ballast water, bilge water, washdown water from the main and helicopter decks, incinerator emissions, harmful packaged substances, freight containers, plastic packaging bands and garbage, galley waste, sewage and plastics generally shall be consistent so far as is reasonable and practicable with the provisions and intentions of MARPOL.

74.2 The Contractor must ensure that the environmental impacts arising from the operation of science gear, antifouling paint, the introduction of personnel with a potential to cause environmental impact, the introduction of helicopters, barges and other vessels, engine exhaust gas emissions, noise from engines, propeller and steering gear, noise from acoustic/sonar equipment, and light from searchlights, running and deck lights are reduced as far as practicable. The parties will agree on operating procedures to give effect to this intent prior to the Positioning Date.

74.3 The Contractor must ensure that it takes all reasonable steps to avoid fuel spillage through breach of bunker or cargo tanks, loss of marine science gear overboard or loss of deck cargo overboard.

75. Counterparts

75.1 This Contract may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same Contract.

76. Entire Agreement

76.1 This Contract constitutes the entire agreement between the parties as to its subject matter and in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.

77. Severability

77.1 The parties agree that a construction of this Contract that results in all provisions being enforceable is to be preferred to a construction that does not.

77.2 If, despite the application of clause 77.1, a provision of this Contract is illegal or unenforceable:

- (a) if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed; and
- (b) in any other case, the whole provision is severed,

and the remainder of this Contract continues in force.

78. Costs and duties

78.1 Except as expressly stated otherwise in this Contract, each party must bear its own legal costs of and other costs and expenses of preparing, negotiating and executing this Contract.

79. Ownership of Contract

79.1 All copyright and other Intellectual Property Rights in this Contract remain the property of the Commonwealth.

80. Cumulative remedies

- 80.1 Except as expressly provided otherwise in this Contract, a right, power, remedy, entitlement or privilege given or granted to a party under this Contract is cumulative with, without prejudice to and not exclusive of any other right, power, remedy, entitlement or privilege granted or given under this Contract or by law.

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Schedule 1 – Contract Details

Item number	Subject	Clause reference	Detail
1.	Commencement Date	1.1 and 3.1	<i>[Insert date]</i> <i>[Drafting note: This is the start of the Contract and not the Search]</i>
2.	Term	1.1 and 3.1	The Term ends when the Commonwealth confirms in writing to the Contractor that all of the Services have been performed to the satisfaction of the Commonwealth.
3.	<i>[Not used]</i>		
4.	Commonwealth's Contract Authority	1.1 and 29.1	<i>[Insert name]</i> <i>[Insert position]</i>
5.	Contractor's Contract Authority	1.1 and 34.4	<i>[Insert name]</i> <i>[Insert position]</i>
6.	Address for Notice to the Commonwealth	72	Attn: <i>[Insert]</i> Australian Transport Safety Bureau 62 Northbourne Avenue Canberra, ACT 2601, Australia Telephone: <i>[Insert]</i> Facsimile: <i>[Insert]</i> Email: <i>[Insert]</i>
7.	Address for Notice to the Contractor	72	Attn: <i>[Insert]</i> <i>[Insert Contractor name]</i> <i>[Insert address]</i> Telephone: <i>[Insert]</i> Facsimile: <i>[Insert]</i> Email: <i>[Insert]</i>
8.	Liability Cap	55	Unlimited <i>[Note: If the Tenderer does not agree with an unlimited liability cap, it should provide a risk assessment for its proposed search activity which demonstrates the appropriate liability cap.]</i>
9.	Pollution Liability	73	Unlimited <i>[Note: If the Tenderer does not agree with an unlimited liability cap, it should provide a risk</i>

Item number	Subject	Clause reference	Detail
			<i>assessment for its proposed search activity which demonstrates the appropriate liability cap.]</i>

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Schedule 2 - SOW

Note to Tenderers: A Statement of Requirements is set out in Schedule 1 of the RFT and an amended form of that document, relevant to the services, as provided by the selected tenderer and varied during contract negotiations will be included as a Statement of Work to the final Contract.

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Schedule 3 - Search Vessel and Equipment Specifications

Vessel 1 – General Description

[Insert photo of vessel(s)]

[A description of how Vessel 1 will be utilised to provide the Services should be set out in the Statement of Requirements, in particular in the section addressing search plans and method.]

Vessel		
	Owner and Operator:	
	Flag / Port of Registry:	
	Class:	
	Built / Refit:	
	Call Sign:	
	IMO No.:	
	Safe Manning Certificate:	
	Work Boat Description:	
Dimensions		
	Length (overall):	
	Beam:	
	Max Draft:	
	GRT:	
	NRT:	
Machinery		
	Main Engines:	
	Total Propulsion:	
	Propellers:	
	Bow and Stern Thrusters	
	Generator(s):	
	Endurance:	
	Cruising Speed:	
	Range at Cruising Speed:	
	Acquisition speed assuming full cable length:	
Capacities		
	Fuel:	
	Fuel Consumption at Cruising Speed (Tonnes/day):	
	Fuel Consumption at Acquisition Speed (Tonnes/day):	
	Vessel Endurance	

