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**NSW Procurement – Contracting Services is a Business Unit of the NSW  
Department of Commerce**

**NSW Procurement – Contracting Services invites this tender for and on behalf  
of the  
NSW Government State Contracts Control Board**

**Request for Tender RFT 0800361  
Dry Lease of Light Helicopters for the NSW  
Department of Environment and Climate Change**

**Tender Issue Date: 14 April 2008**

**Closing Date: Wednesday 21 May 2008**

**Closing Time: 9:30 am Sydney Time**

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For the purposes of this RFT, inquiries should be directed to the Contact Officer nominated in Part A of this RFT.

Other matters should be directed to:

Group General Manager  
NSW Procurement – Contracting Services  
NSW Department of Commerce  
McKell Building  
2-24 Rawson Place  
Sydney NSW 2000  
Tel: (02) 9372 7504  
Fax: (02) 9372 7533

# Dry Lease of Light Helicopters for the NSW Department of Environment and Climate Change

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# PART A Tender Conditions - The Requirement and Tender Information

## 1. Outline Description of the Requirement

### 1.1 Introduction

- 1.1.1 This Request For Tender ("RFT") is made by the State Contracts Control Board ("the Board") for the supply of the Deliverables defined in this RFT and detailed in the Specification.
- 1.1.2 The Board is responsible for the conduct of the tender process, assisted by NSW Procurement – Contracting Services.

### 1.2 Outline of the Requirement

- 1.2.1 This RFT is seeking Tenders for the dry leasing of up to three light helicopters (the Aircraft) for the NSW Department of Environment and Climate Change (DECC; the Principal) for the period 1 August 2008 to 31 July 2011, with options to extend for a further two (2) x one (1) year periods.
- 1.2.2 The leased Aircraft will be available for operations under the Principal's AOC and will be crewed by the Principal's aircrew during the contract period. For the purposes of scheduled maintenance considerations the Aircraft will be based at Bankstown Airport, Sydney, NSW. However, during operations the Aircraft may be based and/or deployed in other areas of NSW. The Contractor must carry out all necessary scheduled and unscheduled maintenance on the Aircraft to ensure it remains in airworthy condition and serviceable and ensure compliance with all relevant regulatory and manufacturer requirements.
- 1.2.3 The Contractor must guarantee the exclusive availability of the Aircraft to the Principal during the seven months from 1 September and 31 March each financial year (the Service Period) as well as any extensions to the Service Period. The Principal will give the Contractor at least 7 days notice of any extensions to the Service Period.
- 1.2.4 Whilst the Contractor does not have to guarantee the availability of the Aircraft beyond this period (i.e. Service Period plus extensions), the Principal may require Aircraft on an ad hoc basis outside this period each year. In such cases the Principal will give at least 24 hours notice of any ad hoc requirements, which may be for one or more days. Once the booking is confirmed by the Principal the order must be honoured by the Contractor.
- 1.2.5 The Contract Prices and conditions of Contract included in the Agreement shall apply to the Service Period, any extensions to the Service Period and any ad hoc requirements mentioned in clause 1.2.4 above.
- 1.2.6 The Principal will guarantee a minimum payment of 180 hours during the Service Period, or pro rata thereof for extensions to the Service Period or for ad hoc requirements, at the Routine Operations rate, including GST, as per the Price Schedule in Part C. Although the Principal only guarantees 180 hours during the Service Period, the actual hours used may be greater. In this case the Contractor will be paid for each hour flown. Based on hours flown in recent years DECC estimate that an Aircraft will fly in the vicinity of 350 hours per year. These hours are based on historical data only. Many factors can affect the hours flown; therefore this estimate is indicative only.

- 1.2.7 The Aircraft will be used predominantly for firefighting but may be used for a wide range of other aviation operations carried out by the Principal. These include other emergency incident operations as well as routine operations and the specific aviation roles of external load carrying, aerial shooting, winching/hover entry/exit, low level observation and aerial incendiary/infrared camera operations.
- 1.2.8 Tenderers may submit offers for one or more Aircraft. If a tenderer submits offers for more than one Aircraft it shall submit separate pricing and technical information in relation to each Aircraft as required in Part C. The tenderer shall also advise if any discounts apply to its Tender Prices if it is awarded a contract for more than one Aircraft. The tenderer shall also have to clearly demonstrate that it has the financial viability and capability to fund a contract, particularly if it offers more than one Aircraft. Notwithstanding the requirement for up to three Aircraft, the Board is not bound to award a contract for any Aircraft.
- 1.2.9 Aircraft must be fully equipped and ready to start on 1 September 2008. If tenderers offer Aircraft availability beyond this date they will have to offer a fully costed interim aircraft solution, one which satisfactorily meets the Specification and timeframe.
- 1.2.7 There is no need for the Contractor to insure the Aircraft for hull or public liability. The Principal will provide insurance cover for the Aircraft for replacement value and unlimited liability whilst it is under its control with the NSW Treasury Managed Fund (TMF) under the NSW Government's self-indemnity scheme. Consequently, Tender Prices should only include costs for those insurances nominated in clause 11 of Part D but not those relating to hull or public liability for the Aircraft whilst the Aircraft is under the control of the Principal.
- 1.2.8 If a tenderer requires more detail on the TMF insurance cover a copy of the "TMF Contract of Coverage" is available from the Contact Officer or from the NSW Treasury website at  
[https://www.sicorp.nsw.gov.au/sicorp\\_web/AboutUs/con\\_cover/Contract%20of%20Coverage%20\(FINAL\).pdf](https://www.sicorp.nsw.gov.au/sicorp_web/AboutUs/con_cover/Contract%20of%20Coverage%20(FINAL).pdf) .

### **1.3 Procurement Objective**

- 1.3.1 The procurement objective is to award a contract or contracts with organisation/s that can provide a value for money solution for the provision of quality Aircraft that is/are maintained to a high standard.

## **2. Summary Information for Tenderers**

### **2.1 Interpretation**

- 2.1.1 Definitions of terms used in Parts A-C are contained in cl.4 of Part B.

### **2.2 Structure of Request for Tender**

- 2.2.1 This RFT is made up of four Parts as follows:

#### **Tender Conditions**

Part A: The Requirement and General Information

Part B: The Tender Process

#### **Tender Response**

Part C: Tender Response to be completed by the Tenderer

#### **Conditions of Contract**

Part D: Contract Agreement

- 2.2.2 Part C and other information submitted by the tenderer, once completed, forms the Tender, and is to be submitted in accordance with Parts A, B and D.

## **2.3 Contact Officer**

- 2.3.1 Refer requests for information or advice regarding this RFT to:

Name: Mark Van Epen  
 Phone: 02 9372 7530  
 Fax: 02 9372 7799  
 E-mail: [mark.vanepen@commerce.nsw.gov.au](mailto:mark.vanepen@commerce.nsw.gov.au)

- 2.3.2 Any information given to a tenderer to clarify any aspect of this RFT will also be given to all other tenderers if in the Board's opinion the information would unfairly favour the inquiring tenderer over other tenderers.

## **2.4 Nature of Agreement**

- 2.4.1 The Requirement is to be met by an agreement between the Principal and the successful tenderer on the conditions contained in Part D.

## **2.5 Eligibility to Tender**

- 2.5.1 Tenders must be submitted by a legal entity or, if a joint Tender, by legal entities, with the capacity to contract. DECC will only contract with the relevant legal entity or entities.
- 2.5.2 The Board may submit any financial information provided by the tenderer for independent financial assessment of the tenderer's business.
- 2.5.3 The Board may ask a tenderer to provide evidence of its legal status or capacity to contract. If Tenders from entities propose to contract in their capacity as trustees, such evidence may include copies of the relevant trust deeds. Any evidence requested is to be provided within 3 working days of the request.
- 2.5.4 The Board reserves the right to reject any Tender if the Board judges the tenderer not to have appropriate financial assets.
- 2.5.5 If the Board judges the tenderer's financial position to be marginal, the Board reserves the right to make acceptance of any Tender conditional upon the tenderer entering into a bank or parent company guarantee, or an unconditional performance bond in a form satisfactory to the Board.
- 2.5.6 The Board reserves the right to conduct an on site capability and/or aviation safety audit of the tenderer or its sub-contractors.
- 2.5.7 Tenderers must read, understand and comply with the requirements of the Commerce Business Ethics Statement, which is available at the link below. Tenderers must disclose any potential conflict of interests (including any relevant relationships) in the Tender.
- <http://www.commerce.nsw.gov.au/About+Commerce/Business+ethics+statement/Business+ethics+statement.htm#commerce>
- 2.5.8 The Board will consider any disclosure and the DECC will only enter into an agreement with tenderers that do not have improper conflict of interests. If the Board or DECC become aware of improper conflict of interests by a successful tenderer at the time an agreement has already been entered into the Principal reserves the right to terminate the agreement.



## 2.6 Other Eligibility Requirements

- 2.6.1 The Board will not enter into an agreement with a company that does not have an Australian Business Number and is not registered for GST. Normally, tenderers must be registered for GST and state their ABN in their Tender.
- 2.6.2 Tenders from tenderers that do not have an ABN and/or are not registered for GST, such as tenderers commencing business in Australia, may be considered at the Board's discretion if the tenderer demonstrates that it will obtain an ABN and GST registration before entering into an agreement. Such tenderers must state how and when they intend to obtain an ABN and register for GST in their Tender.

## 3. Where to Obtain this RFT

### 3.1 RFT Copies

- 3.1.1 A tenderer may obtain either a hard copy or electronic copy of this RFT.
- 3.1.2 NSW Department of Commerce has adopted an electronic tendering system using the internet, which has the capacity for viewing, downloading, or ordering the RFT and for the lodgement of Tenders.

### 3.2 Hard Copy

- 3.2.1 A hard copy of this RFT may be:
  - (a) purchased by telephoning (02) 9372 8900. An additional fee is charged for delivery by express post or by courier, as required.
  - (b) viewed and purchased through the NSW Department of Commerce *eTendering* website at <https://tenders.nsw.gov.au/commerce>. Hard copy orders placed and paid for through the website will be filled by postal delivery.
- 3.2.2 A copy of the Price Schedule in CD-ROM form or on a floppy disk may in some cases be provided with the hard copy.

### 3.3 Electronic Copy

- 3.3.1 An electronic copy of the RFT and any Addenda that may be issued up to the Closing Date and Time, may be viewed and downloaded from the internet at the NSW Department of Commerce *eTendering* website at <https://tenders.nsw.gov.au/commerce>.
- 3.3.2 A tenderer is encouraged, although not required, to obtain the RFT and to lodge a Tender electronically through the NSW Department of Commerce *eTendering* website.
- 3.3.3 In order to download an electronic copy of the RFT, a tenderer must first register as a site user.
- 3.3.4 A tenderer should follow the instructions on the site to view an RFT. To locate and view an RFT and its RFT Summary, follow the instructions on the NSW Department of Commerce *eTendering* website:
  - (a) First locate the RFT using the RFT Search, or by looking at the Current RFT listings screen where the additional search function may also be used.

- (b) You may see some details of the RFT by accessing them through the blue “Viewable Copy” button. This function is provided to assist in making a decision to obtain a “Responsible Copy” of the RFT.
- (c) Download the “Responsible Copy” files from the website by selecting the blue “Responsible Copy” button (if one appears for that RFT) and then follow the steps and the instructions on the NSW Department of Commerce eTendering website.

### **3.4 RFT Purchase Price**

3.4.1 The non-refundable purchase price for a hard copy of this RFT is \$110 Inclusive of GST.

3.4.2 Payment may be made:

- (a) if purchasing from the Tenders Office, McKell Building, by cheque drawn in favour of the NSW Department of Commerce, or by credit card (MasterCard, Visa and Bankcard). Cash will not be accepted; or
- (b) if ordering a hard copy through the NSW Department of Commerce eTendering website, by credit card (Mastercard, Visa and Bankcard).

## PART B The Tender Process

### 4. Definitions of Terms Used in Parts A-C

- 4.1** Unless the context indicates otherwise, the following terms, where used in Parts A-C of this RFT, shall have the meanings set out below. Note the defined terms below will not all necessarily appear in this RFT.

**“ABN”** means an Australian Business Number as provided in the GST law.

**“Addendum”** means an addendum or addition to this RFT made by the Board before the Closing Date and Time under cl. 5.4.

**“Alternative Tender”** means a Non-Conforming Tender that is intended to offer a different method of meeting the object and intent of the Requirement.

**“AOC”** – means Air Operators Certificate.

**“Aircraft”** – means a light utility helicopter, equipped in accordance with the specifications supplied in the Contractor’s Tender and accepted by the Principal.

**“Board”** means the State Contracts Control Board established under the Public Sector Employment and Management Act 2002 whose responsibilities include:

- Inviting and accepting tenders;
- Determining the conditions under which tenders are invited or accepted;
- Entering into contracts on behalf of Departments and other public sector agencies; and
- Ongoing contract administration and management,

and includes the duly authorised delegates of the Board, including officers of NSW Procurement – Contracting Services.

**“Closing Date and Time”** means the Closing Date and Time for receipt of Tenders, specified on the cover sheet to this RFT.

**“Code”** means the NSW Government Code of Practice for Procurement as amended from time to time, together with any other codes of practice relating to procurement, including any amendments to such codes that may be applicable to the particular RFT. The code can be viewed and downloaded from:

[http://www.treasury.nsw.gov.au/procurement/pdf/code\\_of\\_prac-curr.pdf](http://www.treasury.nsw.gov.au/procurement/pdf/code_of_prac-curr.pdf)

**“Conforming Tender”** means a Tender that:

- (a) conforms to the Requirement;
- (b) is in the prescribed form;
- (c) conforms to the terms and conditions of Part D, and
- (d) conforms to all of the other requirements of this RFT.

**“Contractor”** means the tenderer as a party to the proposed agreement.

**“DECC”** means the NSW Department of Environment and Climate Change incorporating the Parks and Wildlife Group, which is the Principal.

**“Declared Incident”** means a fire or other emergency incident declared by DECC managers.

**“Deliverables”** means the goods and/or services sought under this RFT, as detailed in the Specification.

**“Dry Hire” or “Dry Lease”** means including all costs associated with the Aircraft, positioning, maintenance, additional insurance to TMF coverage and operation of the Aircraft and includes lubricants but not fuel.

**“Government Businesses”** means in general, entities which:

- (a) have some form of public sector ownership;
- (b) are engaged in trading goods and/or services;
- (c) have a large measure of self sufficiency; and
- (d) are subject to executive control.

In this context, the term Government business includes Public Trading Enterprises, State Owned Corporations and General Government Businesses.

**“GST”** is a goods and services tax and has the same meaning as in the GST Law. All dollar references in this agreement are \$A, exclusive of GST, unless stated otherwise.

**“GST Free Supplies” and “Input Taxed Supplies”** have the same meaning as in the GST Law.

**“GST Law”** means any law imposing a GST and includes A New Tax System (Goods & Services Tax) Act 1999 (C'th) or if that Act does not exist, means any Act imposing, or relating, to a GST and any regulation made under those Acts.

**“Incident Rate”** means the price to be paid by the Principal for each operating hour flown in the operations of a declared incident.

**“Late Tender”** means a Tender received after the Closing Date and Time for Tenders and includes a Tender, which is only partly received by the Closing Date and Time.

**“Month”** means calendar month, comprising of the actual amount of days for that month.

**“Non-Conforming Tender”** means a Tender that:

- (a) does not conform to the Requirement;
- (b) is not in the prescribed form;
- (c) does not substantially conform to any one or more of the terms and conditions of Part D, including a Tender which seeks to substantially qualify or amend these conditions, or
- (d) does not conform to any of the other requirements of this RFT.

**“OHS&R”** means occupational health, safety and rehabilitation.

**“Operating Hour”** – shall mean the time in hours or parts thereof to be in decimals of an hour (i.e from “skids off to skids on” determined by the Hobbs meter or equivalent and recorded on the Maintenance Release).

**“Price”** means, in respect of each Deliverable offered, the Price nominated in the Price Schedule for that Deliverable which may be expressed as a lump sum or a rate per unit of quantity, calculated in accordance with cl. 7.2.

**“Price Schedule”** means the list of Deliverables offered by the tenderer, together with the corresponding pricing information, at Part C of the RFT.

**“Principal”** means the party named as Principal in the proposed agreement at Part D.

**“Requirement”** means the requirement for the Deliverables to be met by the Tender, outlined in cl.1 of Part A and detailed in the Specification.

**“RFT”** means Request for Tender 0800361.

**“Routine Operations Rate”** means the price to be paid by the Principal for each operating hour flown other than on a declared incident.

**“Specification”** means the detailed description of the required goods and services or goods or services contained in Schedule 2 to Part D.

**“Service Period”** means the period from 1 September to 31 March each financial year during which the Contractor must guarantee the exclusive availability of the Aircraft to the Principal.

**“NSW Procurement – Contracting Services”** means a business unit of the NSW Department of Commerce representing the Board and authorised to arrange and administer contracts on behalf of the Board.

“**Tender**” means the offer to supply the Deliverables submitted in response to the RFT.

“**Tender Price**” has the same meaning as Price.

## 5. Preparation of Tender – General

### 5.1 Conformity of Tenders

5.1.1 The Board seeks Conforming Tenders.

5.1.2 Non-Conforming Tenders that do not include a fully completed Part C, in particular those Tenders which do not contain sufficient information to permit a proper evaluation to be conducted, or cannot be effectively evaluated because the file is not in the required format, or is not prepared using the required software, or has become corrupt, may be excluded from the tender process without further consideration at the Board’s discretion.

5.1.3 Tenderers are encouraged to offer options or solutions that contribute to the Principal’s ability to carry out its business in a more cost-effective manner. Tenderers may, if they choose, submit an Alternative Tender provided the Alternative Tender meets the scope and functional intent expressed in the RFT. Where such an Alternative Tender is proposed, a detailed description of the alternative must be submitted, stating clearly the manner in which it does not conform to the requirements of the RFT. Tenderers submitting an Alternative Tender are strongly advised to also submit a Conforming Tender, if possible.

5.1.4 An Alternative Tender must be clearly marked “Alternative Tender”.

5.1.5 The Board expressly reserves the right to accept, in its discretion, either or both of the following:

- (a) Any Alternative Tender or part of an Alternative Tender, which meets the scope and functional intent expressed in the RFT; and
- (b) Any other Non-Conforming Tender or part of a Non-Conforming Tender (not, in either case, being an Alternative Tender or part of an Alternative Tender) that, in the Board’s opinion, is substantially a Conforming Tender.

### 5.2 Prescribed Form of Tender

5.2.1 The Tender, including any Alternative Tender, must comprise a completed Part C and any attachments to Part C, as may be necessary. Any attachments should be labelled to identify those clauses of the RFT to which they relate.

5.2.2 The Tender will be taken to be for the supply of the Requirement on the terms and conditions stated in Part D except to the extent that these are amended by the Tender.

### 5.3 General Instructions for Completion of Tenders

5.3.1 Prices, responses and other information provided in the Tender are to be in writing and in English.

5.3.2 Tenderers must complete all of Part C of this RFT, as directed, and must not amend any of the questions provided.

5.3.3 Tenderers should notify the Contact Officer in writing on or before the Closing Date and Time if they find any discrepancy, error or omission in this RFT.

