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

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

Request for Tender 0802056  
- Provision of Aircraft Charter Services for the  
NSW Department of Juvenile Justice and NSW  
Police Force  
[1 March 2009](#) to [28 February 2014](#)

Tender Issue Date: 1 December 2008

Closing Date: 21 January 2009

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 B 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

## Provision of Aircraft Charter Services for the NSW Department of Juvenile Justice and NSW Police Force

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## REQUEST FOR TENDER - PART A – OVERVIEW

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### 1 Outcome

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This Request for Tender (“RFT”) is made by the State Contracts Control Board (the “Board”) for the Provision of Aircraft Charter Services for the NSW Department of Juvenile Justice and NSW Police Force under the proposed Agreement of the Services defined in the Statement of Requirements of this RFT.

The Board is responsible for the delivery of the tender process, assisted by NSW Procurement – Contracting Services, whilst the proposed Agreement will be executed between NSW Department of Juvenile Justice and NSW Police Force and the successful tenderer/s.

The key outcome of this RFT is to provide purchasing solution (through the proposed Agreement) for the required Services, which meets the needs of Department of Juvenile Justice and NSW Police Force.

### 2 Objectives

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The objectives of the proposed Agreement in achieving the desired outcome, includes, but is not limited to the following:

- (a) Reduce the total cost of the Services;
- (b) Provide Services which are commercially competitive;
- (c) Establish a sustainable partnership between NSW Department of Juvenile Justice and NSW Police Force and the successful tenderer/s to deliver quality Services;
- (d) Best practice through continual review of delivery methods i.e value-engineering;
- (e) Effective management of risks;
- (f) Compliance with all applicable laws, standards, codes and policies.
- (g) To drive automation in procurement for greater efficiency and information management.

### 3 Required Benefits

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The required benefits to be achieved in delivering the objectives of the proposed Agreement are:

- (a) A sustainable, mutually beneficial supply chain partnership;
- (b) Savings and efficiency gains;
- (c) Reduced costs to the NSW Government by value-engineering its delivery methods;
- (d) Transparency of all transactions, including performance measurement, pricing and reporting;

### 4 Scope of RFT

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#### 4.1 Services

The purchasing of the following Services are covered under the proposed Agreement:

NSW Department of Juvenile Justice’s (DJJ) and NSW Police Force’s (NSWPF) need, when required to charter multi-engine fixed wing aircraft inclusive of fuel and flight crew. The aircraft will be generally used to transport juvenile detainees and their escorting staff to or between country locations to attend court, funerals or similar casework appointments, as well as specified NSW Police Force requirements. Air charter is used when either commercial flights do not service the required location, or when a group of detainees need to be moved, or when it is more cost effective to charter.

Usage figures provided by DJJ indicate approximately 204 air charters were required 2007/08

(departures from Albion Park 11, Bankstown 103, Dubbo 20, Grafton 14, Maitland/Warnervale 38, Wagga 18), while NSWPF required 158 flights (approx.\$570,000) over the same period.

This tender invites offers to provide an Aircraft Charter Service for either the full range of services or for part of the range of services (e.g., for all destinations listed from Albion Park only), within NSW on behalf of the NSW Department of Juvenile Justice and NSW Police Force.

A detailed description of the Services is described in the Statement of Requirements (RFT, Part F).

#### **4.2 Contract and Duration**

It is envisaged that the term of the proposed Agreement will be of five (5) years.

#### **4.3 Current Scope and Expenditure**

The current expenditure incurred by the Principal for the procurement of the Services is approximately \$750,000 per annum. This amount is provided for information only and does not constitute a guarantee for future work through the proposed Agreement.

#### **4.4 NSW Government requirements**

The successful tenderer must comply with NSW Government codes, guidelines and Standards listed in Schedule 1 of Part D.

### **5 RFT Structure**

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#### **5.1 Interpretation**

5.1.1 Definitions of terms used in Parts A to C are contained in clause 4 of Part B

#### **5.2 This RFT comprises 6 Parts as follows:**

##### **Overview – Part A**

It is an executive summary of main outcomes, objectives, requirements and expectations for this proposed Agreement and the Statement of Requirements. It provides the tenderer with the essential information to make an informed decision on whether to tender or not.

##### **Conditions of Tender – Part B**

It provides the terms, conditions and processes governing the tender phase of the RFT.

##### **Tender Response – Part C**

These are response schedules which are required by the Board to evaluate the tenderers' offers.

##### **Agreement - Part D**

This is the conditions of contract to be executed between the successful tenderer and the Principal.

##### **Special Conditions – Part E (Not used)**

##### **Statement of Requirements – Part F**

A detailed description of the Services to be provided by the successful tenderer/s including technical specification, service levels and performance framework. It will form part of the Agreement to be executed between the successful tenderer/s and the Principal.

If submitting a Tender, retain Parts A, B, D and F. Part C, once completed, forms the Tender, and is to be submitted in accordance with Parts A, B and D.

Part D is executed later by the successful tenderer(s) and the Principal to form the agreement.

### **6 Best Price and Cost Structure**

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Tenderers are encouraged to provide their best price(s) with their tender. Whilst the Board reserves the right to negotiate pre award, such negotiations may not occur and it is not the Board's preference.

It is important that tenderers realise that they may not be short-listed for further consideration, if they do not provide their best price with their initial tender.

**7 Benchmarking** (Not used)

**8 Performance Framework**

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The Board is committed to engaging contractors who are able and willing to continually improve their performance during the term of the proposed Agreement.

The performance framework within the proposed Agreement provides both incentives for good performance and sanctions for poor performance.

Performance incentives and sanctions are based on the Contractor's performance. The Statement of Requirements (RFT, Part F) describes the performance framework in detail and the measurement/targets of all performance indicators.

Typical incentives and sanctions that may be used by the Principal include, but are not limited to :

- (a) Additional or reduced performance reporting requirements;
- (b) Scope variation ie. inclusion of additional Services/reduction;
- (c) Extensions of the proposed Agreement (if available);
- (d) Non payment of price variations.

**9 Electronic Business** (Not used)

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Agreement

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## PART B Conditions of Tender

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### 1 Definitions

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Unless the context indicates otherwise, the following terms, where used in Parts A-C of this RFT, shall have the meanings set out below.

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

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

**“Aerodrome”** means facilities which are authorised under the CAR’s for the intention of landing, take-off and ground movement of aircraft.

**“Affiliate”** means a company, corporation or other entity which controls, or is controlled by, directly or indirectly, a Party; or a company, corporation or other entity which is under common control with a Party. "Control" for the purposes of this definition means the right to exercise fifty per cent (50%) or more of the voting rights attached to the issued share capital of such company, corporation or other entity or the right to control fifty per cent (50%) or more of the votes on the appointment of the directors of such company, corporation or other entity.

**“Agreement”** means the proposed agreement to be made between the Principal and the Contractor and executed by way of a Deed, in the form of Part D (and Part E if applicable) to this RFT.

**“Aircraft”** means the Contract Aircraft, being twin piston or turbine engine powered aeroplanes meeting the specifications and having the capacity and configuration described in Schedule 4 to Part B, or any other substitute Aircraft provided on a temporary or one off basis in accordance with the provisions of Schedule 4 Part B and where the context so requires shall include any engine, component or other part.

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

**“Area of Operations”** means the areas nominated in Clause 1 of Schedule 3.

**“ATSB”** means the Australian Transport Safety Bureau.

**“AO”** means Audit Observation, issued by CASA as a result of an abnormality noted in a compliance audit.

**“Aviation Authority”** means the Civil Aviation Safety Authority of Australia (CASA).

**“Avionics”** means Aircraft electrics, instrumentation, navigation equipment, flight instruments and radios.

**“Base”** means the base of operations listed in Schedule 5 or such other operational base as may subsequently be agreed by the Principal and the Contractor as suitable for the Area of Operations required by the Principal from time to time and from which the Contractor shall operate and maintain the Aircraft in accordance with the terms and conditions of the Contract.

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

- (a) Inviting and accepting tenders;
- (b) Determining the conditions under which tenders are invited or accepted;
- (c) Entering into contracts on behalf of the Crown in right of the State of New South Wales; and
- (d) On-going contract administration and management, and includes the duly authorised delegates of the Board, including officers of NSW Procurement – Contracting Services.

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**“CASA”** means the Civil Aviation Safety Authority of Australia.

**“Closing Date and Closing Time”** means the Closing Date and Closing Time for receipt of tenders specified in the cover sheet of 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/\\_\\_data/assets/pdf\\_file/0015/1356/code\\_of\\_prac-curr.pdf](http://www.treasury.nsw.gov.au/__data/assets/pdf_file/0015/1356/code_of_prac-curr.pdf)

**“Commencement Date”** means the date set out in Clause 2 of Schedule 1.

**“Confidential Information”** means in relation to a Party, information that:

- is by its nature confidential;
  - is designated by that Party as confidential; or
- the other Party knows or ought to know is confidential.

**“Conforming Tender”** means a tender that conforms in all material aspects to:

- (a) the Statement of Requirements;
- (b) the terms and conditions of Part D, and Part E if applicable,
- (c) other parts of this RFT, and
- (d) is in the prescribed form.

**“Contract”** means this agreement concluded between the Principal and the Contractor, together with such appendices and documents as are identified in Clause 1 hereof.

**“Contractor”** means a tenderer who has entered into an Agreement with the Principal.

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

- (a) insolvency;
- (b) the Contractor indicates that it does not have the resources to perform the Contract or any contract;
- (c) an application for winding up is made and not stayed within fourteen (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;
- (g) notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- (h) any actions of a similar effect are taken.

**“Contractor’s Material”** means all material created, written or otherwise brought into existence as part of, or for the purpose of, performing the Services including, but not limited to, all reports (whether in draft or final form), documents, equipment, information and data stored by any means.

**“Contractor’s Personnel”** means the persons employed or contracted by the Contractor from time to time to assist in carrying out the Services, including personnel who shall have the appropriate minimum standard of experience and qualifications as identified in Schedule 6 hereto, and "Personnel" when used in connection with the Contractor shall have the same meaning.

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**“Contractor’s Representative”** means the person or persons set out in Clause 6 of Schedule 1 or any other person nominated in writing by the Contractor from time to time to whom the Principal shall direct enquiries and who shall give the Principal instructions in all matters relating to the administration of the Contract.