	Period	
	Potable Water:	
	Ship's Stores:	
	Cabin Accommodation (Marine Crew):	
	Cabin Accommodation (Seismic Crew):	
	Business / Training Room(s):	
	Number of cabins and berths available to Nominated Commonwealth Representative(s):	
	Number of cabins and berths available to Stakeholder Observers:	
	Accommodation, Messing, Facilities and Steward Services offered to the Nominated Commonwealth Representative(s) and Stakeholder Observers:	
	Expectations of Nominated Commonwealth Representatives in regard to their shipboard responsibilities	
	Expectations of Nominated Stakeholder Observers in regard to their shipboard responsibilities	
Electronics		
	Radar:	
	Secondary Radar:	
	Echo Sounder:	
	GPS:	
	Communications:	
	High Speed data link:	
	Weather Fax:	
Safety Equipment:		
	Lifeboat Type:	
	Number Lifeboats:	
	Lifeboat Capacity:	
	EPIRB:	

	Life Rafts:	
	Life Vests:	
	Life Buoys:	
	Additional Safety Equipment:	
Fire-Fighting Equipment		
	Description and locations of FFE:	
	Main Fire Pump Type/Flow:	
	Fire Detection and Warning System:	
Staff Evacuation:		
	Heli Deck:	
	Other:	

Vessel 2 – General Description

[Insert details as applicable]

Vessel 3 – General Description

[Insert details as applicable]

Vessel 4 – General Description

[Insert details as applicable]

Schedule 4 - Maritime Certificates and Search Vessel

Note to Tenderers: This Schedule will be developed during negotiations and included as this Schedule in the final Contract.

1. Maritime Certificates and Vessel Survey certificates, status and licence

Maritime Certificates and Vessel Survey:	Details:
List all relevant statutory marine certificates:	<i>[To be inserted.]</i>
Current marine survey status:	<i>[To be inserted.]</i>
Details of operating licence:	<i>[To be inserted.]</i>
Insurance:	

2. Insurance

Insurance Type	Details	Amount
Property loss or damage	For property used to perform the Contract and which, if lost or damaged, could affect the performance of the Contract.	<i>[To be inserted.]</i>
General liability	Public and products liability to cover liability for loss or injury arising from the Contractor's activities, access to its (or Subcontractors') premises or use of products. No watercraft exclusion.	<i>[To be inserted.]</i>
Professional indemnity	No watercraft exclusion.	<i>[To be inserted.]</i>
Workers' compensation	As required by law.	As required by law

Insurance Type	Details	Amount
Marine liability insurance (P&I) and hull insurance to cover general liability, pollution liability and replacement value for hulls.	These may be specialist policies or extensions to existing policies.	<p>[To be inserted.] for general liability</p> <p>Pollution liability as required by applicable conventions</p> <p>Replacement value for hulls</p>
[Insert other insurance (i.e. ISR, etc) held by Contractor.]	[To be inserted.]	[To be inserted.]

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Schedule 5 - Accommodation and Hotel Services

Note to Tenderers: This Schedule will be developed during negotiations and included as this Schedule in the final Contract.

1. Accommodation:

[Insert]

2. Provisioning and meals:

[Insert]

3. Work Health & Safety:

[Insert]

4. Recreational facilities:

[Insert]

Draft

Schedule 6 - Environmental Requirements

Note to Tenderers: The RFT and this draft Contract set out certain requirements relating to environmental requirements. This Schedule will be developed during negotiations and included as this Schedule in the final Contract.

<u>MARPOL and other requirements:</u>	
Provide information regarding the systems or procedures in place on the Vessels to meet the requirements of MARPOL with regard to each of the following: Sewage discharge; Galley waste discharge; Other wastes; Incinerator emissions; Wash down water from main and heli-decks; and Bilge water:	
<u>Discharge of ballast water:</u>	
Provide information about your Vessels' operational and ballast water management procedures that minimise harmful micro-organisms risks:	
<u>Antifouling paint:</u>	
Types of antifouling paint used on the Vessels, and note that any application of such paint during the charter may need to be with non-TBT paint	
<u>Environmental training for officers and Contractor Personnel:</u>	
Details of environmental quality certification (if any) and details of accreditation party and contact details:	
Details of an environmental policy which includes induction and training in the Vessels' environmental management systems and equipment for officers and Contractor Personnel	
<u>Engine exhaust gas emissions:</u>	
As-installed engine specifications regarding exhaust emissions and information about any	

fitted emission control equipment such as catalytic converters:	
<u>Noise from engines, propeller(s) and steering gear:</u>	
Specifications for the types of propulsion and steering gear including bow and stern thrusters. Where available, noise and output-to-water should be included	
<u>Light from searchlights, running and deck lights:</u>	
Information about your Vessels' searchlights, running and deck lights and other external lighting to allow an assessment to be made of the likely effects of operation of lights on seabirds	
<u>Environmental performance (Non-MARPOL) - abnormal events:</u>	
Information regarding the systems or procedures in place on the Vessels to allow assessment of their Vessels' environmental performance relating to each of the following events: Fuel spillage; and Loss of equipment overboard:	
Facilities and procedures for containment and clean up of an oil spill:	

Schedule 7 - Quality Assurance Control Procedures

Note to Tenderers: This Schedule is provided as an example of the type of information the ATSB expects would be included as a part of the Quality Assurances and Control Procedures. The content of this Schedule will depend on the search methodology, equipment and quality assurance processes. Accordingly, this Schedule will be developed during negotiation and included as this Schedule in the final Contract.

