



# **Ambulance Service of New South Wales**

## **CONTRACT AGREEMENT 0800903**

**Between**

**Health Administration Corporation** for and on behalf of the  
Ambulance Service of New South Wales

and

**Royal Flying Doctor Service of Australia (South Eastern  
Section)**

### **Fixed Wing Air Ambulance Services Agreement**

|                    |                                       |
|--------------------|---------------------------------------|
| Commencement Date: | 1 January 2012                        |
| Completion Date:   | 31 December 2021                      |
| Extension Options: | 1 January 2022 to 31<br>December 2023 |

**30 November 2009**

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## **Fixed Wing Air Ambulance Services Agreement** between:

**Date:** 30 November 2009

**Parties:** **HEALTH ADMINISTRATION CORPORATION** a corporation solely constituted by section 9 of the Health Administration Act, 1982 (New South Wales) C/- The New South Wales Department of Health, 73 Miller Street, North Sydney, New South Wales (ABN 45 100 538 161) for and on behalf of the Ambulance Service of New South Wales.

**(“the Principal”)**

and

**ROYAL FLYING DOCTOR SERVICE OF AUSTRALIA (SOUTH EASTERN SECTION)** having its registered office at Airport, Broken Hill New South Wales (ABN 86 000 032 422).

**(“the Contractor”)**

### **Recitals**

The Director-General of the Department of Health has on behalf of the Crown the function of providing, conducting, operating and maintaining Ambulance Services under Section 67B of the Health Services Act. The Director-General has determined that the Health Administration Corporation may exercise functions in connection with Ambulance Services and the Ambulance Service of NSW has been established as an administrative unit of the Health Administration Corporation to provide such services. The Ambulance Service of NSW is responsible for emergency medical services under the Act.

On 19 December 2008 the Principal issued Request for Tender ("RFT") 0800903 and on 15 September 2009 the Principal issued RFT 0800903-BAFO for the Services. On 25 March and 14 October 2009 the Contractor submitted tenders in response to the RFTs to the Principal ("Contractor's Tender").

The parties have agreed that the Contractor will provide the Services on the terms and conditions set out in this Agreement.

### **Operative Clauses**

#### **1. Definitions**

In this Agreement the following words or expressions will, unless the context otherwise requires, have the following meanings:

- 1.1 “**AAS**” means the Air Ambulance Service of NSW;
- 1.2 "**Act**" means the *Health Services Act 1997* (NSW);

- 1.3 "**Aeromedical Attendants**" means the flight crew supplied by the Principal, including medical, nursing, ambulance and support staff, but excludes the Flight Crew;
- 1.4 "**Air Navigation Regulations**" means any regulations made under the *Air Navigation Act 1920* (Cth);
- 1.5 "**Aircraft**" means the Contractor's aircraft made available to the Principal under this Agreement in accordance with the Specifications;
- 1.6 "**Airservices Australia**" means the statutory authority established under the *Air Services Act 1995* (Cth);
- 1.7 "**Annexure**" means an annexure to this Agreement;
- 1.8 "**ASNSW**" means the Ambulance Service of NSW, being an Administrative unit of the Health Administration Corporation, established under Section 9 of the Health Administration Act;
- 1.9 "**Business Day**" means any day from Monday to Friday except any day gazetted in New South Wales as a public holiday, and any other day nominated by the Principal;
- 1.10 "**Business Hours**" means 9:00 am to 5:00 pm on any Business Day;
- 1.11 "**CASA**" means the Civil Aviation Safety Authority or its successors;
- 1.12 "**Chief Pilot**" means the person appointed in accordance with Part 82 of the Civil Aviation Orders from time to time by the Contractor to manage, co-ordinate and oversee all pilots hired or employed by the Contractor;
- 1.13 "**Civil Aviation Orders**" means orders issued by CASA under the Civil Aviation Regulations, as amended from time to time;
- 1.14 "**Civil Aviation Regulations**" means any regulations made under the *Civil Aviation Act 1988* (Cth), as amended from time to time;
- 1.15 "**Commencement Date**" means the time and date for the commencement of the Services as specified in **Item 2 of Schedule 1**;
- 1.16 "**Commencement Guarantee**" means a bank guarantee for the sum set out in **Item 5 of Schedule 1** from a bank acceptable to the Principal and substantially in the form of **Schedule 5**, guaranteeing the commencement of the provision of the Services on the Commencement Date;
- 1.17 "**Confidential Information**" means:
- (a) the terms of this Agreement;
  - (b) all information relating to the internal management, structure, personnel, policies, strategies, clients, suppliers or affairs of either party;
  - (c) all information comprised in or relating to any Intellectual Property Rights of either party;

- (d) all information relating to the financial position or reputation of either party and in particular, any information relating to the assets or liabilities of either party or any other matter that does or may affect the financial position or reputation of either party;
  - (e) any report prepared by either party or generated under this Agreement; and
  - (f) any other information which has been disclosed to or learned by either party under or in connection with this Agreement or in the performance of the Services but excludes any such information which:
    - (1) is generally available in the public domain, otherwise than as a result of an unauthorised disclosure or a breach of confidence; or
    - (2) is acquired by either party from a third party (other than a representative of either party) in circumstances which do not import an obligation of confidence; or
    - (3) is brought into existence independently by either party without access to Confidential Information or otherwise in connection with this Agreement; or
    - (4) is subject to disclosure requirements by Law or the Principal's procedures and policies.
- 1.18 "**Contract Manager**" means such person from time to time nominated in writing by a party in accordance with **clause 44**;
- 1.19 "**Contractor's Contract Manager**" means such person from time to time nominated in writing by the Contractor in accordance with **clause 44**;
- 1.20 "**Contractor's Progress**" means the Contractor's compliance with its obligations under this Agreement as measured by its adherence to the IMP contained in **Schedule 7**;
- 1.21 "**Contractor's Site**" means the site of the Facilities utilised by the Contractor for the purposes of this Agreement and such other site as advised by the Contractor from time to time;
- 1.22 "**CRR**" means the contract readiness review process prior to the Commencement Date as specified in the IRP;
- 1.23 "**CRR Certification Form**" means the form provided by the Principal (in hard copy) to the Contractor in accordance with **Schedule 6** which will be used to certify that the Contractor has passed the CRR;
- 1.24 "**Depart**" or "**Departure**" means from the moment at which the Aircraft first moves for the purpose of taking-off to undertake each Flight Sector of a Flight Plan;



- 1.25 "**Engineering Survey**" means a survey containing matters including but not limited to, an aircraft's accident and damage history, maintenance history, manufacture and version data and time since overhaul data;
- 1.26 "**Estimated Completion Time**" means the time indicated for the completion of the last Flight Sector in a Flight Plan;
- 1.27 "**ETD**" means the time a Flight Plan requires an Aircraft to Depart;
- 1.28 "**Execution Date**" means the date specified in **Item 1 of Schedule 1**;
- 1.29 "**Facilities**" or "**Facility**" means the facilities provided by the Principal to the Contractor in accordance with the Specifications;
- 1.30 "**Fees**" means the fees payable for the Services, which includes the Standing Charge and the Flying Hours Charge;
- 1.31 "**Flight Crew**" means the pilots, and any other flight crew, provided by the Contractor, excluding the Aeromedical Attendants. However, the Flight Crew shall be extended to include the flight nurse in circumstances where the Aircraft is to be ferried;
- 1.32 "**Flight Plan**" means a Plan issued by the Principal to the Contractor specifying the flight requirements to be carried out by the Contractor and information provided to Airservices Australia in relation to the intended flight of an Aircraft;
- 1.33 "**Flight Route**" means one or more Flight Sectors to be undertaken by the Aircraft during a flight;
- 1.34 "**Flight Sector**" or "**Sector**" means a non-stop flight between two Suitable Landing Areas;
- 1.35 "**Flying Hours**" means the time calculated based on "wheels off to wheels on" as recorded on the Aircraft hours meter (including pro-rata thereof to the nearest six (6) minutes to the decimal of 0.1 of an hour);
- 1.36 "**Flying Hours Charge**" means the variable monthly charge based on flying hours of the Aircraft and the HFR as calculated in accordance with **Schedule 2** and adjusted in accordance with **Schedule 3**;
- 1.37 "**Force Majeure**" means an act of God, fire, lightning, explosion, flood, subsidence, insurrection or civil disorder, or military operations, acts or omissions of any government or government department, authority or agency (whether legislative, executive or administrative) an inability to obtain or delay in obtaining any government or quasi-government approvals, consents, permits, licences or authorities, industrial disputes (not involving Staff) and any other cause outside of the control of the party seeking to rely on this clause, specifically excluding any event (which would otherwise be a Force Majeure event in accordance with this Agreement) that is significantly contributed to or caused by the affected party's action or inaction;

- 1.38 **"Full Details"** means details of:
- (a) the nature of the breach or offence or alleged breach or offence;
  - (b) any conviction recorded or adverse finding made in respect of the breach or offence;
  - (c) any penalty or Plans imposed by a court, tribunal, commission or board in respect of the breach or offence and the maximum penalty that could have been imposed under applicable industrial instruments and Law;
  - (d) the name of the court, tribunal, commission or board, the State or Territory in which the proceeding or prosecution is brought, the date on which the proceeding or prosecution was commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, commission or board;
  - (e) the name of the entity against which the finding or conviction was made or the proceeding or prosecution was initiated; and
  - (f) further information about any of the above, if required by the Principal;
- 1.39 **"Further Term"** means the extended period of this Agreement set out in **Item 4** of **Schedule 1** as granted by the Principal in accordance with **clause 3.2**;
- 1.40 **"GST"** has the meaning set out in the *A New Tax System (Goods and Services Tax) Act 1999*;
- 1.41 **"HFR"** means the charge per flying hour calculated in accordance with **Schedule 2** and adjusted in accordance with **Schedule 3**;
- 1.42 **"IMP"** means the implementation management plan contained in **Schedule 7**;
- 1.43 **"Information Privacy Principles or IPP"** means the information contained in the Information Privacy Principles set out under sections 8 to 19 of the *Privacy and Personal Information Act 1988 (NSW)*;
- 1.44 **"Insolvency Event"** means the happening of any of these events:
- (a) an application is made to a court for an order, or an order is made, that the Contractor be wound up; or
  - (b) an application is made to a court to appoint a liquidator or provisional liquidator to the Contractor, or one of them is appointed; or
  - (c) the directors of the Contractor resolve that the Contractor is insolvent or likely to be/become insolvent; or
  - (d) an administrator is appointed to the Contractor under Part 5.3A of the *Corporations Act 2001 (Clth)*; or

- (e) except to reconstruct or amalgamate while solvent on terms approved by the Principal, the Contractor enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or
- (f) the Contractor resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, or is otherwise wound up or dissolved, except to reconstruct or amalgamate while solvent on terms approved by the Principal; or
- (g) the Contractor is or states that it is unable to pay its debts as and when they fall due; or
- (h) a receiver is appointed to any of the assets of the Contractor; or
- (i) as a result of the operation of section 459F(1) of the Corporations Act, the Contractor is taken to have failed to comply with a statutory demand; or
- (j) the Contractor is or makes a statement from which it may be reasonably deduced by the Principal that Contractor is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act; or
- (k) the Contractor becomes insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event; or
- (l) anything analogous or having a substantially similar effect to any of the events specified above happens to the Contractor under the law of any applicable jurisdiction;

1.45 **“Intellectual Property”** means:

- (a) inventions and discoveries, whether or not registered or registrable as patents including developments or improvements of equipment, products, technology, processes, business processes, methodologies, methods or techniques;
- (b) designs (whether or not registered or registrable);
- (c) copyright (including future copyright) in all literary works (including computer software), artistic works, musical works, dramatic works, subject matter other than works, and any other works or subject matter in which copyright subsist or may in the future subsist and includes neighbouring rights and other rights contained in the *Copyright Act 1968*;
- (d) trade marks (whether registered or unregistered);
- (e) rights under the Circuit Layouts Act 1989;

- (f) rights under the *Plant Breeders Rights Act 1994*;
  - (g) confidential information and trade secrets;
  - (h) know-how;
  - (i) all other rights defined in Article 2 of the World Intellectual Property Organisation Convention;
  - (j) and all other intangible or industrial property rights and all statutory and common law rights and remedies in relation thereto; and
  - (k) rights of renewal and extension of those rights in paragraphs (a) to (j) which are capable of registration.
- 1.46 "IRP" means the implementation review programme to be complied with by the Contractor as set out in **Schedule 6**;
- 1.47 "IRR" means the intermediate readiness review process prior to the CRR as specified in the IRP;
- 1.48 "**IRR Certification Form**" means the form provided by the Principal (in hard copy) in accordance with **Schedule 6** which will be used to certify that the Contractor has passed the IRR;
- 1.49 "**Law**" means Commonwealth, New South Wales or local government legislation including regulations, by-laws or other subordinate legislation, judicial, administrative or regulatory decrees or judgements and includes all relevant standards and any amendments, modifications or re-enactments;
- 1.50 "**MEL**" means minimum equipment list;
- 1.51 "**MMSC**" means the minimum monthly standing charge payable by the Principal to the Contractor in accordance with **Schedule 2** and adjusted in accordance with **Schedule 3**;
- 1.52 "**MOU**" means the Memorandum of Understanding between the Principal and Ambulance Victoria;
- 1.53 "**Non-Compliance Notice**" means a notice issued by the Principal to the Contractor for the purposes of **clause 35.2**;
- 1.54 "**Performance Guarantee**" means an irrevocable bank guarantee for the sum set out in **Item 6 of Schedule 1** from a bank approved by the Principal and substantially in the form of **Schedule 5**;
- 1.55 "**Performance Measures**" means the measures of compliance by the Contractor with its obligations under this Agreement as specified in **Schedule 4**;
- 1.56 "**Performance Payment**" means the performance payment (if any) payable by the Principal to the Contractor in accordance with **Schedule 4**;

- 1.57 **"Personal Information"** means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
- 1.58 **"Principal's Contract Manager"** means such person(s) appointed by the Principal in accordance with **clause 44** to be the representative of the Principal for the purposes of this Agreement;
- 1.59 **"Principal's Mark"** means the name and each and every trade mark or logo or insignia (whether registered or not) of, or used by, the Principal from time to time;
- 1.60 **"PRR"** means the preliminary readiness review process as specified in the IRP;
- 1.61 **"Review Date"** means the time at which the HFR and Standing Charge are reviewed in accordance with **Schedule 3**;
- 1.62 **"Schedule"** means a schedule to this Agreement;
- 1.63 **"Services"** means the services to be provided by the Contractor under this Agreement including, without limitation, the services provided under **clauses 7, 9, 10 and 11**;
- 1.64 **"Services Term"** means the time period set out in **Item 3 of Schedule 1** for the delivery of the Services, commencing on the Commencement Date;
- 1.65 **"Specifications"** means the specifications set out in **Schedule 8** of this Agreement;
- 1.66 **"Staff"** means the Contractor's employees, officers, representatives, nominees, Contractors or sub-contractors;
- 1.67 **"Standard/s"** means all Laws, the Specifications and other matters as specified in the documents contained in this Agreement and the Schedules as amended from time to time;
- 1.68 **"Standing Charge"** means the MMSC calculated and payable as set out in **Schedule 2** and adjusted in accordance with **Schedule 3** plus any Performance Payment;
- 1.69 **"Statutory Requirements"** means the laws relating to the performance of this Agreement or the lawful requirements of any authority with respect to the performance of this Agreement;
- 1.70 **"Suitable Landing Areas"** means a place at which the Aircraft may take off and land in accordance with the Civil Aviation Regulations as set out in the Specifications;
- 1.71 **"Term"** means the duration of this Agreement from the Execution Date until the end of the Services Term or the Further Term as determined in accordance with **clause 3** and **Schedule 1**;

- 1.72 **"Transition Plan"** means the plan for the seamless transition of the Services, upon the expiry of this Agreement or termination of this Agreement for any reason, as agreed by the Principal.