**“Contract Price(s)”** means the charges for aircraft charter services payable by the Principal to the Contractor for the Services as per the Pricing Schedule at Part C, as applicable.

**“Correctly Rendered Invoice”** means, includes or provides for:

(a) if a goods and services tax [“GST”] is payable by virtue of the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth) [“GST ACT”] in respect of the provision of the Services, the Contractor has rendered to the Principal a tax invoice as required by the GST Act;

(b) the amount due for payment as claimed by the Contractor in its invoice in respect of Services which have been performed in accordance with this Contract, that amount being correctly calculated and clearly set out.;

(c) details of the Services provided, and additionally sets out or is accompanied by any other details or reports required by this Contract; and

(d) the invoice is rendered at the times specified in Clause 12 and addressed to the Principal’s contract officer or such other officer notified by the Principal to the Contractor to receive invoices for payment.

**“Cost Structure”** means the individual tenderer’s cost breakdown in accordance with the number of categories specified in Part C. Such breakdown must equate to 100% of the tenderer’s cost for the supply of the Services.

**“Deed”** means a form in which a contract can be recorded which requires execution under the parties’ seal.

**“Detainee”** means a person aged up to 21 years who is in the custody of the Department of Juvenile Justice.

**“Emergency”** means any occurrence which, in the absolute opinion of the Principal’s Representative, is a matter of life or death or threat of serious injury to a person or a matter of potential loss, or of serious damage to, property or the environment or a matter of potential threat to the Principal’s operations.

**“Equipment”** means the equipment fitted to or contained in the Aircraft.

**“Execution Date”** means the date when both Parties have signed the Contract in Clause 1 of Schedule 1.

**“Flight Time”** means the time from the commencement of the takeoff run for the purposes of becoming airborne until the conclusion of the landing run following a flight.

**“Flight Time Record”** means such time as is recorded in the Aircraft documentation as Flight Time.

**“Flight Time Charge”** means the dollar value of the Flight Time multiplied by the hourly rate nominated in clause 3 of Schedule 2 and is payable by the Principal to the Contractor. The Flight Time Charge excludes those items detailed in clause 3 of Schedule 2 as exclusions.

**“F/O”** means first officer or co-pilot.

**“Force Majeure”** means Acts of God, storm, tempest, riot, revolution, rebellion, civil strife, war (declared or undeclared), military actions, armed conflict, insurrection, floating or stationary mines or torpedoes, acts of any Government or military agency acting under actual or assumed authority, acute and unusual material shortages, expropriation, confiscation, nationalisation, seizure or wilful destruction by any Government or any other cause beyond the reasonable control of either Party and

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whether or not similar to the matters herein specifically enumerated, but specifically excluding industrial action and financial distress.

**“Fuel Bench Price”** means the price of fuel used for calculation purposes of the Rise and Fall Clause of clause 6 of Schedule 2,

**“GST”** means 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 (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.

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

**“Handling Charge”** means the charge levied by authorised organisations for the ground handling of an aircraft, its passengers or other requirements that are not covered by Landing and Air Navigation charges.,

**“Hours of Availability”** means the periods of availability of an Aircraft in Clauses 3 and 5 of Schedule 3.

**“IFR”** means Instrument Flight Rules.

**“Industrial Action”** means strike, lockout, ban, limitation of work, labour disturbance or any lawful or unlawful industrial dispute whatsoever.

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

**“Intellectual Property”** means all rights in copyright, patents, registered and unregistered trademarks, registered designs, trade secrets, and all other rights of Intellectual Property defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967, whether created before or after the date of this Contract.

**“Landing, Navigation, Parking, and Passenger Departure Tax Charges”** means the actual amount paid for Landing, Parking, Navigation and Passenger Departure Tax Charges as levied by the appropriate authorities.

**“MEL”** means an Aircraft minimum equipment list as approved by CASA.

**“Month”** means one (1) calendar month which shall mean thirty (30) days.

**“Non-Conforming Tender”** means a tender that does not conform in all material aspects to:

- (a) the Statement of Requirements;
- (b) the terms and conditions of Part D, and Part E if applicable;
- (c) other Parts of this RFT;
- (d) is not in the prescribed form.

**“Nominated Operational Base”** means the designated home base from which the Contractor’s Aircraft shall operate.

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

**“Operational Period”** means for DJJ, the hours of 0600 to 1800 five (5) days per week from Monday to Friday.

**“Party”** means a Party to this Contract being either the Principal or the Contractor and includes its successors and permitted assigns.

**“Personnel”** has the same meaning as Contractor’s Personnel;

**“PIC”** means Pilot-in-Command or Aircraft Captain.

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**“Price”** means the price payable for each Deliverable as set out in the Pricing Schedule at Part C.

**“Price Schedule”** means the Price Schedule attached to the Tender in Part C.

**“Principal”** means the party executing the proposed Agreement with the successful tenderer. ie NSW Department of Juvenile Justice.

**“Principal’s Material”** means any material, document, or information supplied by the Principal to the Contractor by whatever means, including information supplied by the Principal which is information from other departments or agencies of the Crown.

**“Principal’s Representative”** means the person nominated by the Principal to whom the Contractor shall direct inquiries and who shall give the Contractor instructions in all matters relating to the administration of the Contract, and as referred to under Clause 25 hereof.

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

**“RCA”** means a Request for Corrective Action as a result of an adverse finding by CASA.

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

**“Services”** means the services and their associated goods or the services only sought under this RFT, as detailed in the Statement of Requirements.

**“SMS”** means the Contractor’s Safety Management System

**“Spare Parts”** means all spare parts of the Aircraft which are required to be provided by the Contractor properly and safely to maintain the Aircraft in accordance with sound industry practice and in compliance with the current regulations and requirements of all relevant and competent authorities and as may be amended from time to time.

**“Specification”** means the detailed description of the required Services contained in Part F

**“Standing Charge”** means a fee payable by the Principal to the Contractor on a monthly basis of an amount nominated in the Contract to maintain a Service.

**“Statement of Requirements”** means the detailed description of the goods and services contained in Part F.

**“State Contracts Control Board”** is the Board.

**“Statutory Requirements”** means the laws relating to the performance of this Contract or the lawful requirements of any authority with respect to the performance of this Contract.

**“Tendered Price”** means the price tendered by the Contractor for the Flying Hour Charge per Aircraft type and accepted for inclusion in the Contract.

**“Term”** means the period of this Contract, as set out in this Contract.

## **2 Tender Preparation**

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### **2.1 Tenderer to inform itself**

Before submitting its tender, a tenderer must:

2.1.2 Examine all information relevant to the risks and contingencies and other circumstances having an effect on its Tender; and

2.1.3 Satisfy itself:

- (a) that the tender, including the tender price is correct; and
- (b) that it is financially and practically viable for it to enter into and perform the proposed Agreement.

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## **2.2 Information Supplied in Part F**

The information contained in Part F has been provided with due care for the tenderer's guidance, but is not guaranteed as being completely accurate. The Board shall not be held liable for any errors or omissions contained in Part F.

## **3 Eligibility to Tender**

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### **3.1 Legal Entity of Tenderer**

3.1.1 Tenders must be submitted by a legal entity or, if a joint tender, by legal entities, with the capacity to contract. The Principal will only enter into an Agreement with such legal entity or entities.

3.1.2 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.

### **3.2 Financial Capability of Tenderer**

3.2.1 The Board reserves the right to reject any tender if the Board judges the tenderer not to have appropriate financial capability.

3.2.2 Where the Board forms the view that the tenderer does not have the appropriate financial capability, the Board reserves the right to make acceptance of any tender conditional upon the tenderer entering into a bank, parent company or personal guarantee, or an unconditional performance bond in a form satisfactory to the Board.

### **3.3 ABN Requirements**

3.3.1 The Principal 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.

3.3.2 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 with the Principal. Such tenderers must state how and when they intend to obtain an ABN and register for GST in their tender response.

## **4 Tender Process**

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### **4.1 Provisional RFT Program (Not used)**

### **4.2 Tenderer Briefing (Not used)**

### **4.3 Contact Officer**

4.3.1 Tenderers should refer requests for information or advice regarding this RFT to:

NSW Procurement  
Client Support Centre  
P: 1800 NSW BUY (679 289)  
E: [nswbuy@commerce.nsw.gov.au](mailto:nswbuy@commerce.nsw.gov.au)  
W: <http://www.nswbuy.com.au> ( <http://www.nswbuy.com.au/> )

4.3.2 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.

### **4.4 Conformity of Tenders**

4.4.1 The Board seeks Conforming Tenders.

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- 4.4.2 Non-Conforming Tenders may be excluded from the tender process without further consideration at the Board's discretion.

#### **4.5 Alternative Tenders**

- 4.5.1 Tenderers may, if they choose, submit an Alternative Tender. Alternative Tenders will only be considered if submitted in conjunction with a Conforming Tender. An Alternative Tender must be clearly marked "Alternative Tender".

#### **4.6 Submission of Tenders**

- 4.6.1 Prices, responses and other information provided in the tender are to be in writing and in English.
- 4.6.2 Tenderers must complete all of Part C of this RFT, as directed and must not amend any of the questions provided.
- 4.6.3 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.
- 4.6.4 All tenders must be provided

Electronic: the file formats and versions below:

Please refer a number of file formats have already been prescribed in clause 4.6.5.

Hard Copy

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

- 4.6.5 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 lodgment of the tender.
- 4.6.6 It is recommended that electronic files be kept as small as practical and the lodgement files below an optimum size of 7 MB, as the limitations of the Internet and communications may affect the successful transmittal and receipt of large files.

#### **4.7 Tender Lodgement**

Tenders must be fully received by the Closing Date and Closing Time.

A Tender must be lodged into the designated secure tender box/es, and must be submitted electronically to the electronic tender box for this RFT via the NSW Department of Commerce tenders website at: <https://tenders.nsw.gov.au/commerce> (Login in as a system user, locate the web page for this RFT, and follow the on screen instructions to lodge the tender).

The lodgement can only be made by a registered system user of the NSW Government eTendering system.

Hard Copy or Facsimile Lodgement (Optional)

- (a) Delivery into the Physical Tender Box at:

Tender Box

NSW Department of Commerce

Level 3 Mckell Building (Ground floor west)

2-24 Rawson Place Sydney NSW

- (b) The tender must be able to be lodged into the physical tender box deposit slot of 400mm by 90mm, and must be lodged during normal McKell Building opening hours of 7:30am to 6:30pm Monday to Friday (excluding Public Holidays).