5.3.4 Tenderers must ensure that all Excel or Word attachments can be opened and viewed by Microsoft Excel 2003 or Microsoft Word 2003. Other formats for the

attachments are only to be submitted if an arrangement has first been made with the Contact Officer prior to lodgement of the Tender.

#### **5.4 Addenda to RFT**

- 5.4.1 If, for any reason the Board, at its sole discretion, requires the RFT to be amended before the Closing Date and Time, an Addendum will be issued.
- 5.4.2 In each case, an Addendum becomes part of the RFT.
- 5.4.3 The Board, during the tender open period may issue Addenda altering the RFT. In such cases, it is the obligation of the tenderer to verify if any addenda were issued prior to the closing date, even if a Tender has already been submitted. They must obtain a copy of all Addenda as given in clause 5.4.4 or 5.4.5 as applicable.
- 5.4.4 Where a RFT has been acquired in a hard copy form, tenderers must contact the Contact Officer named under clause 2.3 of Part A or the Tenders Office (Level 8 McKell Building 2-24 Rawson Place Sydney, contact number: 9372-8900, e-mail: [Tenders@commerce.nsw.gov.au](mailto:Tenders@commerce.nsw.gov.au)) to obtain a copy of the Addendum.
- 5.4.5 Where a RFT has been acquired in an electronic form, tenderers must check the web site address, <https://tenders.nsw.gov.au/commerce> and download the Addendum.
- 5.4.6 It is mandatory for tender response 5.1 in Part C to be completed. Failure to complete tender response 5.1 in Part C may result in your tender not being considered.

#### **5.5 Pre-Tender Briefing**

- 5.5.1 A pre-tender briefing will be held, commencing at 10:00 a.m. on Thursday 24 April 2008 at  
  
Parks and Wildlife Group  
Hangar 609  
Tower Road  
Bankstown Airport  
  
to discuss all aspects of the RFT. Please contact Mark Van Epen on telephone 9372 7530 or email [mark.vanepen@commerce.nsw.gov.au](mailto:mark.vanepen@commerce.nsw.gov.au) to confirm your attendance.
- 5.5.2 The Contact Officer and officers from DECC will be available at that time to answer any questions regarding this RFT and the tender process generally.
- 5.5.3 It is highly recommended that all tenderers attend the briefing in order that they fully acquaint themselves with the tender requirements. It is also expected that all tenderers will have thoroughly read this document prior to the briefing.

#### **5.6 Inspection of DECC Helicopter**

- 5.6.1 DECC's helicopter Park Air 1 will be available for inspection at the pre-tender briefing on Thursday 24 April between the hours of 10.00 a.m. and 3.00 p.m. Please contact Linda Sinclair on telephone 9792 1788 to arrange an appointment to view the helicopter on this day.

## **5.7 Tenderers to Inform Themselves**

5.7.1 Before submitting its Tender, a tenderer must:

- (a) Examine all information relevant to the risks and contingencies and other circumstances having an effect on its Tender; and
- (b) Satisfy itself:
  - (i) that the Tender, including the Tender Price is correct; and
  - (ii) that it is financially and practically viable for it to enter into and perform the proposed agreement.

## **6. Preparation of Tender – Policy Requirements**

### **6.1 Procurement Policy – Introduction**

6.1.1 Tenderers should read the main policy document listed below. Other relevant policies and particular policy objectives to be implemented through this procurement are drawn to tenderers' attention in this cl. 6. Their requirements are reflected in the selection criteria listed in cl. 9.2 and in the responses required from tenderers in Part C.

NSW Government Procurement Policy

<http://www.treasury.nsw.gov.au/pubs/tpp2004/tpp04-1.pdf>

### **6.2 Code of Practice for Procurement**

6.2.1 Tenderers must comply with the NSW Government Code of Practice for Procurement, which is available at:

[http://www.treasury.nsw.gov.au/procurement/pdf/code\\_of\\_prac-curr.pdf](http://www.treasury.nsw.gov.au/procurement/pdf/code_of_prac-curr.pdf)

6.2.2 Lodgement of a Tender will itself be an acknowledgement and representation by the tenderer that it is aware of the requirements of the Code, that the tenderer will comply with the Code and that the tenderer agrees to provide periodic evidence of compliance with the Code and access to all relevant information to demonstrate compliance for the duration of any agreement that may be awarded.

6.2.3 If a tenderer has failed to comply with the Code, this failure will be taken into account by the Board when considering its Tender or any subsequent tender and may result in this or any subsequent tender being passed over without prejudice to any other rights or action or remedies available to the Board.

### **6.3 Occupational Health Safety & Rehabilitation**

6.3.1 Tenderers must comply with the following OHS&R requirements in the performance of any contract awarded:

The Occupational Health and Safety Act 2000 (NSW) and any regulation made under this Act, including the OHS Regulation 2001, and

Codes of Practice, approved and issued pursuant to the above Act and or regulations made under the Act.

6.3.2 Tenderers must ensure that the tenderer's sub-contractors will comply with the OHS&R requirements listed in clause 6.3.1 in the performance of any contract awarded.

- 6.3.3 Tenderers must indicate in Part C compliance with OHS&R requirements, including any specific requirements of the contract in Part D.

## 7. Preparation of Tender – Price Schedule

### 7.1 Price Schedule

- 7.1.1 Complete the Price Schedule at Part C.

### 7.2 Calculating the Tender Price

- 7.2.1 The Tender Price must:

- (a) be in Australian dollars;
- (b) cover all costs of performing the agreement;
- (c) include Goods and Services Tax if it is payable and all other applicable taxes, duties and charges at the rates applicable at the Closing Date and Time for Tenders; and
- (d) include all costs associated with the preparation and submission of the Tender.

### 7.3 Price Variation

- 7.3.1 The Tender Price shall be firm for the first three years of the contract and then subject to annual adjustment for the optional extension periods, if required, in accordance with the provisions of clause 5.6 of Part D.

### 7.4 GST Free or Input Taxed Supplies

- 7.4.1 Tenderers must identify and state the value of any GST Free or Input Taxed Supplies to be made under the agreement.

### 7.5 Minimum Tender Validity Period

- 7.5.1 Tenders must remain open for acceptance for a period of at least six (6) months from the Closing Date and Time for Tenders. Tenderers must state in Part C if their Tenders will remain open for any longer period.

## 8. Submission of Tenders

### 8.1 General Instructions for Submission of Tenders

- 8.1.1 A Tender must be fully received by the Closing Date and Time.

- 8.1.2 A Tender may be submitted by one of the following methods:

- (1) by electronic lodgement through the NSW Department of Commerce, eTendering website at

<https://tenders.nsw.gov.au/commerce>

- (2) by delivery into the Tender Box:

It must be marked



Tender Box  
 Level 3, McKell Building, 2-24 Rawson Place, Sydney.2000  
 RFT No , Title and closing date and Time  
 .

- (3) by post, addressed to

Tender Box  
 Tenders Office,  
 Level 3, McKell Building 2-24 Rawson Place, Sydney NSW 2000  
 RFT No , Title and closing date and Time

- (4) by facsimile to (02) 9372 8974.

8.1.3 If a tenderer intends to submit electronically through the NSW Department of Commerce eTendering website or by facsimile, the following must be considered:

- (a) The facsimile machine and NSW Department of Commerce eTendering website are at peak use on the morning when Tenders close.
- 1) Due to the limitations of these means of communication it may take longer to lodge a Tender near the Closing Date and Closing Time than at other times.
  - 2) When lodging by facsimile or through the NSW Department of Commerce eTendering website, it is recommended that a Tender be lodged well in advance of the Closing Date and Closing Time.
  - 3) A tenderer must determine whether lodgement of a Tender by facsimile or through the NSW Department of Commerce eTendering website is appropriate.
- (b) The facsimile machine and the NSW Department of Commerce eTendering website may experience difficulties in accepting a large Tender. A tender lodged via the NSW Department of Commerce eTendering website should ideally be below 7 megabytes (MB) in total file size. Responses totalling more than 7MB may experience difficulties in lodgement. A tenderer is referred to the clause governing electronic Tenders to the NSW Department of Commerce eTendering website for instructions as to compressing electronically submitted Tenders.
- 1) In order to comply with the above paragraph, an electronic Tender may be supported by documents in hard copy or on CD-ROM.
  - 2) Supporting documents, to be submitted in hard copy or on CD-ROM, may be designated throughout the RFT. Supporting documents may include, but are not limited to, statutory declarations, certificates, and company brochures.
  - 3) If submitting an electronic Tender with supporting documents:
    - (a) The complete Tender, including the supporting documents, must be submitted by Closing Date and Closing Time, and
    - (b) Supporting documents should be clearly designated as "Supporting Documents to RFT 0800361".

- 8.1.4 A tenderer is not required to provide multiple copies of a Tender unless specifically requested to do so.
- (a) If a tenderer provides multiple submissions, the tenderer should clearly state on the front page of the Tender whether it is:
    - (1) A "Copy". A copy must be identical to an earlier or simultaneous submission in every respect.
    - (2) A "Variation". A variation of an earlier Tender will be deemed as superseding a prior submission.
    - (3) An "Alternative Tender".
  - (b) In the event that a Tenderer fails to designate whether a submission is a Copy or a Variation, the latest Tender received in the NSW Department of Commerce Tender Box will be deemed as the definitive submission.
- 8.1.5 If required, a tenderer must provide a copy of the Price Schedule on a CD-ROM or an IBM compatible 1.44MB floppy disk in a file format that can be read, formatted, displayed, manipulated and printed by Microsoft Excel 97.

## 8.2 Electronic Lodgement of Tenders

- 8.2.1 A tenderer is encouraged to lodge its Tender electronically through the NSW Department of Commerce *eTendering* website at <https://tenders.nsw.gov.au/commerce>. Electronic Tenders will be treated in accordance with the *Electronic Transactions Act 2000* (NSW).
- 8.2.2 A tenderer, by lodging a Tender electronically, is taken to have accepted conditions shown in the Conditions of Tendering and rules on the NSW Department of Commerce *eTendering* website.
- 8.2.3 To lodge a Tender electronically the files that represent the Tender Response must be up-loaded through the NSW Department of Commerce *eTendering* website. To do so go to the RFT on the website and click on the blue "Lodge a Response" link on the web page and then follow the steps and instructions provided, including any specific instructions which may have been supplied with the RFT.
- 8.2.4 A tenderer must observe the following format for electronic lodgements:
- (a) The Tender must be lodged in a file format required by the RFT.
  - (b) If a tenderer compresses files, it must be possible to decompress them using WinZip. A tenderer must not submit self-extracting (\*.exe) zip files.
  - (c) A tenderer must not change pre-existing text in the RFT other than to insert the required information.
  - (d) The file/s name/s must have an extension and not have invalid characters or file names/loading pathnames too long for the system, as detailed on the NSW Department of Commerce *eTendering* website
- 8.2.5 Signatures are not required for a Tender submitted to the NSW Department of Commerce *eTendering* website. A tenderer must ensure that a Tender is authorised by the person or persons who may do so on behalf of the tenderer and appropriately identify the person and indicate the person's approval of the information communicated.

- 8.2.6 Electronically submitted Tenders may be made corrupt or incomplete, for example by computer viruses. The Board may decline to consider for acceptance a Tender that cannot be effectively evaluated because it is incomplete or corrupt. Note that:
- (a) To reduce the likelihood of viruses, a tenderer must not include any macros, applets, or executable code or files in a Tender.
  - (b) A tenderer should ensure that electronically submitted files are free from viruses by checking the files with an up to date virus-checking program before submission.
- 8.2.7 If a tenderer experiences any persistent difficulty with the NSW Department of Commerce eTendering website in submitting a Tender or otherwise, it is encouraged to advise the Contact Officer promptly in writing.
- 8.2.8 If there is a defect or failure of the NSW Department of Commerce eTendering website and the Board is advised, the Tender Closing Date and Time may be extended provided that, in the view of the Board, the tender process will not be compromised by such an extension.

### **8.3 Custody of Tenders After Receipt**

- 8.3.1 On receipt of Tenders lodged to the NSW Department of Commerce eTendering website, Tenders are encrypted and stored in a secure "electronic tender box."
- 8.3.2 For reasons of probity and security, NSW Department of Commerce is prevented from interrogating the electronic tender box to ascertain whether Tenders have been received or for any reason, until after the Closing Date and Time.
- 8.3.3 The e-mail receipt that is sent to the tenderer after successfully up-loading and lodging the Tender electronically is the only evidence of Tender lodgement provided.

### **8.4 Late Tenders**

- 8.4.1 In accordance with the requirements of the NSW Government Code of Tendering, Late Tenders will not be considered except when the Board is satisfied that the integrity and competitiveness of the tendering process will not be comprised.
- 8.4.2 Normally, Late Tenders will not be considered for acceptance if they are:
- (a) hand delivered, including hand delivered by courier; after the Closing Date and Time; or
  - (b) received through Australia Post unless the envelope is clearly postmarked before the Closing Date and Time; or
  - (c) received through Australia Post with only the tenderer's own franking machine on the envelope; or
  - (d) received by electronic communication (facsimile or over the internet) and the despatch of the electronic communication of the Tender has occurred after the Closing Date and Time, including where delay may be due to the receiving facsimile or internet facility being engaged, faulty or otherwise inoperative.

### **8.5 Extension of the Closing Date and Time**

- 8.5.1 The Board may, in its discretion, extend the Closing Date and Time.

## 9. Evaluation of Tenders

### 9.1 General

- 9.1.1 Tenders will be assessed against the selection criteria listed below, which are not necessarily exhaustive, in order of significance or to be given equal weight.
- 9.1.2 The selection criteria for this RFT that do not relate to price will account for 60% of the total evaluation score. The selection criteria for this RFT that relate to price will account for 40% of the total evaluation score.
- 9.1.3 Information supplied by the tenderer in Part C will contribute to the assessment against each criterion. Tenderers are advised to respond clearly to all the selection criteria listed in this RFT.

### 9.2 Selection Criteria

- (a) degree of compliance with the technical specification for Aircraft and equipment and the suitability of the Aircraft to meet role requirements outlined in the technical specification;
- (b) ability to conduct high quality timely maintenance including degree of compliance with the maintenance specification;
- (c) the tenderer's capacity to fulfil the contract, particularly its performance in contracts similar to that proposed, including referee reports;
- (d) availability of Aircraft by the commencement of the Service Period (for the purpose of this criterion the tenderer can assume a decision on contract award by 31 July 2008);
- (e) the degree of the tenderer's compliance with applicable government policies;
- (f) the degree of the tenderer's compliance with the conditions of the contract at Part D;
- (g) the tenderer's financial capacity to perform the contract; and
- (h) the Tender Price.

### 9.3 Variation of Tenders

- 9.3.1 At any time before the Board accepts any Tender received in response to this RFT, a tenderer may, subject to cl. 9.3.2, vary its Tender:
  - (a) by providing the Board with further information by way of explanation or clarification;
  - (b) by correcting a mistake or anomaly; or
  - (c) by documenting agreed changes to the Tender negotiated under cl.10.1 of this Part.

9.3.2 Such a variation may be made either:

- (a) at the request of the Board, or
  - (b) with the consent of the Board at the request of the tenderer;
- but only if,
- (c) in the case of variation requested by the tenderer under cl.9.3.1(a) or (b), it appears to the Board reasonable in the circumstances to allow the tenderer to provide the information or correct the mistake or anomaly; or
  - (d) in the case of variation under cl.9.3.1(c), the Board has confirmed that the draft documented changes reflect what has been agreed.

9.3.3 If a Tender is varied in accordance with cl. 9.3.1(a) or (b), the Board will provide all other tenderers whose Tenders have similar characteristics with the opportunity of varying their Tenders in a similar way.

9.3.4 A variation of a Tender under cl. 9.3.1 will not be permitted if in the Board's view:

- (a) it would substantially alter the original Tender; or
- (b) in the case of variation under cl.9.3.1 (a) or (b), it would result in the revising or expanding of a Tender in a way that would give a tenderer an unfair advantage over other tenderers.

#### **9.4 Corrupt or Unethical Conduct**

9.4.1 If a tenderer or any of its officers, employees, agents or sub-contractors is found to have

- (a) offered any inducement or reward to any public servant or employee, agent or sub-contractor of the Board, the Client Agency or the NSW Government in connection with this RFT or the submitted Tender;
- (b) committed corrupt conduct in accordance with the provisions of the *Independent Commission Against Corruption Act 1988*;
- (c) a record or alleged record of unethical behaviour;
- (d) not complied with the requirements of Commerce Business Ethics Statement available at:

<http://www.commerce.nsw.gov.au/About+Commerce/Business+ethics+statement/Business+ethics+statement.htm>

the Board may, in its discretion, invite the relevant tenderer to provide written comments within a specified time before the Board excludes the tenderer on this basis.

#### **9.5 Exchange of Information Between Government Agencies**

9.5.1 Lodgement of a Tender will itself be an authorisation by the tenderer to the Board to make available, on request, to any NSW government agency information, including but not limited to, information dealing with the tenderer's performance on any contract that may be awarded. Such information may be used by the recipient NSW Government agency for assessment of suitability for pre-qualification, selective tender lists, expressions of interest or the award of a contract or termination of contract.

- 9.5.2 The provision of the information by the Board to any other NSW Government agency is agreed by the tenderer to be a communication falling within section 22(1) of the *Defamation Act 1974* (NSW), and the tenderer shall have no claim against the Board and the State of New South Wales in respect of any matter arising out of the provision or receipt of such information, including any claim for loss to the tenderer arising out of the communication.
- 9.5.3 In the evaluation of Tenders, the Board may take into account any information about the tenderer that the Board receives from any source.
- 9.5.4 To avoid doubt, information that may be collected, exchanged and used in accordance with this provision includes “personal information” about the tenderer for the purposes of the *Privacy and Personal Information Protection Act 1998*. Lodgement of a Tender will be an authorisation by the tenderer to the Board to collect such information from third parties, and to use and exchange such information in accordance with this cl. 9.5.
- 9.5.5 The tenderer’s attention is drawn to the *Freedom of Information Act 1989* which may confer rights, subject to the terms of that Act, to access, and to require the correction of, information held by certain agencies.
- 9.5.6 During the course of the agreement, the successful tenderer’s performance will be monitored and assessed. Performance assessment reports, including substantiated reports of unsatisfactory performance, can be taken into account by NSW government agencies and may result in future opportunities for NSW government work being restricted or lost.

## 10. Outcomes

### 10.1 Negotiations Before Determination of Outcome

- 10.1.1 Before making any determination as to acceptance or rejection of Tenders the Board may, at its discretion, elect to negotiate with preferred tenderers, including those who have submitted Alternative Tenders or who have submitted substantially Conforming Tenders, to mutually improve outcomes.
- 10.1.2 The Board will generally not enter into negotiations on the standard conditions of contract contained in Part D.