## 2. Interpretation

2.1 In this Agreement, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) a reference to an agreement or another instrument includes any variation of either of them;
- (c) a reference to an annexure or schedule is a reference to an annexure or schedule to this Agreement and a reference to this Agreement includes a recital, annexure or schedule;
- (d) a reference to a clause is a reference to a clause of this Agreement;
- (e) a reference to a paragraph is a reference to a paragraph in the Schedule in which the reference appears;
- (f) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (g) the word person includes a firm, body corporate, unincorporated association or an authority;
- (h) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (i) a reference to a party includes a reference to the representatives of that party;
- (j) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated to be exclusive of that day;
- (k) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) a reference to a month is to a calendar month and a reference to a year is to a financial year commencing on 1 July and ending on 30 June of each calendar year;
- (m) an agreement representation or warranty on the part or in favour of two or more persons binds, or is for the benefit of, them jointly and severally;
- (n) all dollar amounts are expressed in Australian dollars;

- (o) if the day on which the payment of money falls due is not a Business Day, the due date will be deemed to be the next Business Day;
- (p) a reference to the word "contract" means this Agreement; and
- (q) a reference to a third person is a reference to a person who is not a party to this Agreement.

2.2 Headings are included for convenience and do not affect the interpretation of this Agreement.

2.3 Time will be of the essence in respect of each obligation of the Contractor.

2.4 The Contractor will make sufficient information available to Staff to ensure compliance with this Agreement.

### 3. Term

3.1 This Agreement will commence on the Execution Date and continue for the Term unless terminated or extended in accordance with the provisions of this Agreement.

3.2 The Principal may, at its sole discretion, extend the Term by a Further Term on the same terms and conditions contained in this Agreement by giving the Contractor notice in writing no later than six (6) months prior to the end of the Term.

### 4. Provision of Services and Commencement Guarantee

4.1 The Contractor must perform the Services in accordance with the Standards and the reasonable directions of the Principal. The Contractor agrees to provide the Services from the Commencement Date upon and subject to the terms and conditions of this Agreement. The Contractor is in breach of this Agreement if the Contractor is unable to provide the Services from the Commencement Date in whole or in part, as determined by the Principal.

4.2 It is a condition of this Agreement that, within five (5) Business Days of the Execution Date, the Contractor procures the execution and delivery to the Principal of the Commencement Guarantee. If the Contractor fails to comply with this **clause 4.2**, the Principal may immediately terminate this Agreement by notice in writing to the Contractor. The Contractor is not entitled to any expenses, loss or damage resulting or in any way connected to the Principal's termination of this Agreement in accordance with this **clause 4.2**.

- 4.3 (a) If the Contractor fails to perform any pre-Commencement Date obligation in accordance with this Agreement, the Contractor will be liable to the Principal, for any loss or damage that is suffered by the Principal as a result of the Contractor's failure;
- (b) Notwithstanding **clause 4.3(a)**, if the Contractor fails to meet any pre-Commencement Date obligations under this Agreement, the Principal may at its sole discretion:-

- (1) provide such additional time as the Principal in its discretion deems appropriate for the Contractor to meet its pre-Commencement Date obligations, in which case the Contractor will continue to be liable for any loss or damage which the Principal suffers or incurs for the extent of such additional time as provided under **clause 4.3(a)**; or
- (2) immediately terminate this Agreement by notifying the Contractor in writing to that effect. The Principal will not be liable for any losses or expenses incurred by the Contractor as a result of such termination.

4.4 The Commencement Guarantee will be exercisable by the Principal to enable the Principal to recover any losses, costs or expenses incurred:

- (a) if the Contractor fails:
  - (1) to pass any stage of the IRP as required under **clause 5, Schedule 6** or the Specifications; or
  - (2) to perform any of its pre-Commencement Date obligations within the time specified for performance of that (or those) obligations;
- (b) on the happening of any event set out in **clause 35.4(b) or 35.4(c)**; or
- (c) if the Principal terminates this Agreement due to any default by the Contractor.

4.5 If the Contractor has, in the opinion of the Principal, satisfactorily commenced provision of the Services on the Commencement Date, the Principal will, within five (5) Business Days certify in writing that the Contractor has satisfactorily commenced providing the Services and release the Commencement Guarantee by notifying the relevant bank that the Commencement Guarantee is no longer required.

4.6 The Services must be provided in accordance with the following documents in the following order of priority:

- (a) the terms and conditions of this Agreement;
- (b) the Schedules and Annexures; and
- (c) the Principal's requirements for provision of the Services as stated in RFT 0800903 and RFT 0800903-BAFO.

## 5. Implementation Review Programme

5.1 It is a fundamental condition of this Agreement that the Contractor complies with both the requirements of the IRP set out in **Schedule 6** and the requirements of the IMP set out in **Schedule 7** to the satisfaction of the Principal.



- 5.2 As part of the IRP, the Principal will determine (subject to the process set out in **Schedule 6**) whether:
- (a) the Contractor has complied with the Specifications and all of **Schedule 6**; and
  - (b) the Contractor's Progress complies with the IMP.
- 5.3 Failure by the Contractor to meet the requirements of **clauses 5.1, 5.2** and/or **Schedule 6** will result in the Principal being entitled to give notice of termination for default under **clause 39.1**, without the need to give the Contractor a further notice requiring the fault to be remedied.
- 5.4 The Principal may draw down from the Commencement Guarantee any amount which the Principal expends or incurs as a result of the failure of the Contractor to comply with the Specifications, all of **Schedule 6** and/or the IMP.

## **6. Performance Guarantee**

- 6.1 Within five (5) Business Days of receipt of the CRR Certification Form, certified by the Principal in accordance with the CRR and **Schedule 6**, the Contractor must deliver to the Principal the Performance Guarantee. The Contractor's entitlement to payment of the Fees in accordance with **clause 17** is subject to the Contractor's compliance with this **clause 6.1**.
- 6.2 The Performance Guarantee will be exercisable by the Principal to enable the Principal to recover any losses, costs or expenses incurred:
- (a) if the Principal is required to carry out the Services or obligations of the Contractor, or is required to procure the services of a third party to carry out the Services or obligations of the Contractor, or any similar services, including but not limited to helicopter services, as a result of a failure by the Contractor to comply with its obligations for any reason, subject to any offset from the Fees in accordance with **Schedule 4**;
  - (b) if the Contractor breaches **clause 18.1**;
  - (c) if the Contractor's Air Operator's Certificate is cancelled or becomes invalid for any reason;
  - (d) on the happening of any event set out in **clause 35.4**; or
  - (e) if the Principal terminates this Agreement due to any default by the Contractor.
- 6.3 For the avoidance of doubt, the Principal is entitled to draw immediately upon the Performance Guarantee for any breach by the Contractor of its obligations under this Agreement which do not amount to a breach of **Schedule 4**. If the Contractor breaches its obligations under **Schedule 4**, the Principal must first seek to deduct the relevant losses, costs or expenses from the Fees before drawing on the Performance Guarantee, in accordance with **Schedule 4**.

6.4 Provided the Contractor is not in default under this Agreement at the time of the expiry or termination of this Agreement by the Principal (as applicable), the Principal will release the Performance Guarantee either:

- (a) within twenty (20) Business Days from the date that the Contractor completes its obligations under the Transition Plan in accordance with **clause 22.9** to the reasonable satisfaction of the Principal; or
- (b) on the expiry or termination of this Agreement,

whichever is the latter, by notifying the relevant bank that the Performance Guarantee is no longer required. The Contractor's obligations under **clause 22.9** are continuing obligations and survive termination of this Agreement.

## 7. Aircraft

7.1 The Contractor must ensure the Aircraft:

- (a) are available for use by the Principal in accordance with the Specifications and the requirements of this Agreement; and
- (b) meet the Aircraft specifications set out in the Specifications.

7.2 Subject to **clause 7.3** the Contractor must not use alternative or replacement Aircraft without the prior written consent of the Principal.

7.3 If at any time the Contractor is unable to fulfil its obligations under **clause 7.1** from its own fleet of Aircraft, the Contractor must, at no extra cost or expense to the Principal, and without any delay in the provision of the Services, provide a suitable replacement Aircraft to the reasonable satisfaction of the Principal. If a replacement Aircraft is required, the Contractor must, prior to the use of the replacement Aircraft, notify the Principal in writing of the registration and serial or construction number of each replacement Aircraft, the type of Aircraft and the expected duration of use of such replacement Aircraft.

7.4 At any time should the Principal require the Aircraft be available for use by the Principal above the requirements contained in the Specifications, the Contractor will provide such additional Aircraft and Flight Crew if the Contractor has the resources available. Any HFR and additional pilot labour expenses incurred as a result of the use of additional Aircraft above the requirements contained in the Specifications may be claimed by the Contractor from the Principal at the same rates set out in **Schedule 2** or pro-rata thereof (assuming a ten (10) hour working day for additional pilots).

7.5 If items of Aircraft equipment or components are unserviceable on a regular basis and in the Principal's opinion this affects the Contractor's capacity to carry out the normal tasks required under this Agreement, the Principal may direct the Contractor to take reasonable remedial action. The Contractor must promptly comply with any such direction to the satisfaction of the Principal, including a direction to replace the Aircraft in question.

- 7.6 The Contractor may, with the prior, written consent of the Principal (which will not be unreasonably withheld) make modifications to any Aircraft. The cost of any modifications in accordance with this **clause 7.6** (if any) must be borne solely by the Contractor. If there is any resulting decrease in the costs to the Contractor in providing the Services, the relevant MMSC and HFR will be accordingly reduced. The Contractor must provide all necessary information to the satisfaction of the Principal evidencing the effect on the costs of the Contractor as a result of any modifications under this **clause 7.6**.
- 7.7 The Principal may require the Contractor to make modifications to any Aircraft at any time. The cost of any such modification will be borne solely by the Principal, unless the modification is required to meet the Specifications. If there is any resulting decrease or increase in the costs to the Contractor in providing the Services, the relevant MMSC and HFR will be accordingly reduced or increased (as applicable). The Contractor must provide all necessary information to the satisfaction of the Principal evidencing the effect on the costs of the Contractor as a result of any modifications under this **clause 7.7**.
- 7.8 Notwithstanding anything to the contrary in this Agreement, the Contractor is solely liable for any increase in costs relating to implementing any modifications or increased costs in providing the Services which are required or which are a result of additions to or deletions from the MEL, or any modifications to the Aircraft required by Law or to meet the Specifications.
- 7.9 The Contractor will provide to the Principal aircraft specifications and an Engineering Survey in relation to any Aircraft intended to be leased or purchased by the Contractor after the Execution Date and intended to be used for the provision of the Services, prior to leasing or purchasing any such Aircraft.
- 7.10 The Contractor must not, without the prior written consent of the Principal:
- (a) use the Aircraft for any purpose or function other than to enable the Contractor to fulfil its duties under this Agreement including complying with **clause 7.13**;
  - (b) use the Aircraft in any way which might cause loss or damage to the reputation of the Principal or its officers; or
  - (c) permit smoking, alcohol consumption or illicit drug consumption in the Aircraft or on the Facility at any time whether or not the Aircraft is in use.
- 7.11 (a) The Principal reserves the right to approve or reject any aircraft intended to be leased or purchased by the Contractor under **clauses 7.3** or **7.9** to provide the Services if, in the opinion of the Principal, the aircraft is unsuitable to provide the Services.
- (b) The Principal may consider the aircraft unsuitable to provide the Services due to matters including but not limited to:

- (1) the aircraft's history; or
  - (2) the aircraft's lack of compatibility with other Aircraft to be used for the provision of the Services; or
  - (3) the aircraft's non-conformance with the Specifications.
- (c) The Principal must notify the Contractor of its approval or rejection of the proposed aircraft within thirty-six (36) hours of receiving the Engineering Survey in relation to that aircraft. The Principal's approval of any proposed aircraft will not be unreasonably withheld.
- 7.12 If the Principal rejects the aircraft under **clause 7.11**, the Contractor will not lease or purchase the aircraft for the provision of the Services.
- 7.13 The Contractor will ensure that each Aircraft is capable of operating 24 hours per day throughout the State of New South Wales and the other Australian States and Territories including their offshore areas of responsibility if directed by the Principal.