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- (c) No receipt can be given however written acknowledgement of delivery of a container may be given by prior arrangement. Contact Tenders Office on (02) 9372 8900.
  - (d) If the tender is larger in physical size and cannot be broken down, or delivery personnel require a signature as evidence of delivery the tender must be delivered between 8:30am and 4:30pm Monday to Friday (excluding Public Holidays) and only by prior arrangement. Contact Tenders Office on (02) 9372 8900. Commerce personnel will not take delivery of containers that present an OH&S risk in terms of size or weight.
  - (e) Tenders must be clearly marked with the RFT number – “0802056”.

**Or Lodgement to the Facsimile Tender Box at Ph: (02) 9372 8974:**

Tenders which are sent by facsimile and which are not completely received at the specified location by the close of tenders may be excluded from consideration for acceptance even if transmission or receipt is delayed due to the receiving facsimile machine being engaged, faulty or otherwise inoperative.

If a tenderer intends to submit by facsimile it must consider the following:

The facsimile machine only allows one tender to be lodged at a time and is at its peak on the morning when tenders and tenders close. Due to the volume received on those closing dates, the State Contracts Control Board (SCCB) cannot guarantee the level or speed of access to these facilities at that time and tenderers should consider lodging in good time having regard to this.

**4.8 Electronic Tenders**

- 4.8.1 A tender submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW).
- 4.8.2 A tenderer, by electronically lodging a tender, is taken to have accepted conditions shown in the Conditions and rules on the NSW Department of Commerce tenders website at <https://tenders.nsw.gov.au/commerce>.
- 4.8.3 A tenderer must follow the following directions:
  - (a) A RFT for which electronic lodgement is available through the website can be identified by the blue “Lodge a Response” link on the web pages for the RFT.
  - (b) To lodge a tender electronically, the files containing the tenderer’s response must be up-loaded through the website to the NSW Government etendering system. Access to the up-loading process is through the blue “Lodge a Response” link, then following the steps and instructions on the NSW Department of Commerce tenders website and any instructions which may have been supplied with the RFT documents, advertisement or invitation.
- 4.8.4 A tenderer must observe the following format for lodgements:
  - (a) An electronically lodged 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 path names too long for the system, as detailed on the NSW Department of Commerce tenders website.
- 4.8.5 Signatures are not required for an electronic tender. A tenderer must ensure that a tender response 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.



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- 4.8.6 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. Tenderers must 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 response.
  - (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.
- 4.8.7 If a tenderer experiences any persistent difficulty with the NSW Department of Commerce tenders website in submitting a tender or otherwise, it is encouraged to advise the Contact Officer promptly in writing.
- (a) If there is an extended defect or failure of the NSW Department of Commerce tenders website or eTendering system and the Board is advised, the tender Closing Date and Closing Time may be extended provided that, in the view of the Board, the RFT process will not be compromised by such an extension.
  - (b) Tenders must be fully received by the Closing Date and Closing Time.
- 4.8.8 Tenderers may break down the lodgement of large tenders into smaller packages if clearly identified eg. package 1 of 3; 2 of 3; 3 of 3.
- 4.8.9 If a tenderer provides multiple lodgements, the latest tender received will be the tender to be evaluated, unless the tenderer provides clear direction as to whether the lodgement is:
- (a) an alternative tender,
  - (b) supporting information
  - (c) a further part of a tender that has had previous lodgement.
- 4.9 Tender Validity Period**
- 4.9.1 The Tender will remain open for acceptance by the Principal for a period of six (6) months from the Closing Date and Closing Time for tenders.
- 4.10 Late Tenders**
- 4.10.1 Late tenders should not be considered, except where the Board is satisfied that the integrity and competitiveness of the tendering process has not been compromised. The Board shall not penalise any supplier whose tender is received late if the delay is due solely to mishandling by the Board.
- 4.11 Extension of Closing Date and Time**
- 4.11.1 The Board may, in its discretion, extend the Closing Date and Closing Time.
- 4.12 Corruption or Unethical Conduct**
- 4.12.1 Tenderers must comply with the requirements of the Commerce Business Ethics Statement, which is available at the link below and must disclose any conflicts of interests in Part C.
- 4.12.2 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 subcontractor of the Board, the Principal, or the NSW Government in connection with this RFT or the submitted Tender;
  - (b) committed corrupt conduct in the meaning of the Independent Commission Against Corruption Act 1988;
  - (c) a record or alleged record of unethical behaviour; or not complied with the requirements of Commerce Business Ethics Statement available at:

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

this may result in the tender not receiving further consideration.

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

4.12.4 If the Board and/or the Principal becomes aware of improper conflict of interests by a successful tenderer after an Agreement has been executed, then the Principal reserves the right to terminate the Agreement.

#### **4.13 Code of Practice for Procurement**

4.13.1 In submitting its tender, the tenderer signifies agreement to comply with the Code.

4.13.2 Failure to comply with the Code may be taken into account by the Board when considering the tenderer's tender or any subsequent tender, and may result in the tender being passed over.

#### **4.14 Prescribed Form of Tender**

4.14.1 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.

4.14.2 The Tender will be taken to be for the provision of the Services on the terms and conditions stated in Part D (and Part E if applicable) except to the extent that these are amended by the Tender and agreed by the Principal

#### **4.15 Addenda to RFT**

4.15.1 If, for any reason the Board, at its sole discretion, requires the RFT to be amended before the Closing Date and Closing Time, an Addendum will be issued.

4.15.2 In each case, an Addendum becomes part of the RFT.

4.15.3 The Board, during the tender 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 closing date, even if a tender has already been submitted.

4.15.4 Tenderers must check the web site address,  
<https://tenders.nsw.gov.au/commerce> and download the Addendum.

#### **4.16 Tenderer's Costs**

The tenderer acknowledges that the Board will not be liable to it for any expenses or costs incurred by it as a result of its participation in this RFT, including where the RFT has been discontinued.

#### **4.17 Custody of Tenders after Receipt**

4.17.1 On receipt of tenders lodged electronically to the NSW Government eTendering system, Tenders are encrypted and stored in a secure "electronic tender box."

4.17.2 For reasons of probity and security, the Board and its agents are prevented from interrogating the electronic tender box to ascertain whether tenders have been received or for any reason, until after the Closing Date and Closing Time.

4.17.3 The e-mail receipt that is sent to the system user lodging the tender after successfully lodging the tender electronically to the NSW Government eTendering system is the only evidence of tender lodgement provided.

#### **4.18 Ownership of Tenders**

4.18.1 All tenders become the property of the Board on submission.

4.18.2 The Board may make copies of the tenders for any purpose related to this RFT.

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#### **4.19 Discontinuance of Tender Process**

- 4.19.1 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.

#### **4.20 Variations to Tenders**

- 4.20.1 At any time after the Closing Date of tenders and before the Board accepts any tender received in response to this RFT, a tenderer may, subject to clause 4.20.2, vary its tenders:
- (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 clause 5.5 of this Part B.
- 4.20.2 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,
    - (i) in the case of variation requested by the tenderer under clause 4.20.1(a)-(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
    - (ii) in the case of variation under clause 4.20.1(c) the Board has confirmed that the draft-documented changes reflect what has been agreed.
- 4.20.3 If a tender is varied in accordance with clause 4.20.1(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.
- 4.20.4 A variation of a tender under clause 4.20.1 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 clause 4.20.1(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.

### **5 Evaluation Process**

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- 5.1.1 Tenders will be assessed against the evaluation criteria listed below which are not indicated in order of significance or be given equal weight.
- 5.1.2 The evaluation criteria for this RFT that do not relate to price will account for 60% of the total evaluation score. The evaluation for this RFT that relate to price will account for 40% of the total evaluation score.
- 5.1.3 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 evaluation criteria listed in this RFT.
- 5.1.4 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 electronic tenders that cannot be effectively evaluated because the file has become corrupt, may be excluded from the tender process without further consideration at the Board's discretion.
- 5.1.5 The Board may assess an Alternative Tender against the evaluation criteria where submitted with a Conforming Tender.

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## **5.2 Evaluation Criteria**

The evaluation criteria for this RFT (which include but are not limited to) are:

- (a) Tenderer's past performance in the industry, particularly performance of contracts of a similar nature to the Principal's requirement, including referee reports.
- (b) Capacity and ability of the tenderer to provide appropriate management structure and business acumen to perform the Services safely and efficiently.
- (c) Degree of compliance with the specifications of Part F, including quality of service delivery, Aircraft, equipment and facilities.
- (d) Safety, Risk Management and Quality Management systems and practices of the tenderer.
- (e) Commercial viability, financial risk rating and capacity to finance service delivery over the life of the Contract.
- (f) Pricing considerations and value for money of the proposed services.
- (g) Reference Reports.
- (h) Compliance with the proposed conditions of Part D.
- (i) Compliance with NSW Government procurement policy and other applicable NSW Government policies, including:
  - (i) Workforce development;
  - (ii) Compliance with OHS&R requirements;
- (j) Compliance with relevant legislation and standards.

## **5.3 Presentations by Tenderer**

- 5.3.1 The Board, may during the evaluation of tenders, undertake site inspections of tenderer's or their subcontractor's proposed premises.
- 5.3.2 The Board, may in its discretion, and as part of the evaluation process, invite any or some of the tenderers to make personal presentations regarding their tender. The tenderer shall make any presentations at its own cost.
- 5.3.3 Receiving a presentation by a tenderer in no way represents a commitment by the Board to accept any aspect of the tender.
- 5.3.4 All information obtained during the course of presentation or site inspection may be taken into consideration in the evaluation of tenders.

## **5.4 Acceptance or Rejection of Tenders**

- 5.4.1 The Board may assess an Alternative Tender against the evaluation criteria when submitted with a Conforming Tender.
- 5.4.2 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, when submitted with a Conforming Tender; 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.
- 5.4.3 The Board is not bound to accept the lowest tender.
- 5.4.4 If the Board rejects all the tenders received it may 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).