### 10.2 Acceptance or Rejection of Tenders

- 10.2.1 The Board may accept all or any part or parts of any Tender or Tenders, including, in accordance with cl. 5.1, any Alternative Tender or other Non-Conforming Tender.
- 10.2.2 The Board may accept more than one Tender.
- 10.2.3 The Board is not bound to accept the lowest or any Tender.
- 10.2.4 If the Board rejects all the Tenders received it may:
  - (a) invite fresh Tenders based on the same or different criteria (specifications and details contained in Alternative Tenders will not be used as the basis for the calling of new Tenders), or
  - (b) conduct post-tender negotiations in accordance with cl. 10.6.

### 10.3 Discontinuance of the Tender Process

- 10.3.1 Where the Board determines that awarding a contract would not be in the public interest, the Board reserves the right to discontinue the tender process at any

point, without making a determination regarding acceptance or rejection of Tenders.

- 10.3.2 The Board will not be liable for any losses suffered by a tenderer as a result of discontinuance of the tender process, including costs of tendering.

#### **10.4 Notification of Outcome**

- 10.4.1 Following the Board's decision, all tenderers will be notified in writing of the outcome of their Tenders.

#### **10.5 Entry Into Agreement**

- 10.5.1 The Principal may enter into an agreement with the successful tenderer either by letter of acceptance or by execution of a formal agreement in terms of Part D. If the Principal chooses to proceed by way of formal agreement it will indicate in any notification of acceptance that such acceptance will be formalised by execution of a formal agreement.

#### **10.6 Post Tender Negotiations in the Event all Tenders are Rejected**

- 10.6.1 If the Board rejects all Tenders on the basis that all Tenders are Non-Conforming, but considers that conformity with the requirements of this RFT is achievable, it may enter into negotiations with the least non-conforming tenderer with a view to achieving a Conforming Tender and entering into an agreement. If such negotiations are unsuccessful the Board may then enter negotiations with the next most acceptable tenderer. This process may be repeated with each of the rejected Tenders in order of potential acceptability. However, the Board is not obliged to enter into negotiations with any tenderer.
- 10.6.2 The purpose of the negotiations will be advised by the Board and made clear to the participants before the commencement of negotiation. Negotiations will not seek to play off tenderers' prices against other tenderers' prices.

#### **10.7 Complaints**

- 10.7.1 It is the NSW Government's objective to ensure that industry is given every opportunity to win Government contracts. Should any entity feel that it has been unfairly excluded from tendering or unfairly disadvantaged by the conditions in Part D or the Requirement, it is invited to write to:

Chairman, State Contracts Control Board  
Level 22, McKell Building  
2-24 Rawson Place  
SYDNEY NSW 2000

#### **10.8 Disclosure of Information Concerning Tenderers and Outcome of the Tender Process**

- 10.8.1 Details of tenderers and the outcome of the tender process may be disclosed in accordance with the NSW Government Tendering Guidelines, available at:  
<http://www.dpws.nsw.gov.au/Government+Procurement/Procurement+Policy+Framework/NSW+Government+Tendering+Guidelines.htm>

An outline of these requirements can be found in Annexure 1 of this Part B.

#### **10.9 Ownership of Tenders**

- 10.9.1 All Tenders become the property of the Board on submission.

10.9.2 The Board may make copies of the Tenders for any purpose related to this RFT.

#### **10.10 Monitoring of Contractor Performance**

10.10.1 During the course of the agreement the Contractor's performance will be monitored and assessed. For details refer to the NSW Government Procurement Guidelines on Service Provider performance management, which is available on request from the Contact Officer, the NSW Department of Commerce or can be viewed and downloaded from

<http://www.ogp.commerce.nsw.gov.au/NR/rdonlyres/eucuz2722gdb54776cyhkw7ntoj4cpw5iga5ztwvtvjethi2xjujwd4zrgsfte4cye7lgoqtlf4wxywdioutedaph/Service+Provider+Performance+Management.pdf>

10.10.2 The terms and conditions of the proposed agreement, set out in Part D, detail the performance criteria to be applied in the monitoring of Contractor performance.



## ANNEXURE 1 TO PART B (Disclosure of Information)

### Disclosure of Information Concerning Tenderers and Outcome of the Tender Process

1. In accordance with the NSW Government Tendering Guidelines referred to in clause 10.8.1 and found at <http://www.dpws.nsw.gov.au/Government+Procurement/Procurement+Policy+Framework/NSW+Government+Tendering+Guidelines.htm>, the following **tender information** is required to be disclosed -

Tender Type	Level of Disclosure	Basis of Disclosure
For all public calls for tender, expressions of interest or other such public calls which may result in a contract with the private sector.	As a minimum: a concise description of the proposed works, goods or services the subject of the tender call; the date responses to the tender call close and where responses are lodged; location of the tender call documents; and the names and addresses of all entities which submit responses.	Routine public disclosure at the time tender calls are advertised.  Routine public disclosure within 7 days of the date tender calls closed.
In a multi-stage tender process.	The names and addresses of the short listed entities, except where such disclosure is likely to compromise the competitiveness of the subsequent tender process.	Routine public disclosure within 7 days of these entities being advised of their short listing.

2. In accordance with the NSW Government Tendering Guidelines referred to in clause 10.10.1, Part B, the following **contract** information is required to be disclosed -

Contract Size and Type	Level of Disclosure	Basis of Disclosure
<b>Class 1 contracts</b> All government contracts with estimated value \$150,000 or above).	(a) The name and business address of the contractor; (b) Particulars of any related body corporate (within the meaning of the Corporations Act 2001 of the Commonwealth) in respect of the contractor, or any other private sector entity in which the contractor has an interest, that will be involved in carrying out any of the contractor's obligations under the contract or will receive a benefit under the contract; (c) The date on which the contract became effective and the duration of the contract; (d) Particulars of the project to be undertaken, the goods or services to be provided or the real property to be leased or transferred under the contract; (e) The estimated amount payable to the contractor under the contract; (f) A description of any provisions under which the amount payable to the contractor may be varied; (g) A description of any provisions with respect to the renegotiation of the contract; (h) In the case of a contract arising from a tendering process, the method of tendering and a summary of the criteria against which the various	Routine public disclosure within 60 days after the contract becomes effective.

	tenders were assessed; and (i) A description of any provisions under which it is agreed that the contractor is to receive payment for providing operational or maintenance services.	
<b>Class 2 contracts</b> Class 1 contracts (i.e. government contracts with estimated value \$150,000 or above) which also: <ul style="list-style-type: none"> <li>- result from a direct negotiation where there has not been a tender process; or</li> <li>- have been the subject of a tender process and where the final contract terms and conditions are substantially negotiated with the successful tenderer (this includes alliance type contracts); or</li> <li>- involve operation or maintenance obligations for 10 years or longer; or</li> <li>- involve a privately financed project as defined by relevant Treasury guidelines; or</li> <li>- involve a transfer of land or other asset to a party in exchange for the transfer of land or other asset to an agency.</li> </ul>	The information required for class 1 contracts and <ul style="list-style-type: none"> <li>(a) Particulars of future transfers of significant assets to the State at zero, or nominal, cost to the State, including the date of their proposed transfer;</li> <li>(b) Particulars of future transfers of significant assets to the contractor, including the date of their proposed transfer;</li> <li>(c) The results of any cost-benefit analysis of the contract conducted by the agency;</li> <li>(d) The components and quantum of the public sector comparator if used;</li> <li>(e) Where relevant, a summary of information used in the contractor's full base case financial model (for example, the pricing formula for tolls or usage charges);</li> <li>(f) Where relevant, particulars of how risk, during the construction and operational phases of a contract to undertake a specific project (such as construction, infrastructure or property development), is to be apportioned between the parties, quantified (where practicable) in net present-value terms and specifying the major assumptions involved;</li> <li>(g) Particulars as to any significant guarantees or undertakings between the parties, including any guarantees or undertakings with respect to loan agreements entered into or proposed to be entered into; and</li> <li>(h) Particulars of any other key elements of the contract.</li> </ul>	Routine public disclosure within 60 days after the contract becomes effective.
<b>Class 3 contracts</b> Class 2 contracts where the estimated value of the government contract is \$5 million or more.	The information for class 1 and 2 contracts and the complete contract, less confidential information.  Note: if some or all of a class 3 contract is not disclosed for reasons of confidentiality, the agency is to disclose: <ul style="list-style-type: none"> <li>the reasons for not publishing the contract or provisions;</li> <li>a statement as to whether the contract or provisions will be published and, if so, when; and</li> <li>where some but not all of the provisions of the contract have been disclosed, a general description of the types of provisions that have not been published.</li> </ul>	Routine public disclosure within 60 days after the contract becomes effective.

### 3. Requests for Disclosure of Additional Contract Information

Tenderers must acknowledge that any person may make a specific request to the State Contracts Control Board for any item of contract information contained in schedules 1 or 2, or for a copy of a contract, which is not required to be routinely disclosed under section 15A of the FOI Act. The State Contracts Control Board must provide the requested contract information or the requested copy of the contract to the requesting person (less any confidential information) within 60 days of receiving the request.

Where a copy of a contract has been requested and some or all of the contract is not provided for reasons of confidentiality, the State Contracts Control Board will disclose:

- the reasons for not providing;
- a statement as to whether the contract or provisions will be provided and, if so, when; and
- where some but not all of the provisions of the contract have been provided, a general description of the types of provisions that have not been provided.

#### **4. Disclosure of Amendments or Variations to Contract Information Under the FOI Act**

The FOI Act requires that, if there is an amendment to the contract terms or a material variation made under the contract that changes information already routinely disclosed under the FOI Act, the State Contracts Control Board must ensure that the information concerning the change is routinely disclosed within 60 days after such amendment or variation becomes effective, less any confidential information. In the case of class 3 contracts, the full amendment or material variation, less any confidential information, must be disclosed within the 60 day timeframe.

#### **5. Confidential Information**

None of the disclosure obligations contained in the FOI Act, or the requirements for disclosing tender information or a copy of a contract or information in relation to a contract under these guidelines, require the disclosure of:

- the commercial-in-confidence provisions of a contract (as defined in schedule 3 to the Freedom of Information Act) (the contractor's financing arrangements; the contractor's cost structure or profit margins; the contractor's full base case financial model; any intellectual property in which the contractor has an interest; or any matter whose disclosure would place the contractor at a substantial commercial disadvantage in relation to other contractors or potential contractors, whether at present or in the future.);
- details of any unsuccessful tender;
- any matter that could reasonably be expected to affect public safety or security; or
- information which would be exempt from disclosure if it were the subject of an application under the Freedom of Information Act.

Where such confidential information is withheld, the State Contracts Control Board must inform the requesting person that access to that information may be sought in accordance with the Freedom of Information Act. This will enable a person seeking the information to have the appeal rights available under the Freedom of Information Act.

#### **6. Tenderers are Invited to Nominate Items They Consider are Confidential and Why.**



**State Procurement is a Business Unit of the NSW Department of Commerce**

**State Procurement invites this tender for and on behalf of the  
NSW Government State Contracts Control Board**

## **PART C** **TENDER RESPONSE**

### **Request for Tender: 0800361**

Request for Tender RFT 0800361 - Dry Lease of Light Helicopters  
for the NSW Department of Environment and Climate Change

Closing Date: Wednesday 21 May 2008

Closing Time: 9:30 am Sydney Time

Your Company's Legal Name: \_\_\_\_\_

Your Company's Trading Name: \_\_\_\_\_

Your Company's ABN number: \_\_\_\_\_

Contact Name: \_\_\_\_\_  
<insert name to whom enquiries should be directed>

Contact Phone: \_\_\_\_\_

(i) **If a Tender is not submitted electronically, the tenderer must submit the original Tender, plus four copies of the Tender. Tenders are to be marked "Original", "Copy 1", "Copy 2", "Copy 3 and "Copy 4" accordingly.**

(ii) **If submitting an electronic Tender, please answer the following and indicate Yes or No below:**

- Are you providing supporting documents in hard copy or on CD-ROM?  
**Yes/No**
- Did you clearly mark the supporting documents as "Supporting Documents to RFT No 0800361"?  
**Yes/No**

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## PART C TENDER RESPONSE

### PART C1 INFORMATION SUPPLIED IN RESPONSE TO PART AB

#### 1. INTRODUCTION

- 1.1 The information provided in this Part will be used in the assessment of Tenders. Questions have been framed to ensure responses that are relevant to the selection criteria. Please provide attachments where necessary, clearly labelled and cross-referenced.
- 1.2 References to “you” in this Part means the tenderer and all responses given will be taken to be responses of the tenderer.

#### 2. PRICING AND RELATED FACTORS

##### 2.1 Price Schedule

- 2.1.1 You must complete the Price Schedule provided below. Tendered prices must be stand alone rates and include all costs involved in satisfying the requirements of the Agreement at Part D, particularly the Specification at Schedule 2 to Part D.
- 2.1.2 Please complete a separate Price Schedule for each Aircraft offered including description of Aircraft type and registration number, if applicable.

Aircraft Type: \_\_\_\_\_

Registration Number (if applicable): \_\_\_\_\_

Item Number and Description	Price Excluding GST	GST Component	Total Price Including GST
1. Dry hire of Aircraft - Routine Operations Rate dry (maintenance time)	\$..... per flight hour	\$.....	\$..... per flight hour
2. Dry hire of Aircraft - Incident Rate dry (maintenance time)	\$..... per flight hour	\$.....	\$..... per flight hour

- 2.1.3 If you are offering an interim solution because the principal Aircraft will not be available by the start date of 1 September please provide hereunder a separate Price Schedule for each interim Aircraft offered including description of Aircraft type and registration number, if applicable. If you offer an interim Aircraft you will also have to complete a separate specification sheet provided at Annexure 1 to this Part for each Aircraft offered.

## 2.2 Quantity Discounts

2.2.1 If you are offering more than one Aircraft under clause 2.1.2 please indicate hereunder whether any discounts apply to the tendered prices if more than one Aircraft is selected for contract award.

(a) If two Aircraft are accepted a discount of \_\_\_\_\_ % will apply to the tendered prices for each Aircraft.

(b) If three Aircraft are accepted a discount of \_\_\_\_\_ % will apply to the tendered prices for each Aircraft.

(N.B.: If this condition is not completed, the prices tendered will be deemed to be NETT.)

## 2.3 Price Variation

2.3.1 The tenderer agrees with the price variation conditions included in clause 5.6 of Part D?

**Yes/No** (Delete whichever is not applicable)

2.3.2 If No, please indicate hereunder the alternative conditions sought. (**Note:** Alternative price variation clauses will be factored into the tender evaluation.)

2.3.3 If Yes, please indicate hereunder what percentage of the tendered prices will be adjustable under the Consumer Price Index and what percentage will be adjustable under the nominated maintenance index (refer price variation conditions provided in clause 5.6 of Part D). It is acceptable for tendered prices to be variable by one index only, in which case 100% should be nominated against that index and nil % against the other index.

Consumer Price Index: \_\_\_\_\_%

Maintenance: \_\_\_\_\_%

## 2.4 Settlement Discount

2.4.1 The tendered prices are subject to a settlement discount of \_\_\_\_\_% for payment within \_\_\_\_\_ days from the date of receipt of the invoice.

(N.B.: If this condition is not completed, the prices tendered will be deemed to be NETT.)

## 2.5 Tender Validity Period

2.5.1 The Tender will remain valid for acceptance within \_\_\_\_\_ months from the deadline for lodgement of tenders, in accordance with Part A.

**N.B.** The minimum validity period is as stated in clause 7.5 of Part A.

## 2.6 Delivery Time

2.6.1 Aircraft type \_\_\_\_\_ registration number \_\_\_\_\_ (if applicable) will be fitted out and ready to commence work within \_\_\_\_\_ calendar days from formal notification of contract award.

Note: Please complete the above for each Aircraft offered including any interim Aircraft submitted. Refer also clause 3 (d).

### 3. SELECTION CRITERIA

Tenderers are required to respond individually to each of the selection criteria outlined in the following spaces. The information provided will be used in the assessment of Tenders. Responses are to be concise and focus on key elements of the tenderer's proposal as it relates to each of the selection criteria.

**(a) Degree of compliance with the technical specification for Aircraft and equipment and the suitability of the Aircraft to meet role requirements outlined in the technical specification.**

Tenders must state whether the Aircraft offered conforms to the specification outlined in Annexure 1 to this Part. A separate completed specification sheet is to be completed for each Aircraft offered including any interim Aircraft submitted. Please ensure that all the information requested to the right of every first column is provided for each specification item.

The Tender must be clear as to the extent of compliance or non-compliance with any clause or paragraph of the specification. Any failure to do so, including incomplete information, may be interpreted as failure to comply with the requirement concerned when assessing the relative merits of Tenders.

Please note that the specification is indicative of the needs of DECC, and Aircraft offered must be of at least the same standard and potential. Consideration may be given, however, to Aircraft of a higher standard if they are available and better suited to the DECC requirements.

**(b) Ability to conduct high quality timely maintenance including degree of compliance with the maintenance specification.**

In response to this criterion tenderers should provide the following information:

- (i) Full details of the proposed maintenance provider, its experience, qualifications, quality and capacity of its personnel and facilities available to conduct scheduled and unscheduled maintenance on the proposed Aircraft.
- (ii) Timeframes for servicing the proposed Aircraft.
- (iii) A statement of compliance to the maintenance specification in Schedule 2 of Part D. Ensure you state whether you comply with each and every clause of the specification and, clearly state any clause numbers not fully complied with, if any, together with full details of deviations.
- (iv) Any other information which they believe will support/demonstrate compliance with this criterion.



**(c) The tenderer's capacity to fulfil the contract, particularly its performance in contracts similar to that proposed, including referee reports.**

- (i) The tenderer is to provide a list of its past and current relevant service delivery projects (no more than 5) and provide the following information for each:

Information Required	Response
Name and location of the services	
Client	
Scope of the Services Including Timeframe	
Value of Contract	
Other information you would like to add	

- (ii) The tenderer should provide details of the number of years it has been in business in the form in which it is presently constituted; the number of years it has been providing similar services; scope of its current business activities; management/company structure; number of employees; business acumen; quality certifications, its capacity to take on the project in the context of the current commitments of the organisation and any other information which it believes will support/demonstrate compliance with this criterion.

- (iii) Provide details required below for persons willing to act as referees in relation to your performance in helicopter services similar to those covered by this Request for Tender.

**Referee No 1.**

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Organisation: \_\_\_\_\_

Telephone No: \_\_\_\_\_

Fax No: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Referee No 2.**

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Organisation: \_\_\_\_\_

Telephone No: \_\_\_\_\_

Fax No: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Referee No 3.**

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Organisation: \_\_\_\_\_

Telephone No: \_\_\_\_\_

Fax No: \_\_\_\_\_

Email Address: \_\_\_\_\_

**(d) Availability of Aircraft by the commencement of the Service Period.**

In addition to the information provided by the tenderer in clause 2.6, please include details of timeframes for acquisition of Aircraft, fit out requirements and timeframes, for each Aircraft proposed, including interim Aircraft, and any other information that will impact on Aircraft availability.

**(e) The degree of the tenderer's compliance with applicable government policies.****(i) Code of Practice for Procurement**

Have you have read the [NSW Government Code of Practice for Procurement](#) and taken it into consideration in preparing and submitting your Tender?