7.1 Quality Assurance and Quality Control

The Contractor is responsible for ensuring that all Equipment is performing to manufacturers specifications. The Contractor shall evaluate data quality using all available systems.

The Contractor shall ensure that the technical specifications and quality standards and procedures as detailed in this Contract are complied with at all times and that all logs, test results, and other quality control information will be available to the Nominated Commonwealth Representative at all times.

Instrument tests and calibrations shall be in accordance with manufacturer's specifications and/or the Contractor's recommended procedures.

The Commonwealth may undertake a full technical audit of the Contractor's equipment and spares as specified in this Contract. Any such audit does not in any way affect the Contractor's responsibility and obligations under this Contract.

Throughout the Term the Contractor shall operate a Quality Assurance Control Procedure which conforms to the requirements of ISO-9000 and shall use the system to ensure that quality standards are maintained throughout provision of the Services.

The Contractor shall ensure that all operational logs and reports are legible and correctly annotated.

The Contractor will notify the Nominated Commonwealth Representative whenever the specifications contained within this document are not complied with.

The tolerances and specifications contained within this document may be relaxed by the Nominated Commonwealth Representative in consultation with the Commonwealth.

Where no Nominated Commonwealth Representative is available on board, information should be passed to the Client Representative to relay to the key Commonwealth person on-shore responsible for the Search Data.

7.2 General Quality Acceptance Criteria

Equipment must be maintained within specifications during the search by daily, and where appropriate, 'start-of-line' checks. In the case of deployed equipment such sound velocity equipment (SVP, CTD, or XBT) or sidescan sonar, checks prior to deployment must be carried out to prove functionality and acceptable data quality.

1. Instrument test results will be submitted to the Nominated Commonwealth Representative for approval.

2. Equipment must be in good working order.
3. If requested a list must be provided of on board Equipment spares for Contractor supplied Equipment detailed in the contract, e.g. sidescan, multibeam, and SBP modules, computers, transducers condition.
4. The condition of all Search devices, systems and components should be reported to the Nominated Commonwealth Representatives before mobilisation and Equipment not performing to the manufacturer's specifications or Contractor's satisfaction should be specifically declared.

7.3 Delivery requirements

On a daily basis or as agreed with the Nominated Commonwealth, the Contractor will deliver the following as per equipment type used:

Sidescan sonar

1. Raw sonar data in native format and navigation files;
2. XTF converted file with embedded processed navigation;
3. Survey log (documenting, at minimum, any changes made to the acquisition parameters or system during acquisition, instrument location (every 30 min), and sea conditions); and

Where processing is required,

4. Processed files with target detection report (incl. target image, dimension); and
5. Slant-range corrected mosaic of the searched area, if available.

Multibeam sonar

For details regarding multibeam data acquisition and deliverables, please refer to the Standard of Operation Procedures written by Geoscience Australia ([GA record 2013/33](#))

1. Raw data in native format (incl. SV profile, motion and position, raw bathymetry, raw backscatter per beam and in time series);
2. Raw water column data (separate files where applicable);
3. Continuous ship navigation ASCII file at 1 second interval (NMEA, GGA or GGL string);
4. Search log, ASCII text (incl. SVP cast info and multibeam line applied to, POSMV and acquisition offset changes);
5. Sound velocity profiles (ASCII *.csv); and
6. If available, processed data, including XYZ and time series-generated backscatter mosaic. Preferred format is Caris HIPS & SIPS project structure. If CARIS format not available, processed line SAIC GSF (maintain raw sonar file characteristics, i.e. filename, number of pings and start/stop time, raw backscatter (per beam and time-series), unsmoothed navigation, sign convention.

Sub-bottom profiler (SBP)

1. Raw data (whole trace, not just envelop data);

2. Search log (incl. frequency range, signal type, high and low cut filters, pulse length, trace window, recording parameters such as delay, sea condition);
3. SGY standard data (whole trace) with navigation incorporated in the SGY headers. The SGY data is compatible with Kingdom, Paradigm with minimal intervention and reprocessing.

If available, SBP will be run continuously in the Search Area and thus, synchronised with other acoustic systems.

Sample frequency will be set between 25 and 50 kHz depending on the frequency range of the system.

On completion of the search the Contractor must deliver a general report of the search operations and any outstanding raw or processed Search Data.

7.4 Requirements during Mobilisation and Search

During Mobilisation and during the Search Period the Contractor shall undertake the following and advise the Nominated Commonwealth Representative of the results.