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## **5.5 Post Tender Negotiations**

- 5.5.1 Before making any determination as to acceptance or rejection of Tenders the Board may, at its discretion, elect to conduct limited negotiations with preferred tenderers, including those who have submitted Alternative Tenders or who have submitted Conforming Tenders, to mutually improve outcomes.
- 5.5.2 The Board will generally not enter into negotiations to amend standard conditions of contract contained in Part D, and Part E if applicable.
- 5.5.3 If the Board considers that none of the tenders are fully acceptable either due to the level of non-conformance or because they do not represent sufficient value for money, but considers that full conformity is achievable, negotiations may be conducted with the tenderer that submitted the most conforming tender based on the evaluation criteria. The purpose of the negotiations will be advised by the Board and made clear to the participants before the commencement of negotiation.
- 5.5.4 The Board may at its absolute discretion elect to conduct post tender negotiations under clause 5.5.3 with more than 1 tenderer in the event that it decides that the closeness of the tenders or timing constraints warrants doing so.

## **5.6 Exchange of Information between Government Agencies**

- 5.6.1 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.
- 5.6.2 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 30 of the Defamation Act 2005 (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
- 5.6.3 In the evaluation of tenders, the Board may take into account any information about the tenderer that the Board receives from any source.
- 5.6.4 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 clause 5.6.
- 5.6.5 The tenderer's attention is drawn to the Freedom of Information Act 1989 which obliges disclosure of the contract documents resulting from the tender and may confer rights, subject to the terms of that Act, to access, and to require the correction of, information held by certain agencies, including tenders held by the Board. A summary of the provisions is contained in the Annexure 1 to Part B (Disclosure Information).

## **6 Method of Acceptance**

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- 6.1.1 Acceptance of a tender or part tender will be subject to the execution of a formal Deed of agreement in the terms of Part D, and Part E if applicable. Until the Principal and the successful tenderer(s) execute a formal Agreement there will be no legally enforceable agreement concluded between them.

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## **7 Disclosure Information**

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- 7.1.1 Following the Board's decision, all tenderers will be notified in writing of the outcome of their Tenders.
- 7.1.2 Details of tenderers and the outcome of the tender process will be disclosed in accordance with the Freedom of Information Act 1989 and the NSW Government Tendering Guidelines, available at:  
<http://www.dpws.nsw.gov.au/Government+Procurement/Procurement+Policy+Framework/NSW+Government+Tendering+Guidelines.htm>
- 7.1.3 An outline of these requirements can be found in Annexure 1 to Part B of this RFT.

## **8 Complaints Procedure**

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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 and/or Part E, or the Statement of Requirements in Part F, it is invited to write to:

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

## 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 7.1.2 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.	<p>As a minimum:</p> <ul style="list-style-type: none"> <li>a concise description of the proposed works, goods or services the subject of the tender call;</li> <li>the date responses to the tender call close and where responses are lodged; and</li> <li>location of the tender call documents.</li> </ul> <p>The names and addresses of all entities which submit responses.</p>	<p>Routine public disclosure at the time tender calls are advertised.</p> <p>Routine public disclosure within 7 days of the date tender calls closed.</p>
In a multi-stage tender process.	The names and addresses of the shortlisted 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 shortlisting.

2. In accordance with the NSW Government Tendering Guidelines referred to in clause 7.1.2, the following **contract** information is required to be disclosed -

Contract size and type	Level of disclosure	Basis of disclosure
<p><b>Class 1 contracts</b> All government contracts with estimated value \$150,000 or above).</p>	<ul style="list-style-type: none"> <li>a) The name and business address of the contractor;</li> <li>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;</li> <li>c) The date on which the contract became effective and the duration of the contract;</li> <li>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;</li> <li>e) The estimated amount payable to the contractor under the contract;</li> <li>f) A description of any provisions under which the amount payable to the contractor may be varied;</li> </ul>	Routine public disclosure within 60 days after the contract becomes effective.

	<p>g) A description of any provisions with respect to the renegotiation of the contract;</p> <p>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 tenders were assessed; and</p> <p>i) A description of any provisions under which it is agreed that the contractor is to receive payment for providing operational or maintenance services.</p>	
<p><b>Class 2 contracts</b> Class 1 contracts (i.e government contracts with estimated value \$150,000 or above) which also:</p> <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>	<p>The information required for class 1 contracts and</p> <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>	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>
<p><b>Class 3 contracts</b> Class 2 contracts where the estimated value of the government contract is \$5 million or more.</p>	<p>The information for class 1 and 2 contracts and the complete contract, less confidential information.</p> <p>Note: if some or all of a class 3 contract is not disclosed for reasons of confidentiality, the agency is to disclose:</p> <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</li> </ul>	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>



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	provisions will be published and, if so, when; and <ul style="list-style-type: none"> <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>	
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### 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 where it is a class 3 contract, which is not required to be routinely disclosed under section 15A of the Freedom of Information Act 1989. (" 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 some provisions or all of the contract;
- 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 section 15A (14) of the FOI 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 FOI 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 challenge that decision under the Freedom of Information Act.

6. Tenderers are invited to nominate items they consider are confidential and why.

## **Agency Specific Standing Offer Services**

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

**Dated: <Insert Date>**

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<Insert Principal Name>

and

<Insert Contractor name>

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***AGREEMENT (REQUEST FOR TENDER, PART D) FOR***

**0802056: Provision of Aircraft Charter Services for the  
NSW Department of Juvenile Justice and NSW Police  
Force**

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**THIS AGREEMENT** executed by **DEED** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

**BETWEEN**

NEW SOUTH WALES STATE CONTRACTS CONTROL BOARD, of McKell Building, 2-24 Rawson Place, Sydney, in the State of New South Wales ("the Principal").

**AND**

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

**BACKGROUND**

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

**NOW THE PARTIES AGREE:**

**1 Interpretation**

**1.1 Definitions**

**"Aerodrome"** means facilities which are authorised under the CAR's for the intention of landing, take-off and ground movement of aircraft.

**"Affiliate"** means a company, corporation or other entity which controls, or is controlled by, directly or indirectly, a Party; or a company, corporation or other entity which is under common control with a Party. "Control" for the purposes of this definition means the right to exercise fifty percent (50%) or more of the voting rights attached to the issued share capital of such company, corporation or other entity or the right to control (50%) or more of the votes on the appointment of the directors of such company, corporation or other entity.

**"Agreement"** means this Deed of Agreement including the Schedules and Part E, Special Conditions of Agreement, where applicable.

**"Aircraft"** means the contract Aircraft", being twin piston or turbine engine powered aeroplanes meeting the specifications and having the capacity and configuration described in Schedule 4, or any other substitute Aircraft provided on a temporary or one off basis in accordance with the provisions of Schedule 4 and where the context so requires shall include any engine, component or other part.

**"Area of Operations"** means the areas nominated in Clause 1 of Schedule 3.

**"ATSB"** means the Australian Transport Safety Bureau.

**"AO"** means Audit Observation, issued by CASA as a result of an abnormality noted in an Audit.

**"Applicable Discount"** means an applicable discount in Schedule 3 Pricing, as varied from time to time in accordance with this Agreement, or any other Applicable Discount which may be offered by the Contractor from time to time.

**"Approved Sub-Contractors"** means the sub-contractors approved by the Principal and indicated in Schedule 7.

**"Aviation Authority"** means the Civil Aviation Safety Authority of Australia (CASA).

**"Avionics"** means Aircraft electrics, instrumentation, navigation equipment, flight instruments and radios.

**“Base”** means the base of operations listed in Schedule 5 or such other operational base as may subsequently be agreed by the Principal and the Contractor as suitable for the Area of Operations required by the Principal from time to time and from which the Contractor shall operate and maintain the Aircraft in accordance with the terms and conditions of the Contract.

**“CASA”** means the Civil Aviation Safety Authority of Australia.

**“Change in Control”** means a circumstance in which control is or may be exercised over the Contractor:

- (a) through removal or appointment of directors of the Contractor;
- (b) by virtue of the direct holding of at least 15% of the voting shares in the Contractor or a holding company of the Contractor; or
- (c) by any other means whatsoever.

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

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

**“Commencement Date”** means the date set out in Clause 2 of Schedule 1.

**“Confidential Information”** means, in relation to a Party, information that:

- (a) is by its nature confidential;
- (b) is designated by that Party as confidential; or
- (c) the other Party knows or ought to know is confidential.

**“Consequential Loss”** means any loss recoverable at law (other than loss arising in the usual course of things) which is:

- (a) consequential upon other loss;
- (b) a loss of opportunity or goodwill;
- (c) a loss of profits;
- (d) a loss of anticipated savings or business;
- (e) loss of value of any equipment,

and any costs or expenses in connection with the foregoing.

**“Contract”** means this agreement concluded between the Principal and the Contractor, together with such appendices and documents as are identified in Clause 1 hereof.

**“Contractor”** means the contractor under this agreement and includes its subcontractors, re-sellers and distributors.

**“Contractor Information”** means the information provided by the Contractor in Schedule 1 and includes information on Approved Subcontractors.

**“Contractor’s Insolvency”** means any of the following events occurring in relation to the Contractor:

- (a) insolvency;
- (b) the Contractor indicates that it does not have the resources to perform the 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;
- (g) notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- (h) any actions of a similar effect are taken.

**“Contract Material”** means New Contract Material and Existing Contract Material.

**“Contractor’s Material”** means all material created, written or otherwise brought into existence as part of, or for the purpose of, performing the Services including, but not limited to, all reports (whether in draft or final form), documents, equipment, information and data stored by any means.

**“Contractor’s Personnel”** means the persons employed or contracted by the Contractor from time to time to assist in carrying out the Service, including personnel who shall have the appropriate minimum standard of experience and qualifications as identified in Schedule 6 hereto, and "Personnel" when used in connection with the Contractor shall have the same meaning.

**“Contractor’s Representative”** means the person or persons set out in Clause 6 of Schedule 1 or any other person nominated in writing by the Contractor from time to time to whom the Principal shall direct inquiries and who shall give the Principal instructions in all matters relating to the administration of the Contract.

**“Contract Price”** means the total amount payable by the Principal to the Contractor for the Services ordered under this Agreement and calculated in accordance with clause 5.2.

**“Contract Price/s”** means the charges for aircraft charter services payable by the Principal to the Contractor for the Services as per the Pricing Schedule at Part C, as applicable.

**“Correctly Rendered Invoice”** means:

- (a) if a goods and services tax (“GST”) is payable by virtue of the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth) (“GST ACT”) in respect of the provision of the Services, the Contractor has rendered to the Principal a tax invoice as required by the GST Act);
- (b) clearly sets out the amount claimed by the Contractor in the invoice and that amount is due for payment, is correctly calculated and is in respect of Services which have been performed in accordance with this Contract;
- (c) sets out details of the Services provided, and sets out or is accompanied by any other details or reports required by this Contract; and
- (d) the invoice is rendered at the times specified in Clause 12 and addressed to the Principal’s Contract Officer or such other officer notified by the Principal to the Contractor to receive invoices for payment.