## **8. MOU**

- 8.1 The Contractor acknowledges that the MOU provides for access, by the Principal to a third party, to the Aircraft in accordance with the MOU.
- 8.2 For the purposes of providing a third party with access to the Aircraft under the MOU, the Principal may request the Contractor to provide a specific Aircraft. The Contractor may either:
- (a) grant the Principal's request subject to any conditions in its absolute discretion; or
  - (b) subject to **clause 8.3**, refuse the Principal's request if the Contractor reasonably determines that the specific Aircraft is unavailable.
- 8.3 If the Contractor refuses the Principal's request for a specific Aircraft under **clause 8.2(b)**, the Contractor will provide an alternative Aircraft if available.
- 8.4 The Performance Measures will not apply to any Aircraft and Flight Crew, if applicable, provided by the Contractor under the MOU.

## **9. Pilots and Staff**

- 9.1 The Contractor must:
- (a) provide a sufficient number of pilots to meet the Aircraft availability requirements set out in the Specifications; and
  - (b) ensure that:

- (1) subject to the Principal otherwise providing its written consent, all its pilots and Staff providing the Services hold all necessary qualifications and permits, including those required by Law, and are sufficiently experienced in accordance with the Specifications;
- (2) all its pilots and Staff providing the Services are adequately trained and competent to carry out their duties in relation to the provision of the Services; and
- (3) each pilot to be used to provide the Services has undergone a satisfactory national police check and a register of same is maintained as required by the Principal or by Law.

- 9.2 The Contractor will advise the Principal in writing of the experience and qualifications of the proposed pilot. The Principal reserves the right, at its absolute discretion, to decline the appointment of any pilot proposed to perform duties under this Agreement. The Contractor acknowledges that certain pilots may prove unsuitable for duties under this Agreement and the Principal may require the Contractor to replace such pilot/s as soon possible, and in any event, within one (1) month of the Principal's request. The Principal may require the immediate removal of any pilot from the provision of the Services at any time in writing if that pilot has engaged or is implicated in any unsafe, illegal, immoral or undesirable activities which could affect the reputation of the Principal or the suitability of the pilot to undertake the Services.
- 9.3 The Contractor must control and maintain a register of the total flying activities (whether that flying activity is undertaken for the Principal or otherwise) and related duties of all pilots during any period they are providing Services under this Agreement.
- 9.4 Notwithstanding the rostered finishing time of each pilot's shift, the Principal may require a pilot commencing duty to extend any period of duty to the maximum period of time permitted by Law. The Principal will pay the Contractor for such additional period of duty (including all additional duty hours arising from any consequential roster shift change) at a pro-rata hourly rate (assuming an eight (8) hour working day) based on the daily rate set out in **Schedule 2**.
- 9.5 Notwithstanding that any Contractor's Staff may from time to time be under the control or direction of the Principal, no relationship of employer and employee exists between the Principal and the Contractor's Staff. Notwithstanding any such control or direction, the Contractor:
- (a) is solely liable in respect of the death of or injury to any of its Staff while engaged in or about the execution of any work pursuant to this Agreement; and
  - (b) indemnifies the Principal and must keep the Principal indemnified in respect of any demand, proceedings, costs, expenses or claim made or threatened against the Principal concerning such death or injury.

- 9.6 The Contractor is not and will not represent itself, and ensure that its Staff do not represent themselves, as being employees or agents of the Principal.
- 9.7 The Contractor is responsible for and liable to pay all wages, salaries, benefits, entitlements and payments and all income, payroll, sales and similar taxes and workers' compensation insurances in relation to its Staff however arising under this Agreement or by Law.

## **10. Aircraft Maintenance and Servicing**

- 10.1 The Contractor must ensure the Aircraft are maintained and serviced in accordance with the requirements set out in the Specifications.
- 10.2 The Contractor will be solely responsible, at its expense, for the maintenance and servicing of the Aircraft in accordance with the Specifications.

## **11. Aircraft & Facilities Cleaning**

- 11.1 The Contractor must ensure the Aircraft and any Facilities are cleaned in accordance with the requirements set out in the Specifications.
- 11.2 If the Contractor fails to maintain the Aircraft and Facilities to suitable standards of cleanliness and tidiness, as determined by the Principal in its sole discretion, the Principal reserves the right to employ a third party to clean the Aircraft and Facilities. The cost of third party cleaning of the Aircraft and Facilities will be deducted from the following month's Standing Charge payable to the Contractor.

## **12. Third Party Services**

In addition to the circumstances specified in **clause 35.5** and **Schedule 4**, if the Contractor fails to provide the Services in accordance with this Agreement at any-time, the Principal will be entitled to obtain a suitable alternative aircraft and associated services from a third party. The Contractor will be responsible for all direct and indirect costs in relation to the procurement and delivery of such third party services.

## **13. Facilities**

- 13.1 From the Commencement Date, the Principal will provide the Contractor with Facilities to facilitate the provision of the Services under this Agreement in accordance with the Specifications.
- 13.2 Subject to **clause 13.4**, the Principal will provide the Facilities to the Contractor at no cost to the Contractor.
- 13.3 The Principal will be responsible for the following costs:
- (a) taxes or levies in relation to the Facilities, including all rates and land taxes;

- (b) the Principal's share of utility costs for the Facilities (including phone and heating costs); and
  - (c) maintenance costs of the Facilities.
- 13.4 The Contractor will be responsible for all costs (other than those specified in **clause 13.3**) associated with providing the Services in the Facilities such as office equipment, provision of network services and communication costs.
- 13.5 The Contractor warrants that it will take all due care in the maintenance, security, use and safety of the Facilities and will comply with any direction from the Principal in relation to access and use of the Facilities.
- 13.6 The Principal will supply to the Contractor, upon the Contractor's written request, certificates of currency in relation to any insurance covering any Facilities supplied by the Principal pursuant to this Agreement.

#### **14. Staff Responsibility**

- 14.1 The medical care of the Principal's patients is the responsibility of the Principal and its staff.
- 14.2 The Contractor must ensure that Staff provided by the Contractor:
- (a) render all assistance required of them by the Principal, the Aeromedical Attendants or other Principal's staff;
  - (b) do not interfere with the medical care of the Principal's patients unless the Principal or its staff request the Contractor's Staff to assist the Principal or the Principal's staff;
  - (c) at all times while on duty act in a courteous and co-operative manner towards members of the Principal and persons being transported on behalf of the Principal; and
  - (d) abide by all the Principal's policies that are published from time to time and as provided by the Principal to the Contractor.

#### **15. Training**

- 15.1 The Contractor must, at the Principal's expense, provide medical crew training as set out in the Specifications.
- 15.2 The costs of providing medical crew training under **clause 15.1** may be claimed by the Contractor from the Principal at the rates contained in **Schedule 2**, or as adjusted under **Schedule 3**.

## 16. Flight Plans

- 16.1 The Principal will provide the Contractor with Flight Plans specifying, without limitation, the ETD/s, Aircraft configuration requirements, Flight Route and any additional instructions the Principal deems necessary. The Principal may alter the Flight Route at any time. It is the Contractor's sole responsibility to produce Flight Plans to enable it to comply with the Flight Plan, including any variations to the Flight Plan.
- 16.2 A Flight Route normally involves flights between Suitable Landing Areas listed in the Specifications. The Contractor must ensure that the Aircraft are able and available to fly to and land and take off at any Suitable Landing Area in accordance with the Specifications. Not less than five (5) Business Days prior to the Commencement Date, the Contractor must institute a system of pre-lodged Flight Plans for these standard Flight Sectors. The Contractor's Flight Plans must take into account the Principal's routine requirement for unscheduled in-flight diversion.
- 16.3 The Contractor must be capable of receiving a Flight Plan from the Principal via facsimile or as otherwise agreed by the Principal. In the case of a facsimile, a Flight Plan will be deemed to be received by the Contractor on the production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the Contractor.
- 16.4 The Contractor must follow the instructions of the Principal as soon as possible after the Flight Plan is communicated to the Contractor and, subject to **clause 16.5** and any amendment to the Flight Route in accordance with **clause 16.1**, must not deviate from the requested Flight Plan.
- 16.5 The Contractor will not be in breach of, or be deemed to be in breach of, the provisions of **clause 16.2** because the Aircraft is unable to land, or take off from, a Suitable Landing Area specified in the Flight Plan if:
- (a) in the opinion of the pilot in command, the weather precludes safe operations; or
  - (b) the Suitable Landing Area is temporarily closed or unable to be used for any reason.
- 16.6 The Contractor must immediately advise the Principal if an Aircraft is unable to land at a specified Suitable Landing Area and, within five (5) Business Days, notify the Principal in writing of the reasons for such inability to land.

## 17. Fees and Invoices

- 17.1 (a) Subject to **clause 6.1**, in consideration of the Contractor providing the Services, the Principal will pay, and the Contractor agrees to accept, payment of the Fees from the Commencement Date.



- (b) The Fees will include:
  - (1) the Flying Hours Charge; and
  - (2) the Standing Charge.

17.2 The Contractor must submit an invoice to the Principal for the Fees:

- (a) monthly in arrears, not more than five (5) Business Days after the end of the relevant month;
- (b) in a form containing information (including required information set out in **Schedule 2**) which clearly shows the basis for raising the invoice as relating to the provision of the Services; and
- (c) in a format as required by the Principal and notified to the Contractor from time to time.

17.3 Subject to **clause 42** the Principal must pay the amount stated in each invoice within twenty (20) Business Days after the date it is received by the Principal, less any amounts the Principal is entitled to deduct in accordance with this Agreement.

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## 18. Performance

- 18.1 The Contractor will ensure that it meets the Performance Measures at all times. For the avoidance of doubt, any Aircraft that has been issued with Flight Plans will not be found in breach of the Performance Measures solely because that Aircraft is unavailable for another Flight Plan.
- 18.2 The Contractor will not be in breach of **clause 18.1** where it satisfies the Principal that its failure to comply with **clause 18.1** is a result of:
- (a) delays caused solely by the Principal;
  - (b) Aircraft being prevented from take-off due to meteorological conditions being below those set out in the Civil Aviation Regulations or Air Navigation Regulations for operation of the Aircraft; or
  - (c) the destination Suitable Landing Area being closed to air traffic.
- 18.3 Within five (5) Business Days of occurrence, the Contractor will notify the Principal in writing of the reason for any delay or incompleteness of a Flight Plan, other than those delays or interruptions caused solely by the Principal or its agents.

## 19. Records

- 19.1 The Contractor will keep accurate and complete records, reports, documents and other evidence relating to the performance of the Services or the performance of any other obligation of the Contractor under this Agreement.
- 19.2 The Contractor must make available to the Principal and its agents or representatives all materials and documents described in **clause 19.1** at the offices of the Contractor, at all reasonable times, for inspection, audit or reproduction by the Principal or its agents or representatives for at least seven (7) years from the date of payment for those Services, or such longer period as is reasonably required by the Principal. The Principal will bear the expenses incurred by it in performing such inspection and audit.
- 19.3
- (a) The Principal is bound by the requirements of the *State Records Act 1998* (NSW) as amended from time to time in relation to the creation, management and retention of government records.
  - (b) The Principal is also bound by the *Freedom of Information Act 1989* (NSW) in relation to the provision of public access to government records.
  - (c) The Contractor agrees to comply with any applicable law, as well as any policy or reasonable direction of the Principal relating to records management and archival requirements.

- (d) Without limiting the scope of **clause 19.3(a)**, the Contractor will co-operate with and assist the Principal to comply with any obligations imposed by the *State Records Act 1998* (NSW) as amended from time to time and any other laws that may impose obligations in relation to record keeping, access to, retention and disposal of records in relation to this Agreement and the Services.

19.4 Unless specified to the contrary in this Agreement, the Contractor must at all times maintain full, true, and up-to-date accounts and records relating to this Agreement. Such accounts and records must:

- (a) include appropriate audit trails for transactions performed;
- (b) record all receipts and expenses in relation to the Services performed for and products supplied to the Principal in accordance with this Agreement;
- (c) be kept in a manner that permits them to be conveniently and properly audited;
- (d) be drawn in accordance with any applicable Australian accounting standards;
- (e) in the case of any Services performed on a time and materials or cost plus basis, identify the time spent by the Contractor's employees, officers, sub-contractors or agents in performing those Services; and
- (f) be made available to the Principal or the Principal's nominee as required for the performance of the Contractor's obligations under this Agreement.

## **20. Audit**

20.1 The Principal may inspect, or cause to be inspected by a third party, any of the Aircraft, including any equipment and/or observe or cause to be observed, the Services at any reasonable time.

20.2 If, in the reasonable opinion of the Principal or the third party:

- (a) an Aircraft does not comply with this Agreement; or
- (b) an Aircraft or any of the equipment is in an unsatisfactory or unsafe condition; or
- (c) any of the equipment is not safely secured or fitted to an Aircraft; or
- (d) the Services are not being carried out with due diligence and care or in a safe, competent, skilful or professional manner,

the Contractor will at its expense, upon receipt of written notice from the Principal, modify, repair or replace the Aircraft and/or any of the equipment and/or modify or remedy the Services (as the case may be) to the reasonable satisfaction of the Principal.

- 20.3 The Principal may conduct periodic aviation safety audits in accordance with this **clause 20** on the Contractor's operation and if applicable, parent company, which will involve the Contractor's management, operations and maintenance systems.