7.4.1 Navigation

1. Global Positioning System (**GPS**) configuration dockside check and other positioning device, such as USBL that may be used for towed or autonomous vehicles (during mobilisation).
2. Antenna positions and location of any navigation reference points (during mobilisation) Sidescan sonar, Multi-Beam Echo Sounder (**MBES**), Sub Bottom Profiling (**SBP**) and configuration and offsets in relation to GPS and Motion Reference Unit (**MRU**) positions (shipboard or AUV mounted) and results from routine system checks (during mobilisation). Where MBES is used, this includes the patch test data or latest report and vessel configuration file (Caris *.hvf or equivalent plain text format), including sign convention used.
3. GPS and other navigation performance tests

The navigation systems must record to disk all basic GPS and USBL positioning data as an ASCII file and if directed by the Nominated Commonwealth Representative standard National Marine Electronics Association (NMEA 0183) format data may also be required.

GPS navigation coordinates will be provided at one second intervals throughout the Search. This requirement may be relaxed by the Nominated Commonwealth Representative after negotiation.

The following parameters shall be recorded at appropriate intervals as directed by the Nominated Commonwealth Representative:

1. Time, Coordinated Universal Time (**UTC**);
2. Raw positioning data for all systems and sensors;
3. Primary position;
4. Secondary position;
5. Number of GPS Space Vehicles (**SV's**) and their NMEA-0183 Satellite Identification (**ID's**) used with elevations;
6. GPS Horizontal Dilution of Precision (**HDOP**) and Positional (**3D**) Dilution of Precision (**PDOP**) values;

7. One Sigma error ellipse values or standard deviation of the least squares position for primary system;
8. One Sigma error ellipse values or standard deviation of the least squares position for secondary system;
9. USBL position where in used;
10. Gyro heading; and
11. Water depth.

7.5 Work Not to Continue

All logs, test results, and other quality control information will be available to the Nominated Commonwealth Representative at all times.

The Contractor will notify the Nominated Commonwealth Representative whenever the specifications contained within this document are not complied with. The Nominated Commonwealth Representative may then request the Contractor to cease the collection or recording of Search Data.

Under these circumstances the Commonwealth's obligation is limited to payment of Off Hire Fees or Standby Fees, as applicable.

Draft

Schedule 8 – Payment Schedule

Note to Tenderers: This Schedule will be developed during negotiations and included as this Schedule in the final Contract.

draft

Schedule 9 – Warranties and Acknowledgments

Part A Contractor's acknowledgments

- A1 The Contractor acknowledges that:
- (a) the Contractor does not rely on any representation or warranty made by or on behalf of the Commonwealth which is not set out in this Contract;
 - (b) it has had the opportunity to examine all information supplied by or on behalf of the Commonwealth in respect of the matters contemplated by this Contract ('**Information**'), to seek such independent advice as it considers necessary in respect of the Information and to make satisfactory enquiries of the Commonwealth and other relevant persons in respect of the Information;
 - (c) it has knowledge and experience in relation to business, Services and operational matters and is capable of evaluating the merits associated with entering into and performing its obligations under this Contract;
 - (d) no representation or warranty has been made by the Commonwealth or any person acting on behalf of the Commonwealth (including any minister, officer, director, employee, agent or adviser of any of them) in relation to:
 - (i) any principles or policies to be applied by any Governmental Authority with respect to the regulation of shipping generally and coastal shipping in particular;
 - (ii) the exercise of discretions under the *Navigation Act 2012 (Cth)* or any other legislation; (iii) the interpretation or application of existing or future provisions of the *Navigation Act 2012 (Cth)* or any other legislation;
 - (e) the Commonwealth may engage other parties to provide Services to it from time to time.

Part B Contractor's warranties

B.1. Capacity of Contractor

- (a) (**Full power and authority**): The Contractor has the legal right, capacity and full power and authority to enter into and carry out its obligations under this Contract and each transaction contemplated by this Contract including but not limited to the provision of Equipment to the Commonwealth for the purpose of this Contract.
- (b) (**No violation of any law**): The execution, delivery and performance of this Contract by the Contractor will not breach, contravene or violate any provision of:
 - (i) any law, regulation, order, rule or decree of any Governmental Authority;
 - (ii) the Contractor's company Constitution; or
 - (iii) any security agreement, deed, contract, undertaking or other instrument to which the Contractor is a party or which is binding on it, and does not and will not result in the creation or imposition of any security over any of its assets pursuant to the provisions of any such security agreement, deed, contract, undertaking or other instrument.

If, during a Search Period, a change to, or the introduction of, any law, regulation, order, rule or decree of any Governmental Authority results in a material variation to the costs

of performing the Services, the parties must negotiate in good faith a change to the Fees that reflects the variation to the costs of performing the Services.

B.2. Solvency

- (a) **(No liquidation)**: The Contractor is not in liquidation and no order, petition, application, proceeding, meeting or resolution has been made, presented, brought, called or passed for the purpose of winding up the Contractor.
- (b) **(No threatened liquidation)**: No proceedings have been threatened for the purpose of winding up the Contractor.
- (c) **(Controllers)**: No controllers (within the meaning of the *Corporations Law*) have possession or control of any of the Contractor's assets or undertaking for the purpose of enforcing a charge.
- (d) **(No threat of controllers)**: No chargee, secured party or other person is entitled to be in, or has threatened to take, possession or control of any of the Contractor's assets or undertaking for the purpose of enforcing a charge.
- (e) **(Administrators)**: No administrator (within the meaning of the *Corporations Law*) has been appointed to the Contractor.
- (f) **(No threat of administrators)**: No threats have been made to appoint an administrator to the Contractor.
- (g) **(No insolvency or inability to pay debts)**: The Contractor has not stopped payments to creditors generally, and the Contractor is not insolvent (within the meaning of the *Corporations Law*) or unable to pay its debts as and when they fall due.