**“Customer Contract”** means the contract that is made between the Contractor and the Principal under clause 3.3 of this Agreement.

**“Deed”** means a form in which a contract can be recorded which requires execution under the parties’ seal.

**“Emergency”** means any occurrence which, in the absolute opinion of the Principal’s Representative, is a matter of life or death or threat of serious injury to a person or a matter of potential loss, or of serious damage to, property or the environment or a matter of potential threat to the Principal’s operations.

**“Equipment”** means the equipment fitted to or contained in the Aircraft.

**“Execution Date”** means the date when both Parties have signed the Contract in Clause 1 of Schedule 1.

**“Existing Contract Material”** means any material which is existing at the date of this Agreement and which may be incorporated in to the New Contract Material.

**“Expert Determination”** means the procedure set out in clause 14.5.

**“Financial Security”** means the security in the amount and form specified by the Principal set out in Schedule 1 item 6 and in accordance with the pro-forma in Schedule 5.

**“Flying Hours”** means such time as is recorded in the Aircraft log book as the time during which the Aircraft is airborne. The period from take off to touch down shall be known as “airborne”, and be calculated to the nearest one tenth of one hour. All such periods of time airborne for each flight shall be accumulated for the purposes of calculating Flying Hours during any period, in particular in calculating the number of Flying Hours each month for which payment is to be made.

**“Flying Hour Charge”** means the charge for the Principal in Schedule 2, including all costs associated with aviation fuel expended in the performance of the Services.

**“F/O”** means first officer or co-pilot.

**“Force Majeure”** means Acts of God, storm, tempest, riot, revolution, rebellion, civil strife, war (declared or undeclared), military actions, armed conflict, insurrection, floating or stationary mines or torpedoes, acts of any Government or military agency acting under actual or assumed authority, acute and unusual material shortages, expropriation, confiscation, nationalisation, seizure or wilful destruction by any Government or any other cause beyond the reasonable control of either Party and whether or not similar to the matters herein specifically enumerated, but specifically excluding Industrial Action and financial distress.

**“Hours of Availability”** means the periods of availability of an Aircraft in Clauses 3 and 5 of Schedule 3.

**“Industrial Action”** means strike, lockout, ban, limitation of work, labour disturbance or any lawful or unlawful industrial dispute whatsoever.

**“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.

**“Key Performance Indicators”** means performance indicators in respect of the Contractor's performance of this Agreement.

**“Key Personnel”** means the personnel of the Contractor specified in Schedule 1 item 5.

**“Landing, Navigation Parking, and Passenger Departure Tax Charges”** means the actual amount paid for Landing, Parking, Navigation and Passenger Departure Tax Charges as levied by the appropriate authorities.

**“MEL”** means an Aircraft minimum equipment list as approved by CASA.

**“Month”** means one calendar month which shall mean thirty (30) days.

**“New Contract Material”** means any material brought into existence as part of, or for the purpose of providing the Services including records, documents and Information stored by any means.

**“Operational Period”** means for DJJ, the hours of 0600 to 1800 five (5) days per week from Monday to Friday.

**“Party”** means a Party to this Contract being either the Principal or the Contractor and includes its successors and permitted assigns.

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

**“Personal Information”** has the same meaning as in Privacy and Personal Information Protection Act 1998 (NSW). (Guide Note: If Personal Information is within the meaning of the Health Records and Information Privacy Act, then add ‘Health Records and Information Privacy Act 2002 (NSW)’).

**“Personnel”** of a Party means;

- (a) the officers, employees, agents and contractors of that Party,
- (b) in the case of the Contractor, includes subcontractors, and the Key Personnel in Schedule 1 item 5.

**"PIC"** means Pilot-in-Command or Aircraft Captain.

**"Price"** means the price payable for a Service as set out in Schedule 3 and, where relevant, means the price inclusive of any Applicable Discount specified in Schedule 3.

**"Price Schedule"** means Schedule 3 to this Agreement and/or variations made to it in accordance with this Agreement.

**"Principal"** means the State Contracts Control Board established under the Public Sector Employment and Management Act 2002 and includes the duly authorised delegates of the Principal, including officers of NSW Procurement for and on behalf of the Crown in right of the State of New South Wales who will be a party to the Contract.

**"Principal's Material"** means any material, document, or Information supplied by the Principal to the Contractor by whatever means.

**"Principal's Delegate"** means the Principal's employee named in Schedule 1 item 8 responsible for the overall administration of this Agreement on behalf of the Principal.

**"Principal's Representative"** means the person nominated by the Principal to whom the Contractor shall direct inquiries and who shall give the Contractor instructions in all matters relating to the administration of the Contract, and as referred to under Clause 25 hereof.

**"Public Service"** has the same meaning as that given to it in the *Public Sector Employment and Management Act 2002* (NSW).

**"Public Sector Service"** has the same meaning as that given to it in the *Public Sector Employment and Management Act 2002* (NSW).

**"RCA"** means a Request for Corrective Action as a result of an adverse finding by CASA.

**"Relationship Manager"** means the Contractor's employee named in Schedule 1 item 5.

**"Request for Tender"** means the request for tender issued by the Principal, consequent to which this Agreement was awarded to the Contractor for the supply of the Services.

**"Schedule"** means a schedule to this Agreement.

**"Services"** means the services to be supplied by the Contractor in accordance with Schedules 2 and 9 of this Agreement and itemised in Schedule 3 and includes any goods which are ancillary to the provision of the Services.

**"Service Classification"** means individual types of services within a Category as described in Schedules 2, 3, and 9.

**"Service Levels"** means the service levels which need to be met by the Contractor under this Agreement in accordance with Schedule 6.

**"Service Period"** means the time for the supply of the Services as specified in Schedules 2 and 9.

**"Service Site"** means the place where the Service is to be performed, which place is specified in the Customer Contract.

**"SMS"** means the Contractor's Safety Management System prepared as per CASA guidelines.

**"Spare Parts"** means all spare parts of the Aircraft which are required to be provided by the Contractor properly and safely to maintain the Aircraft in accordance with sound industry practice and in compliance with the current regulations and requirements of all relevant and competent authorities and as may be amended from time to time.

**"Specification"** means the detailed description of the required Services contained in Schedules 3 to 6 inclusive.



**“Standards”** means Australian Standards, where such exist and are applicable to the Services, and includes international standards in the event of the lack of an applicable Australian Standard.

**“State Contracts Control Board”** and **“the 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.

**“Statement of Requirements”** means the detailed description of the Services to be provided under this Agreement in Schedule 2.

**“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.

**“Substantial Breach”** means:

- (a) in the case of this Agreement, a substantial breach of a term of this Agreement by the Contractor and includes but is not limited to, any breach of the following clauses:
  - (i) clauses 5.1 to 5.9 (Pricing),
  - (ii) clause 8.3 (Punctual Delivery) without being granted an extension of time under clause 8.4,
  - (iii) clause 9 (Confidentiality),
  - (iv) clause 11.5 (Minimum Insurance Requirements),
  - (v) clause 11.9 (Financial Security),
  - (vi) clause 11.13 (Child Protection),
  - (vii) clause 12.1 (Service Levels),
  - (viii) clause 16.1 (No Assignment or Novation); and
  - (ix) clause 16.2 (Conflicts of Interests).

**“Tendered Price”** means the price tendered by the Contractor for the Flying Hour Charge per Aircraft type and accepted for inclusion in the Contract.

**“Term”** means the period of this Agreement, set out in item 2 Schedule 1 and any extension of the Term in accordance with clause 2.2.

**“Transition Plan”** (*Optional*) means the Contractor’s plan in Schedule 2 and/or Schedule 9 for ensuring successful transition to and from this Agreement.

**“UNSPSC”** means United Nations Standards Products & Services Code, being a coding system which classifies both products and services for use on a global basis.

## 1.2 Rules for interpreting this Agreement

1.2.1 Headings are for convenience only, and do not affect the interpretation of this Agreement. 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) software, 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) any thing (including a right, obligation or concept) includes each part of it.

## 1.2.3 Where:

- (a) the Contractor consists of more than one person or corporation, this Agreement binds each of them separately and any two or more of them jointly and severally;
- (b) an obligation, representation or warranty made by the Contractor in this Agreement shall bind each person or corporation separately and jointly and each person or corporation shall alone be responsible for the performance of every obligation, representation or warranty contained in this Agreement.

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

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

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

1.2.7 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.

1.2.8 In the event of any ambiguity, discrepancy or inconsistency in interpreting any term or terms of this Agreement, the order of priority in the interpretation of such term or terms will be in the order of:

- (a) Part E, Special Conditions to this Agreement, if applicable;
- (b) Schedule 9;
- (c) The terms and conditions of this Agreement;
- (d) Schedules 1 and 2 to this Agreement;
- (e) Any other Schedules to this Agreement;
- (f) The Customer Contract.

## 2 Term

### 2.1 Duration

2.1.1 This Agreement commences on the commencement date specified in item 2 of Schedule 1 and expires on the expiry date specified in the same item 2, unless sooner terminated in accordance with this Agreement.

### 2.2 Extension (Not used)

## 3 Formation

### 3.1 Nature of the Agreement between the Principal and the Contractor

3.1.1 This Agreement describes the terms and conditions between the Principal and the Contractor under which the Contractor agrees with the Principal that it will supply the Services.

3.1.2 This Agreement constitutes the entire Agreement between the Parties. Any prior arrangements, Agreements, representations or undertakings are superseded.

### 3.2 No Assurance of Volumes and Non-Exclusive Supply

3.2.1 This Agreement does not:

- (a) imply that the Contractor will receive any specific volume of orders for the Services,
- (b) imply that the Contractor is the exclusive provider of the Services to the Principal; or
- (c) oblige the Principal to place Customer Contracts for the Services with the Contractor.

3.2.2 The Contractor acknowledges that the Principal may, from time to time, in its discretion, appoint other suppliers under an agreement to supply the Services and that the Contractor will make no objection to such appointment.

**3.3 Customer Contract**

3.3.1 The Contractor agrees that each time the Principal places an order, a separate Customer Contract is formed. The terms and conditions of the Customer Contract are those appearing in:

- (a) This Agreement, any variations thereto, including any Schedules; and
- (b) The order.