## 21. Variation

- 21.1 The Principal will notify the Contractor if it wishes to vary the Services, and the parties will negotiate in good faith with a view to determine:
- (a) the scope of the variation to the Services;
  - (b) any variation to the Fees;
  - (c) any additional costs (not included in the Fees), which the parties agree the Contractor must incur to provide the Services or fulfil its obligations under this Agreement in accordance with the variation; and
  - (d) the period of time which the Contractor reasonably requires to adjust its procedures and resources to accommodate the agreed variation.
- 21.2 After the parties have reached agreement in relation to the proposed variation in accordance with **clause 21.1** the Principal will give the Contractor written notice of the date by which the variation is to be implemented by the Contractor. The Services, and the obligations of the Contractor under this Agreement, will not be varied until the date specified and agreed in such notice.
- 21.3 If there is any dispute between the parties as to:
- (a) the matters set out in **clause 21.1**; or
  - (b) the reasonableness of the period specified by the Principal in the notice in **clause 21.2**,

such dispute will be determined in accordance with **clause 42**.

## 22. General Obligations of the Contractor

- 22.1 The Contractor must, and must ensure that its Staff, strictly comply with all relevant Laws, official directives, orders, or judicial administrative or regulatory decrees or judgements in relation to any act, matter or thing to be done pursuant to this Agreement.
- 22.2 The Aircraft operations on behalf of the Principal are deemed to be "Aerial Work" category (or its equivalent), and the Contractor must ensure that such operations are conducted in accordance with Laws applicable to Air Service Operations Aerial Work (as defined in the Civil Aviation Regulations) unless otherwise authorised in writing by the Principal. The Contractor will hold an Air Operator's Certificate under the Aerial Work category in accordance with the Civil Aviation Regulations throughout the Term.

- 22.3 The Contractor will perform the Services in a good and workmanlike manner, in accordance with the highest professional standards, with a level of care, skill, knowledge and judgement required or reasonably expected of persons by best industry practice and in strict accordance with the terms of this Agreement. The Aircraft operations will be conducted with due regard to patient comfort and operational efficiency and in a manner which reduces as much as possible the cost to the Principal.
- 22.4 The Contractor will not engage in any activity which would in any way adversely affect or impair the Contractor's ability to provide the Services in an independent and reliable manner.
- 22.5 The Contractor will not engage in, nor allow any of its Staff to engage in, behaviour of any kind which attracts media attention of a nature which is detrimental to the interests of the Principal.
- 22.6 The Contractor must not place or allow any passenger other than staff, agents or invitees of the Principal on Aircraft except with the prior approval of the Principal. This **clause 22.6** does not preclude the carriage of authorised persons within the meaning of the Air Navigation Regulations nor additional pilots carried for the purposes of checking or training.
- 22.7 The Contractor is responsible for all matters relating to its Staff. Any delays, costs or expenses caused as a result of any industrial dispute involving Staff will be the responsibility of the Contractor and will not be deemed an event of Force Majeure.
- 22.8 The Contractor must:
- (a) use appropriate equipment to carry out the Services (in the reasonable opinion of the Principal); and
  - (b) maintain the equipment used by the Contractor to provide the Services to the appropriate Standard (in the reasonable opinion of the Principal).
- 22.9 The Contractor must:
- (a) work cooperatively with the Principal if required in developing the Transition Plan; and
  - (b) fully comply with any Transition Plan provided to the Contractor by the Principal in accordance with the Specifications on expiry or termination of this Agreement for any reason.
- 22.10 The Contractor's obligations under **clause 22.9** are continuing obligations and survive termination of this Agreement.

## **23. Standards**

- 23.1 The Contractor must ensure that all work carried out in relation to the Services and all materials, equipment and parts used in performing the Services meet with all applicable Standards as amended from time to time.

- 23.2 If there is any disagreement between the parties in relation to the applicable Standards, the Contractor must meet and consult with the Principal to determine the appropriate Standards to be used. The Standards must be formulated in writing and signed by the Principal. Failing agreement between the parties, the matter will be resolved in accordance with **clause 42**.
- 23.3 To the extent there is any inconsistency between the Standards set out in this **clause 23** and the Standards set out in the Specifications, the Standards in the Specifications will prevail.

## **24. Quality Assurance**

- 24.1 The Contractor must demonstrate to the complete satisfaction of the Principal throughout the Term a commitment to adopt, undertake and apply a programme of total quality management.
- 24.2 The Contractor will provide copies of unaltered reports of internal audits conducted under its quality management system to the Principal within five (5) Business Days of completion.
- 24.3 The Contractor will provide the Principal with a schedule of internal audits for the first year at the Commencement Date and for each subsequent year prior to the commencement of that year.
- 24.4 The Contractor must, on request, provide the Principal with evidence of quality certifications applied for, pending, cancelled and held by the Contractor.
- 24.5 The Contractor must immediately notify the Principal if any of its quality certification applications are rejected or quality certifications are cancelled, lapse or are not renewed, and provide the Principal with detailed particulars of the facts and circumstances.

## **25. Occupational Health and Safety**

- 25.1 In carrying out the Services, the Contractor will:
- (a) abide by all statutory provisions in relation to occupational health and safety including as a minimum, but not limited to, the provisions of the *Occupational Health and Safety Act 2000* (NSW) and any regulation made under that Act; and any Code of Practice approved and issued pursuant to that Act and/or regulations made under that Act, regardless of the jurisdiction within which the Contractor is operating whilst performing the Services;
  - (b) comply at all times with the Principal's policies and procedures for occupational health and safety provided to the Contractor in accordance with **clause 14.2(d)** and the audits conducted in accordance with **clause 20**;

- (c) take all reasonable precautions for the health and safety of the general public and the personnel of the Principal and the Contractor engaged in performing the Services, and comply with such reasonable directions as the Principal's Contract Manager may from time to time give to the Contractor in relation to occupational health and safety;
- (d) promptly notify the Principal's Contract Manager of any accident involving death or injury to, or damage to, the property of any person;
- (e) furnish to the Principal's Contract Manager monthly reports of all incidents and accidents to all persons engaged in performing their duties in relation to the Services and accidents involving members of the public and preventative action taken to prevent re-occurrence; and
- (f) take prompt action to anticipate and avoid existing and future hazards associated with providing the Services.

25.2 The Contractor indemnifies and holds harmless the Principal and will keep the Principal indemnified in respect of all loss, damages, claims, costs, expenses, judgements, compensation and legal expenses which may be incurred by the Principal in relation to any claim for personal injury or death or loss of or damage to property made against the Principal by or on behalf of any person arising from, directly or indirectly, of any breach by the Contractor of its obligations under **clause 25.1**.

## **26. Notifications**

26.1 The Contractor will notify the Principal's Contract Manager immediately after becoming aware of any incident or event that the Contractor is legally required to report and any other serious incident that may impact on the Services. The Contractor may notify the Principal's Contract Manager verbally.

26.2 The notification must include a description of the incident or event and a summary of any proposed rectification, if applicable.

## **27. Reports**

27.1 The Contractor will:

- (a) provide to the Principal a written report immediately after notifying the Principal of a notifiable event under **clause 26.1**;
- (b) provide to the Principal, on the fifth Business Day following the end of each month a report of any accidents, all incident reports prepared and all operational and maintenance irregularities and/or delays which occurred during that month ("**Monthly Report**") in accordance with **clause 27.2**;

- (c) prepare and furnish to the Principal as and when and in the manner reasonably required by the Principal from time to time, such reports relating to the whole or any part of the Services or any other matter the subject of this Agreement;
- (d) promptly, and not later than five (5) Business Days after receipt, provide to the Principal a copy of any written report by any regulatory authority or statutory authority concerning operational, maintenance engineering or financial management practices relating to the conduct of operations covered by this Agreement including CASA audit surveillance reports; and
- (e) provide the Principal with any additional reports required by the Principal in accordance with the Schedules.

For the avoidance of doubt, reports must be issued under **clauses 27.1(a) and 27.1(d)** in relation to any incidents, irregularities or reports regarding the Contractor's Sites or any other facility used by the Contractor for any purpose (including purposes not related to this Agreement) and any aircraft used or operated by the Contractor for any purpose whatsoever (including purposes not related to this Agreement).

27.2 The Monthly Report must include the following items:

- (a) details and names of pilots who have completed training during the previous one month period;
- (b) details and names of pilots scheduled for training during the following one month period;
- (c) details of vacant pilot shifts by day and shift;
- (d) Flying Hours and pro-rata thereof flown on each Aircraft, with total hours broken down into operations, maintenance and training;
- (e) details by Aircraft registration of all scheduled and unscheduled maintenance involving in excess of two (2) hours, where the Aircraft was unavailable for operations, with a copy of maintenance releases for each Aircraft;
- (f) details including estimated down-time for scheduled maintenance planned for the following period and reasons for any defects;
- (g) copies with an explanation of any non-compliance notices issued by the CASA during the period;
- (h) copies with an explanation of aircraft survey reports issued by the CASA during the period;
- (i) copies with an explanation of any major defect reports issued by either the CASA or the maintenance organisation during the period;



- (j) details with an explanation for any dispensations granted during the period by the CASA against the provisions of the Civil Aviation Regulations or Civil Aviation Orders;
- (k) copies of any airworthiness directives and service bulletins issued by the CASA or any other appropriate authorities, or the Aircraft manufacturer;
- (l) a record for each flight of each Aircraft, summarised for the calendar month and cumulative for the financial year to date;
- (m) a summary of the usage of Special Type Certificate for Maximum All Up Weight; and
- (n) the following data:
  - (1) Aircraft availability on each Aircraft, calculated by hour and pro-rata thereof, by day;
  - (2) engine hours total and for the month;
  - (3) Flying Hours total and for the month;
  - (4) total cycles for each engine, and for the month;
  - (5) Aircraft turnout time;
  - (6) turnout delays and reasons;
  - (7) Aircraft response time;
  - (8) Aircraft scene time for each leg;
  - (9) Aircraft scene time delays and reasons;
  - (10) Aircraft mission time;
  - (11) Aircraft turnaround time; and
  - (12) turnaround delays and reasons.

27.3 All reports produced pursuant to this Agreement are Confidential Information.

## **28. Representations, Warranties and Undertakings**

28.1 The Contractor represents and warrants to the Principal that:

- (a) the Services will be rendered with due care and skill and in a proper and professional manner and any materials supplied in connection with the Services be fit for the purpose for which they are supplied;
- (b) it has the level of skill, qualifications, knowledge, resources and ability which may be expected of a person experienced in providing the Services;

- (c) it has the power, licences, consents and authorisations required or necessary to enter into and observe its obligations under this Agreement;
- (d) it has no professional or contractual obligations which, in the reasonable opinion of the Principal, currently or during the Term of the Agreement, conflict with or adversely affect the performance of the Services; and
- (e) the Contractor, or its relevant sub-contractor, is the beneficial owner of or has the right to use all property held by the Contractor (or its sub-contractor on its behalf, or on behalf of its sub-contractor), which in any way, directly or indirectly, affects the Contractor's ability to perform its obligations under this Agreement.

28.2 The Contractor acknowledges that it has fully acquainted itself with all conditions affecting the provision of the Services. Any failure by the Contractor to acquaint itself with any condition affecting the provision of the Services will not relieve the Contractor from responsibility for performing the Services.

28.3 The representations and warranties referred to in **clause 28.1** will be continuous and ongoing.

## **29. Indemnity**

29.1 Subject to **clause 29.3**, but notwithstanding any other provision of this Agreement and any request or suggestion given by any Principal's Staff, all matters relating to the performance of the Services and the operation of the Aircraft are the sole responsibility of the Contractor and the Contractor will indemnify the Principal and keep the Principal indemnified at all times from and against all losses, damages, injuries (including death), claims, demands, proceedings or expenses whatsoever including any legal expenses on a full indemnity basis directly or indirectly arising from or in connection with the performance of the Services or the operation of the Aircraft including:

- (a) all costs and expenses of installing, using, owning, repairing, operating and maintaining the Aircraft;
- (b) all liabilities, claims, proceedings, penalties (whether civil or criminal) fines or other sanctions, judgements, costs and expenses whatsoever which may at any time be made or claimed by any person directly or indirectly in any manner relating to the Aircraft including, in respect of any damage to property or death of or injury to any person;
- (c) the loss, destruction of or damage to all or any part of the Aircraft for any reason within the control of the Contractor;
- (d) any failure or default to fully comply with any obligation expressed or implied in this Agreement; and

- (e) any negligent or wilful act or omission of the Contractor or its Staff in the performance or non-performance of any of the Contractor's obligations under this Agreement.

29.2 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the Contractor and survives termination of this Agreement.

### **30. Insurance**

30.1 The Contractor warrants that it has workers' compensation insurance in accordance with applicable legislation for all the Contractor's employees. The Contractor must provide to the Principal evidence of such insurance satisfactory to the Principal on request from time to time.

30.2 The Contractor must throughout the Term effect and maintain at its expense policies of insurance against such risks as a prudent and cautious businessperson conducting the Services would insure, including without limitation, the liabilities referred to in this **clause 30.2**.

These policies must include, without limiting the generality of the foregoing:-

- (a) a policy of public liability insurance (including, without limitation, cover for liability under the *Civil Aviation (Carrier's Liability) Act 1959*) indemnifying the Principal against all sums for which the Contractor or the Principal may become liable by way of damages or which the parties could be called upon to pay in respect of any accident, death, bodily injury or damage to or loss of property. Such insurance must name the Contractor as the insured and must note the interest of the Principal under the policy, and must have a limit of not less than
  - of any such accident, death or bodily injury or damage to or loss of property;
- (b) hull "all risks" insurance on the Aircraft and any substitute Aircraft at all times whilst in flight, taxiing or on the ground;

- (c) hangarkeeper's liability insurance section 2 for replacement value to cover instances where the Aircraft is located at the Contractor's and/or its sub-contractor's maintenance facility.
- 30.3 All policies of insurance must be effected with an insurer approved by the Principal, which approval will not be unreasonably withheld.
- 30.4 If the Contractor ceases to be subject to the *Civil Aviation (Carriers' Liability) Act 1959*, the Contractor must immediately effect insurance policies, at the Contractor's own cost, covering the risks specific in the *Civil Aviation (Carrier's Liability) Act 1959* with a minimum cover of .
- 30.5 The Contractor must lodge with the Principal on the date of the CRR a letter from the relevant insurance company addressed to the Principal certifying that the Contractor is the holder of an insurance policy required to be held in accordance with **clause 30.2** and stating the value of indemnity, the conditions of such insurance and the name of the insurer.
- 30.6 The Contractor must not make any admission of liability to any person on behalf of the Principal. In the event that the Contractor makes any such admission, the Contractor warrants that it will fully indemnify and hold harmless the Principal against all and any liability for loss, damages, claims, costs, demands, proceedings or expenses (including full legal expenses) which may be incurred as a result of such admission.
- 30.7 The Contractor will, when requested by the Principal's Contract Manager to do so, provide copies of any insurance policy effected by the Contractor pursuant to this Agreement or a certificate of currency with respect to that insurance policy.