B.3. Contractor's credentials

The Contractor has disclosed to the Commonwealth in writing details of:

- (a) any litigation, proceeding, enquiry, claim or allegation whatsoever, actual or threatened, against or involving the Contractor or any director or senior executive of the Contractor;
- (b) the existence of any breach or default or alleged breach or default of any agreement, order or award or other legal obligation, including under any legislation binding upon the Contractor or any director or senior executive of the Contractor; and
- (c) any matters relating to the commercial or financial capacity of the Contractor where such matters may materially affect the Contractor's ability to perform any of its obligations under this Contract or its creditworthiness, integrity, character or reputation.

B.4. Information provided by Contractor

All information (whether in any tender to the Commonwealth or otherwise) provided to the Commonwealth by the Contractor (or any of its officers, employees, agents or advisers) is true and correct in every material respect concerning any or all of:

- (a) the Contractor;
- (b) the Vessels;
- (c) the Equipment, including the Subsurface Equipment; and
- (d) any person concerned with the Contractor.

B.5. Date Code Warranty

In this warranty, the following definitions apply:

Calculations includes without limitation, the calculation, comparison, sequencing and any combination required, which accommodates same century and multi-century formulas and date values and date data interface values including leap year calculations and date data century recognition;

Product includes, but is not restricted to any software, hardware, firmware, micro code or system used under or in connection with this Contract.

The Contractor warrants that so far as the operation of any aspect of the Product(s) relies on, incorporates, or otherwise utilises a date code the Product(s) are able to consistently and correctly handle date information including but not limited to:

- (a) accepting correct date input;
- (b) providing correct date output; and
- (c) performing accurate calculations, sequences and comparisons based on dates or portions of dates.

B.6. Intellectual Property Warranty

In this warranty, 'Intellectual Property Rights' means all intellectual property rights including but not limited to the following rights:

- (a) patents, copyright, rights in circuit layouts, registered designs, trade marks and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).

The Contractor warrants that:

- (a) there are no existing restrictions or constraints on its right and authority to supply and/or operate the Equipment, data and information (including the Search Data) provided under this Contract to the Commonwealth; and
- (b) the exercise of the rights granted in this Contract do not infringe the Intellectual Property Rights of any third party.

B.7. Equipment, Data and Contractor Personnel

The Contractor warrants that:

- (a) the Equipment is fit for the purpose of, and in good functioning order for, performing the relevant Services required under this Contract;
- (b) the Search Data is fit for the purpose including for the Commonwealth to fulfil the Objectives;

- (c) the Contractor Personnel are properly equipped and trained to operate the equipment for the performance of the Services required under this Contract; and
- (d) the Vessels will be capable of performing the Services and able to remain in operation for the entire Search Period.

draft

Schedule 10 – Workplace Safety Guidelines on Drugs, Alcohol and Smoking

1. Safety Policy Statement

The Commonwealth and its employees will strive to promote and maintain an occupational environment, which protects the health, safety and welfare of all within the workplace.

It aims to provide all staff with access to information, expert advice and facilities to maintain good health and safe working practices.

2. Alcohol and Drug Policy

Alcohol and drugs affect people's performance as well as their safety and competency when working.

Australian Maritime regulations require marine staff to observe stringent controls on their blood alcohol levels at all times.

Recognising this and the fact that all personnel at sea have a duty to remain capable to deal with unforeseen emergencies at any time. The Commonwealth requires that the following rules apply as a minimum:

- No person embarked on the Vessels (or any other vessel used in performing the Services) shall be intoxicated, or under the influence of drugs not prescribed by a medical practitioner for the purpose of medical treatment.
- No person embarked on the Vessels, (or any other vessel used in performing the Services) while on duty, shall be under the influence of alcohol or drugs or recovering from the effects of intoxication.

If in the opinion of the Party Chief or Client Representative a staff member is unable to function safely due to the influence of drugs or alcohol, the individual will be directed to leave the work area. The Contractor must have suitable disciplinary procedures to deal with this eventuality.

3. Smoking Policy

The Commonwealth Government has a policy of a smoke free work place and supports the development of similar smoke free zones in public places.

For the purposes of this document smoking is banned on all areas of the Vessels (or any other vessel used in performing the Services) except those designated below:

- Cabins, except where a cabin is shared by a smoker and a non-smoker, in which case the cabin shall be non-smoking.
- A designated smoking lounge (if appropriate) that is not the primary lounge on the Vessel
- Such areas of the deck space as the Vessel Master designates
- Areas agreed by the Party Chief and Client Representative as is appropriate for the situation of the individual Vessel.

Schedule 11 – Confidentiality Deed

DEED dated 2014

BETWEEN THE COMMONWEALTH OF AUSTRALIA represented by the Australian Transport Safety Bureau ('the Commonwealth')

AND *[insert the name of the Contractor]* ('the Contractor')

AND *[insert name of the recipient of the Confidential Information]* ('the Recipient')

Drafting note: For the purpose of clause 6 the addresses of the parties should be set out above.