**3.4 Provisions of Agreement to apply to the Customer Contract**

3.4.1 The provisions of this Agreement apply to the Customer Contract as if they were repeated in the Customer Contract.

**3.5 Approved Sub-Contractors**

3.5.1 The Contractor may with the written consent of the Principal, sub-contract any part of this Agreement to an Approved Sub-Contractor in Schedule 7.

3.5.2 The Contractor must make the Approved Sub-contractor aware of the terms and conditions of this Agreement and this clause;

3.5.3 The terms and conditions of the sub-contract must be consistent with this Agreement.

3.5.4 The Contractor will continue to be bound by, and responsible for performance of this Agreement notwithstanding that part or all of it may have been sub-contracted.

3.5.5 The Principal may, without incurring liability, withdraw its approval of an Approved Sub-contractor if in its reasonable opinion the sub-contractor is not meeting the requirements of this 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.

3.5.6 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.

**4 The Services****4.1 The Services**

4.1.1 The Services to be supplied by the Contractor under this Agreement and listed in Schedule 3.

**4.2 Performance of the Services**

4.2.1 The Contractor must perform the Services at the Service Site/s and within the Service Period in accordance with this Agreement.

4.2.2 The Principal may reject Services which are not in accordance with this Agreement.

**4.3 Provision of Facilities by the Principal (Not used)****4.4 Variation to Service Description**

4.4.1 The Contractor must notify the Principal in writing as soon as practicable of any variation to the description of a Service offered in Schedule 3.

4.4.2 A variation under clause 4.4.1 may include a variation to the description of the number or name of the Service but excludes a variation:

- (a) to the Price of the Service;

- (b) that modifies or upgrades the Service; or
  - (c) that introduces a new Service to the Price Schedule.
- 4.4.3 The Principal will notify the Contractor of its acceptance or rejection of the variation to the description of a Service. If the variation is accepted, it shall be taken to be incorporated into Schedule 3.

#### **4.5 Improvements to Services**

- 4.5.1 If during the Term the Contractor makes available on a general commercial basis Services that are modified versions or upgrades of a Service, the Contractor must offer the Principal the same Service under this Agreement within 30 days of such Service being available on a general commercial basis.
- 4.5.2 The Services offered by the Contractor under clause 4.5.1 will form part of Schedule 3 when the Principal notifies its acceptance of the offer. Prior to accepting or rejecting the Contractor's offer, the Principal may request the Contractor to provide any further data reasonably required within 14 days to enable the making of an informed decision on the offer, and the Contractor must supply the same.
- 4.5.3 In the event that the Principal has not notified the Contractor of its acceptance of the Contractor's offer within 30 days, the offer will be deemed not to have been accepted by the Principal.

#### **4.6 Access to Service Sites**

- 4.6.1 The Principal shall allow the Contractor reasonable access to its Service Sites/s for the purpose of meeting its obligations under this Agreement.

#### **4.7 Suspension of the Services by the Principal**

- 4.7.1 The Principal may at any time give written notice the Contractor to suspend the performance of all or any part of the Services and may include in that notice details of the extent to which it requires the Contractor to:
- (a) Keep its Personnel and equipment on stand-by; and
  - (b) comply with any safety and operational requirements.
- 4.7.2 If the Contractor receives a written notice from the Principal under clause 4.7.1, the Contractor must immediately, or as soon as practicable (having regard to any safety and operational requirements), suspend the performance of the Services, or the relevant part.
- 4.7.3 Subject to clause 4.7.5, the Principal shall pay the Contractor compensation for the suspension of the Services, or the relevant part, on such basis as the Parties may reasonably agree to compensate the Contractor for keeping its Personnel and equipment on stand-by to the extent stated in the written notice in clause 4.7.1.
- 4.7.4 The Contractor must resume carrying out the Services when instructed by the Principal's Delegate.
- 4.7.5 If the need for the suspension arose from the Principal's act or omission, then the Contractor will be entitled to reasonable direct costs of the suspension, unavoidably incurred, having taken all reasonable steps to minimise the costs. The Contractor has no other remedies in connection with the suspension.

### **5 Pricing**

#### **5.1 Contractor's Obligations**

- 5.1.1 The Contractor must supply the Services on the basis of the Prices in Schedule 3, except where provided in this Agreement.

#### **5.2 Calculating the Contract Price**

- 5.2.1 The Pricing for the Services in Schedule 3, which are fixed for the periods indicated therein, includes all applicable levies, duties, taxes, insurances, packaging, imposts, overheads and

profits, any Applicable Discounts as well as all costs and expenses that the Contractor incurs in their supply, but is exclusive of GST.

### 5.3 Price Variation

- 5.3.1 The Contractor may not seek to vary the Price of a Service listed in Schedule 3 except in accordance with the frequencies and methodology indicated in Schedules 3. Subject to the Contractor having provided the Principal with sufficient documentation to justify the application, and subject to clause 12.1.2(a), the Principal may in writing, approve the application within 30 days of lodgement.
- 5.3.2 Where the Price variation is accepted, Schedule 3 will be updated to include the varied Price. The varied Price becomes the basis from which any future applications for Price variations will be calculated.
- 5.3.3 The Principal reserves the right to delete a Service from Schedule 3 if it considers a Price variation application to be unreasonable.
- 5.3.4 Notwithstanding any other provision in this Agreement, the Contractor may apply in writing to the Principal to decrease its Prices at any time without any supporting documentation.

### 5.4 Benchmarking (Not used)

### 5.5 Rebates

- 5.5.1 The Contractor warrants that if at any time during the Term of this Agreement, it receives any rebate, discount, commission or other subsidy on any Service that it purchases from its subcontractors or other third party suppliers, the benefit of such rebate, discount, commission or subsidy will be directly passed on to the Principal under this Agreement.

### 5.6 Bulk Purchase Discounts (Not used)

### 5.7 Continuous Best Price

- 5.7.1 Notwithstanding any other clause in this Agreement, where the Principal has been able to confirm that the external market pricing for any Service in Schedule 3 is consistently more competitive than under this Agreement, the Principal will provide the Contractor with reasonable evidence of such market situation and request the Contractor vary its Prices to align with the market.
- 5.7.2 Where the Contractor offers more favourable prices to any other purchaser of similar Services in NSW purchased in similar circumstances, including volumes (where Price is volume dependent), timing and terms and conditions where they have a substantial impact on price, it must promptly make the more favourable price available to the Principal under this Agreement.

### 5.8 Goods and Services Tax

- 5.8.1 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.

- 5.8.2 The Contractor must hold an Australian Business Number (ABN) and be registered for GST.
- 5.8.3 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 is received.
- 5.8.4 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.

- 5.8.5 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 clause 5.9.4.

## **6 Payment**

### **6.1 Payment of Contract Price**

- 6.1.1 In consideration of the Contractor providing the Services under this Agreement, the Principal shall, subject to the terms and conditions of this Agreement, pay the Contractor the Contract Price.
- 6.1.2 Failure by the Principal to pay the Contract Price at the due time will not be grounds to avoid performance of this Agreement.

### **6.2 Invoices and Time for Payment**

- 6.2.1 All claims for payment made by the Contractor shall be in the form of a Tax Invoice. A claim for payment shall be substantiated by an itemised account and the Contractor shall provide any further details in regard to the account that are reasonably requested by the Principal, including consolidated monthly invoicing on behalf of its branches/business units.
- 6.2.2 Subject to this clause 6.2, the Principal shall make payment within 30 days from the end of the month after receipt of a valid Tax Invoice and documents necessary to evidence delivery to the Principal.
- 6.2.3 The parties agree the making of a payment is not intended to be an acknowledgement that the Services have been supplied in accordance with this Agreement.
- 6.2.4 If the Principal disputes an invoice amount the Principal shall certify the amount it believes is due for payment and shall pay that amount and the liability for the balance of payment shall be determined in accordance with this Agreement.
- 6.2.5 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 by the Principal of money becoming due for the supply of the Services.

### **6.3 Set-Off/Money Recoverable by the Principal**

- 6.3.1 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 Services.
- 6.3.2 Without limiting clause 6.3.1, 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. 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:
- (a) 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; or
  - (b) recovered from the Contractor by the Principal in an appropriate court.

### **6.4 Suspension of Payments**

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 until such instructions or requirements have been complied with by the Contractor.

## **7 Variations**

### **7.1 Variations to Agreement**

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

## **8 Service Delivery**

### **8.1 Requirement for Customer Contracts**

8.1.1 The Contractor must not supply the Services unless the Principal issues a Customer Contract. Such Customer Contracts may be made by:

- (a) Written request to the Contractor by facsimile, email or by hand, containing the details outlined in clause 8.1.2;
- (b) Electronic issue in accordance with the Principal's and/or the Contractor's ordering system and this Agreement;
- (c) Any other method required by the Principal which is in keeping with the NSW Government's financial and audit policies.

8.1.2 A Customer Contract in whichever form it is issued, must provide the following details:

- (a) a description of the Services;
- (b) the Price for the Services;
- (c) this Agreement reference number;
- (d) delivery date;
- (e) Service Site;
- (f) name of officer placing the Customer Contract; and
- (g) address to which the Contractor's invoice is to be sent for payment.

8.1.3 If the Customer Contract is issued in incomplete form, the Contractor must notify the officer placing the Customer Contract of the details required under clause 8.1.2 that have not been provided prior to supply of the Services which are the subject of the Customer Contract.

### **8.2 Contractor to Fulfil all Customer Contracts**

8.2.1 The Contractor must fulfil all Customer Contracts placed by the Principal during the Term in accordance with this Agreement.

8.2.2 The Principal may place a single Customer Contract for the Services to be supplied in a single delivery, or a single Customer Contract to be supplied in multiple deliveries, ie. "Blanket Orders".

### **8.3 Punctual Delivery**

8.3.1 The Contractor must deliver the Services within the specified Service Periods in Schedule 2 or Schedule 9, or by the delivery times specified in the Agreement.

8.3.2 As soon as practicable after becoming aware of any matter which is likely to change or which has changed the time for delivery, the Contractor must notify the Principal in writing of the circumstances which the Contractor considers will give rise to the delay, and the extent or likely extent of the delay, and whether the Contractor will be requesting a reasonable extension of time in accordance with clause 8.2.