## **31. Confidentiality**

- 31.1 Both parties:
- (a) acknowledge that the Confidential Information is confidential to each party, notwithstanding that some Confidential Information may have been developed by the Contractor for the Principal under this Agreement; and
  - (b) will at all times keep the Confidential Information confidential and protect and preserve the confidential nature of the Confidential Information.
- 31.2 Each party will not without the prior written consent of the other party:
- (a) make available, communicate or disclose any Confidential Information to any person other than as required for the performance of the Services or, for the purpose of complying with applicable Law or government policy; or
  - (b) use or allow its employees to use any of the Confidential Information for any purpose other than in relation to the performance of obligations under this Agreement.

- 31.3 The parties will:
- (a) ensure that any person to whom Confidential Information is made available, communicated or disclosed ("**Disclosee**") is at all times subject to and maintains the obligations of confidentiality contained in this **clause 31**; and
  - (b) immediately notify the other party in writing if any Disclosee discloses or is suspected of disclosing or intending to disclose any Confidential Information except as permitted by this Agreement.

## **32. Conflict of Interest**

- 32.1 The Contractor warrants that it and each of its Staff does not hold any office or possess any property, is not engaged in any business, trade or calling and does not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with or might appear to be created in conflict with its duties and interests under this Agreement.
- 32.2 The Contractor will immediately inform the Principal of any matter that may give rise to an actual or potential conflict of interest at any time during the Term.

## **33. Privacy**

- 33.1 During this Agreement, the Contractor must comply with its obligations under **Schedule 9** and any Statutory Requirements relating to privacy.
- 33.2 The Contractor must immediately notify the Principal when the Contractor becomes aware of or receives a complaint relating to a breach of this **clause 33** by its Staff or other persons.
- 33.3 The Contractor will indemnify the Principal in respect of any loss, liability or expense incurred and arising out of or in connection with the Contractor's breach of any obligations under or pursuant to this **clause 33**.
- 33.4 The Principal must give the Contractor fourteen days notice in writing of an intention to claim a liability, loss or expense in accordance with **clause 33.3** including in that notice an explanation of how that liability or expense was assessed and the Contractor's proposed share of that liability.
- 33.5 This **clause 33** will survive the termination or expiry of this Agreement for a period of six years.

## **34. Use of the Principal's Mark or Logo**

The Contractor will not use the Principal's Mark without first obtaining the approval in writing of the Principal and will ensure that its Staff do not wear any apparel labelled with the Principal's Mark without the prior written approval of the Principal.

### 35. Rights of the Principal

35.1 The Principal has a right of access to any and all of the Contractor's Sites, Aircraft and vehicles used for this Agreement for the purpose of undertaking various audits as required from time to time. The Principal will give reasonable notice (unless in an emergency or where urgent access is reasonably required) to the Contractor of its requirement for physical access to the Contractor's Sites and Aircraft at the time an audit is to be undertaken. Any failure by the Contractor to allow or facilitate access by the Principal to the Contractor's Sites and vehicles is a breach of this Agreement.

35.2 Without prejudice to any rights or remedies that accrue to the Principal under this Agreement or at Law or otherwise, if the Contractor:

- (a) fails to perform or comply with any of its obligations under this Agreement; or
- (b) in the reasonable opinion of the Principal, any of the Services performed by the Contractor otherwise constitute a breach of the Contractor's obligations under this Agreement,

the Principal may give a Non-Compliance Notice to the Contractor specifying the relevant failure or breach.

35.3 If the Principal gives a Non Compliance Notice under **clause 35.2**, the Contractor must:

- (a) deliver to the Principal within five (5) Business Days a detailed written corrective action plan indicating how the Contractor will ensure that the breach of or failure to perform or comply with any of its obligations specified in the Non-Compliance Notice will be corrected for the remainder of the Term; and
- (b) at its own cost and expense, promptly remedy or rectify such non-compliance or breach within five (5) Business Days of receipt of the Non-Compliance Notice.

35.4 If:

- (a) in the reasonable opinion of the Principal, the Contractor is not performing the Services in a safe manner; or
- (b) the Contractor suffers an Insolvency Event; or

- (c) the Principal issues a Non-Compliance Notice under **clause 35.2**, and the Contractor has failed to rectify the matters specified in that Non-Compliance Notice within five (5) Business Days of receipt,

then without prejudice to any rights or remedies that accrue to the Principal under this Agreement or at law or otherwise, the Principal has the right to, by notice to the Contractor, temporarily suspend any Services and/or to withhold or expend part or all of any Fees due or owing to the Contractor (in addition to any rights which the Principal may have in relation to draw on the Performance Guarantee) to rectify the relevant breach or non-compliance by the Contractor and offset such amounts from any Fees payable to the Contractor under this Agreement.

- 35.5 If the Principal suspends any Services under **clause 35.4**, the Principal may, at the Contractor's cost, obtain such Services from a third party for the duration of such suspension. The Principal may offset any additional costs incurred by the Principal under this **clause 35.5** from any Fees payable to the Contractor under this Agreement.
- 35.6 The Principal will not authorise resumption of the Services until the unsatisfactory performance by the Contractor has been corrected by the Contractor to the Principal's satisfaction.
- 35.7 In no event will any suspension under this **clause 35** be the basis for a claim by the Contractor against the Principal.
- 35.8 If the Principal exercises its rights under **clause 35.4** to withhold payments and the Contractor reasonably believes that it is able to complete the Services in strict accordance with this Agreement:
- (a) the parties will negotiate in good faith with a view to reaching agreement regarding the ability of the Contractor to perform the Services; and
- (b) if the parties are unable to reach agreement under **clause 35.8(a)**, the dispute will be resolved in accordance with **clause 42**.

## **36. Compliance with Laws, Standards and Codes**

- 36.1 The Contractor must, in performing its obligations under the Agreement, comply with:
- (a) all Statutory Requirements;
- (b) the codes, policies, and guidelines specified in **item 9** of **Schedule 1**;
- (c) all Standards in accordance with **clause 23** of this Agreement; and

- (d) where a particular Standard has been agreed between the Contractor and the Principal, and that Standard is revised, the Contractor must submit evidence of compliance with the revised Standard within a reasonable period of time.

### **37. Industrial Relations Issues**

- 37.1 The Contractor must immediately notify the Principal of any industrial relations issues that materially adversely affect or are likely to materially adversely affect the Contractor's or its Staff's performance under the Agreement.

### **38. Child Protection**

- 38.1 If the provision of the Services involves child-related employment, the Contractor must ensure that:
- (a) it complies with, and ensures that its sub-contractors comply with, the NSW Department of Commerce Code of Behaviour for the Protection of Children and other Vulnerable People, attached at **Schedule 10**;
  - (b) it complies with its obligations, and ensures that its sub-contractors comply with their obligations, as an employer under the *Child Protection (Prohibited Employment) Act 1998* ("Prohibited Employment Act") and the *Commission for Children and Young People Act 1998* ("Children and Young People Act").
- 38.2 Details of relevant obligations are contained in guidelines issued by the NSW Department of Education and Training, called "The Working With Children Check." The guidelines are available at [www.kids.nsw.gov.au](http://www.kids.nsw.gov.au).
- 38.3 Without affecting the obligations imposed by the Prohibited Employment Act and the Children and Young People Act:
- (a) if any work under the Agreement is "child-related employment" under the Prohibited Employment Act (employment of specified kinds that primarily involves direct contact with children where that contact is not directly supervised), the Contractor:
    - (1) must obtain, and ensure that its sub-contractors obtain, a prohibited person declaration from any person who is to perform the work; and
    - (2) must conduct, and ensure that its sub-contractors conduct, a working with children check on any person who is to perform the work.



- (b) if any work under the Agreement is “child-related employment” under the Children and Young People Act (any employment that involves direct contact with children where the contact is not directly supervised) the Contractor must conduct, and ensure that its sub-contractors conduct, a Working With Children Check on any person who is to perform the work.
- 38.4 The Contractor must not, and must ensure that its sub-contractors do not, engage any person who is a “prohibited person” under the Prohibited Employment Act (persons who have committed a serious sex offence within the meaning of that Act) to perform work under the Agreement that is “child-related employment” under that Act.
- 38.5 The Principal may require the immediate removal of a “prohibited person” or a person who is the subject of a child abuse allegation or investigation from performance of child-related employment under the Agreement.
- 38.6 If the Contractor does not comply with any requirement under this clause the Principal may terminate this Agreement for cause.

### **39. Termination**

- 39.1 If:
- (a) the Contractor fails to rectify a failure or non-compliance specified in a Non-Compliance Notice provided by the Principal in accordance with **clause 35.2** within five (5) Business Days of the Principal giving such notice or such greater time as is specified by the Principal in its notice;
  - (b) an Insolvency Event occurs in respect of the Contractor;
  - (c) the Contractor commits a breach of this Agreement which specifically entitles the Principal to terminate this Agreement, including but not limited to a breach of **Schedule 4**; or
  - (d) either party suffers an event of Force Majeure which continues for a period of twenty (20) Business Days or more,
- then the Principal may terminate this Agreement in whole or in part with immediate effect by giving written notice to the Contractor.
- 39.2 If the Contractor does not rectify a failure to perform or comply with this Agreement, then in addition to other remedies available to it, the Principal may take such action as is necessary to rectify such failure or non-compliance, at the expense of the Contractor.

- 39.3 On termination or expiry of this Agreement for whatever reason the Contractor will immediately surrender to the Principal all data, records and Confidential Information pertaining to the Services and the Principal will within five (5) Business Days pay the Contractor for Services satisfactorily performed up to the date of termination less any deductions made in accordance with **clauses 35.4 and 35.5**.
- 39.4 Termination of this Agreement for any reason does not affect:
- (a) any rights of either party against the other party which:
    - (1) arose prior to the time at which such termination occurred; or
    - (2) otherwise relates to or may arise at any future time from any breach or non-observance of obligations under this Agreement occurring prior to the termination; and
  - (b) the rights and obligations of the parties under this **clause 39.4** and **clauses 19.2, 29, 31 and 32**.
- 39.5 The Contractor will co-operate with and render all necessary assistance to the Principal (in the Principal's reasonable opinion) in the event that this Agreement is terminated to enable the Principal to take over the provision of the Services under this Agreement.

#### **40. Lease of Aircraft**

- 40.1 The Contractor must, as soon as practicable but no later than one (1) month after the PRR, do all things necessary, including execute all documents requested by the Principal, to enable the Principal to continue to use the Aircraft at all times during the Term, whether or not the Contractor is in breach of this Agreement or is otherwise unable to provide the Services.
- 40.2 The Contractor's obligations under **clause 40.1** includes the execution of leases, assignments and other documents over the Aircraft which will not come into effect unless an event referred to in **clause 39.1** occurs, or the Contractor fails to meet its obligations under **clause 18.1**.
- 40.3 The documents referred to in **clauses 40.1** and **40.2** will be held by the Principal for the Term and any extension of the Term.
- 40.4 The documents referred to in **clauses 40.1** and **40.2** must allow the Principal at its sole discretion, to assign or novate to a third party any or all of its rights acquired under such documents.

- 40.5 The Contractor must not assign, novate or transfer its interest in the Aircraft or encumber the Aircraft in any manner whatsoever (including without limitation entering into a finance lease) without the Principal's prior written consent. The Contractor must ensure that, if the Principal grants its consent to such encumbrance, transfer, assignment or novation, any assignee, transferee or chargee of the Aircraft has notice of, and takes its interest subject to, the Principal's rights in respect of the Aircraft secured in accordance with this **clause 40**.
- 40.6 Failure by the Contractor to comply with its obligations under **clause 40.1** within the specified time frame will result in the Principal being entitled to:
- (a) exercise its rights under the Commencement Guarantee to recover any losses, costs or expenses incurred by the Principal as a result of the Contractor's breach; and
  - (b) terminate this Agreement, in accordance with **clause 39.1(a)**, at the Principal's option.

#### **41. Sub-contracting**

- 41.1 The Contractor will not sub-contract any aspect of the Services except with the prior written consent of the Principal. Any sub-contracting without the prior written consent of the Principal is a breach of this Agreement.
- 41.2 The consent of the Principal to any proposed sub-contract by the Contractor may be granted, granted on conditions or withheld, and the Principal will have no obligation to the Contractor to grant consent or to give reasons for withholding its consent.
- 41.3 The Contractor will not be relieved of any of its liabilities or obligations under this Agreement by entering into any sub-contract and the Contractor will be liable to the Principal for the acts, defaults and neglects of any sub-contractor or any representative of that sub-contractor as fully as if they were the acts, defaults or neglects of the Contractor.
- 41.4 Notwithstanding any consent given by the Principal under **clause 41.2** the Contractor will be responsible for ensuring the suitability of a sub-contractor for the work proposed to be carried out and for ensuring that the work performed by the sub-contractor meets the requirements of this Agreement.
- 41.5 Prior to the commencement of any work under this Agreement by a sub-contractor, the Contractor will, if requested to do so by the Principal, obtain from the sub-contractor an executed deed of confidentiality in such form as the Principal from time to time requires.
- 41.6 The Contractor must ensure that each sub-contractor is aware of all the terms and conditions of this Agreement relevant to the sub-contractor's part in the supply of the Services.