**Yes/No** (Delete whichever is not applicable)

Will you maintain compliance with the Code for the purposes of the Contract, advise the Board of any breaches of the Code for the duration of the Contract and provide evidence of compliance when requested by the Board during the course of the Contract?

**Yes/No** (Delete whichever is not applicable)

Provide any other relevant information below

**(ii) Occupational Health Safety & Rehabilitation**

Do you currently comply with your OHS&R statutory obligations and will you continue to do so including obligations relating to performance monitoring and sub-contractor performance for the duration of any contract awarded?

**Yes/No** (Delete whichever is not applicable)

If **“No”**, provide details below

**(f) The degree of the tenderer’s compliance with the conditions of the contract at Part D.**

Does your offer comply fully with the Conditions of Contract at Part D, including Schedule 1 and Schedules 3 to 9 inclusive, of the Request for Tender?

**Yes/No**

If No, please list clause numbers not fully complied with and provide full details of deviations below.

**(g) The tenderer’s financial capacity to perform the contract.**

Your response to this criterion should include copies of your annual financial reports for the last three financial years, information on how you will finance the contract, particularly if you have to purchase Aircraft, together with other information you think is necessary to demonstrate compliance with this criterion. If you are an infant organisation and/or you are tendering for more than one Aircraft which you do not already own, a comprehensive financial plan detailing costs against income is essential.

**4. OTHER INFORMATION REQUIRED**

**4.1 Sub-Contractors**

- 4.1.1 Is any part of the Deliverables to be provided through sub-contract? Note in this context, suppliers of raw materials and components to be incorporated into the Aircraft are not regarded as sub-contractors.

**Yes/No**

If **“Yes”**, give details of item/service, name, address and ABN of proposed sub-contractor(s).

## 4.2 Suitability of Proposed Sub-Contractors

- 4.2.1 Provide details of proposed sub-contractors' legal status (company, partnership, individual etc) and their experience and qualifications in the provision of similar work to your company.

## 4.3 Schedule of Insurance

### 4.3.1 Worker's Compensation Insurance

Insurance Company: \_\_\_\_\_

Address: \_\_\_\_\_

Common Law Amount \_\_\_\_\_

Phone number: \_\_\_\_\_

Policy number: \_\_\_\_\_

Expiry Date: \_\_\_\_\_

### 4.3.2 Public Liability Insurance

Insurance Company: \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Policy number: \_\_\_\_\_

Expiry Date: \_\_\_\_\_

Limit of Liability: \_\_\_\_\_

### 4.3.3 Hangarkeepers Insurance

Insurance Company: \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Policy number: \_\_\_\_\_

Expiry Date: \_\_\_\_\_

Limit of Liability: \_\_\_\_\_

### 4.3.4 Other Insurances

Type of Insurance: \_\_\_\_\_

Insurance Company: \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Policy number: \_\_\_\_\_

Expiry Date: \_\_\_\_\_

Limit of Liability: \_\_\_\_\_

#### 4.4 Details of Ownership

- 4.4.1 If you are a company, please provide details of your ownership, that is, Australian, Overseas, largest shareholder, paid-up capital and other relevant details.
- 4.4.2 If you are a partnership, please provide a list of partners and details of the partnership financial arrangements.
- 4.4.3 Is the tenderer currently offering its business for sale, or is the subject of a merger, takeover or change of ownership? Answer yes or no in the space provided below. If the answer is yes full details are to be provided.

#### 4.5 Contracting as Agent/Trustee

- 4.5.1 If awarded a contract, do you intend to enter the contract in your own right or as agent or trustee for some other entity or entities? If the latter, provide full details including a copy of the trust deed.

#### 4.6 Current Legal Proceedings

- 4.6.1 Are you or any of your directors or close associates currently, or have you, or have your directors or close associates been at any time within the last five years, the subject of any or any pending:
- (a) legal proceedings, including winding up or bankruptcy proceedings;
  - (b) insolvency administrations or investigations; and/or
  - (c) investigations by ICAC or any other public body?

**Yes/No**

If “Yes”, please supply full details below:

#### 4.7 Commerce Business Ethics Statement

- 4.7.1 Do you comply with the requirements of the Commerce Business Ethics Statement referred to in clause 9.4.1 (d) of Part B?

Yes/No

If “No”, provide an explanation below

- 4.7.2 Tenderers are to disclose hereunder details of any potential conflict of interest (including any relevant relationships) as outlined in the Commerce Business Ethics Statement.

**5. ADDENDA TO THIS RFT AFTER ISSUE**

- 5.1 If there have been any Addenda by the Board to this RFT after the issue of this RFT, indicate below whether you have read and allowed for the Addenda in your Tender.

**YES/NO/THERE HAVE BEEN NO ADDENDA BY THE BOARD** (Delete whichever is not applicable)

If **NO**, provide reasons below

## **PART C2 TENDERER IDENTIFICATION DETAILS AND CONFIRMATION OF TENDER**

### **1. TENDERER IDENTIFICATION DETAILS**

#### **1.1 Name of Tenderer:**

**Individual:** [Print name]

Trading Name (if applicable):

\_\_\_\_\_

or

**Company:** [Full name]

Trading Name (if applicable):

Name and official position of authorised officer  
completing tender:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

or

**Partnership:** [Trading Name of partnership]

Name of partner completing tender:

\_\_\_\_\_

\_\_\_\_\_

#### **1.2 ABN:**

\_\_\_\_\_

#### **1.3 Address of Tenderer:**

*[in the case of a company, state registered office and, if  
different, principal place of business]*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

#### **1.4 Business Postal Address:**

\_\_\_\_\_

\_\_\_\_\_

Telephone No.:

( )

Facsimile No:

( )

Email:

Website:

Contact Name for general enquiries:

Telephone No.:

Tenderer's reference number:

## 2. ACKNOWLEDGEMENT AND CONFIRMATION OF TENDER

Note to tenderers: If submitting a hard copy Tender, execute cl. 2.2. If submitting an electronic Tender, only complete cl. 2.3.

- 2.1 Lodgement of a Tender will itself be an acknowledgment and representation by you that you are aware of the requirements of the Codes; that you will comply with the Codes; and that you agree to report to the Board any breaches of the Codes for the duration of the Contract.
- 2.2 I affirm that this is my Tender to supply the Deliverables sought in the RFT at the prices tendered, and in accordance with the conditions of the RFT except as expressly amended in my Tender, and that the information given in my Tender is correct:

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Signature of tenderer (if an individual, as identified in cl. 1.1 Part C2)

OR

\_\_\_\_\_  
Signature of authorised officer of tenderer (if a company, as identified in cl. 1.1 Part C2)

OR

\_\_\_\_\_  
Signature of partner completing Tender on behalf of partnership (as identified in cl. 1.1 Part C2)

- 2.3 If submitting an electronic Tender, do you acknowledge and accept that electronic submission in accordance with the requirements of the RFT and any conditions of the NSW Department of Commerce tenders website is sufficient to verify and affirm that this is your Tender to supply the Deliverables at the prices tendered on the conditions contained in Parts A and B, except as expressly amended in your Tender and that the information contained in your Tender is correct?

Note that such acknowledgment and acceptance, by stating "Yes", is a necessary prerequisite to consideration of your Tender.

Yes/No

\_\_\_\_\_  
Print Name and Title



Dated: <Insert Date>

---

The Principal

NSW Department of Environment and Climate  
Change

and

---

**CONTRACT AGREEMENT 0800361 FOR DRY LEASE OF LIGHT  
HELICOPTER**

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## **PART D – CONDITIONS OF CONTRACT AGREEMENT**

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THIS AGREEMENT is made on the \_\_\_\_ day of \_\_\_\_\_ 2008.

**BETWEEN:**

**NSW Department of Environment and Climate Change** of 43 Bridge Street, Hurstville 2220, in the State of New South Wales ("the Principal")

**AND**

..... **[insert name of contractor]** of  
 ..... **[insert address]** in the State of ..... ("the Contractor")

**BACKGROUND:**

- A. The Principal issued the Request for Tender for the Supply of the Deliverables.
- B. The Contractor submitted the Tender that was accepted by the Principal.
- C. The Principal and the Contractor have agreed to enter a contract for the supply of Deliverables in the form of this Agreement.

**1. Interpretation**

**1.1 Definitions**

**"Agreement"** means this agreement including:

- (a) the Schedules to this agreement;
  - (c) the Tender and any documents evidencing agreed changes to the Tender; and
  - (d) any documents notifying the Principal's acceptance,
- and is also referred to as the Contract.

**"AOC"** means Air Operators Certificate.

**"ADs"** means Airworthiness Directives.

**"Aircraft"** has the same meaning as "Helicopter".

**"Area of Operations"** means onshore Australia (including Lord Howe Island) out to 200 nautical miles.

**"Base Date"** means the date of the Tender.

**"CARs"** means Civil Aviation Regulations.

**"CASA"** means the Civil Aviation Safety Authority.

**"Civil Aviation Act"** means the Civil Aviation Act and the Regulations and Orders made thereunder.

**"Claims"** includes all manner of actions, suits, causes of action, arbitrations, debts, dues, interest, costs, expenses, claims, demands, verdicts and in any state or country howsoever arising.

**“Confidential Information”** means Information including any documents or correspondence provided by the Principal to the Contractor that:

- (a) is by its nature confidential;
- (b) is designated by the Principal as confidential; or
- (c) the Contractor knows or ought to know is confidential;

and includes:

- (d) the Contract Material;
- (e) the Principal’s Material including but not in any way limited to the financial information, the corporate information and the commercial information of the Principal;
- (f) any material which relates to the affairs of a third party.

**“Conflict of interest”** means engaging in any activity, or obtaining any interest, likely to conflict with the performance by the Contractor of, or to restrict the Contractor in performing, its obligations under this Agreement.

**“Circumstances Beyond the Control of the Contractor”** include:

- (a) acts of God;
- (b) fire, flood, or earthquake;
- (c) national emergency or war; or
- (d) a serious industrial dispute.

**“Contract Material”** means:

- (a) any material brought into existence as part of, or for the purpose of providing the Deliverables including records, documents and Information stored by any means (“New Contract Material”);
- (b) any material which is existing at the date of this Agreement and which is incorporated with the New Contract Material (“Existing Contract Material”).

**“Contract Price”** means in respect of each Deliverable, the price nominated in the Contract Price Schedule in Schedule 3 and any subsequent variation agreed by the Parties. All dollar references in this Agreement are \$A, exclusive of GST, unless stated otherwise.

**“Contractor’s Delegate”** means the individual or the position title nominated in Schedule 1, item 3.

**“Contractor’s Insolvency”** means any of the following:

- (a) The Contractor becomes insolvent;
- (b) The Contractor indicates that it does not have the resources to perform this Agreement;
- (c) An application for winding up is made and not stayed within 14 days;
- (d) A winding up order is made;

- (e) A controller, administrator, receiver and manager, provisional liquidator or liquidator is appointed;
- (f) A mortgagee enters the possession of any property of the Contractor; notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- (g) Any actions of a similar effect are taken.

**“DECC”** means the NSW Department of Environment and Climate Change incorporating the Parks and Wildlife Group, and which is the Principal under this Agreement.

**“Declared Incident”** means a fire or other emergency incident declared by DECC managers.

**“Deliverables”** means the goods and/or services to be supplied by the Contractor in accordance with this Agreement.

**“Dry Hire” or “Dry Lease”** means the hire of the Aircraft by the Principal from the Contractor without fuel.

**“Helicopter”** means the Helicopter as described in Part A of the Specification in Schedule 2, or an alternative helicopter as described in Part B of the Specification in Schedule 2, and which have been accepted by the Principal.

**“Incident Rate”** means the price to be paid by the Principal for each operating hour flown in the operations of a declared incident.

**“Information”** includes information in the form of data, text or images.

**“Intellectual Property”** includes copyright, patent, trademark, design, semi-conductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights existing in Australia, whether created before or after the date of this Agreement.

**“Month”** means calendar month, comprising of the actual amount of days for that month.

**“Operating Hour”** means the time in hours or parts thereof to be in decimals of an hour (i.e from “skids off to skids on” determined by the Hobbs meter or equivalent and recorded on the Maintenance Release).

**“Parties”** means the Principal and the Contractor.

**“Party”** means the Principal or the Contractor, as applicable.

**“Price Schedule”** means the Price Schedule at Schedule 3 which represents the Contractor’s Tender prices as varied and agreed during the Tender acceptance phase and/or variations made in accordance with this Agreement.

**“Principal”** means the NSW Department of Environment and Climate Change.

**“Principal’s Material”** means any material, document, or Information supplied by the Principal, the Principal’s Delegate, or the Crown to the Contractor.

**“Principal’s Delegate”** means the person or entity acting as contract administrator and is named in Schedule 1.

**“Public Service”** has the same meaning as that given to it in the *Public Sector Management Act 1988* (NSW).

**“Request for Tender”** means Request for Tender 0800361 for the Deliverables issued by the State Contracts Control Board, including any addenda.

**“Routine Operations Rate”** means the price to be paid by the Principal for each operating hour flown other than on a declared incident.

**“Schedule”** means a schedule to this Agreement.

**“Security”** means the security described in Schedules 1 and 5 or as otherwise agreed.

**“Service Period”** means the period from 1 September to 31 March each financial year during which the Contractor must guarantee the exclusive availability of the Aircraft to the Principal.

**“Specification”** means the detailed description of the Deliverables to be provided under the Agreement contained in Schedule 2, and any subsequent variation agreed by the Parties.

**“State Contracts Control Board ” or “Board”** means the State Contracts Control Board established by the *Public Sector Employment and Management Act 2002* and includes the duly authorised delegates of the Board, including officers of NSW Procurement – Contracting Services.

**“State of New South Wales”** means the Crown in right of the State of New South Wales.

**“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.

**“Tender”** means the tender submitted by the Contractor in response to the Request for Tender, including any accepted variation to the tender.

**“Term”** means the term of this Agreement, if any, set out in Schedule 1 or otherwise agreed, and any extension of the Term in accordance with this Agreement.

**“Warranty Period”** means, in relation to a particular Deliverable, the period of warranty of that Deliverable.

## 1.2 Rules for Interpreting this Agreement

1.2.1 Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

1.2.2 A reference to:

- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (b) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
- (c) a person includes any type of entity or body of persons whether or not incorporated;
- (d) any thing (including a right, obligation or concept) includes each part of it, for example a reference to a part of this Agreement includes a reference to subordinate parts of that part.

1.2.3 A singular word includes the plural and vice versa.



- 1.2.4 A word that suggests one gender includes the other genders.
- 1.2.5 If a word is defined, another part of speech of that word has a corresponding meaning.
- 1.2.6 The Parties may undertake business by the electronic exchange of information and the provisions of this Agreement will be interpreted to give effect to undertaking business in this manner.
- 1.2.7 A reference to the Principal includes, where the context so requires, its employees, agents, sub-contractors, officers and duly authorised delegates.
- 1.2.8 If the Contractor consists of more than one party, each obligation of the Contractor shall bind those parties jointly and severally and will be enforceable against them jointly and severally.
- 1.2.9 If there is an inconsistency between the terms of this Agreement then, for the purpose only of resolving the inconsistency, the documents that comprise this Agreement are to be construed in their date order, in descending order of priority from the latest date to the earliest date.

## **2. Principal's Delegate**

- 2.1 The Principal's Delegate is responsible for administering this Agreement.
- 2.2 The Contractor must comply with any reasonable direction given by the Principal's Delegate in connection with the performance of work under this Agreement.
- 2.3 Unless this Agreement provides otherwise the Principal's Delegate may exercise rights and discharge obligations conferred or imposed on the Principal under this Agreement.

## **3. Supply Under an Agreement for the Term**

### **3.1 Nature of the Agreement Between the Principal and the Contractor**

- 3.1.1 This Agreement is for the term specified in Schedule 1, or as otherwise agreed, unless terminated sooner in accordance with this Agreement.

## **4. Supply of Deliverables**

### **4.1 Supply**

- 4.1.1 The Contractor shall supply the Deliverables as directed by the Principal in accordance with this Agreement, including any agreed project plan.

### **4.2 Conforming Deliverables**

- 4.2.1 All Deliverables shall conform to the Specification and the standards specified in this Agreement.

### **4.3 Delay in Supply**

- 4.3.1 The Contractor will give prompt written notification to the Principal of any likely delay in the supply of any of the Deliverables beyond any agreed delivery date.
- 4.3.2 Written notification of delay will not release the Contractor from its obligation to supply by the agreed delivery date unless the Principal agrees in writing to extend the date.
- 4.3.3 If, in the Principal's opinion the delay has arisen from a cause beyond the reasonable control of the Contractor, the Principal will not refuse a proposed extended delivery date without reasonable grounds for doing so.
- 4.3.4 The Contractor will not be entitled to any price increase or any costs or expenses in connection with the delay.

### **4.4 Contract Manager**

- 4.4.1 The Contractor shall ensure that a Contract Manager is appointed for the Term and that the said manager at any point in time:
  - 4.4.1.1 is designated as the representative of the Contractor in relation to the management of any current or future performance or policy issues in respect of this contract; and
  - 4.4.1.2 has the authority to make decisions binding on the Contractor in relation to this contract.
- 4.4.2 During the contract period the Contract Manager shall remain contactable and reasonably available and accessible to authorised officers of the Principal.

## **5. Prices and Payment**

### **5.1 Contract Price**

- 5.1.1 The Contractor must supply the Deliverables for the Contract Price.
- 5.1.2 The Contract Price, except as specifically provided or agreed, is inclusive of all costs and expenses of supply including the following:
  - Aircraft Requirements and Equipment specified in Schedule 2.
  - External Load Requirements for Aircraft & Equipment specified in Schedule 2.
  - FFAST (Aerial Shooting) Requirements for Aircraft & Equipment specified in Schedule 2.
  - Winch & Hover Exit/Entry Requirements for Aircraft & Equipment specified in Schedule 2.
  - Low Level Survey/Air Attack requirements for Aircraft & Equipment specified in Schedule 2.
  - Aerial Incendiaries and Infra/Red Camera operations Requirements for Aircraft & Equipment specified in Schedule 2.
  - All other costs associated with providing the requirements under the Agreement.

- 5.1.3 The Contractor must pay all packaging, freight, insurance, and other charges, in connection with the delivery of Deliverables and the return of Deliverables wrongly supplied except where it is expressly provided in this Agreement.

## 5.2 Payment

- 5.2.1 For the purposes of this clause, a Claim is a claim for payment:

- (a) in the form of a Tax Invoice;
- (b) substantiated by an itemised account and any further details reasonably requested by the Principal;
- (c) if made in respect of goods, accompanied by a receipt of delivery from the Principal;
- (d) if made in respect of services, accompanied by any required certificate of acceptance from the Principal.

- 5.2.2 Subject to this clause, the Principal shall make payment within 30 days of receipt of a Claim.

- 5.2.3 Payments During Service Period (1 September to 31 March)

- 5.2.3.1 Monthly progress payments shall be made during the Service Period in accordance with item 10 of Schedule 1. The Contractor shall submit monthly tax invoices for payment. With each Claim the Contractor must provide the Principal with a copy of the maintenance release. No payment will be due in response to the Claim until the copy of the maintenance release is received.