### **8.4 Extension of Time**

8.4.1 Where there is likely to be a delay in the Contractor discharging an obligation under this Agreement because of a Circumstance Beyond the Contractor's Control (other than a circumstance arising out of any act or omission on the part of the Contractor), the Contractor will:

- (a) within 3 days of becoming aware of the possibility of such a delay, notify the Principal, in writing of the circumstances which the Contractor considers will give rise to the delay, and the extent or likely extent of the delay and strategies proposed to manage the consequences of the delay; and
- (b) request a reasonable extension of time.

8.4.2 The Principal may consent to a request for extension of time under this clause 8.4.2 provided that:

- (a) the Contractor uses its best endeavours to minimise the delay and recover lost time; and
  - (b) where appropriate, the Contractor provides the Principal with a plan indicating in detail the steps the Contractor proposes to take to minimise the impact of the Circumstance Beyond the Control of the Contractor.
- 8.4.3 The Contractor will not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with the delay.

## **8.5 Rejection of Services**

- 8.5.1 The Principal may reject Services which are not in accordance with this Agreement.
- 8.5.2 Upon rejection of any Services the Principal shall notify the Contractor and may direct that the rejected Services be removed and replaced or rectified at the Contractor's risk and expense within such reasonable time as the Principal may direct.
- 8.5.3 If the Contractor fails to remove or rectify the rejected Services within the time directed, the Principal may have the rejected Services re-delivered at the Contractor's risk and expense.
- 8.5.4 Where the Contractor fails to deliver the Services by the Service Period, or such other time agreed by the Principal, or where Services are rejected and the Contractor fails to replace the rejected Services in conformity with the Agreement, the Principal may:
- (a) purchase from another supplier substitute Services of the kind and quality ordered; or
  - (b) where it is not possible or practicable to purchase from another supplier substitute Services of the kind or quality ordered, purchase Services of a superior kind and quality to the Services under this Agreement.
- 8.5.5 In both cases listed in clause 8.5.4 any extra cost or expense incurred over and above the Contract Price, shall be a debt due from the Contractor to the Principal.

## **9 Confidentiality**

### **9.1 Obligations of Parties**

- 9.1.1 Except to the extent necessary to comply with any statutory requirements or government policy relating to the public disclosure of Confidential Information, neither Party will make public, disclose or use any Confidential Information of the other Party except in accordance with this Agreement, unless the other Party gives its prior written consent.
- 9.1.2 Each Party may disclose Confidential Information to its officers, employees and sub-contractors where such disclosure is essential to carrying out their duties or in accordance with this Agreement.
- 9.1.3 Each Party must ensure the Confidential Information of the other Party is used solely in connection with or for the purposes of fulfilling its obligations under this Agreement.
- 9.1.4 The Principal may at any time require the Contractor to arrange for its Personnel engaged in the performance of this Agreement to execute without delay a Deed of Confidentiality, substantially in the form of Schedule 4.
- 9.1.5 This clause will survive the termination of this Agreement.

## **10 Intellectual Property**

### **10.1 Ownership**

- 10.1.1 Intellectual Property created in relation to New Contract Material will be owned by the Contractor upon their creation.
- 10.1.2 The Contractor irrevocably grants to the Principal an exclusive royalty free transferable licence to use the Intellectual Property in the New Contract Material for so long as the Principal may require.



- 10.1.3 The Parties acknowledge and agree that the Parties or, where applicable, particular third parties, are the sole owners of their Intellectual Property rights in or in relation to the Existing Contract Material.
- 10.1.4 The Contractor must ensure all licence fees and/or consents required under law are paid and/or obtained as a result of any reproduction, adaptation or use of any Intellectual Property or Contract Material necessary for the provision of the Services.
- 10.1.5 Upon completion of the Agreement, or at such other time as the Agreement or the Principal may require, the Contractor must fully and promptly disclose to the Principal all New Contract Material created or developed under or in connection with this Agreement.

## **11 Specific Obligations of Contractor**

### **11.1 Contract Transition Requirements**

- 11.1.1 The Contractor must ensure that it has complied with the requirements of the Transition Plan in Schedule 9 of this Agreement in accordance with the dates indicated therein.

### **11.2 Marketing by the Contractor (Not used)**

### **11.3 Licences and Approvals**

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

### **11.4 Compliance with Laws and Standards**

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

- (a) all applicable Statutory Requirements;
- (b) the NSW Government codes, policies, guidelines and Standards listed in item 4 of Schedule 1 or any other codes, policies, guidelines and Standards specified in writing by the Principal to the Contractor as revised, amended, supplemented, altered or reissued from time to time; and
- (c) any particular Standard which has been agreed between the Contractor and the Principal, and that Standard is revised, the Contractor must submit evidence of compliance with the revised Standard within a reasonable period of time.
- (d) the obligations imposed on the Principal by the Privacy and Personal Information Protection Act 1998 (NSW) in relation to Personal Information that is disclosed to, or acquired by, or in possession of the Contractor in accordance, or in connection, with the Contract. The Contractor must, and must ensure that its officers, employees, agents and sub-contractors, comply with the obligations imposed on the Principal by the Privacy and Personal Information Protection Act as though the Contractor were, as far as reasonably practicable, the Principal in relation to any such Personal Information. The Contractor will comply with any request of the Principal in relation to Personal Information and will not do anything that would cause the Principal to be in breach of its obligations under the Privacy and Personal Information Protection Act.

### **11.5 Minimum Insurance Requirements**

- 11.5.1 The Contractor must hold and maintain, and must ensure that all subcontractors 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 liability policy of insurance which includes public liability insurance for at least the amount specified in item 7(a) of Schedule 1 in respect of each claim; and
  - (b) services liability insurance for at least the amount specified in item 7(b) of Schedule 1 for the total aggregate liability for all claims arising out of the Contractor's products for the period of cover; and
  - (c) workers' compensation insurance in accordance with applicable legislation for all the Contractor's employees; and

- (d) such other insurances as are specified in Schedule 1 item 7 of the Agreement Details.
- 11.5.2 All policies of insurance must be effected with an insurer rated A – or better by AM Best or an equivalent rating organisation.
- 11.5.3 The Contractor must ensure that each policy is in effect for the Term of this Agreement or such other period as required by the Principal.
- 11.5.4 The Contractor shall, and shall ensure 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 shall ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim.
- 11.5.5 The Contractor must, when requested in writing by the Principal, arrange for its insurer to complete a “Certificate of Currency of Insurance Obtained”.
- 11.5.6 Where the Contractor is insured under its parent company’s insurance policy, the parent company’s insurance policy must clearly indicate that it applies and extends coverage to the Contractor.
- 11.5.7 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Agreement.
- 11.6 General Indemnity**
- 11.6.1 The Contractor will be liable in respect of, and indemnifies, and shall keep indemnified, the Principal and its 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 any unlawful, negligent, reckless or deliberately wrongful act or omission of the Contractor (or its employees, agents or subcontractors or their employees) in the performance of this Agreement.
- 11.6.2 The Contractor’s liability in respect of, and indemnity given in, clause 11.6.1 shall be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Principal, its officers, employees or agents caused or contributed to the loss.
- 11.7 Contractor’s Warranties for the Services**
- 11.7.1 The Contractor warrants that:
- (a) it will provide the Services in accordance with this Agreement and with all the due care and skill;
  - (b) the Services do not infringe the Intellectual Property rights of a third party;
  - (c) the Services shall conform to any legally applicable Australian Standards;
  - (d) it has capacity to enter into this Agreement and perform the obligations imposed on the Contractor; and
  - (e) the Contractor has not entered into any arrangement, whether a trust arrangement or otherwise, that impedes or is likely to impede the performance of this Agreement by the Contractor.
- 11.8 Third Party Warranties**
- 11.8.1 Where the Contractor supplies Services that have been procured from third parties, the Contractor agrees to assign to the Principal, to the extent permitted by law, the benefits of any warranties given by the third parties.
- 11.8.2 The parties agree that the 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.

**11.9 Financial Security** (Not used)**11.10 Mistakes in Information**

- 11.10.1 The Contractor must pay for any additional costs incurred by the Principal 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.

**11.11 Notification of Change in Control or Transfer of Ownership**

- 11.11.1 During the Term, the Contractor must immediately notify the Principal under this Agreement in writing of any Change in Control or other action to reconstruct or amalgamate itself.

**11.12 Notification of Contractor's Insolvency**

- 11.12.1 The Contractor must immediately notify the Principal in writing of the Contractor's Insolvency and disclose the details of any:
- (a) Action taken in relation to the Contractor's Insolvency in so far as it affects this Agreement;
  - (b) Existing orders which the Contractor has entered into under this Agreement.

**11.13 Child Protection**

- 11.13.1 If the Services involves child-related employment, the Contractor must ensure that:
- (a) it complies with, and ensures that its sub-contractors comply with, the NSW Department of Commerce Code of Behaviour for the Protection of Children and other Vulnerable People; and
  - (b) it complies with its obligations, and ensures that its sub-contractors comply with their obligations, as an employer under the *Child Protection (Prohibited Employment) Act 1998* ("*Prohibited Employment Act*") and the *Commission for Children and Young People Act 1998* ("*Children and Young People Act*").
- 11.13.2 Details of relevant obligations are contained in guidelines issued by the NSW Department of Education and Training, called "the working with children check." The guidelines are available at [www.kids.nsw.gov.au](http://www.kids.nsw.gov.au).
- 11.13.3 Without affecting the obligations imposed by the *Prohibited Employment Act* and the *Children and Young People Act*:
- (a) if any work under this Agreement is "child-related employment" under the *Prohibited Employment Act* (employment of specified kinds that primarily involves direct contact with children where that contact is not directly supervised), the Contractor,
    - (i) must obtain, and ensure that its sub-contractors obtain, a prohibited person declaration from any person who is to perform the work; and
    - (ii) must conduct, and ensure that its sub-contractors conduct, a working with children check on any person who is to perform the work.
- 11.13.4 The Contractor must not, and must ensure that its sub-contractors do not, engage any person who is a "prohibited person" under the *Prohibited Employment Act* (persons who have committed a serious sex offence within the meaning of that Act) to perform work under this Agreement that is "child-related employment" under that Act.
- 11.13.5 The Principal may require the immediate removal of a "prohibited person" or a person who is the subject of a child abuse allegation or investigation from performance of child-related employment.