- 41.7 The Contractor will pay a sub-contractor in accordance with the terms of the relevant sub-contract.

## **42. Dispute Resolution**

### **42.1 Co-operation**

The parties must do all they reasonably can to co-operate in matters relating to this Agreement, but their rights and responsibilities under this Agreement remain unchanged unless the parties agree in writing to vary them.

### **42.2 Duty Not to Hinder Performance**

Each party must do all it reasonably can to avoid hindering the performance of the other under this Agreement.

### **42.3 General**

In order to resolve any conflicts or issues between the parties promptly and to the satisfaction of the parties, the issue resolution process stated below is to be followed:

- (a) Amicable Resolution (**clause 42.4**); and
- (b) Expert Determination (**clause 42.5**).

### **42.4 Amicable Resolution**

- (a) The parties must follow the dispute resolution process specified in this **clause 42** before, if entitled under this **clause 42**, either commencing proceedings or taking similar action except to seek an urgent injunction or declaration.
- (b) Either party may give notice to the other party of an issue, including a dispute or difference, (“the Issue Notice”) about the meaning or effect of this Agreement, or about any matter arising under or out of this Agreement. The Issue Notice must be given within a reasonable time of the party becoming aware of the issue.
- (c) The party submitting the Issue Notice must submit it to the other party’s Contract Manager.
- (d) The parties must follow the issue resolution process in this clause before either commencing proceedings or taking similar action except to seek an urgent injunction or declaration.
- (e) If a party gives an Issue Notice under this clause, each party will nominate in writing a senior executive who will promptly confer to resolve the issue.
- (f) A party is not entitled to refer an issue to Expert Determination until 15 Business Days after the giving of the Issue Notice to the person or persons specified.

- (g) A party may only refer an issue to Expert Determination by giving notice in writing specifying the issue to be decided (“the Referral Notice”) to the other party.
- (h) If a Referral Notice has not been given to the Principal’s Contract Manager within 15 Business Days, then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).

#### 42.5 **Expert Determination**

- (a) If a Referral Notice is given under **clause 42.4(g)**, the expert is to be agreed between the parties. If they cannot agree within 15 Business Days of the Referral Notice, the expert is to be nominated by the nominee of the Chief Executive Officer, Australian Commercial Disputes Centre, Sydney, New South Wales.
- (b) The expert nominated must be a lawyer unless otherwise agreed. The expert must not be:
  - (1) an employee of the parties;
  - (2) a person who has been connected with the Agreement; or
  - (3) a person who the parties have been unable to agree on.
- (c) When the person to be the expert has been agreed or nominated, the Principal, on behalf of both parties, must engage the expert by letter of engagement (and provide a copy to the Contractor) setting out:
  - (1) the issue referred to the expert for determination;
  - (2) the expert’s fees;
  - (3) the procedure for determination set out in **Schedule 11**; and
  - (4) any other matter which is relevant to the engagement.
- (d) The parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.
- (e) If the expert determines that one party must pay the other an amount exceeding the amount shown in **Item 8 of Schedule 1** (calculating the amount without including interest on it, and after allowing for set off), then either party may commence litigation, but only within three (3) months after receiving the determination.

- (f) Unless a party has a right to commence litigation under **clause 42.5 (e)**:
- (1) the parties must treat each determination of the expert as final and binding and give effect to it; and
  - (2) if the expert determines that one party owes the other money, that party must pay the money within twenty (20) Business Days.

### **43. Media**

The Contractor must not, and must ensure that its Staff do not, make any statement to the media on behalf of the Principal or in relation to the provision of the Services. All enquiries from the media must be referred to the Principal. The Contractor will provide as much notice as possible to the Principal of all events which arise in the course of providing the Services which are likely to receive media attention.

### **44. Contract Manager**

- 44.1 The Contractor must nominate in writing no later than ten (10) Business Days prior to the CRR, a person to fill each Contract Manager position set out in **Item 7.1 of Schedule 1**. The Contractor must ensure that its Contract Managers are empowered to represent the Contractor as required by **Schedule 1** at all times.
- 44.2 The Principal must nominate in writing no later than ten (10) Business Days prior to the CRR, a person to fill each Contract Manager position set out in **Item 7.3 of Schedule 1**.
- 44.3 The Principal will ensure there is a Principal's Contract Manager appointed at all times during the Term.

### **45. Notices**

- 45.1 A notice, approval, consent or other communication in connection with this Agreement:
- (a) must be in writing; and
  - (b) must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the addressee or if the addressee notifies another address or facsimile number then to that address or facsimile number.
- 45.2 Unless a later time is specified in it and subject to **clause 45.3**, a notice, approval, consent or other communication takes effect from the time it is received.

- 45.3 A letter or facsimile is deemed to be received:
- (a) in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) Business Day after posting;
  - (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient notified for the purpose of this clause within Business Hours. If other than in Business Hours then at 9am on the next Business Day; and
  - (c) in the case of an instrument or letter given or served by hand, at the time of delivery.

## **46. Waiver and Variation**

- 46.1 Subject to **clause 46.2**, a provision of or a right created under this Agreement may not be:
- (a) waived except by deed signed and dated by the party granting the waiver; or
  - (b) varied except by deed signed and dated by the parties.
- 46.2 The Specification may only be varied in writing signed and dated by the parties.
- 46.3 The waiver by a party of a breach by the other party of any covenant, obligation or provision in this Agreement contained or implied does not operate as a waiver of another or continuing breach by that party of the same or any other covenant, obligation or provision contained or implied in this Agreement.

## **47. Governing Law**

- 47.1 This Agreement takes effect, is governed by and will be construed in accordance with the laws for the time being of the State of New South Wales.
- 47.2 The Contractor hereby submits to the non exclusive jurisdiction of the Courts of the State of New South Wales, and courts entitled to hear appeals from those courts.

## **48. Assignment**

- 48.1 The Contractor will have no right to assign, novate, mortgage, charge or otherwise encumber or declare itself trustee in respect of, any of its rights under this Agreement or delegate any of its obligations under this Agreement, or purport to do so, without the prior written consent of the Principal.
- 48.2 The Principal may at any time delegate any of its obligations and/or assign, or novate any of its rights under this Agreement to any third party. The Contractor agrees, on the request of the Principal, to do everything reasonably necessary to give effect to any such assignment or novation including, but not limited to, the execution of documents.

## **49. Documentation**

This Agreement (including all Schedules and Annexures) constitutes the entire agreement between the parties. Any prior arrangements, agreements, representations or undertakings are superseded and will have no effect.

## **50. Intellectual Property**

- 50.1 The Contractor acknowledges that all Intellectual Property owned by the Principal on the Commencement Date and any developments, improvements, modifications or enhancements to that Intellectual Property, developed by the Contractor during the course of providing the Services or otherwise, are and are assigned and remain the exclusive property of the Principal.
- 50.2 All Intellectual Property in all reports produced for the Principal by the Contractor under **clause 26** vest with the Principal upon creation. The Principal grants the Contractor a non-exclusive licence to use the Intellectual Property contained in the reports for the purposes of providing the Services, notwithstanding that the Intellectual Property in the reports is always considered to be Confidential Information. This licence expires upon termination of this Agreement.
- 50.3 The Contractor assigns all its Intellectual Property in all documents provided by the Contractor under **clause 19** to the Principal. The Principal grants the Contractor a non-exclusive royalty free licence to use the Intellectual Property contained in the documents for the purposes of the Services. If a third party has any Intellectual Property in such documents, the Contractor will procure for the Principal a non-exclusive, unconditional, perpetual royalty free licence to use the documents.

## **51. Precedence of Documents and Parts**

Except as provided in **clause 23.3** the clauses of this Agreement prevail over the Schedules and Annexures to the extent of any conflict between them.

## **52. Exercise of Rights**

A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

## **53. Further Assurances**

Each party agrees, at its own expense, at the request of another party, to do everything reasonably necessary to give effect to this Agreement and the transactions contemplated by it, including, but not limited to, the execution of documents.



## 54. Force Majeure

- 54.1 An obligation of a party under this Agreement will be suspended during the time and to the extent that the party is prevented from or delayed in complying with that obligation by an event of Force Majeure.
- 54.2 A party affected by an event of Force Majeure must give to the other party particulars of the event of Force Majeure and take all reasonable steps to remove or mitigate the relevant event of Force Majeure as expeditiously as possible.
- 54.3 An obligation of the Contractor under this Agreement will be suspended during the time and to the extent that the Contractor is prevented from or delayed in complying with that obligation due to actions or inaction by the Principal or its agents.
- 54.4 If an event of Force Majeure continues for a period of twenty (20) Business Days, the Principal has the right to immediately terminate this Agreement in accordance with **clause 39.1**.

## 55. GST

- 55.1 All terms in this **clause 55** are to be defined as set out in the *A New Tax System (Goods and Services Tax) Act 1999* and any associated regulations.
- 55.2 It is the intention of the parties that any consideration for a taxable supply under this Agreement should be received by the supplier exclusive of GST.
- 55.3 The recipient of a supply must pay the supplier an amount equal to the supplier's GST on the consideration at the same time as the consideration is paid. The supplier must issue a tax invoice before the recipient is obliged to pay.

## 56. Legal Costs

Each party will bear its own costs of preparing and executing:

- (a) this Agreement; and
- (b) any other documents created pursuant to this Agreement, including but not limited to documents created under **clause 40**.

## 57. Counterparts

This Agreement may be executed in any number of counterparts.

## Schedule 1 – General

1. **Execution Date** 30 November 2009
2. **Commencement Date** 1 January 2012
3. **Services Term** 1 January 2012 to 31 December 2021
4. **Further Term** 1 January 2022 to 31 December 2023
5. **Commencement Guarantee amount** Equal to \_\_\_\_\_ of the total annual standing charges for all Aircraft (based on the MMSC at Execution Date)
6. **Performance Guarantee amount** Equal to \_\_\_\_\_ of the total annual standing charges for all Aircraft (based on the MMSC at Commencement Date)
7. **Contract Managers**
  - 7.1 The Contractor nominates the following persons for the positions in accordance with **clause 44**:
    - (a) The particulars for the Contractor’s Contract Managers are as follows:
 

|                   |   |
|-------------------|---|
| Name:             | John Wasley   |
| Position:         | Base Manager, Mascot  |
| Phone:            |   |
| Address:          | Corner of Ross Smith Avenue and Eleventh Street,<br>Sydney Airport NSW (PO Box 289, Mascot NSW<br>1460) |
| Facsimile number: |   |
| Email Address:    |   |

**SIGNED** for and on behalf of the )  
**HEALTH ADMINISTRATION** )  
**CORPORATION** by )  
Chief Executive of the Ambulance Service )  
of NSW, being a lawfully authorised )  
delegate of the Director-General of the )  
NSW Health Department, but not so as to )  
incur any personal liability, in the presence  
of:

Signature of authorised person

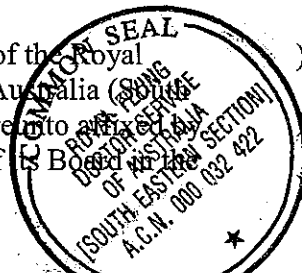
Print Name of authorised person

Signature of Witness

Print Name of Witness

Date

**THE COMMON SEAL** of the Royal )  
Flying Doctor Service of Australia (South )  
Eastern Section) – was hereunto affixed )  
in the authority of a resolution of its Board in the )  
presence of:



Chief Executive Officer

Board Member

(b) The particulars for the Chief Pilot are as follows:

Name: Darryl Brooks

Position: Chief Pilot

Phone:

Address: Hangar 91, Corner Nomad Road and Bristol Street,  
Essendon Airport Victoria 3041

Facsimile number:

Email Address:

7.2 The Contractor's Contract Managers are the agents of the Contractor for the purposes of any act, matter or thing to be done under this Agreement. Each Contract Manager will represent the Contractor and be available at all reasonable times for consultation on behalf of the Contractor with the Principal and its officers in connection with any matter arising under this Agreement.

7.3 The particulars for the Principal's Contract Managers are as follows:

Name: Graeme Field

Position: Manager, Aeromedical Retrieval Services, ASNSW

Phone:

Address: Corner of Ross Smith Avenue and Eleventh Street,  
Sydney Airport NSW (PO Box 878, Mascot NSW  
1460)

Facsimile number:

Email Address:

7.4 The Principal's Contract Managers are the agents of the Principal to do those acts, matters or things pursuant to this Agreement nominated by the Principal.

8. **Dispute Amount** \$250,000

9. **Codes etc. (cl.36)** The Code of Practice for NSW Government Procurement  
Implementation Guidelines for NSW Government  
Procurement  
NSW Department of Commerce Code of Behaviour for  
the Protection of Children and other Vulnerable People

**Schedule 2 – Fees**









**Schedule 3 - Variation of Fees**











## **Schedule 4 - Performance Measures**







## Schedule 5 - Commencement and Performance Guarantees

### Commencement Guarantee

**TO: HEALTH ADMINISTRATION CORPORATION** a corporation solely constituted by section 9 of the Health Administration Act, 1982 (New South Wales) C/- The New South Wales Department of Health, 73 Miller Street, North Sydney, New South Wales (ABN 45 100 538 161) for and on behalf of the Ambulance Service of New South Wales ("**the Principal**").

At the request of the Royal Flying Doctor Service of Australia (South Eastern Section) Ltd ("**Contractor**") we inform the Principal that ("**Financial Institution**") is holding at your disposal a sum equal to \_\_\_\_\_ of the total annual standing charges for all Aircraft based on the Minimum Monthly Standing Charge ("**Guaranteed Sum**") in connection with the Fixed Wing Air Ambulance Services Agreement 0800903 between the Contractor and the Principal.