- 5.2.3.2 After the end of each calendar month the Principal shall advise the Contractor of the hours flown that month for Routine Operations and Declared Incidents. At the end of each Service Period, or as otherwise agreed with the Principal, the Contractor shall submit a Claim for the following:

(Total hours flown for Routine Operations multiplied by the appropriate hourly rate) plus (total hours flown for Declared Incidents multiplied by the appropriate hourly rate) minus (the total amount of progress payments made for the Service Period).

- 5.2.4 Payments During 1 April to 31 August

- 5.2.4.1 Monthly progress payments in line with item 10 of Schedule 1, or pro rata thereof, shall only be paid if the overall guaranteed hours have not been flown (refer clause 1.5 of Schedule 2 for explanation of guaranteed flying hours). For example, if during the Service Period 150 hours were flown (in which case the Contractor would have been paid for 180 hours) and the Service Period was extended by one month then the progress payment will be made for the additional month. However, if the overall hours flown during the Service Period was 250 and the Service Period was extended by one month, the Contractor will only be paid for the actual hours flown during the additional month. The Contractor shall submit monthly tax invoices for payment. With each Claim the Contractor must provide the Principal with a copy of the maintenance release. No payment will be due in response to the Claim until the copy of the maintenance release is received.

- 5.2.4.2 After the end of each calendar month the Principal shall advise the Contractor of the hours flown that month for Routine Operations and Declared Incidents. At the end of August each year, or as otherwise agreed with the Principal, the Contractor shall submit a Claim for the following:

(Total hours flown during April to August for Routine Operations multiplied by the appropriate hourly rate) plus (total hours flown during April to August for Declared Incidents multiplied by the appropriate hourly rate) minus (the total amount of payments made for the corresponding period).

- 5.2.5 If the Principal has requested further details regarding the invoice, the time for payment will be extended until 14 days after the date the information is supplied.
- 5.2.6 Unless a certificate of acceptance has been issued, a payment is not an acknowledgment that the Deliverables have been supplied in accordance with this Agreement, but shall be taken to be payment on account only.
- 5.2.7 If the Principal disputes the invoice amount it shall certify the amount it believes is due for payment and shall pay that amount. The liability for the balance of payment shall be determined in accordance with this Agreement. In the event of a dispute over the number of payable operating hours, the maintenance release (Collective Hobbs meter or equivalent, ie skids off to skids on) and the Principal's daily operational records shall be binding on both Parties.
- 5.2.8 The Contractor will not be entitled to any credit charge, service fee or any other fee or charge for extending credit or allowing time for the payment of money becoming due for the provision of Deliverables.

### **5.3 Set-Off/Money Recoverable by Principal**

- 5.3.1 The Principal may deduct from amounts which may be payable or which may become payable to the Contractor, any amount due from the Contractor to the Principal in connection with the supply of the Deliverables.
- 5.3.2 For each day or part-day that the Aircraft is not available for the Principal's use (other than routine 100-hour maintenance as allowed in clause 3.21 of Part B of Schedule 2) an amount equal to the Routine Operations Rate shall be an amount due from the Contractor to the Principal under clause 5.3.1.
- 5.3.3 Without limiting the above, any damages, costs and expenses recoverable by the Principal from the Contractor in consequence of the Contractor's breach of this Agreement may be deducted from money then due to the Contractor under this Agreement. If that money is insufficient for that purpose, the balance remaining unpaid will be a debt due by the Contractor to the Principal and may be set off against any other money due to the Contractor by the Principal under this or any other agreement between the Principal and the Contractor.
- 5.3.3 Nothing in this clause will affect the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.

### **5.4 Suspension of Payments**

- 5.4.1 Should the Contractor refuse or neglect to carry out the instructions or requirements of the Principal in regard to any matter connected with this Agreement, the Principal may suspend all payments to the Contractor without penalty until such instructions or requirements have been complied with by the Contractor.

### **5.5 Additional Expenses**

- 5.5.1 The Principal will only reimburse the Contractor any reasonable costs, expenses, or charges incurred by the Contractor and not provided for in this Agreement where the Contractor has first obtained the Principal's written approval.
- 5.5.2 If the Principal is the Crown, all reimbursement shall be made by the Crown acting through the Principal's Delegate, and not through the Board.

### **5.6 Price Variation**

- 5.6.1 Contract Prices shall be firm until 31 July 2011.
- 5.6.2 Annual price variations from 1 August 2011 will be available to the Contract Prices if the option to extend the Contract is executed. Such variation shall be on the basis of movements in CPI and maintenance costs.
- 5.6.3 Contract Prices will be varied by movements in CPI and maintenance costs by the percentages nominated by the tenderer in the price schedule in Part C.
- 5.6.4 The Contractor shall outline the impacts of movements in CPI and maintenance costs on Contract Prices in accordance with the following formula:
- $$\text{New Rate} = \text{Original Rate} \times [\text{CPI}\% \times (\text{CPI2} / \text{BaseCPI})] + [\text{IPI}\% \times (\text{IPI2} / \text{BaseIPI})]$$
- Where Original Rate = the Routine Operations Rate or Incident Rate at the Tender Closing Date;
- Where CPI% = the percentage proportion of the routine operations rate or incident rate nominated by the tenderer in the price schedule in Part C that relates to movements in CPI;
- CPI2 = the CPI figure for the quarter immediately preceding the price variation date;
- BaseCPI = the CPI figure for the quarter immediately preceding the Tender Closing Date;
- IPI% = the percentage proportion of the routine operations rate or incident rate nominated by the tenderer in the price schedule in Part C that relates to movements in maintenance costs;
- IPI2 = the IPI figure for the quarter immediately preceding the price variation date; and
- BaseIPI = the IPI figure for the quarter immediately preceding the Tender Closing Date.
- 5.6.5 The Consumer Price Index (CPI) is the Australian Consumer Price Index as published by the Australian Bureau of Statistics (ABS) category 6401.0, 'weighted average of eight capital cities'.
- 5.6.6 The International Price Index (IPI) figure is the Australian International Trade Price Index, as published by the ABS category 6457.0, 'Import Price Index, item 79: other transport equipment'.
- 5.6.7 The price variation date shall be 1 August 2011 and 1 August 2012 if the options to extend the Contract are executed, as outlined in Schedule 1.
- 5.6.8 Lapse of Index
- 5.6.8.1 If any of the indexes nominated in clauses 5.6.4 and 5.6.5 lapse during the Term the Principal will nominate a replacement index.

- 5.6.9 The Contractor must follow the following procedure in making application for any variation to prices, unless otherwise agreed:
- 5.6.9.1 The application for variation must be in the form of a written statement, containing details of the existing approved price and the proposed new price in respect of each Deliverable for which price variation is sought.
  - 5.6.9.2 The application must be accompanied by all relevant documents in support of the claim.
  - 5.6.9.3 The application must be submitted in writing to the Principal as far in advance as practicable of, and at least 21 days before, the date from which the variation is sought to commence.
- 5.6.10 The onus will be on the Contractor to prove to the satisfaction of the Principal all details of any variation claimed. The Contractor shall make available to the Principal such further information as the Principal shall require to satisfy itself as to the details of the claim. Failure to do so shall entitle the Principal to reject the application.
- 5.6.11 No price increase shall be granted retrospectively nor backdated prior to the date of the Contractor's application for approval.

## **5.7 Best Price**

- 5.7.1 The price for a Deliverable taking into account any applicable discounts on the price must be no less favourable than the price paid by any other purchaser of the Deliverables to the Contractor.
- 5.7.2 Where the Contractor offers more favourable prices to any other purchaser of the Deliverables, it must make the more favourable price available to the Principal.
- 5.7.3 If the Principal has paid a price for a Deliverable during a period when the Contractor has offered a more favourable price, then the Contractor agrees to reimburse the Principal the difference between the amount represented by the price less any applicable discount that has been paid by the Principal's Delegate and the more favourable price.
- 5.7.4 A failure to comply with this clause will entitle the Principal to terminate this Agreement in accordance with clause 16.1.

## **5.8 Maximum Ceiling Price**

- 5.8.1 The Contract Price is a maximum ceiling price which cannot be exceeded without the Contractor applying for a price variation in accordance with this Agreement.

## **5.9 Goods and Services Tax**

- 5.9.1 In this clause and Agreement:

**“Consideration”, “Tax Invoice”, Taxable Supply” and “Supply”** have the same meaning as provided for in the GST Law.

**“GST”** is a goods and services tax and has the same meaning as in the GST Law.

**“GST Law”** means any law imposing a GST and includes *A New Tax System (Goods & Services Tax) Act 1999* (Cth) or if that Act does not exist, means any Act imposing, or relating, to a GST and any regulation based on those Acts.

- 5.9.2 The Contractor must hold an Australian Business Number (ABN) and be registered for GST.
- 5.9.3 Every invoice issued by a person making a Supply must be in the form of, or be accompanied by, a valid Tax Invoice. No amount is payable until a valid Tax Invoice for the Contract Price, or any instalment of the Contract Price, is received.
- 5.9.4 If there is any abolition or reduction of any tax, duty, excise or statutory charge associated with the GST, or any change in the GST, the Consideration payable for the Supply must be varied so that the Contractor's net dollar margin for the Supply remains the same.
- 5.9.5 Any contract entered into by a Party to this Agreement with a third party which involves a Supply being made, the cost of which will affect the cost of any Supply made under or in connection with this Agreement, must include a clause in equivalent terms to this clause.
- 5.9.6 The Parties agree that this clause will apply to the Management Fee payable by the Contractor to the Principal.

#### **5.10 The Contractor's On-costs**

- 5.10.1 The Principal will not be liable for any of the Contractor's employee “on-costs”, including wages, salaries, holiday pay or allowances, sick pay, Workers' Compensation, or any tax or levy voluntarily undertaken by or imposed (either by statute or otherwise) on the Contractor.

#### **5.11 Mistakes in Information**

- 5.11.1 The Contractor must pay for the extra costs (if any) occasioned by errors or omissions in Material or other Information supplied by it, even though that Material or Information may have been approved by the Principal.

### **6. Conduct of Agreement**

#### **6.1 The Contractor's Personnel**

- 6.1.1 The Contractor warrants that all personnel engaged in the provision of the Deliverables are appropriately qualified, competent and experienced.
- 6.1.2 The Contractor must employ only such persons:
  - (a) as are careful, skilled and experienced in the provision of the Deliverables or similar Deliverables;
  - (b) (where applicable) who hold all necessary licences, permits and authorities; and
  - (c) whose standards of workmanship are entirely suitable for the supply of the Deliverables and the requirement of this Agreement.

#### **6.2 Contractor to Establish Necessary Facilities**

- 6.2.1 The Contractor must establish all facilities necessary for the proper and effective conduct and management of all its obligations under this Agreement.

### **6.3 Access to the Contractor's Premises**

- 6.3.1 The Contractor must at all reasonable times permit officers authorised by the Principal to have access to the premises of the Contractor and where necessary and where requested by the Principal arrange for access to premises of any sub contractors engaged by the Contractor.

### **6.4 Electronic Commerce**

- 6.4.1 If the Principal requires it, the Contractor must implement the electronic commerce proposals, applications or services submitted in the Tender (if any) for the purposes of this Agreement.
- 6.4.2 The Principal and the Contractor may agree to do business electronically as is necessary for the performance of the Agreement.

### **6.5 Sub-contractors**

- 6.5.1 The Contractor may sub-contract part or all of the Agreement to a sub-contractor approved by the Principal from time to time and/or identified in Schedule 9 ("approved sub-contractor") on the terms of this clause.
- 6.5.2 The Contractor must at all times ensure that the approved sub-contractor is engaged in the supply of the Deliverables.
- 6.5.3 The Contractor must make the approved sub-contractor aware of the terms and conditions of the Agreement and this clause.
- 6.5.4 If the Principal requires it, the Contractor must arrange for the approved sub-contractor to execute the statutory declaration at Schedule 5.
- 6.5.5 The terms and conditions of the sub-contract must be consistent with the Agreement.
- 6.5.6 The Contractor will continue to be bound by, and responsible for performance of the Agreement notwithstanding that part or all of it may have been sub-contracted.
- 6.5.7 The Principal may, without incurring liability, withdraw its approval of a sub-contractor if in its reasonable opinion the sub-contractor is not meeting the requirements of the Agreement. The Principal will notify the Contractor in writing that its approval is withdrawn and the Contractor will immediately terminate its arrangement with the sub-contractor.
- 6.5.8 To the extent that loss is not attributable to the Principal's withdrawal of approval of a sub-contractor:
- (a) the Contractor will be liable for any acts or omissions of any sub-contractor or any employee or agent of the sub-contractor as fully as if they were the acts or omissions of the Contractor, and
  - (b) the Contractor will indemnify and release the Principal from any liability or loss resulting from the acts or omissions of any sub-contractor.
- 6.5.9 The Contractor shall not terminate any approved sub-contractor without the prior written consent of the Principal.

### **6.6 Maintenance of Contractor's and Sub-Contractor's Contact Details**

- 6.6.1 The Contractor must notify the Principal of any change in the Contractor contact details, if any.
- 6.6.2 The Contractor must notify the Principal of any change in the sub-contractor contact details, if any.



## **6.7 Security of Sub-contract Payments**

6.7.1 "Paid when paid provision" means a term of a sub-contract under which:

- (a) the Contractor's liability to pay for Deliverables is contingent on a payment being made by the Principal or
- (b) the due date for payment for Deliverables is dependant on the date on which a payment is made by the Principal.

6.7.2 The terms of any sub-contract of this Agreement must not include a paid when paid provision.

6.7.3 The Principal is not liable for any failure by the Contractor to comply with this clause.

## **6.8 Contractor's Warranties (Services)**

6.8.1 In relation to Deliverables that are services, the Contractor warrants that:

- (a) it will provide the Deliverables in accordance with the requirements of this Agreement, including any agreed project plan, and with due care and skill;
- (b) it will comply with all statements or representations as to the provision of the Deliverables contained in the Tender;
- (c) the information contained in the Tender as to the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Contractor and its employees and sub-contractors is correct; and
- (d) it will not enter into any arrangement that impedes or is likely to impede the performance of this Agreement in the manner and to a standard satisfactory to the Principal, without first obtaining the Principal's consent.

## **6.9 Contractor's Warranties**

6.9.1 The Contractor warrants that:

- (a) the Deliverables do not infringe the Intellectual Property rights of a third party;
- (b) the Deliverables shall conform to any legally applicable standards;
- (c) it will not allow or cause any action, or enter into any arrangements that impedes or is likely to impede the proper and effective conduct and management of all the contractor's obligations under this Agreement, and to a standard that is satisfactory to the Principal, without first obtaining the Principal's consent; and
- (d) it has established and will comply with and maintain during this Agreement, the quality assurance arrangements set out in the Tender.

## **6.10 Defective Goods**

- 6.10.1 The Contractor shall remedy any error or defect in a warranted Deliverable that has been notified to it by the Principal during the Warranty Period at the Contractor's own cost and expense.
- 6.10.2 If the Contractor fails to remedy an error or defect in a warranted Deliverable within 30 days after notification by the Principal, the Principal may:
- (a) arrange for performance of the necessary remedial work by a third party at the Contractor's expense; or
  - (b) arrange the return of the Deliverable to the Contractor at the Contractor's expense and immediately obtain a full refund of the price of that Deliverable from the Contractor.
- 6.10.3 The rights and remedies provided in this clause are in addition to, and do not limit, any other rights of the Principal under this Agreement or otherwise at law.

## **6.11 Defective Services**

- 6.11.1 If in the opinion of the Principal the Contractor has not supplied a Deliverable in accordance with this Agreement ("Defective Deliverable"), the Principal may require the Contractor to do all things reasonably necessary to remedy the situation.
- 6.11.2 In rectifying the Defective Deliverable the Contractor will, at its own expense, comply with all reasonable directions of the Principal consistent with the terms of this Agreement.
- 6.11.3 If the Contractor fails to comply with such a direction the Principal may arrange for an alternative contractor to supply the Defective Deliverable at the Contractor's expense.
- 6.11.4 Any direction given, or the arrangement of alternative supply of the Deliverable, will not amount to a waiver of the Principal's rights under this Agreement.

## **6.12 Third Party Warranties**

- 6.12.1 Where the Contractor supplies Deliverables that have been procured from third parties, the Contractor assigns to the Principal to the extent permitted by law, the benefits of any warranties given by the third parties.
- 6.12.2 Assignment of any third party warranties is in addition to the warranties offered directly by the Contractor under this Agreement and does not relieve the Contractor from the obligation to comply with the Contractor's own warranties.

## **6.13 Performance Guarantee**

- 6.13.1 Once the Principal has accepted the Agreement, the Contractor must provide the Security to the Principal.
- 6.13.2 The Principal will hold the Security as security for the due and proper performance and completion of all the obligations of the Contractor under this Agreement.

- 6.13.3 If the Contractor fails to properly perform and complete its obligations under this Agreement and the Principal suffers loss or damage arising from, or in connection with, such failure by the Contractor, the Principal may deduct any or all such loss or damage (as ascertained and certified by the Principal) from the Security.
- 6.13.4 If the Security is not sufficient to meet payment of all the loss or damage suffered by the Principal, the balance remaining will be a debt due and owing from the Contractor to the Principal and may be recovered by the Principal in any appropriate court.
- 6.13.5 If the Contractor fails to deposit the Security as requested by the Principal in accordance with this clause the Principal may terminate this Agreement for substantial breach.
- 6.13.6 The Security must be issued by an Australian domiciled bank, insurance company or other financial institution ("Issuer") acceptable to the Principal in its discretion.
- 6.13.7 The Contractor agrees that the Principal will have no liability to the Contractor of any nature (whether in negligence or otherwise) for any loss or damage suffered or incurred by the Contractor where the Principal exercises its rights under this clause in good faith.
- 6.13.8 The Contractor must not take any action to injunct or otherwise prevent the Principal from making a claim or receiving a payment under the Security. This clause does not prevent the Contractor from taking action to recover from the Principal any amount invalidly received by the Principal under any such Security.
- 6.13.9 The Principal must release the Security to the Contractor (or to whom the Contractor directs) if:
  - (a) the Contractor has fully performed and discharged all of its obligations under this Agreement; and
  - (b) in the reasonable opinion of the Principal:
    - (i) there is no prospect that money or damages will become owing (whether actually or contingently) by the Contractor to the Principal; and
    - (ii) no payment by the Contractor or the provider of the Security is likely to be void, voidable or refundable under any law, including without limitation any law relating to insolvency.

#### **6.14 Performance Monitoring**

- 6.14.1 The Contractor must meet with the Principal from time to time and/or at nominated intervals, as reasonably directed by the Principal, to evaluate and monitor performance of this Agreement by the Contractor.
- 6.14.2 If there is an agreed project plan for this Agreement, the Principal may choose to monitor performance in accordance with project milestones or stages as set out in that plan.
- 6.14.3 The Principal may also elect, in its discretion, to monitor performance of any sub-contracts under this Agreement.
- 6.14.4 If the Principal elects to monitor sub-contract performance the Contractor will do all things reasonably necessary to facilitate arrangements for such monitoring to take place.