RECITALS

- A. Under an agreement dated *[insert date]*, between the Commonwealth and *[insert name of Contractor]* ('Contractor') the Contractor agreed to supply certain seafloor search services to localise, positively identify, map and obtain visual imaging of the wreckage of the Boeing 777 aircraft operated as Malaysia Airlines Flight 370 which is believed to have gone missing in the Indian Ocean on or around 8 March 2014 (MH370) to the Commonwealth ('Agreement').
- B. The parties wish to keep confidential all Confidential Information related to performance of the services provided under the Contract.
- C. In order to preserve the confidentiality of the Confidential Information, the parties request the Recipient, and the Recipient agrees, to enter into this Deed of Confidentiality ('Deed').

AGREEMENT

1. DEFINITIONS

'Business Day' means a day that is not a Saturday, Sunday or public holiday in the Australian Capital Territory.

'Confidential Information' means information belonging to, or provided to, or provided by, a party ('Disclosing Party') in accordance with the Contract that:

- (a) is by its nature confidential;
- (b) is designated by the Disclosing Party as confidential; or
- (c) the other party ('Recipient') knows or ought to know is confidential;

and in the case of the Commonwealth includes any Search Data (whether in the form of raw data or not), but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Deed or by any other unlawful means;
- (e) is in the possession of the Recipient without restriction in relation to disclosure before the date of receipt from the Disclosing Party; or
- (f) has been independently developed or acquired by the Recipient prior to this Deed.

'Purpose' means the provision to the Commonwealth of seafloor search services to localise, positively identify, map and obtain visual imaging of the wreckage of MH370 in accordance with the Contract.

'Search Data' means the data and information acquired, or to be acquired, in the performance of the Contract and provided to the Commonwealth in accordance with the Contract, and includes, according to the context, either or both:

- (a) the raw data as acquired and recording; and
- (b) the data and information as processed and analysed.

2. OBLIGATION OF CONFIDENTIALITY

- 2.1 The Recipient acknowledges that the Confidential Information constitutes confidential information to the relevant Disclosing Party.
- 2.2 The Recipient agrees to keep the Confidential Information secret at all times and agrees not to disclose or deal with the Confidential Information or any part of it nor to permit the Confidential Information or any part of it to come into the hands of any person, corporation or authority except in accordance with this Deed or in such other manner as may be duly authorised in writing beforehand by a Disclosing Party.
- 2.3 The obligations of the Recipient under this clause 2 will not be taken to have been breached to the extent that Confidential Information:
 - (a) is authorised or required by law, or otherwise, to be disclosed;
 - (b) is disclosed for use by any Minister of the Australian Government;
 - (c) without limiting the application of this clause 2.3, is disclosed in order to respond to a request or direction of a house of Parliament, or a request by a committee, of a Parliament of the Commonwealth, for information; or
 - (d) is in the public domain otherwise than due to a breach of this clause 2.

3. USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION

- 3.1 The Recipient is only authorised to use the Confidential Information for, or in relation to, the Purpose.
- 3.2 The Recipient must not disclose any Confidential Information without the prior written consent of a Disclosing Party.

4. SECURITY AND CONTROL

- 4.1 The Recipient will:
- (a) establish and maintain adequate security measures to safeguard the Confidential Information from access, copying, disclosure or use by unauthorised persons;
 - (b) keep the Confidential Information under the Recipient's effective control;
 - (c) maintain complete, accurate and up to date records of the Recipient's use, copying, destruction of copies and disclosure of the Confidential Information and immediately produce these records to the Disclosing Party as and when requested, and
 - (d) immediately notify the Disclosing Party in the event the Recipient becomes aware of any unauthorised use, access, copying or disclosure of any of the Confidential Information.
- 4.2 The Recipient must use its best endeavours to assist the Disclosing Party with any proceedings which it takes against any person relating to unauthorised use, copying or disclosure of all or any part of the Confidential Information disclosed to the Recipient as provided for in this Deed.

5. DELIVERY UP

- 5.1 The Recipient must, immediately upon request by the Disclosing Party deliver to that party all documents in its possession or control containing Confidential Information.
- 5.2 If at the time of such a request the Recipient is aware that documents containing the Confidential Information are beyond the Recipient's possession or control, then the Recipient must provide full details of where the documents containing the Confidential Information are, and the identity of the person who has control of them.

6. NOTICE

- 6.1 A notice or other communication which may be given to or served by a party under this Deed will be deemed to be given or served if it is in writing, signed by that party, is either delivered by hand, posted, sent by facsimile or email to the receiving party at the address set out below or such other address as may be notified in writing by the receiving party from time to time.

Commonwealth: the Australian Transport Safety Bureau

Physical Address: 68 Northbourne Avenue
Canberra, ACT 2601, Australia

Postal Address: *[insert]*

Fax: *[insert]*

Email: *[insert]*

Contractor:

[Insert physical address, postal address, facsimile and email address for the provision of notices].

Recipient:

[Insert physical address, postal address, facsimile and email address for the provision of notices].