1. The Financial Institution irrevocably undertakes to hold the Guaranteed Sum and unconditionally pay on receipt of notification in writing the Guaranteed Sum (or any portion of the Guaranteed Sum) demanded by the Principal up to the maximum aggregate sum of the Guaranteed Sum.
2. The Financial Institution unconditionally agrees that payment will be made immediately by the Financial Institution to the Principal of the whole or any part or parts of the Guaranteed Sum without reference by the Financial Institution to the Contractor and notwithstanding any notice given by the Contractor to the Financial Institution not to pay the Guaranteed Sum to the Principal.
3. The obligations and liabilities of the Financial Institution under this Guarantee will continue in force and effect until the Financial Institution:
  - a) receives notification in writing from the Principal that this Guarantee is no longer required; or
  - b) pays to the Principal the whole of the Guaranteed Sum or the balance remaining after any part payment or payments by the Financial Institution or of such lesser amount as the Principal may agree to accept in full settlement of the Financial Institution's liabilities under this Guarantee.
4. The Financial Institution may at any time, without being required to do so, pay to the Principal the Guaranteed Sum less any amount it may already have paid under this Guarantee (or such lesser sum as the Principal agrees to in writing) and upon payment its liability under this Guarantee will immediately cease.
5. This Guarantee is governed by the law in force in the State of New South Wales. The parties to this Guarantee agree to submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts of appeal from them.

DATED

200

**[EXECUTED UNDER SEAL BY THE FINANCIAL INSTITUTION]**

## Performance Guarantee

**TO: HEALTH ADMINISTRATION CORPORATION** a corporation solely constituted by section 9 of the Health Administration Act, 1982 (New South Wales) C/- The New South Wales Department of Health, 73 Miller Street, North Sydney, New South Wales (ABN 45 100 538 161) for and on behalf of the Ambulance Service of New South Wales ("**the Principal**").

At the request of the Royal Flying Doctor Service of Australia (South Eastern Section) Ltd ("**Contractor**") we inform the Principal that ("**Financial Institution**") is holding at your disposal a sum equal to \_\_\_\_\_ of the total annual standing charges for all Aircraft based on the Minimum Monthly Standing Charge ("**Guaranteed Sum**") in connection with the Contractor's liabilities under the Fixed Wing Air Ambulance Services Agreement 0800903 between the Contractor and the Principal.

1. The Financial Institution irrevocably undertakes to hold the Guaranteed Sum and unconditionally pay on receipt of notification in writing the Guaranteed Sum (or any portion of the Guaranteed Sum) demanded by the Principal up to the maximum aggregate sum of the Guaranteed Sum.
2. The Financial Institution unconditionally agrees that payment will be made immediately by the Financial Institution to the Principal of the whole or any part or parts of the Guaranteed Sum without reference by the Financial Institution to the Contractor and notwithstanding any notice given by the Contractor to the Financial Institution not to pay the Guaranteed Sum to the Principal.
3. The obligations and liabilities of the Financial Institution under this Guarantee will continue in force and effect until the Financial Institution:
  - (a) receives notification in writing from the Principal that this Guarantee is no longer required; or
  - (b) pays to the Principal the whole of the Guaranteed Sum or the balance remaining after any part payment or payments by the Financial Institution or of such lesser amount as the Principal may agree to accept in full settlement of the Financial Institution's liabilities under this Guarantee.
4. The Financial Institution may at any time, without being required to do so, pay to the Principal the Guaranteed Sum less any amount it may already have paid under this Guarantee (or such lesser sum as the Principal agrees to in writing) and upon payment its liability under this Guarantee will immediately cease.
5. This Guarantee is governed by the law in force in the State of New South Wales. The parties to this Guarantee agree to submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts of appeal from them.

DATED

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**[EXECUTED UNDER SEAL BY THE FINANCIAL INSTITUTION]**

## Schedule 6 - IRP

| <b>IMPLEMENTATION REVIEW PROGRAM</b>  |
|---|
| <b>1. Monthly Readiness Review (MRR)</b>  |
| a. Each month commencing from no later than two (2) months after the Execution Date a Monthly Readiness Review meeting ("MRR") will be held between the Principal and the Contractor.   |
| b. The MRR will be: <ul style="list-style-type: none"> <li>i. held to review commencement readiness progress as outlined in the Monthly Progress Report ("MPR"); and</li> <li>ii. held at the Principal's Base or any other facility agreed to between the Contractor and the Principal.</li> </ul>   |
| c. Each party will bear its own costs associated with MRRs.   |
| d. The Contractor must provide a MPR to the Principal no later than five (5) Business Days prior to the scheduled MRR.  |
| e. The MPR will be in hard copy format and contain the following information: <ul style="list-style-type: none"> <li>i. an up to date transition schedule from the IMP;</li> <li>ii. a clear indication of the areas of risk to schedule slip and the reasons why;</li> <li>iii. a clear indication of the extent of the impact on the schedule, of any identified risks;</li> <li>iv. a Corrective Action Plan for any areas where schedule slip risk is identified;</li> <li>v. progress on actioning any outstanding Corrective Action Plans;</li> <li>vi. Corrective Action Plan resolution dates; and</li> <li>vii. progress on any specification compliance.</li> </ul> |

## IMPLEMENTATION REVIEW PROGRAM

### 2. Preliminary Readiness Review (PRR)

- a. The Contractor will attend a Preliminary Readiness Review meeting (“PRR”) with the Principal within two (2) months after the Execution Date (and in conjunction with the first MRR). The PRR will address the first MPR and the following additional issues:
- i. review of specification requirements data to be provided by the Principal (where further information is required to be provided by the Principal to the Contractor so that specifications are met);
  - ii. establishing any Corrective Action Plans to overcome specification deviation issues;
  - iii. review of any specification deviations; and
  - iv. establish the exact dates of the Intermediate Readiness Review meeting (“IRR”) and Commencement Readiness Review meeting (“CRR”).
- b. It is a material provision of this Agreement, and a mandatory requirement to pass the PRR, that the Contractor provide the Principal with either:
- i. the full details of all Aircraft that are intended to be used for the provision of the Services, or,
  - ii. objective evidence that a contract has been entered into for the production of the Aircraft intended to be used for the provision of the Services;
- at the time of the PRR.
- c. If paragraph 2b.i is applicable, the Contractor is to also provide full details of the Aircraft acquisition/possession strategy to bring the Aircraft on-shore to Australia and into a fit out programme.
- d. If paragraph 2b.ii is applicable, full production schedule details will be required preferably in MS Project Gantt Chart format. The production schedule must show full production details and tasks to completion of production of the Aircraft to an airworthy state. Subsequent to production a schedule will also be required to indicate post-production activities through to the Commencement Date including bringing the Aircraft on-shore to Australia.
- e. For both paragraph 2b.i and 2b.ii the Contractor is to provide a schedule of all aeromedical fit out details and tasks to the point the Aircraft will be ready to commence the Services by the Commencement Date.

| <b>IMPLEMENTATION REVIEW PROGRAM</b>  |
|---|
| <p>f. It is recognised that paragraphs 2c, 2d and 2e (as applicable) are provided as part of the IMP, but are subject to change, with final confirmation to be issued at the time of the PRR.</p>   |
| <p><b>3. Intermediate Readiness Review (IRR)</b></p>  |
| <p>a. The Contractor will attend an IRR with the Principal no later than six (6) months prior to the Commencement Date and in conjunction with a MRR. The IRR will address the MPR for that month and the IRR Certification Form.</p>   |
| <p>b. The IRR Certification Form must contain a compliance checklist relative to the respective clauses contained in this Agreement. Each separate clause requiring compliance certification will be called an "Item".</p>  |
| <p>c. The Contractor must submit the completed IRR Certification Form at least five (5) Business Days prior to the IRR. Completion of the IRR Certification Form requires a compliance statement to be made by the Contractor against each Item.</p>  |
| <p>d. At least five (5) Business Days prior to the IRR, the Contractor must provide to the Principal an Aircraft survey report that contains a written schedule of registration and serial or construction numbers of the Aircraft it intends to use to fulfil its obligations.</p>   |
| <p>e. At the IRR, the Principal will audit the compliance statements made by the Contractor in the IRR Certification Form via, but not limited to, inspection of documentation supporting progress (including Aircraft). The Contractor must provide and give access to all material/data required by the Principal.</p>  |
| <p>f. If sufficient objective evidence exists to satisfy the Principal that an Item has or is being complied with, then the Principal may sign off on the Item certifying that the Item complies with the requirements of this Agreement. The Principal may not unreasonably withhold its certification of an Item if objective evidence exists to support a determination that the Item has or is being complied with.</p>   |
| <p>g. The IRR will be held at the Principal's Base or any other location agreed to in writing by the Principal.</p>   |
| <p>h. Each party will bear its own costs associated with the IRR.</p>   |
| <p>i. If the Contractor fails to receive certification for an Item or Items, the Principal may grant the Contractor an Item Action (IA) whereby the Contractor will be given a maximum of ten (10) Business Days to present sufficient evidence to the Principal's satisfaction that those Items deserve certification. If the Contractor fails to provide sufficient evidence, it will fail the IRR and the Principal may exercise its rights under <b>clause 5.3</b> of this Agreement.</p> |

| <b>IMPLEMENTATION REVIEW PROGRAM</b>  |
|---|
| <p>j. When the Principal certifies on the IRR Certification Form that all Items have been complied with at the IRR, the Contractor will be deemed to have passed the IRR.</p>   |
| <p><b>4. Commencement Readiness Review (CRR)</b></p>  |
| <p>a. The Contractor will attend a CRR with the Principal no later than ten (10) Business Days prior to the Commencement Date. The CRR will address the CRR Certification Form as a definitive means of certifying that the Contractor is at the time of the CRR totally ready and able to commence providing the Services.</p>   |
| <p>b. The CRR Certification Form must contain a checklist relative to the respective clauses contained in this Agreement. Each clause requiring compliance certification will be called an "Item".</p>  |
| <p>c. The Contractor must submit the completed CRR Certification Form at least five (5) Business Days prior to the CRR. Completion of the CRR Certification Form requires a compliance statement to be made by the Contractor against each Item.</p>  |
| <p>d. At the CRR, the Principal will audit the compliance statements made by the Contractor in the CRR Certification Form via, but not limited to, inspection of supporting documentation provided by the Contractor and physical inspection of the Contractor's implementation of the terms and conditions of this Agreement (including Aircraft). The Contractor must provide and give access to all material/data required by the Principal.</p>   |
| <p>e. If sufficient objective evidence exists to satisfy the Principal that an Item has been complied with, then the Principal may sign off on the Item certifying that the Item complies with the requirements of this Agreement. The Principal may not unreasonably withhold its certification of an Item if objective evidence exists to support a determination that the Item has been complied with.</p>   |
| <p>f. The CRR will be held at the Principal's Base.</p>   |
| <p>g. Each party will bear its own costs associated with the CRR.</p>   |
| <p>h. If the Contractor fails to receive certification for an Item or Items, the Principal may grant the Contractor an Item Action (IA) whereby the Contractor will be given a maximum of four (4) Business Days to present sufficient evidence to the Principal's satisfaction that all Items deserve certification. If the Contractor fails to provide sufficient evidence, it will fail the CRR and the Principal may exercise its rights under <b>clause 5.3</b> of this Agreement.</p> |

## **Schedule 7 – IMP and Service Continuity**

### **1. Implementation of Service and Continuity of Service**

- 1.1 This Implementation Plan details how the Contractor will manage the introduction phase of the new Aircraft and the increase in staff numbers from the current services provided to ASNSW to the new contracted services.
- 1.2 The implementation of the ASNSW service for this contract largely involves the purchase, modification and introduction of the three B200C and two B350C Aircraft, along with ensuring the people who will be operating, and those required to support these Aircraft are appropriately trained, equipped and in place for the commencement of the operation.
- 1.3 The Contractor shall have the two (2) B350C Aircraft delivered and fitted out first. This allows ASNSW with the ability to use these Aircraft from the commencement of the contract period, or earlier, as part of any coordinated training/operation program from November 2011. Any delay of Aircraft introduction beyond the contract commencement date will be associated with the B200C fleet, which will be supplemented by the current B200 fleet under contract 111/7180 on a one for one basis.
- 1.4 A Gantt chart is included in this schedule covering all the activities associated with the purchase, delivery, modification, recruitment and introduction of Aircraft and resources for the commencement of the contract.
- 1.5 Whilst the plan indicates there will be a delay with the operational availability of the last two B200C aircraft, the Contractor will make every effort to reduce the impact of any delays beyond contract commencement. Nevertheless, the Contractor guarantees continuity of service through the use of the existing B200 aircraft.
- 1.6 The Contractor has worked with Total Aerospace Solutions in developing the specified aeromedical fitout. Throughout the implementation the Contractor will provide Project Management disciplines through a dedicated project team. The Project Manager, reporting directly to the Executive Director, will ensure the successful implementation of the new operation with the support of all appropriate Contractor personnel.
- 1.7 Activities covered by this role include:
- (i) participation in Monthly Readiness Reports and Review Meetings;
  - (ii) use of Risk Management protocols for identification of potential risks to ASNSW and the Contractor associated with the project, and to put in place appropriate contingencies and mitigation plans;



- (iii) provision of, and participation in, various communication processes between the Contractor and ASNSW, including Review Meetings and preliminary and critical design reviews;
- (iv) ensuring all areas are delivering to the implementation timeframe; and
- (v) creation of and management of a dedicated issue register for the tracking of issues and risks for the implementation phase.

## **2. Procurement Plan**

2.1 The Contractor has secured from Hawker Pacific two (2) B350 and three (3) B200C aircraft slots in the Hawker Beechcraft production line, with the two (2) B350C aircraft to be delivered first. The Aircraft will be available as follows:

- two (2) B350C and one (1) B200C aircraft for 1 January 2012,
- remaining two (2) B200C aircraft by the end of February 2012.

2.2 In order to meet the timeframes it is important that the aeromedical fit out design is signed off by 31 March 2010. ASNSW and the Contractor will provide adequate resources to this task within the first three months post execution of contract in order to meet this date. This includes the Preliminary Design Review and the Critical Design Review milestones. The Contractor currently has three (3) operational B200C aircraft with a Total Aerospace Solutions aeromedical fit out. One of these aircraft and fit out will be made available at agreed times to ASNSW to facilitate the design review.