- 6.14.5 As part of the monitoring of performance of this Agreement the Principal may ask the Contractor for its assessment of the progress of the Agreement and its assessment of the Principal's performance of its responsibilities under the Agreement including through the Principal's Delegate.
- 6.14.6 At the conclusion of this Agreement the Principal will complete a performance report and pass this report to NSW Procurement, Department of Commerce.
- 6.14.7 NSW Procurement will provide the Contractor with a copy of all performance reports prepared with regard to the Contractor (and will similarly provide any sub-contractor with performance reports regarding its sub-contract).
- 6.14.8 NSW Procurement will give the Contractor (and any sub-contractor) the opportunity to seek an independent review of each such report by an officer of NSW Procurement if required.
- 6.14.9 The Contractor, and any sub-contractor, must bear their own costs of complying with this clause. In particular, to avoid doubt, all meetings under this clause are at no additional cost to the Principal.
- 6.14.10 Unless waived by the Principal, the Contractor will, at its own cost, submit a monthly progress report to the Principal for the duration of this Agreement, commencing one month after the date on which this Agreement is made.
- 6.14.11 Each progress report will detail for the period covered by the report:
  - (a) the progress which the Contractor has made in relation to its obligations under this Agreement;
  - (b) any expenditure incurred;
  - (c) any factors which may affect the Contractor's ability to comply with any of its obligations under this Agreement, especially in relation to the supply of the Deliverables;
  - (d) any factors which the Contractor may have to overcome that may cause potential delays in supply of the Deliverables; and
  - (e) any other matter which the Principal may advise in writing to the Contractor.

## **6.15 Keeping of Records and Access to Records**

- 6.15.1 The Contractor must keep proper accounts, records and time sheets in accordance with the accounting principles generally applied in commercial practice.
- 6.15.2 The Contractor must, within a reasonable time of a request from the Principal, give the Principal access to, and copies of, any material relevant to the performance of the Contractor's obligations under this Agreement, and any financial information, that the Principal reasonably requires.

## **6.16 Exchange of Information Between Government Agencies**

- 6.16.1 The Contractor authorises the Principal, including the Principal's Delegate and their employees and agents to make available to NSW Government departments or agencies Information concerning the Contractor, including any Information provided by the Contractor to the Principal and/or the Principal's Delegate and any Information relating to the Contractor's performance under the Agreement, or the Contractor's financial position.
- 6.16.2 The Contractor acknowledges that Information about the Contractor from any source including any substantiated reports of unsatisfactory performance, may be taken into account by NSW Government agencies in considering

whether or not to offer the Contractor future opportunities for NSW Government work.

6.16.3 The Principal regards that the provision of Information about the Contractor to any New South Wales Government department or agency as privileged within section 22 of the *Defamation Act 2005* (NSW).

6.16.4 The Contractor releases and indemnifies the State of New South Wales (which term includes its officers, employees and agents) from any claim in respect of any matter arising out of the provision of Information. Without limiting the above, the Contractor releases the State of New South Wales from any claim it may have for any loss to the Contractor arising out of the provision of Information relating to the use of such Information by the recipient of the Information.

## **6.17 Conflict of Interest**

6.17.1 The Contractor undertakes that, to the best of its knowledge, no conflict of interest of the Contractor, its employees, agents or sub-contractors exists or is likely to arise in the performance of its obligations under this Agreement.

6.17.2 The Contractor must:

- (a) notify in writing, and consult with, the Principal immediately upon becoming aware of the existence, or possibility, of a conflict of interest; and
- (b) comply with any direction given by the Principal in relation to those circumstances designed to manage that conflict of interest.

6.17.3 The Principal may terminate the Agreement in accordance with clause 16.1 if in its view a conflict of interest exists which prevents the proper performance of the Agreement.

## **6.18 Access to Contractor's Premises and Facilities**

6.18.1 The Contractor shall, on the Principal giving twenty four (24) hours notice, give to any person authorised by the Principal ("authorised person") access at all reasonable times to the Contractor's premises and facilities for the purposes of inspection.

6.18.2 The Principal may wish to inspect all staff information kept by the Contractor, including duty time, personnel files and training records. Furthermore, the Principal may wish to inspect any records relating to the contracted Aircraft, including Maintenance Releases (MR's) past and present, flight logs and the Aircraft maintenance log books.

6.18.3 The Contractor may be required to submit to a safety audit, on the provision of twenty four (24) hours notice.

6.18.4 During operations the Contractor shall, on the Principal giving twenty four (24) hours notice, give to the Principal or authorised person, access at all reasonable times to inspect the Aircraft.

6.18.5 The Contractor shall co-operate with any person referred to in accordance with this clause to ensure an effective inspection can be made and shall provide any information in the possession of the Contractor reasonably sought by such person concerning the performance of the Deliverables.

## **7. Confidentiality**

7.1 Subject to this clause, the Contractor must not, without the prior written consent of the Principal, disclose any Confidential Information or any other Information in

connection with this Agreement to any person other than the Principal or the Principal's Delegate.

- 7.2 The Contractor must use the Confidential Information solely in connection or for the purposes of the provision of the Deliverables.
- 7.3 The Contractor may disclose Confidential Information to its officers, employees and sub-contractors ("permitted recipient") where such disclosure is essential to carrying out their duties or in accordance with this Agreement.
- 7.4 Before disclosing the Confidential Information to a permitted recipient, the Contractor must ensure that the permitted recipient is aware of the confidentiality requirements of this Agreement and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the Confidential Information other than as permitted by this Agreement.
- 7.5 The Principal may terminate this Agreement for substantial breach if the Contractor or any permitted recipient of Confidential Information discloses the Confidential Information other than as permitted under this Agreement or by law.
- 7.6 The Confidential Information must not be copied or reproduced by the Contractor or the permitted recipient without the express prior written permission of the Principal, except for such copies as may be reasonably required for the purposes of this Agreement.
- 7.7 The Principal may at its sole discretion and at any time require the Contractor to promptly execute and arrange for its employees, agents or sub-contractors engaged in the performance of this Agreement, to execute a Statutory Declaration and/or a Deed of Confidentiality substantially in the form appearing in the Schedules.
- 7.8 On termination of this Agreement the Contractor must return to the Principal all documents containing the Confidential Information.
- 7.9 This clause will survive the termination of this Agreement.
- 7.10 This clause does not affect the Contractor's obligation to disclose any Confidential Information which is required to be disclosed by law.

## **8. Intellectual Property**

- 8.1 The Contractor warrants that any Intellectual Property embodied in or used by the Contractor in connection with this Agreement is the sole property of the Contractor or the Contractor is legally entitled to use such Intellectual Property for the provision of the Deliverables stipulated under this Contract.
- 8.2 All Intellectual Property created in the performance of the Agreement shall vest in the Principal.

## **9. Principal's Material**

- 9.1 The Contractor must keep secure any Principal's Material and any Contract Material that it holds or controls for the performance of this Agreement.
- 9.2 The Contractor must, within 7 days of completion or termination of this Agreement, or such other period as agreed to in writing by the Principal, return to the Principal any of the Principal's Material it has in its possession or under its control.
- 9.3 The Contractor agrees that it will not make any alteration to the Principal's Material without the prior written consent of the Principal.

## 10. General Indemnity

- 10.1 The Contractor will be liable in respect of, and indemnifies, and shall keep indemnified, the Principal and the Principal's Delegate, including their officers, employees and agents against any claim, loss or expense (including a claim, loss or expense arising out of personal injury or death or damage to property) which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) (together "the loss") as a result of:
- (a) any unlawful, negligent, reckless or deliberately wrongful act or omission of the Contractor (or its employees, agents or sub-contractors or their employees) in the performance of this Agreement; or
  - (b) any breach of this Agreement or any confidentiality deeds required by this Agreement.
- 10.2 The Contractor's liability shall be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Principal or the Principal's Delegate or their officers, employees or agents caused or contributed to the loss.

## 11. Minimum Insurance Requirements

- 11.1 The Contractor must hold and maintain and must ensure that all sub-contractors are beneficiaries under or otherwise hold and maintain, the following insurances for the Term, or for such other period as may be specifically required by this Agreement for the particular policy:
- (a) a broad form public liability policy of insurance (excluding Aircraft cover) to the value of at least the amount specified in Schedule 1 in respect of each claim; and
  - (b) hangarkeeper's liability insurance section 2 for the value specified in Schedule 1 to cover instances where the Aircraft is located at the Contractor's and/or its sub-contractor's maintenance facility; and
  - (c) workers' compensation insurance in accordance with applicable legislation for all the Contractor's employees.
- 11.2 All policies of insurance must be effected with an insurer approved by the Principal (which approval will not be unreasonably withheld).
- 11.3 All policies, apart from workers compensation, must:
- (a) note the interest of the Principal, the State and any sub-contractor;
  - (b) contain a cross-liability clause in which the insurer agrees to waive any rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured or otherwise entitled to the benefit of the policy; and
  - (c) require the insurer to notify all named insured of any variation or cancellation of the policy, provided that a notice of claim given to the insurer by the Principal, the Contractor or the sub-contractor will be accepted by the insurer as a notice of claim given by all of the insured.

- 11.4 The Contractor must, and must ensure that sub-contractors, as soon as practicable, inform the Principal in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by the Agreement and must ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim.
- 11.5 During the Term the Contractor must when requested in writing by the Principal:
- (a) supply proof that all insurance policies required by this Agreement are current; and
  - (b) if required, arrange for its insurer to complete and sign a "Confirmation of Insurances Obtained Form" substantially in the form of Schedule 8, and on-send this to the Principal within 30 days of the request. Equivalent evidence as to the currency of insurance policies required by this Agreement will be acceptable to the Principal.
- 11.6 If the Contractor fails to comply with clauses 11.1, 11.3, 11.4 and 11.5, the Principal
- (a) may effect and maintain that insurance and pay the necessary premiums; and
  - (b) may recover from the Contractor the cost of the premiums and the Principal's reasonable costs of effecting and maintaining the insurance.
- 11.7 Where the Contractor is insured under a foreign company's or holding company's insurance policy, that insurance policy must clearly indicate that it applies to and extends coverage to the Contractor.
- 11.8 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Agreement.
- 11.9 Whilst the Aircraft is in the care and control of the Principal, the Principal will insure the Aircraft with the NSW Treasury Managed Fund, the NSW Government's own self-indemnity scheme, for the Principal's liabilities. The NSW Treasury Managed Fund is managed by NSW Treasury within a part of Treasury called the New South Wales Self Insurance Corporation.
- 11.10 The extent of coverage provided to the Principal by TMF is encapsulated within the TMF Contract of Coverage, which is available on the NSW Treasury website [https://www.sicorp.nsw.gov.au/sicorp\\_web/AboutUs/con\\_cover/Contract%20of%20Coverage%20\(FINAL\).pdf](https://www.sicorp.nsw.gov.au/sicorp_web/AboutUs/con_cover/Contract%20of%20Coverage%20(FINAL).pdf) and the Contractor acknowledges that it has read and understood the coverage provided by the TMF Contract of Coverage to the Principal. The Contract of Coverage contains the full extent of coverage provided. For the information of the Contractor, a simple précis of the TMF Property and Liability coverage is as follows:
- (a) Property
- The intention is to pay for reinstatement or replacement of all real and personal property including aircraft hulls where the loss or damage sustained thereto arises from a real, quantitative and fortuitous circumstances; coverage includes consequential losses as a result of such damage. Cover is provided for all property wherever it is in the world. Coverage will not respond to losses arising out of illegally based operations; wear, tear and/or inherent vice; or, pollution, other than sudden and accidental. Please refer to Section E.3 in its entirety.



**(b) Liability**

The intention is to pay all sums for compensation that the agency is found to be legally liable to pay in respect of claims made against them where the occurrence giving rise to the claim was connected to the agency's activities. Coverage is provided on a worldwide basis. Coverage will not respond to claims arising out of workers compensation; pollution other than sudden and accidental; CTP; or, arising out of illegally based operations. Please refer to Section E.4 in its entirety.

**12. Compliance with Legal Requirements****12.1 Compliance with Laws**

12.1.1 The Contractor must, in carrying out this Agreement, comply with:

- (a) all applicable Statutory Requirements; and
- (b) the codes, policies, guidelines and Australian standards listed in Schedule 1 or any other codes, policies, guidelines and Australian standards specified in writing by the Principal to the Contractor.

12.1.2 The Contractor must provide Material Safety Data Sheets when requested by the Principal from time to time.

**12.2 Licences and Approvals**

12.2.1 The Contractor must obtain at its own cost all licences, approvals and consents necessary to perform this Agreement.

**12.3 Payment of Wages and Allowances**

12.3.1 The Contractor shall ensure that all persons employed by it in or in connection with supply of the Deliverables (including any sub-contractors) are paid all wages and allowances required to be paid by or under any relevant award, determination or order of the State or Territory in which the Deliverables are being provided or by or under any industrial agreement that is in force in the State or Territory in which the Deliverables are being provided and that all such persons are employed under the conditions contained in any such award, judgement, order or industrial agreement.

12.3.2 If requested by the Principal, the Contractor will provide a statutory declaration that all persons employed by the Contractor in providing the Deliverables have been paid in compliance with the provisions of this clause and a statutory declaration from each sub-contractor to the same effect.

**13. Variations**

13.1. This Agreement may not be varied except in writing signed by both the Principal and the Contractor.

**14. No Assignment or Novation**

14.1 The Contractor must not assign or novate this Agreement without first obtaining the written consent of the Principal.

14.2 The Principal may make financial checks on the entity proposing to take over this Agreement before determining whether or not to give consent to the assignment or novation.

## 15. Completion of the Agreement by the Principal

- 15.1 If this Agreement is terminated, the Contractor must assist the Principal in transferring responsibility for the obligations under the Agreement either to an alternative supplier or to the Principal itself, and this will include:
- (a) upon request by the Principal, the Contractor must produce and make available all Contract Material relating to this Agreement;
  - (b) assignment to the Principal, or such other person as the Principal nominates, of any agreement entered into by the Contractor for the supply of any Components or Materials; and
  - (c) if requested, offer to sell, at fair market value, to the Principal, or such other person as the Principal nominates, any equipment used by the Contractor in conjunction with and dedicated solely to the delivery of the Agreement.
- 15.2 The Contractor must continue to carry out obligations under this Agreement in full until termination of the Agreement.

## 16. Termination

### 16.1 Termination for Cause

- 16.1.1 Without prejudice to its rights at common law, the Principal may immediately terminate this Agreement, in whole or in part, by written notice to the Contractor ("Notice of Termination for Cause"):
- (a) where the Contractor makes any statement, fact, information, representation or provides material in the Tender which is false, untrue, or incorrect in a way which materially affects this Agreement;
  - (b) where proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption or similar public body against the Contractor including for corrupt conduct or for collusive pricing;
  - (c) where the Contractor commits a substantial breach of the Agreement that is not capable of remedy;
  - (d) where the Contractor commits a substantial breach of the Agreement in a manner that is capable of remedy and does not remedy the breach within 7 days of receiving a notice from the Principal requiring it to do so ("Notice of Breach"), or such further time, having regard to the nature of the breach and a reasonable time to remedy it, as the Principal may reasonably allow;
  - (e) where the Contractor assigns its rights and/or obligations, sub-contracts or novates this Agreement other than in accordance with this Agreement;
  - (f) in the case of the Contractor's Insolvency; or
  - (g) if in the Principal's view a conflict of interest exists for the Contractor, which prevents the proper performance of the Agreement.
- 16.1.2 If the Principal terminates this Agreement for cause the Principal may:
- (a) at its option, for an appropriate part payment of the Contract Price (as agreed by the Parties or failing agreement as determined by an agreed expert), require the Contractor to deliver to the Principal any Deliverables (for example, Deliverables that are components of other Deliverables) in the possession or under the control of the Contractor as at the date of termination;

- (b) contract with any other person to complete the provision of the Deliverables;
- (c) deduct loss or damages arising from or in connection with the termination (which may be ascertained and certified by the Principal) from any money due, or which may become due to the Contractor (whether under this Agreement or otherwise) and/or from the Security (if any); and
- (d) recover from the Contractor in an appropriate court the balance of any monies remaining unpaid as a debt due and payable by the Contractor to the Principal.

## **16.2 Termination for Convenience**

16.2.1 The Principal may terminate this Agreement in whole or in part by giving written notice ("Notice of Termination for Convenience") with effect from the date stated in the notice and without the need to give reasons.

### **16.2.2 Effect of Termination for Convenience**

16.2.2.1 The Principal shall reimburse the Contractor its unavoidable costs directly incurred as a result of termination provided that any claim by the Contractor:

- (a) must be supported by written evidence of the costs claimed;
- (b) will be in total satisfaction of the liability of the Principal to the Contractor in respect of this Agreement and its termination.

16.2.2.2 The Principal shall not in any circumstances be liable for any consequential loss or loss of profits suffered by the Contractor as a result of the termination of this Agreement by the Principal.

16.2.2.3 If the Principal is the Crown, all reimbursement shall be made by the Crown acting through the Principal's Delegate and not through the Board.

16.2.2.4 The Contractor must, wherever possible, include in all sub-contracts and supply agreements an equivalent provision to this clause.

16.2.2.5 The Principal may at its option, for an appropriate part payment of the Contract Price (as agreed by the Parties or failing agreement as determined by an agreed expert), require the Contractor to deliver to the Principal any Deliverables (for example, Deliverables that are components of other Deliverables) in the possession or under the control of the Contractor as at the date of termination.

## **16.3 Show Cause Notice by CASA**

16.3.1 In the event that the Contractor is issued with a Show Cause Notice (SCN) from CASA, the Contractor shall inform the Principal within twenty four (24) hours, and immediately provide details of the SCN. The Contractor shall also provide the Principal with details of action taken to resolve the SCN.

- 16.3.2 Any serious SCN or equivalent, or other CASA directive that relates to any operation undertaken by the Contractor for the Principal may be regarded as a breach of Contract, in accordance with the provisions of Clause 16.1, and may result in termination of the Contract.

## **17. Issue Resolution**

### **17.1 General**

- 17.1.1 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 will be followed in this order until an issue is resolved:

- (a) Amicable Resolution;
- (b) Expert Determination.

### **17.2 Amicable Resolution**

- 17.2.1 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 the 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.
- 17.2.2 If the Party giving the Issue Notice is the Contractor, and this issue has arisen under this Agreement, it must give the Issue Notice to the Principal.
- 17.2.3 If the Party giving the Issue Notice is the Principal, it must give the Issue Notice to the Contractor.
- 17.2.4 The Parties must follow the issue resolution process in this clause before either commences proceedings or takes similar action except to seek an urgent injunction or declaration.
- 17.2.5 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.
- 17.2.6 A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice.
- 17.2.7 A Party may only refer an issue to Expert Determination by giving notice in writing specifying the issue to be decided ("the Referral Notice").
- 17.2.8 If the Party giving the Referral Notice is the Contractor, it must give the Referral Notice to the Principal.
- 17.2.9 If the Party giving the Referral Notice is the Principal, it must give the Referral Notice to the Contractor.
- 17.2.10 If a Referral Notice has not been given within 28 days of becoming entitled to do so then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).