6.2 A notice is deemed effective if:

- (a) delivered by hand, upon deliver to the relevant address;
- (b) delivered by post, within two Business Days if sent within Australia and within five Business Days if sent outside Australia;
- (c) if transmitted by facsimile, at the time when the machine on which the notice is sent reports in writing that the notice has been transmitted satisfactorily unless within eight hours of receipt during a Business Day, the recipient informs the sender that it has not received the entire notice; and
- (d) if sent by email, when the recipient's email system sends an acknowledgement of receipt,

but if such delivery, receipt or transmission is not on a Business Day or is after 5pm on a Business Day, the notice is taken to be received at 9am on the next Business Day.

7. APPLICABLE LAW

7.1 This Deed will be governed in accordance with the laws in the Australian Capital Territory.

8. SURVIVAL

8.1 This Deed will survive termination or expiry of any Contract between the Commonwealth and the Contractor or the Recipient.

Executed as a Deed

Signed Sealed and Delivered on behalf of)
 the Commonwealth of Australia represented)
 by **the Australian Transport Safety**)
Bureau by an authorised representative in)
 the presence of)

 Signature of witness

 Signature of Commonwealth Representative

 Name of witness (print)

Date

[Signature block for use where the Recipient is an individual]

Signed Sealed and Delivered by **[insert name of Recipient]**)
in the presence of)
)
)
)

Signature of witness

Signature of Recipient

Name of witness (print)

Date

[Signature block for use where the Recipient is body corporate – modify as appropriate]

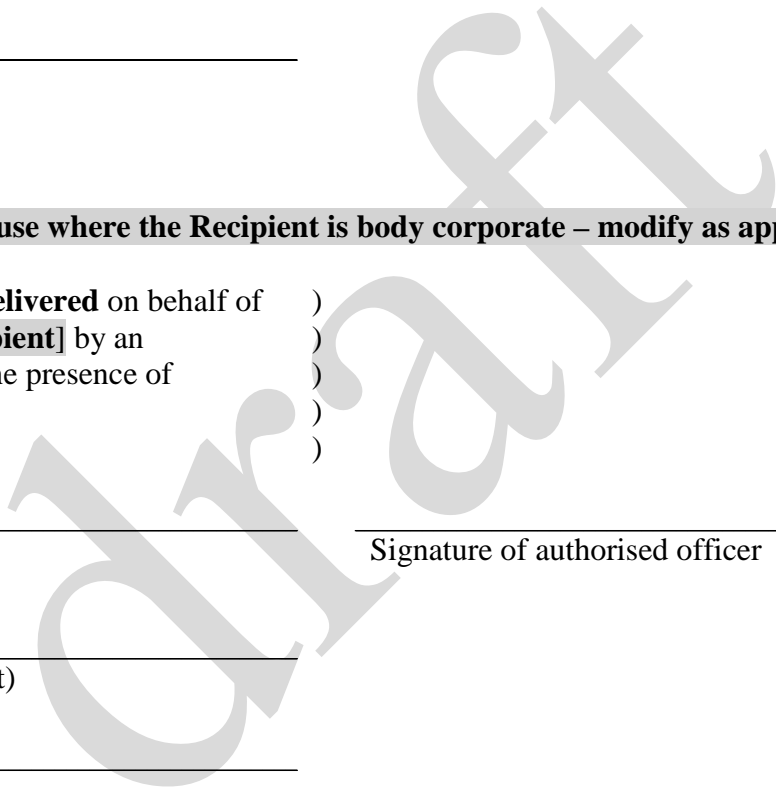
Signed Sealed and Delivered on behalf of)
[insert name of Recipient] by an)
authorised officer in the presence of)
)
)

Signature of witness

Signature of authorised officer

Name of witness (print)

Date



Schedule 12 – Change Proposal Template

[Drafting Note: If the proposed changes will vary the Services, the following form must be completed.]

This Change Proposal (including its attachments, if any) serves to vary the Contract in accordance with the terms set out below. Unless specifically stated in this Change Proposal, all terms and conditions of the Contract continue unaffected.

1.	Change Proposal number	
2.	Raised by	
3.	Details of change (use attachments if required)	
4.	Implementation date of Change Proposal	
5.	Effect on Services	
6.	Plan for implementing the change	
7.	Effect on Fees	
8.	Effect on SOW (if any)	
9.	Effect on Documentation	
10.	Other relevant matters (eg transitional impacts)	

Commonwealth

Name (print)

Position

Signature

Date

Contractor

Name (print)

Position

Signature

Date

Schedule 13 – Parent Company Guarantee

BETWEEN **THE COMMONWEALTH OF AUSTRALIA** represented by the **Australian Transport Safety Bureau** ('the **Commonwealth**') of 62 Northbourne Avenue
Canberra, ACT 2601

AND **[Insert the name of the Contractor]** ('the **Guarantor**') of **[Insert address for notices]**

RECITALS

- A. The Commonwealth requires the contractor to provide certain services, under the annexed contract (**Contract**).
- B. **[Insert name of Contractor]** (**Contractor**) has agreed to provide the services under the Contract.
- C. The Guarantor agrees to provide the guarantees and indemnities appearing in this deed.