## **3. Recruitment Strategy**

3.1 The Contractor plans to keep the staff assigned to the current ASNSW operation to the new contract. The Contractor will be fully staffed to meet the requirements of the contract prior to the Commencement Date.

3.2 The Contractor shall recruit the required additional pilots and maintenance personnel to fulfill the requirements of the contract. This has been planned to take place before the commencement of the new contract to ensure it is established at the time of contract commencement. The recruitment for this will be carried out by the Flight Operations Manager, Engineering Manager and Base Manager.

3.3 Based on the Aircraft availability required the total number of pilots employed to meet the contract requirements will be 25.

- 3.4 The Contractor shall provide adequate numbers of staff to ensure the maintenance requirements of the contract are met. The Contractor plans to engage the following dedicated minimum staffing numbers to the maintenance and records requirements of the ASNSW operation:
- (i) 1 Senior Base Engineer
  - (ii) 12 Licensed Aircraft Engineers (being a mix of Airframe / Engine and Avionics)
  - (iii) 2 Hangar Assistants
  - (iv) 1 Technical Records Clerk
  - (v) 1 Store Person
- 3.5 An additional engineer will be recruited from 2016, or sooner if necessary, to cater for increased maintenance requirements as the Aircraft age and flying hours increase.

#### **4. Training Strategy**

- 4.1 The Contractor will ensure aeromedical staff, pilots and engineers are fully trained on the new Aircraft and aeromedical fitout technologies and systems. This will be done utilising a combination of classroom theory and practical training on the first couple of Aircraft completed.
- 4.2 The attached Implementation Plan Gantt chart includes the planned timings for organising and the provision of training. Training will be coordinated by the Flight Operations Manager and the Engineering Manager, who will report progress to the Project Manager. The establishment of aeromedical staff training will be done in conjunction with ASNSW to ensure an effective and timely delivery.
- 4.3 Training for the new Aircraft and fit out will include:
- (i) aeromedical staff on Aircraft differences and aeromedical fit out systems;
  - (ii) pilots on aircraft differences, Proline 21 avionics and line training; and
  - (iii) engineers on Aircraft differences and Proline 21 for avionics engineers.
- 4.4 As part of the training plan the two (2) B350C Aircraft will be available prior to contract commencement for training use. These Aircraft will be able to be operated from November 2011 in a joint operational / training capacity.

## **5. Aircraft Availability**

- 5.1 The Contractor will achieve the availability of aircraft with the provision of Hawker Beechcraft B200C and B350C aircraft, solely dedicated to the ASNSW operation in accordance with the requirements of the contract.
- 5.2 The Contractor will have in place a pilot roster for the 25 pilots required that will provide for the contract performance requirements. Pilots will be positioned to ensure departures are within \_\_\_\_\_ of receiving a flight order in accordance with Schedule 8, clause 3.5.5.1.
- 5.3 Maintenance of the Aircraft will be completed in accordance with an approved maintenance system in line with the manufacturer's maintenance program. This system will incorporate a progressive maintenance program to ensure Aircraft are available as per the contract specification. The Aircraft will be monitored to ensure sufficient Aircraft hours are available between each Aircraft's scheduled maintenance program.
- 5.4 A minimum of two (2) Contractor Engineers will be available to provide support twenty-four (24) hours a day to rectify Aircraft defects and maintain Aircraft availability, as well as progress scheduled maintenance requirements.
- 5.5 The Base Manager, or in his absence, the Contractor's engineers and pilots, will closely liaise with ASNSW to ensure that availability of the Aircraft meets the ASNSW requirements.

## **6. Fuel Arrangements**

6.1

## **7. Maintenance Arrangements.**

- 7.1 The Aircraft will be maintained in accordance with Class A standards. All personnel, procedures, equipment, workshop facilities, parts and consumables associated with the maintenance of the Aircraft will conform to maintenance data, the air legislation and regulations, and sound industry practice.
- 7.2 The Contractor's Engineering Manager has been accepted by CASA as the Head of Aircraft Airworthiness and Maintenance Control and from the CAR30 Maintenance Organisation's (Certificate of Approval holder) position the Engineering Manager is the accountable person for the provision of maintenance, i.e. Chief Engineer.

- 7.3 The Maintenance Controller ensures Aircraft at all times comply with the limitations and inspection requirements as defined by the aircraft, engine and component manufacturers, and CASA regulations. This includes the compliance of Airworthiness Directives, mandatory Service Bulletins and Service Instructions, etc, as issued by CASA or other applicable national airworthiness authorities.
- 7.4 The Maintenance Controller will communicate with and/or notify ASNSW with regard to Airworthiness Directives, mandatory Service Bulletins and maintenance forecasts, as per the requirements of the contract.
- 7.5 The Contractor's current B200 System of Maintenance will be reviewed to provide a progressive system of maintenance that will meet the Aircraft availability and maintenance window requirements of the contract. A B350C System of Maintenance will be created in the same manner.
- 7.6 It is envisaged that with the progressive System of Maintenance each Aircraft will be maintained within scheduled windows of opportunity (maintenance windows) of no more than two (2) days every 100 flying hours. These maintenance windows will generally be Monday to Friday. However, depending on the flying hours, the maintenance schedule will be adjusted to ensure Aircraft availability of the B200C and B350C fleet is as per contract specification. The release of Aircraft for scheduled maintenance will be coordinated between the Senior Base Engineer and the ASNSW.
- 7.7 The Contractor plans to conduct the maintenance requirements of the Aircraft in the ASNSW facility using its own resources. The Contractor Certificate of Approval will continue to have the facility registered as an approved location as well as coverage for maintenance at temporary locations for any requirements at airfields operated to by the Aircraft.
- 7.8 The engineers will be rostered to ensure that 24/7 on-site coverage is provided. The roster ensures there is ample coverage during the scheduled maintenance windows. The Senior Base Engineer will be on a permanent Monday to Friday dayshift to provide coordination of the Aircraft inspections and liaison with ASNSW. Directly supporting the engineers will be a Store Person and a Technical Records Clerk who will work a permanent Monday to Friday dayshift.
- 7.9 The engineering staff based at the ASNSW facility will have the full support of the Contractor's Engineering Department.

## **7.10 Spares Support**

- 7.10.1 The Contractor will hold an adequate level of stock, in support of the contract as a mitigation strategy against the risk of Aircraft availability and service to ASNSW, largely based on a 'just in case' philosophy rather than a 'just in time' practice. This holding will be assessed and adjusted, to take into account the latest B200C and B350C requirements, and will include spares for the medical fit out, including for stretcher loading devices, stretchers and other various Aircraft fitted role equipment. In addition to the stock held in direct support of ASNSW, the Contractor has access to its other stocks of King Air parts.
- 7.10.2 The RFDS will review the requirements of the Category 'A' MEL's with the intention of holding sufficient spares to cover the critical items of these areas.

## **8. Interim Service Plan**

- 8.1 In the event that the Contractor is unable to deliver one or more of the Aircraft to meet the agreed commencement date, the Contractor will continue to supply the current B200 aircraft under contract 111/7180. The use of these aircraft will negate the need for any additional training for the interim service plan.
- 8.2 The Contractor will provide the two (2) B350C aircraft before the three (3) B200C. This will allow ASNSW to utilise the B350C aircraft at the commencement of the contract period. Any interim requirement is expected to be limited to the B200C aircraft, which will be covered by the current B200 fleet.
- 8.3 Pilot and Engineer numbers will be recruited as per the implementation plan, to ensure the other contract conditions and Aircraft availability are maintained. Training for the new Aircraft and medical fit out will remain as per clause 4 above. Pricing for the interim aircraft service is provided in Schedule 2.





## **Schedule 8 – Specifications**



































































































































































































## Schedule 9 - Privacy

### CONTRACTOR'S PRIVACY OBLIGATIONS

Pursuant to **clause 33** of the Agreement, the Contractor agrees:

- 1** to use, access, retain or disclose Personal Information obtained during the course of providing the Services under the Agreement only for the purpose for which the Personal Information was acquired;
- 2** not to do any act or engage in any practice that would breach an Information Privacy Principle ("IPP"), or which if done or engaged in by the Principal, would be a breach of that IPP;
- 3** to comply with, carry out and discharge to the maximum extent possible, the obligations contained in the IPPs as if it were the Principal carrying out and discharging those obligations;
- 4** to notify the Principal immediately upon becoming aware of a breach or possible breach of any of the obligations contained in or referred to in this Schedule, whether by the Contractor or its Staff;
- 5** to notify the individuals affected, that complaints about acts or practices in relation to such individuals' Personal Information may be investigated by the Privacy Commissioner;
- 6** to comply with all reasonable directions of the Principal in relation to the care and protection of Personal Information held in connection with the Agreement and in addition thereto, take all reasonable measures to ensure that such information is protected against loss, unauthorised access or use, modification or disclosure and against other misuse;
- 7** to ensure that any Staff of the Contractor who is required to deal with the Personal Information for the purposes of the Agreement is made aware of the obligations of the Contractor under this Schedule; and
- 8** to ensure that any other agreement with any Staff who may be fulfilling a requirement in relation to the Agreement which includes the handling of Personal Information, contains the same or equivalent obligations to this Schedule which are enforceable by the Contractor against the other party or the sub-contractor, as applicable.

## **Schedule 10 - Code of Behaviour - Protection of Children and other Vulnerable People**

1. The Contractor must ensure that all persons working on the site or sites under the Agreement, including but not limited to the Contractor's employees and managers, consultants, sub-contractors and suppliers (Contractor Employees) understand and comply with the requirements shown below.
2. All Contractor Employees must gain permission to enter the facility before commencing work and they may only enter approved areas. The Contractor's representative or where a sub-contractor is working without the supervision of the Contractor, the sub-contractor's representative must report their presence to the person in charge of the facility on arrival each day and record, in the Site Visit Log, the details of all Contractor's or sub-contractor's employees working at the site or sites that day.
3. Contractor Employees should avoid talking with, touching or interacting with any children or residents or other users of the facility except where the work requires it or in an emergency or safety situation.
4. Contractor Employees must only use approved toilets and other facilities, unless the person in charge of the facility gives written authority to use alternative arrangements.
5. The work area must not be able to be used or accessed by children, or residents or other users of the facility while work is in progress. Clear signs and barricades (where appropriate) must be used to prevent any inadvertent or unauthorised access.
6. Appropriate privacy must be maintained when working on toilets and similar facilities. Contractor Employees must ensure that toilets and similar facilities are not occupied or in use by children, residents or other users before entering to perform work, and that work does not continue when use of the facilities is required. Where practicable male employees should perform work on male facilities and female employees on female facilities.
7. Contractor Employees must wear clothing that is tidy and in good condition, including a shirt, shorts or trousers or skirts at all times.
8. Contractor Employees should report any concerns about children's behaviour or child abuse to the person in charge of the facility.
9. Contractor Employees must wear or carry an identity card at all times when on the site or sites.



## Schedule 11 - Expert Determination Procedure

### 1. Questions to be determined by the Expert

1.1 The Expert must determine for each issue the following questions (to the extent that they are applicable to the issue):

1.1.1 Is there an event, act or omission which gives the claimant a right to compensation under the Agreement:

- (a) for damages for breach of the Agreement, or
- (b) otherwise in law?

1.1.2 If so, what is the event, act or omission?

- (a) on what date did the event, act or omission occur?
- (b) what is the legal right which gives rise to the liability to compensation?
- (c) is that right extinguished, barred or reduced by any provision of the Agreement, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?

1.1.3 In the light of the answers to **clauses 1.1.1 and 1.1.2** of this Expert Determination Procedure:

- (a) what compensation, if any, is due from one party to the other and when did it fall due?
- (b) what interest, if any, is due when the expert determines that compensation?

1.2 The Expert must determine for each issue any other questions required by the parties, having regard to the nature of the issue.

### 2. Submissions

2.1 The procedure for submissions to the Expert is as follows:

2.2 The party which has referred the issue to Expert Determination must make a submission in respect of the issue, within 15 Business Days after the date of the letter of engagement referred to in **clause 42.5(c)** of the Agreement. This submission must address the questions to be determined by the Expert under **clause 1.1** of this Schedule 11.

2.3 The other party must respond within 15 Business Days after receiving a copy of that submission. That response may include cross-claims.

- 2.4 The party referred to in **clause 2.2** may reply to the response, but must do so within 10 Business Days after receiving the response, and must not raise new matters.
- 2.5 The other party may comment on the reply, but must do so within 10 Business Days after receiving the reply, and must not raise new matters.
- 2.6 The Expert must ignore any submission, response, reply, or comment not made within the time given in **clauses 2.2 to 2.5** of this Expert Determination Procedure, unless the parties agree otherwise.
- 2.7 The Expert may request further information from either party. The request must be in writing, with a time limit for the response. The Expert must send a copy of the response to the other party, and give the other party a reasonable opportunity to comment on the response.
- 2.8 All submissions, responses, replies, requests and comments must be in writing. If a party to the Agreement gives information to the Expert, it must at the same time give a copy to the other party.

### **3. Conference**

- 3.1 The Expert may request a conference with both parties to the Agreement. The request must be in writing, setting out the matters to be discussed.
- 3.2 The parties agree that such a conference is considered not to be a hearing which would give anything under this Expert Determination Procedure the character of an arbitration.

### **4. Role of Expert**

- 4.1 The Expert:
  - 4.1.1 acts as an expert and not as an arbitrator;
  - 4.1.2 must make its determination on the basis of the submissions of the parties, including documents and witness statements, and the Expert's own expertise; and
  - 4.1.3 must issue a certificate in a form the Expert considers appropriate, stating the Expert's determination and giving reasons, within 12 weeks after the date of the letter of engagement referred to in **clause 42.5(c)** of the Agreement.
- 4.2 If a certificate issued by the Expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the Expert must correct the certificate.