### **17.3 Expert Determination**

- 17.3.1 If a Referral Notice is properly given to refer an issue for expert determination, the expert is to be agreed between the Principal and the Contractor. If they cannot agree within 28 days of the Referral Notice, the expert is to be nominated by the Chief Executive Officer, Australian Commercial Disputes Centre, Sydney.

- 17.3.2 The expert nominated must be a lawyer unless otherwise agreed. The expert must not be:
- (a) an employee of the Parties;
  - (b) a person who has been connected with the Agreement; or
  - (c) a person who the Parties have not been able to agree on.
- 17.3.3 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:
- (a) the issue referred to the expert for determination;
  - (b) the expert's fees;
  - (c) the procedure for the determination attached as Schedule 4 to this Agreement; and
  - (d) any other matter which is relevant to the engagement.
- 17.3.4 The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.
- 17.3.5 The procedure for expert determination is provided in Schedule 4 to this Agreement.
- 17.3.6 In answer to any issue referred to the expert by a Party, the other Party can raise any defence, set-off, or counter-claim.
- 17.3.7 If the expert determines that one Party must pay the other an amount exceeding the amount shown in Schedule 1 (calculating the amount without including interest on it, and after allowing for set-offs), then either Party may commence litigation, but only within 56 days after receiving the determination.
- 17.3.8 Unless a Party has a right to commence litigation in accordance with this issue resolution procedure
- (a) the Parties must treat each determination of the expert as final and binding and give effect to it; and
  - (b) if the expert determines that one Party owes the other money, that Party must pay the money within 28 days.

## **17.4 Performance of Agreement During Issue Resolution**

- 17.4.1 The Parties agree to continue performing their obligations under this Agreement while the issue is being dealt with in accordance with the above issue resolution procedures.

## **18. General**

### **18.1 Waiver**

- 18.1.1 A waiver in respect of a breach of a term of this Agreement by the other Party shall not be taken to be a waiver in respect of any other breach. The failure of either Party to enforce a term of this Agreement will not be interpreted as a waiver of that term.

**18.2 Severability**

- 18.2.1 If any part of this Agreement is void or voidable, then that part is severed from this Agreement but without affecting the continued operation of the remainder of the Agreement.

**18.3 Notices**

- 18.3.1 All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post, email or facsimile transmission.
- 18.3.2 Service of any notice under or relating to this Agreement shall be sufficiently served:
- (a) if delivered personally to the Party to be served;
  - (b) if left at or sent by pre-paid registered post to:
    - (i) the address of the Party to be served as set out in Schedule 1;
    - (ii) the last known place of abode or business of the Party to be served which is a company; or
    - (iii) the registered office of any Party to be served which is a Company;

and in the case of posting such notice shall be deemed to have been duly served on the second day after such notice has been posted; or
  - (c) if sent by facsimile transmission - to the last known facsimile number of the Party to be served and shall be deemed to have been duly served at the time such facsimile transmission is sent; and
  - (d) if sent by email - to the last known email address of the Party to be served and shall be deemed to have been duly served at the time the e-mail message is first received by the other Party in a complete, accessible and legible form.
- 18.3.3 If delivery or receipt of a notice is not made on a business day, then it will be taken to be made on the next business day.

**18.4 Counterparts**

- 18.4.1 If there are a number of counterparts of this Agreement, the counterparts taken together constitute one and the same instrument.

**18.5 Applicable Law**

- 18.5.1 This Agreement is governed by the laws of the State of New South Wales and the Parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and the Commonwealth of Australia.

**18.6 Rights Cumulative**

- 18.6.1 The rights and remedies provided under this Agreement are cumulative and not exclusive of any rights or remedies provided by law or any other right or remedy.

**18.7 No Agency/No Employment/No Partnership**

- 18.7.1 The Contractor agrees that the Contractor will not be taken to be, nor will it represent that it is, the employee, partner, officer and/or agent of the Principal.

**18.8 Survival Clause**

- 18.8.1 Unless the context otherwise provides, the rights and obligations under this Agreement will survive the expiration or earlier termination of this Agreement.

**18.9 Entire Agreement**

- 18.9.1 This Agreement constitutes the entire agreement between the Parties. Any prior arrangements, agreements, representations or undertakings are superseded.

**EXECUTED AS AN AGREEMENT THIS .....DAY OF.....2008.**

**EXECUTION BY GOVERNMENT PARTY:**

	)	
	)	
Signed for and on behalf of the	)	
	)	
	)	
NSW Department of Environment and Climate	)	
Change [Principal]	)	
	)	
	)	
by.....	)	.....
[insert name of Principal's representative]	)	(signature of Principal's representative)
	)	
	)	
In the presence of.....	)	.....
	)	(signature of witness)
.....	)	
[insert name of witness]	)	

**EXECUTION BY CONTRACTOR**

**Execution where Contractor is a corporation:**

	)	
<b>THE COMMON SEAL of</b>	)	
	)	
	)	
.....	)	
[insert name of Contractor]	)	
	)	
	)	
	)	(Corporate Seal)
was duly affixed hereto at .....	)	
[insert name of City/Town/Territory]	)	
	)	
	)	
in the State of.....	)	.....
[insert name of State or Territory]	)	(signature of Director)
	)	
	)	
In the presence of .....	)	
	)	
.....	)	
[insert name of Secretary or other permanent	)	.....
officer]	)	(signature of Secretary or other
	)	permanent officer)

**Execution where Contractor is a natural person:**

Signed by..... )  
 ..... )  
 [insert name of Contractor] ) ..... (signature of Contractor)  
 ..... )  
 at..... )  
 [insert name of City/Town] )  
 ..... )  
 in the State of ..... )  
 [insert name of State Territory] )  
 ..... )  
 in the presence of..... ) ..... (signature of witness)  
 ..... )  
 [insert name of witness not a party to the Agreement]

**Execution where Contractor is a partnership**

SIGNED BY )  
 ..... )  
 [insert name of partner authorised to sign on behalf of partnership] )  
 ..... )  
 for and on behalf of the firm )  
 ..... )  
 [insert registered business name and number of partnership] )  
 ..... )  
 at..... )  
 [insert name of City/Town] ) ..... (signature of Partner)  
 ..... )  
 in the State of ..... )  
 [insert name of State/Territory] )  
 ..... )  
 in the presence of..... ) ..... (signature of witness)  
 ..... )  
 [insert name of witness not a party to the Agreement]



## Schedule 1

### Agreement Details

<b>Item 1</b>	<b>Request for Tender No 0800361</b>
<b>Item 2</b>	<b>Contractor's Name:</b>
<b>Item 3</b>	<b>Contractor's Delegate:</b>
<b>Item 4</b>	<p><b>Term:</b> Commencement Date: 1 August 2008 Expiry Date: 31 July 2011</p> <p><b>Period of optional extended term:</b>  <b>Option 1</b> Commencement Date: 1 August 2011 Expiry Date: 31 July 2012  <b>Option 2</b> Commencement Date: 1 August 2012 Expiry Date: 31 July 2013</p>
<b>Item 5</b>	<p><b>Supply of Deliverables</b></p> <p>As detailed in Schedules 2 and 3</p>
<b>Item 6</b>	<p><b>Insurance</b></p> <p>(a) Public liability insurance (excluding Aircraft cover) for \$20,000,000</p> <p>(c) Hangarkeepers insurance (maintenance provider) Amount: Replacement Value</p>
<b>Item 7</b>	<p><b>Codes</b></p> <ol style="list-style-type: none"> <li>1. The Code of Practice for NSW Government Procurement.</li> <li>2. Implementation Guidelines for NSW Government Procurement.</li> <li>3. All relevant CARs, ADs and all other requirements and directives of CASA.</li> </ol>
<b>Item 8</b>	<p><b>Expert Determination Amount:</b></p> <p>\$A: 100,000</p> <p>.</p>
<b>Item 9</b>	<p><b>Security</b></p> <p>Amount: Equal to 10% of the Routine Operations Rate times 180 Form: Bank guarantee or similar</p>
<b>Item 10</b>	<p><b>Progress Payments</b></p> <p>(180 x Routine Operations Rate ÷ 7) per month or pro rata thereof.  <a href="#">Note to Tenderers: This will be expressed as a dollar amount in the actual contract.</a></p>

<b>Item 11</b>	<p><b>Notices to:</b></p> <p><b>The Contractor's contact name and address:</b></p> <p>Name:</p> <p>Address:</p> <p>Position:</p> <p>Telephone:</p> <p>Facsimile:</p> <p><b>The Principal's contact name and address:</b></p> <p>Name: To be advised</p> <p>Position: Manager Fire and Incident Management Section Parks and Wildlife Group</p> <p>Address: PO Box 1967 Hurstville NSW 1481</p> <p>Telephone: 9585 6477</p> <p>Facsimile: 9585 6396</p>
<b>Item 12</b>	<p><b>Principal's Delegate</b></p> <p>Manager Fire and Incident Management Section</p>

## **Schedule 2**

### **Specification of Aircraft and Services**

#### **A. AIRCRAFT SPECIFICATION**

- 1.1 The Aircraft Specification shall be detailed here in line with that specified in Annexure 1 to Part C, as modified and agreed to by the Principal.
- 1.2 The Aircraft is to be available for operation under this Agreement by 1 September 2008.

## **Schedule 2 cont.**

### **B. SERVICE REQUIREMENTS**

#### **1. Scope**

- 1.1 The Contractor shall provide a light utility helicopter as specified in clause A of this Schedule 2. The leased Aircraft will be available for operations under the Principal's AOC and will be crewed by the Principal's aircrew during the Term. For the purposes of scheduled maintenance considerations the Aircraft will be based at Bankstown Airport, Sydney, NSW. However, during operations the Aircraft may be based and/or deployed in other areas of NSW. The Contractor must carry out all necessary scheduled and unscheduled maintenance on the Aircraft to ensure it remains in airworthy and serviceable condition and ensure compliance with all relevant regulatory and manufacturer requirements. Any Aircraft ferry time, travel, accommodation or any other costs associated with the performance of unscheduled maintenance is the Contractor's responsibility regardless of the Aircraft's location.
- 1.2 The Contractor must guarantee the exclusive availability of the Aircraft to the Principal during the seven months from 1 September and 31 March each financial year (the Service Period) as well as any extensions to the Service Period. The Principal will give the Contractor at least 7 days notice of any extensions to the Service Period.
- 1.3 Whilst the Contractor does not have to guarantee the availability of the Aircraft beyond this period (i.e. Service Period plus extensions), the Principal may require Aircraft on an ad hoc basis outside this period each year. In such cases the Principal will give at least 24 hours notice of any ad hoc requirements, which may be for one or more days. Once the booking is confirmed by the Principal the order must be honoured by the Contractor.
- 1.4 The Contract Prices and conditions of Contract included in this Agreement shall apply to the Service Period, any extensions to the Service Period and any ad hoc requirements mentioned in clause 1.3 above.
- 1.5 The Principal will guarantee a minimum payment of 180 hours during the Service Period, plus pro rata thereof for extensions to the Service Period or for ad hoc requirements, at the Routine Operations rate, including GST, as per the Price Schedule in Schedule 3. For example, if the Service Period is extended to include April, or 8 months, the minimum payment of hours for the entire period would increase to 205.71 hours, rounded to 206 hours (i.e.  $\{180 \div 7\} \times 8 \text{ months} = 205.71$  total overall commitment). If the actual flying hours are greater than those guaranteed by the Principal the Contractor will be paid for each hour flown, in accordance with the provisions of clause 5.2 of the conditions of Contract.
- 1.6 The Aircraft will be used predominantly for firefighting but may be used for a wide range of other aviation operations carried out by Principal. These include other emergency incident operations as well as routine operations and the specific aviation roles of external load carrying, aerial shooting, winching/hover entry/exit, low level observation and aerial incendiary/infrared camera operations.

#### **2. Extent of Work**

- 2.1 The minimum total per annum value of the Contract shall be calculated by multiplying the Routine Operations Rate dry hire, including GST, listed in the Price Schedule at Schedule 3 by the minimum guaranteed 180 hours.
- 2.2 The guaranteed minimum number of flying hours is made up of both routine operations hours at the Routine Operations rate and Declared Incident hours at the Incident Rate. For example, if in the Service Period 100 hours of routine operations hours plus 80 hours of Declared Incident hours are utilised, the Principal will have met its obligations under clause 1.2 above.

- 2.3 The Principal agrees to pay during the term of the lease the rate per operating hour, dry (maintenance time) in the Price Schedule listed in Schedule 3 for each hour flown on DECC AOC approved operations. This includes ferry (location) flights, fire surveillance (spotting) flights and all other operations listed on the DECC AOC. However, when there is a "Declared Incident" the Principal agrees to pay the rate per operating hour, dry (maintenance time) in the Price Schedule for Declared Incidents for each hour flown.
- 2.4 In the event of any dispute between the Principal and the Contractor in respect of any payment under this Agreement, the maintenance release (hours determined by a collective Hobbs meter or equivalent) and the DECC Daily Operational Records shall be binding upon both Parties.

### **3. Maintenance**

- 3.1 The Contractor must maintain the Aircraft and equipment made available by the Contractor for use by the Principal in a proper manner in accordance with all relevant CASA requirements and to ensure the airworthiness and serviceability of the Aircraft to the Principal's satisfaction. If the Aircraft or equipment made available by the Contractor is not acceptable when provided, the Principal shall immediately notify the Contractor's Delegate.
- 3.2 The Contractor shall have the full maintenance and engineering responsibility for all required scheduled and unscheduled maintenance. Personnel authorised by the Contractor and approved by the Principal at the cost of the Contractor shall carry out all maintenance.
- 3.3 Where applicable, this includes the cost of any applications or undertakings with CASA regarding the operations of the Aircraft relating to maintenance. All issues relating to the maintenance control of the Aircraft, the maintenance control manual, the maintenance controller or any personnel required to perform these tasks is the Contractor's responsibility and at the Contractor's expense.
- 3.4 The Principal agrees to regularly wash the Aircraft in accordance with the Contractor's procedures and, wherever possible, also carry out an engine wash prior to each day's flight if required.
- 3.5 The Principal agrees to furnish the Contractor with regular maintenance reports in order to assist the Contractor in maintenance planning for the Aircraft. Whilst at Bankstown Airport or other bases, the Principal agrees to hangar the Aircraft where it is possible and practical.
- 3.6 The Contractor shall monitor and control life limited components and special inspection requirements.
- 3.7 The Contractor shall receive airworthiness control and maintenance documents such as vendor manuals, schedules, parts catalogues, service bulletins and service letters etc. and:
- (a) maintain a revision service for the above documents;
  - (b) assess incoming technical data; and
  - (c) determine applicable maintenance requirements arising from such documents.
- 3.8 The Contractor shall receive airworthiness directives (ADs) pertinent to the Aircraft and Aircraft components and determine applicable maintenance requirements.

- 3.9 The Contractor shall liaise with the Principal's Head of Aircraft Airworthiness and Maintenance Control, in respect of airworthiness matters to ensure:
- (a) the timely programming of the Aircraft due for scheduled maintenance through the maintenance organisation;
  - (b) timely notification of any required unscheduled maintenance such as compliance with AD's; and
  - (c) notification of any major defects/damage identified during maintenance/service.
- 3.10 The Contractor shall carry out repairs, modifications, replacements or adjustments on the Aircraft or Aircraft components strictly in accordance with the Aircraft's maintenance schedule.
- 3.11 The Contractor is responsible for submitting and requesting approval for alternate maintenance schedule(s) from the Civil Aviation Safety Authority if, and when, required.
- 3.12 The Contractor shall ensure all replacement components are serviceable and except where previously installed as a result of modifications, shall:
- (a) be identical with components they replace; or
  - (b) be specified in the Aircraft or component manufacturer's parts catalogue as a superseding or alternative part; and
  - (c) be supplied under the cover of applicable documentation provided by a recognised authority or an approved manufacturer.
- 3.13 The Contractor shall ensure that all tools and equipment in use in Aircraft maintenance are within the specified calibration period and meet the required standards specified in the organisation's Calibration Register.
- 3.14 The Contractor shall liaise with CASA in relation to the Aircraft for the following:
- (a) permissible unserviceability applications;
  - (b) Special Flight Permit applications; and
  - (c) applications for exemptions and /or variations to the CARs.
- 3.15 The Contractor shall determine ongoing requirements of weight and balance control of the Aircraft.
- 3.16 The Contractor shall ensure complete, up-to-date and accurate maintenance records are kept for the Aircraft and retained for the periods specified in CAO 100.5.
- 3.17 The Contractor shall manage the installation, removal and maintenance of role equipment (if applicable).
- 3.18 The Contractor shall provide adequate spares holding and control of stores.
- 3.19 The Contractor shall provide maintenance familiarisation training for the Principal's flight crew (if applicable).

- 3.20 The Principal will fly the Aircraft to and from the maintenance facility for scheduled or unscheduled maintenance. The Principal will not be charged for delivery of the Aircraft to the maintenance organisation for scheduled or unscheduled maintenance or return to Bankstown Airport after maintenance. All charges involved in the delivery and return for maintenance purposes will be incurred by the Contractor - this includes fuel and oil.
- 3.21 For routine scheduled maintenance for a 100 hour service the "downtime" limit is 3 consecutive days unless otherwise agreed by the Principal in writing.

#### **4. Alternative Aircraft**

- 4.1 Whilst the Contractor is under no obligation to provide an alternative aircraft, in the event of extended or unscheduled maintenance, it may offer an equivalent aircraft and the Principal may or may not accept that offer. Where an alternative aircraft is supplied it will only be accepted by the Principal where pre-approval has been provided by the Principal, and all areas of the Agreement have been adhered to.

#### **5. Payment of Fuel and Oil**

- 5.1 Subject to clause 5.2 the Principal agrees to furnish all fuel and oil required to operate the Aircraft at its own expense whilst the Aircraft is in the care and control of the Principal.
- 5.2 The Principal is not responsible to pay for the Aircraft's fuel and oil requirements that are required for scheduled and unscheduled maintenance actions including transport to and from the maintenance facility.

#### **6. Delivery**

- 6.1 The Aircraft shall be delivered by the Contractor to the Principal's facilities at Bankstown Airport, New South Wales at the expense of the Contractor at the time indicated in Part A of this Schedule.
- 6.2 The Principal will not be charged for the delivery of the Aircraft to Bankstown Airport. The Principal will not be charged for return of the Aircraft to the Contractor from Bankstown Airport – this includes no charge for fuel and oil etc.
- 6.3 The Aircraft will be fitted with all equipment that the Contractor has stated that it will be fitted with, as detailed in Part A of this schedule. The Contractor shall deliver the Aircraft with an Aircraft Inventory, itemising equipment and the items delivered in and with the Aircraft. The Contractor warrants that upon delivery to the Principal the Aircraft and equipment shall be in an airworthy, good and serviceable condition.
- 6.4 Acceptance of the delivery of the Aircraft is dependent upon the Principal's satisfaction that the Contractor has delivered the Aircraft and the equipment in an airworthy, good and serviceable condition.
- 6.5 Any disagreement with the Aircraft or equipment's current airworthiness or condition shall be resolved through an independent assessment of the airworthiness or condition of the Aircraft and equipment – with the cost shared equally amongst the Contractor and Principal.