AGREEMENT

- 1. Unless defined in this deed, or the context or subject matter otherwise requires, words and expressions in this deed which have a defined meaning in the Contract have the same meaning in this deed.
- 2. The Guarantor guarantees to the Commonwealth the performance of the obligations undertaken by the Contractor under the Contract on the conditions set out in this deed.
- 3. If the Contractor (unless relieved from the performance of the Contract by the Commonwealth expressly or by statute or by a decision of a tribunal or competent jurisdiction) fails to execute and perform its obligations under the Contract, the Guarantor will, if required to do so by the Commonwealth, complete or cause to be completed the obligations set out in, and in accordance with the conditions of, the Contract. If the Contractor commits any breach of its obligations, and such breach is not remedied by the Guarantor under this deed, the Guarantor must indemnify the Commonwealth against Losses directly or indirectly incurred by reason of that default.
- 4. The Guarantor will not be discharged or released or excused from this deed by an arrangement made between the Contractor and the Commonwealth with or without consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by the Contractor or by any forbearance whether as to payment, time, performance or otherwise. This guarantee by the Guarantor to assume the obligations of the Contractor will continue in force and effect until completion of all the Contractor's obligations under the Contract or until the completion of the undertakings of this deed by the Guarantor.
- 5. The undertakings of the Guarantor under this deed will not exceed the obligations of the Contractor under the Contract.
- 6. For the purpose of this deed, where an obligation of the Contractor under the Contract has not been performed, the Contractor will be taken to have failed to perform that obligation

notwithstanding that the Contractor has been dissolved or is subject to external administration procedures under the *Corporations Act 2001* (Cth) or any other law.

7. This guarantee is a continuing guarantee to the Commonwealth until the obligations and liabilities of the Contractor under the Contract in all respects have been performed, observed and discharged.
8. The Guarantor must pay, or immediately on demand reimburse the Commonwealth for the amount of all losses, liabilities, costs, expenses, stamp duty and GST payable in connection with this deed and in connection with preserving or exercising its rights under this deed. GST means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
9. The Guarantor agrees, if directed by the Commonwealth, to:
 - a. a novation of the Commonwealth's rights, title, interest and obligations under this deed; or
 - b. an assignment of the Commonwealth's rights under this deed,(as determined at the sole discretion of the Commonwealth and notified in writing to the Guarantor), to another organisation nominated by the Commonwealth.
10. The Guarantor must not assign, transfer or otherwise deal with its rights, interests or obligations under this deed without the Commonwealth's prior written consent.
11. This deed is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.
12. The following notice arrangements apply:
 - a. notice or other communication which may be given to or served on the Guarantor under this deed will be deemed to have been duly given or served if it is in writing, signed on behalf of the Commonwealth and is either delivered by hand, posted or a copy transmitted electronically to the Guarantor or its agent at any registered office of the Guarantor or posted to the Guarantor's address set out above or such other address as is notified in writing to the Commonwealth from time to time;
 - b. a notice or other communication which may be given to or served on the Commonwealth under this deed will be deemed to have been duly given or served if it is in writing, signed by or on behalf of the Guarantor and is either delivered by hand, posted or a copy transmitted electronically to the Commonwealth at the address set out above or such other address as is notified in writing to the Guarantor from time to time;
 - c. a notice sent by post will be deemed to have been given at the time when, in due course of transmission, it would have been delivered at the address to which it is sent; and
 - d. a notice sent by facsimile transmission or transmitted electronically will be deemed to have been given when the machine on which the notice is sent reports that the notice has been transmitted satisfactorily.
13. Unless the context otherwise requires, terms used in this deed have the same meaning as in the Contract.

EXECUTED as a deed.

Signed Sealed and Delivered on behalf of)
the Commonwealth of Australia represented)
by **the Australian Transport Safety**)
Bureau by an authorised representative in)
the presence of)

Signature of witness

Signature of Commonwealth Representative

Name of witness (print)

Date

[Execution block where Guarantor is a company within the meaning of the Corporations Act.]

Executed as a deed by ***[Insert name of Guarantor]*** in accordance with section 127 of the Corporations Act 2001

Signature of director

← _____ ←
Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary
(print)

Date

Schedule 14 – KPIs

Note to Tenderers: This Schedule will be developed during negotiations and included as this Schedule in the final Contract.

draft

Signing Page

Signed as an Agreement:

SIGNED on behalf of the Commonwealth of
Australia represented by the **Australian**
Transport Safety Bureau by an authorised
representative in the presence of;

Signature of witness

Signature of Commonwealth representative

Name of witness (print)

Name of signatory (print)

Date

[Drafting note: Select the appropriate execution block for the Contractor and delete all execution blocks that are not relevant.]

[Use this signature block if the Contractor is a company]

Executed by **[Name of company]**

Signature of director

← _____ ←
Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Date

[Use this signature block if the Contractor is a trust]

Executed by **[Name of company]** in its own capacity and in its capacity as trustee of the **[insert name of trust]**

Signature of director



Signature of director/company secretary
(Please delete as applicable)



Name of director (print)

Name of director/company secretary (print)

Date

[Use this signature block if the Contractor is an individual]

Signed by **[name of signatory]** in the presence of

Signature of witness



Name of signatory



Name of witness (print)

Date