#### **7. Appropriate Licences**

- 7.1 Where applicable and required by law, all Aircraft maintenance, trade work and other work must be carried out by appropriately licensed persons.

## **8. Standard of Work**

- 8.1 The Contractor must carry out the work in accordance with the Agreement.
- 8.2 The Principal's Delegate may direct the Contractor to correct work that is not in accordance with the Agreement, and the Contractor must correct that work within the time specified by the Principal's Delegate. If the Contractor does not correct the defective work within the time specified, the Principal may have the work corrected by others. The Principal's Delegate will assess the reasonable costs of having the work corrected by others and there will be a debt due from the Contractor to the Principal.

## **9. Quality System**

- 9.1 The maintenance provider will have a system of Total Quality Management, preferably to the appropriate Australian or International Standard, in their organisation.

## **10. Conduct**

- 10.1 The Contractor must ensure the suitability and proper conduct of all persons, including the employees and sub-contractors, employed for Aircraft maintenance or other work and set reasonable standards of conduct, investigate complaints about their behaviour and take appropriate action, if so warranted.
- 10.2 If the Principal's Delegate considers them to be unsuitable to carry out the work the Principal's Delegate may direct the Contractor to stop utilising them on the Aircraft's maintenance or other work and remove them from the Principal's worksites, and the Contractor must comply.

## **11. Care and Protection**

- 11.1 The Contractor is responsible for the care and protection of any materials, plant, equipment and other possessions entrusted to the Contractor by the Principal for the purpose of carrying out any work under the Agreement. The Contractor must make good at the Contractor's expense any damage that occurs to those things while responsible for their care.
- 11.2 The Contractor indemnifies the Principal against any loss or damage to the property of the Principal and liability for personal injury, death, or the damage to or loss of any other property, arising from carrying out work in relation to the Agreement. The Contractor must take effective measures for the protection, health and safety of, and avoidance of injury to persons; and the protection of, and avoiding of loss or damage to, property, while the Contractor is carrying out work on the Principal's estate.

## **12. Emergency Contact**

- 12.1 A 24 Hour Emergency Contact number must be provided by the Contractor to the Principal's Delegate. This contact must be able to respond to an enquiry within 4 hours.

## **13. Audits**

- 13.1 Throughout the term of the Agreement, the Principal reserves the right to implement spot audits of the Contractor's premises, maintenance records and maintenance premises.

## **14. Operations**

- 14.1 The Principal shall have the full operational responsibility for the Aircraft, and shall operate the Aircraft only with pilots properly licensed and qualified to fly the Aircraft in accordance with the flight manual and Principal's Operations Manual.



- 14.2 The Parties agree that the Aircraft shall be used only for lawful purposes including the carriage of passengers and goods within the area of operations and the Principal must at all times comply with the requirements of the Civil Aviation Act and CASA. The Principal further agrees that the Aircraft will not be sub-leased, and no training flights will be conducted with the Aircraft except for the Principal's purposes only. Both Parties agree that the Aircraft will only be used within the limitations of the flight manual.

**15. Signage**

- 15.1 The Contractor shall, at its cost, paint the Aircraft and affix logos as directed by the Principal.
- 15.2 At completion of the Agreement the Contractor, if directed by the Principal, shall remove the Parks and Wildlife Group logos and paint scheme.

**Schedule 3****Contract Price Schedule**

Item Number and Description	Price Excluding GST	Price Including GST
1. Dry hire of Aircraft - Routine Operations Rate dry (maintenance time)	\$ per flight hour	\$ per flight hour
2. Dry hire of Aircraft - Incident Rate dry (maintenance time)	\$ per flight hour	\$ per flight hour

## Schedule 4

### Expert Determination Procedure

#### 4 Questions to be determined by the Expert

- 4.1 The expert must determine for each issue the following questions (to the extent that they are applicable to the issue):
  - 4.1.1 Is there an event, act or omission which gives the claimant:
    - a. a right to compensation under this Agreement
    - b. for damages for breach of this Agreement, or
    - c. otherwise in law?
  - 4.1.2 If so:
    - a. what is the event, act or omission?
    - b. on what date did the event, act or omission occur?
    - c. what is the legal right which gives rise to the liability to compensation?
    - d. 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?
  - 4.1.3 In the light of the answers to the above clauses 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?
- 4.1 The expert must determine for each issue any other questions required by the parties, having regard to the nature of the issue.

#### 4 Submissions

- 2.1 The procedure for submissions to the expert is as follows:
- 2.2 The Party to the Agreement which has referred the issue to Expert Determination ("Referring Party") must make a submission in respect of the issue, within 15 business days after the date of the letter of engagement referred to in the issue resolution clause of the Agreement.
- 2.3 The other party ("Responding Party") must respond within 15 business days after receiving a copy of that submission. That response may include cross-claims.
- 2.4 The Referring Party 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 Responding 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 this clause 2 of this Expert Determination Procedure, unless the Principal and the Contractor 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 that 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 above.
  - 4.1.4 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.

## Schedule 5

### Statutory Declaration for Sub-Contractors

*Oaths Act 1900* (NSW), Ninth Schedule

I

(1) \_\_\_\_\_

do solemnly and sincerely declare that to the best of my knowledge and belief:

1. ....[*Insert full sub-contractor company name and its ACN*] ("the sub-contractor") has been selected as a sub-contractor to .....[*Insert name of the Contractor*] ("the Contractor") for the performance of Contract 0800361 with Department of Environment and Climate Change ("Principal") for the supply of certain Deliverables ("the Agreement").
2. The sub-contractor is aware of the relevant contractual terms and conditions of the Agreement and will be entering into a sub-contract with the Contractor in the near future on terms that will not be inconsistent with the Agreement for .....[*Insert short description of the sub-contract*] ("the Sub-Contract").
3. There are no reasons of which I am aware that would prevent the Sub-Contract from being signed and performed in a manner that would allow the satisfactory and timely performance of the Agreement and the Sub-Contract.

**And I make this solemn declaration, as to the matter aforesaid according to the law in this behalf made, and subject to the punishment by law provided for any wilfully false statement in any such declaration.**

.

(2) \_\_\_\_\_

Declared at \_\_\_\_\_

the \_\_\_\_\_ day of \_\_\_\_\_ 2001 \_\_\_\_\_

Before me, (3) \_\_\_\_\_

(4) \_\_\_\_\_

- (1) Here insert name, address and occupation of person making the declaration and his or her position in the sub-contractor company.
- (2) Signature of person making declaration
- (3) Signature of person before whom the declaration is made \*
- (4) Here insert title of person before whom the declaration is made.

---

\* the jurisdiction within which this declaration is made will depend on who may witness the declaration.

## Schedule 6

### Deed of Confidentiality

BY THIS DEED DATED THE \_\_\_\_\_ day of \_\_\_\_\_ 200..

**BETWEEN** NSW Department of Environment and Climate Change of 43 Bridge Street,  
Hurstville 2000

**AND** .....[Insert name and  
address of Confidant] ("the Confidant ")

#### RECITALS:

- A. In the course of the Confidant supplying certain deliverables for the Principal (whether directly or indirectly) pursuant to the Agreement, the Confidant will have access to and may become aware of Confidential Information belonging to or in the possession of the Principal.
- B. Improper use or disclosure of the Confidential Information would severely damage the Principal's ability to perform its governmental/statutory functions and would severely damage the commercial interests of the NSW Government.
- C. The Principal requires, and the Confidant agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Principal's Confidential Information is kept confidential and that the Confidant provides the deliverables faithfully and without any conflicting interest.
- D. This Deed sets out the terms on which the Confidant will have access to the Confidential Information.

#### OPERATIVE PROVISIONS:

##### 1. Recitals

The Parties acknowledge the truth and accuracy of the Recitals in every particular.

##### 2. Interpretation

###### 2.1 Definitions

In the interpretation of this Deed unless a contrary intention appears requires the following expressions will have the following meanings:

**"Agreement"** means the Agreement between the Principal and the Contractor dated .....[Insert date] for the supply of the deliverables as defined in the Agreement.

**"Confidential Information"** means information that:

- (a) is by its nature confidential;
- (b) is designated by the Principal as confidential; or
- (c) the Confidant knows or ought to know is confidential;

and includes but is in no way limited to:

- (d) the Contract Material;
- (e) the Principal's Material including the financial information, the corporate information and the commercial information of the Principal;

- (f) any material which relates to the affairs of a third party;
- (g) information relating to the policies, strategies, practices and procedures of the NSW Government and any information in the Contractor's possession relating to the NSW Public Service.

**"Contractor"** means the person named as Contractor under the Agreement.

**"Contract Material"** means:

- (a) any material created, written or otherwise brought into existence as part of, or for the purpose of performing the Agreement including but not in any way limited to all Records, working papers, programs, flow charts, reports, including documents, equipment and information and data stored by any means ("New Contract Material"); and
- (b) any material which is existing at the date of the Agreement and which is incorporated with the New Contract Material ("Existing Contract Material").

**"Express Purpose"** means the Confidant performing the obligations under the Agreement.

**"Intellectual Property Rights"** includes copyright, patent, trademark, design, semi-conductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights existing in Australia, whether created before or after the date of the Agreement.

**"Principal's Material"** means any documentation, information or material supplied by or on behalf of the Principal, the Principal's Delegate or the Crown, to the Confidant.

**"Notice"** means notice in writing given in accordance with this Deed.

**"Records"** includes the Contract Material and any other information, documents or data brought into existence by any means and stored by any means in connection with the performance of the Agreement.

## 2.2 General

2.2.1 Headings are for convenience only and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

2.2.2 A reference to:

- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (b) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
- (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
- (d) anything (including a right, obligation or concept) includes each part of it.

2.2.3 If this Deed expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.

2.2.4 A singular word includes the plural, and vice versa.

2.2.5 A word which suggests one gender includes the other genders.

2.2.6 If a word is defined, another part of speech of that word has a corresponding meaning.

### **3. Non disclosure**

3.1 The Confidant must not disclose the Confidential Information to any person without the prior written consent of the Principal.

3.2 The Principal may grant or withhold its consent in its discretion.

3.3 If the Principal grants its consent, it may impose conditions on that consent, including a condition that the Confidant procure the execution of a Deed in these terms by the person to whom the Confidant proposes to disclose the Confidential Information.

3.4 If the Principal grants consent subject to conditions, the Confidant must comply with those conditions.

3.5 Despite this clause, the Confidant may disclose the Confidential Information to its directors, officers, employees, and contractors ("permitted recipients") where such disclosure is essential to carrying out their duties owed to the Confidant or in accordance with this Deed.

3.6 Before disclosing the Confidential Information to a permitted recipient, the Confidant will ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the confidential information other than as permitted by this Deed.

3.7 The Confidential Information must not be copied or reproduced by the Confidant or the permitted recipients without the expressed prior written permission of the Principal, except as for such copies as may be reasonably required for the purposes of this Deed.

3.8 The Principal may at any time require the Confidant to promptly arrange for the permitted recipients to execute a Deed of Confidentiality substantially in the form of this Deed.

3.9 If any person being any director, officer, contractor or employee of the Confidant, who has had access to the Confidential Information in accordance with this clause leaves the service or employ of the Confidant then the Confidant will procure that that person does not do or permit to be done anything which, if done or permitted to be done by the Confidant, would be a breach of the obligations of the Confidant under this Deed.

3.10 The requirements of this Deed do not affect the obligation of the Confidant to disclose any Confidential Information where it is required to be disclosed at law.

### **4. Restriction on Use**

4.1 The Confidant must use the Confidential Information only for the Express Purpose and must not without the prior written consent of the Principal use the Confidential Information for any purpose other than the Express Purpose.

4.2 The Confidant must, unless otherwise authorised by the prior written consent of the Principal:

- (a) treat as confidential and secret all of the Confidential Information which the Confidant has already acquired or will acquire from the Principal;
- (b) take proper and adequate precautions at all times and enforce such precautions to preserve the confidentiality of the Confidential Information and



take all necessary action to prevent any person obtaining access to the Confidential Information other than in accordance with this Deed;

- (c) not directly or indirectly use, disclose, publish or communicate or permit the use disclosure, publication or communication of the Confidential Information to any person other than in accordance with this Deed;
- (d) not copy or disclose to any person in any manner any of the Confidential Information other than in accordance with this Deed; and
- (e) ensure that the permitted recipients comply with the terms of this Deed and keep the Confidential Information confidential and not use or disclose the Confidential Information other than as permitted by this Deed.

## **5. Survival**

- 5.1 This Deed will survive the termination or expiry of the Agreement.

## **6. Rights of the Principal**

### **6.1 Production of Documents**

- 6.1.1 The Principal may demand the delivery up to the Principal of all documents in the possession or control of the Confidant containing the Confidential Information.
- 6.1.2 The Confidant must immediately comply with a demand under this clause.
- 6.1.3 If the Principal makes a demand under this clause, and the Confidant has placed or is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose possession or control they lie.
- 6.1.4 In this clause, "documents" includes any form of storage of information, whether visible to the eye or not.

### **6.2 Legal Proceedings**

- 6.2.1 The Principal may take legal proceeding against the Confidant or third parties if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

## **7. Indemnity and Release**

- 7.1 The Confidant is liable for and agrees to indemnify and keep indemnified the Principal in respect of any claim, damage, loss, liability, cost, expense, or payment which the Principal suffers or incurs as a result of:
  - (a) a breach of this Deed (including a breach of this Deed which results in the infringement of the rights of any third party); or
  - (b) the disclosure or use of the Confidential Information by the Confidant or the permitted recipients other than in accordance with this Deed.

**8. No Exclusion of Law or Equity**

- 8.1 This Deed does not exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

**9. Waiver**

- 9.1 No waiver by the Principal of one breach of any obligation or provision of this Deed will operate as a waiver of another breach of any other obligation or provision of this Deed.
- 9.2 None of the provisions of this Deed will be taken to have been varied waived discharged or released by the Principal unless by its express consent in writing.

**10. Remedies Cumulative****10.1 Cumulative**

- 10.1.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any other rights or remedies.

**10.2 Other Instruments**

- 10.2.1 Subject to the other covenants of this Deed, the rights and obligations of the Parties pursuant to this Deed are in addition to and do not derogate from any other right or obligation between the Parties under any other deed or agreement to which they are parties.

**11. Variations and Amendments**

- 11.1 No term or provision of this Deed may be amended or varied unless reduced to writing and signed by the Parties in the same manner as this instrument.

**12. Applicable Law**

- 12.1 This Deed will be governed and construed in accordance with the law of New South Wales and the Commonwealth of Australia.

**13. Notices**

- 13.1 Notices must be sent to the other Party at the address shown in this Deed, or the address last notified to the other Party in writing, or in the case of the Confidant, at the Confidant's registered office.
- 13.2 All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post, email or facsimile transmission.
- 13.3 If delivery or receipt of a notice is not made on a business day, then it will be taken to be made on the next business day.

Executed as a Deed this .....day of.....20....

**SIGNED, SEALED AND DELIVERED**

by .....

[insert name and position of person signing]

(signature of authorised officer for the Principal)

for and on behalf of the NSW Department of  
Environment and Climate Change

In the presence of:

[insert name of Witness]

(signature of Witness)

**SIGNED, SEALED AND DELIVERED**

by.....

[insert name of Confidant]

(signature of Confidant)

in the presence of.....

[insert name of Witness]

(signature of Witness)

BY THIS DEED DATED THE \_\_\_\_\_ day of \_\_\_\_\_ 200..

## Schedule 7

### Undertaking

**THIS DEED** is made the ..... day of .....20...

### BETWEEN

.....  
 .[Name, ACN and address of financial institution] ) ("**Provider**")

### AND

NSW Department of Environment and Climate Change ("**Beneficiary**")

### IT IS AGREED

At the request of [*Insert name of the Contractor*] ("**Customer**") and in consideration of, among other things, the Beneficiary accepting this undertaking in connection with contract 0800361 for the dry lease of a light helicopter, the Provider unconditionally undertakes to pay to the Beneficiary on demand in writing any sum or sums from time to time up to a maximum aggregate sum of [*amount in words*] (\$[ ]) ("**Sum**"). The Provider unconditionally and irrevocably agrees to pay such moneys to the Beneficiary immediately.

This undertaking is to continue until a notification has been received from the Beneficiary that the Sum is no longer required by the Beneficiary or until this undertaking is returned to the Provider or until payment to the Beneficiary by the Provider of the whole of the Sum or such part as the Beneficiary may require.

The Provider may at any time without being required to do so pay to the Beneficiary the Sum less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required by the Beneficiary and thereupon the Provider shall cease to be liable.

This deed is governed by and must be construed in accordance with the laws of New South Wales.

Executed as a deed this ..... day of .....20....

**SIGNED, SEALED AND DELIVERED**

for and on behalf of .....

[Insert name of the beneficiary]

by .....

[insert name of beneficiary's authorised officer]

In the presence of:

[insert name of Witness]

.....  
(signature of authorised officer of beneficiary)

.....  
(signature of Witness)

**THE COMMON SEAL of**

[insert name of Provider]

**ABN:**

[insert Provider ABN]

was duly affixed hereto at.....

.....  
(Corporate seal)

.....in the State of

[insert name of City / Town]

.....[insert name of State  
or Territory]

.....  
(signature of Director)

in the presence of .....

[insert name of Secretary or other permanent  
officer]

.....  
(signature of Secretary or other permanent  
officer)

**Schedule 8****Sample Confirmation of Insurances Obtained form****Confirmation of Insurances****Insurance Body:****Insured:****Re: Agreement for the dry lease of a light helicopter  
between the Insured and the Principal****It is confirmed that:****1. The Insured has obtained the following policies (the Insurance Policies)**

- (a) Broad Form Liability Expiry \_\_\_/\_\_\_/20\_\_
- (b) The public liability component of the Broad Form Liability policy is to the value of \$AUD\_\_\_(the Limit of Indemnity) in respect of each claim; and
- (c) Hangarkeeper's Liability insurance policy expiry is \_\_\_/\_\_\_/20\_\_ to the value of \$AUD\_\_\_ in respect of each claim.
- (d) Other insurances, if required:

Type of insurance	Value
_____	_____
_____	_____

- 1. The interest of the Principal, the State, and any sub-contractor is noted in the insurance policy/ies.
- 2. The Insurance Policies contain a cross-liability clause in which the insurer agrees to waive any rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured or otherwise entitled to the benefit of the policy.
- 3. The insurer will notify all named insured of any variation or cancellation of the policy and the insurer will accept that a notice of claim given to the insurer by the Principal, the Contractor or the sub-contractor will be accepted by the insurer as a notice of claim given by all of the insured.

**Attach a Certificate of Currency for the policy/ies above.****Specify below any exclusions beyond the standard exclusions for the Insurance Policies.**

\_\_\_\_\_  
**Authorised Representative of Insurer**  
**Position:**  
**Dated:**

\_\_\_\_\_  
**Signed:**

**Schedule 9****List of Approved Sub-Contractors**

Item	A. List of Approved Sub-contractors (Clause 6.5)