**12 Performance Management****12.1 Service Levels**

- 12.1.1 The Contractor must meet the specified Service Levels in Schedule 6 during the Term of this Agreement. Performance against the Service Levels must be tracked by the Contractor and reported to the Principal's Delegate in accordance with the frequencies and formats in Schedule 6.

- 12.1.2 Where the Contractor does not meet the Service Levels in Schedule 8, the Principal may, at its discretion, take one or more of the following actions in relation to the Contractor:
- (a) refuse to agree to all or a portion of the price variation requested by the Contractor under clause 5.3.1,
  - (b) temporarily suspend the use of all or parts of this Agreement by the Principal, for a period not exceeding 12 months; and
  - (c) require the Contractor to undertake more frequent performance reporting in addition to those specified in Schedule 6, to ensure performance is improved;
- until such time as the Contractor has demonstrated its ability to meet the Service Levels in accordance with Schedule 6.
- 12.1.3 The remedies in clause 12.1.2 are in addition to any other provisions available to the Principal to deal with the inability of the Contractor to meet its Service Level obligations under this Agreement and at law.
- 12.1.4 The measurements and tolerances in the Service Levels specified in Schedule 6 may be amended, added to, or deleted by the Principal and the Contractor in writing during the Term of this Agreement.
- 12.2 Principal's Delegate**
- 12.2.1 The Principal has nominated the Principal's Delegate in Schedule 1 item 8 to oversee the performance of this Agreement. The Principal may, by notice in writing to the Contractor, nominate a replacement Principal's Delegate.
- 12.3 Contractor's Relationship Manager**
- 12.3.1 For the purpose of ensuring an efficient relationship with the Principal the Contractor has appointed the Relationship Manager indicated in Schedule 1 item 5. The Relationship Manager must:
- (a) act as the representative of the Contractor and have the legal power to bind the Contractor in all matters pertaining to this Agreement;
  - (b) serve as the principal point of contact for the Contractor with respect to the overall administration of the Agreement;
  - (c) have the authority to implement such actions (including issuing of directives through the Contractor's organisation), as may be required for the Contractor to comply with this Agreement;
  - (d) meet with the Principal's Delegate at least once each month to provide information regarding the Contractor's performance under this Agreement, with particular reference to the Service Levels in clause 12.1.1; and
  - (e) answer the Principal's queries and work with the Principal to address issues relating to matters deemed urgent by the Principal arising out of this Agreement.
- 12.3.2 The Relationship Manager must be available at all times during business hours and at all other times on reasonable notice by the Principal's Delegate to meet with the Principal's Delegate to discuss any queries, concerns or issues arising in connection with this Agreement.
- 12.4 Innovation and Continuous Improvement**
- 12.4.1 The Contractor must identify innovative solutions for mutual value enhancement in connection with this Agreement, with a view to achieving continuous improvement.
- 12.4.2 The Contractor must submit in writing to the Principal, at its own cost, detailed proposals for changes to the Services and associated solutions which are likely to offer significant (including repeated and long term) benefits to the Principal in accordance with the requirements of Schedule 2.
- 12.4.3 The Contractor must ensure that such solutions do not include anything which might adversely affect the quality of the Services and that any proposed changes are consistent with the purpose and intent of this Agreement.

- 12.4.4 The Principal must consider the Contractor's proposals, but is not bound to accept any proposal. The Principal may also accept the proposed changes subject to conditions. The Contractor shall have no claim arising out of the Principal's failure to accept any proposal or proposed changes.
- 12.4.5 If the Principal accepts any changes proposed by the Contractor, any direct savings in the cost to the Contractor of supplying the Services will be for the benefit of the Principal.
- 12.4.6 For the purposes of monitoring performance and providing incentives for the Contractor to improve its performance level, the Principal will construct and maintain a performance management system.
- 12.4.7 The performance framework and the performance indicators are set out in Schedule 6.
- 12.4.8 Where the Contractor has consistently met the levels set out in Schedule 6, the Principal, may in its absolute discretion:
- (a) extend the period of the Agreement with the Contractor subject to the original term and any relevant policy consideration, and/or
  - (b) reduce the level and frequency of the Principal's reporting requirements.

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

- 12.5.1 The Contractor authorises the Principal and its 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 any Information relating to the Contractor's performance under the Agreement, or the Contractor's financial position.
- 12.5.2 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.
- 12.5.3 The Principal regards that the provision of Information about the Contractor to any New South Wales Government department or agency as privileged within section 30 of the *Defamation Act 2005* (NSW).
- 12.5.4 The Contractor releases and indemnifies the Principal and the State of New South Wales from any claim in respect of any matter arising out of the provision of Information. Without limiting the above, the Contractor releases the Principal and 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.

## **13 Personnel**

### **13.1 The Contractor's Personnel**

- 13.1.1 The Contractor warrants that all Personnel engaged in the provision of the Services are appropriately qualified, competent and experienced including the Contractor's Relationship Manager and the Key Personnel nominated in Schedule 1 item 5.
- 13.1.2 The Contractor must:
- (a) employ only such persons as are careful, skilled and experienced in the provision of the Services or similar Services; and
  - (b) (where applicable) hold, or ensure appropriate personnel hold, all necessary licences, permits and authorities.
- 13.1.3 The Principal may object to and direct the Contractor to remove any of its Personnel (including the Relationship Manager and Key Personnel) who in its opinion are incompetent, unsuitable, or who has been guilty of neglect, or other improper behaviour. Such named personnel so removed may not be re-employed by the Contractor under this Agreement.
- 13.1.4 Any replacement Key Personnel provided by the Contractor must be approved by the Principal.

## **14 Conduct and Dispute Management**

### **14.1 Co-operation**

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

### **14.2 Duty not to Hinder Performance**

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

### **14.3 General**

- 14.3.1 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 is to be followed:

- (a) Amicable Resolution (clause 14.4.);
- (b) Expert Determination (clause 14.5)

### **14.4 Amicable Resolution**

- 14.4.1 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 this Agreement, or about any matter arising under or out of this Agreement. The Issue Notice must be given within a reasonable time of the Party becoming aware of the issue.
- 14.4.2 The Party submitting the Issue Notice must submit it to the other Party's authorised representative, which in the case of the Principal is the Principal's Delegate, and in the case of the Contractor is the Relationship Manager.
- 14.4.3 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.
- 14.4.4 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.
- 14.4.5 A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice to the person or persons specified.
- 14.4.6 A Party may only refer an issue to Expert Determination by giving notice in writing specifying the issue to be decided ("the Referral Notice").
- 14.4.7 If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to the Principal.
- 14.4.8 If the Party giving the Referral Notice is the Principal, it must give the Referral Notice to the Contractor.
- 14.4.9 If a Referral Notice has not been given to the person or persons specified within 28 days, then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).

### **14.5 Expert Determination**

- 14.5.1 If a Referral Notice is given under clause 14.4, 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.
- 14.5.2 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 been unable to agree on.

- 14.5.3 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 determination set out in Schedule 8;
  - (d) any other matter which is relevant to the engagement.
- 14.5.4 The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.
- 14.5.5 If the expert determines that one Party must pay the other an amount exceeding the amount shown in Schedule 1 item 9 (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.
- 14.5.6 Unless a party has a right to commence litigation under clause 14.5.5:
- (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.

## **15 Termination by the Principal**

### **15.1 Termination for Cause**

- 15.1.1 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 the 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, or novates this Agreement or subcontracts Agreement except in accordance with this Agreement;
  - (f) in the case of the Contractor's Insolvency;
  - (g) if in the Principal's view a conflict of interest exists for the Contractor which prevents the proper performance of this Agreement.

### **15.2 Effect of Termination for Cause**

- 15.2.1 If the Principal terminates this Agreement for cause the Principal may:
- (a) contract with any other person to complete the provision of the Services including but not limited to any order remaining to be filled;

- (b) deduct loss or damages arising from or in connection with the termination, including any loss or damages incurred by the Principal Contract from any money due, or which may become due to the Contractor from the Financial Security (if any); and
- (c) 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.

### **15.3 Termination for the Principal's Convenience**

- 15.3.1 The Principal may terminate this Agreement in whole or in part for its convenience by giving 14 days written notice ("Notice of Termination for Convenience") with effect from the date stated in the notice and without the need to provide reasons.

### **15.4 Effect of Termination for Convenience**

- 15.4.1 The Principal's termination under clause 15.3 will not affect any outstanding Customer Contracts under this Agreement unless the context requires it.
- 15.4.2 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.
- 15.4.3 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 General**

### **16.1 No Assignment or Novation**

- 16.1.1 The Contractor must not assign or novate this Agreement without first obtaining the prior written consent of the Principal as applicable, which consent may be withheld at the Principal's absolute discretion.
- 16.1.2 The Contractor acknowledges that the Principal may make financial checks and due diligence checks on the entity proposing to take over this Agreement before determining whether or not to give consent to the assignment or novation.

### **16.2 Conflicts of Interest**

- 16.2.1 The Contractor promises 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 the Agreement.
- 16.2.2 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.
- 16.2.3 For the purposes of this clause, a "conflict of interest" includes 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 the Agreement.

### **16.3 Records and Access to Records**

- 16.3.1 The Contractor must keep proper accounts and records in accordance with the accounting principles generally applied in commercial practice.
- 16.3.2 During the Term, 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.



**16.4 Waiver**

- 16.4.1 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.

**16.5 Severability**

- 16.5.1 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.

**16.6 Notices**

- 16.6.1 Notices must be sent to the other Party at the address shown in Schedule 1 item 10 and 11, or the address last notified to the other Party in writing, or in the case of the Contractor, at the Contractor's registered office.
- 16.6.2 All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post or facsimile transmission.
- 16.6.3 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.

**16.7 Counterparts**

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

**16.8 Applicable Law**

- 16.8.1 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.

**16.9 No agency/no employment/no partnership**

- 16.9.1 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.

**16.10 Disengagement Period**

- 16.10.1 For 6 months following the expiry or termination of this Agreement (or part thereof) the Contractor will provide such assistance as is reasonably requested by the Principal for the supply of the Services to continue without interruption to facilitate an orderly, prompt and efficient transition to an alternative service provider to the Principal. Such assistance includes (without limitation):
- (a) providing reasonable co-operation with a third party supplier nominated by the Principal, and
  - (b) providing the Principal's data, information and materials that may be required to enable transacting with a new provider as requested by the Principal.

**16.11 Pricing Information**

The Contractor agrees that, subject to clause 9 (Confidentiality), product pricing information (including discounts, commissions and rebates as appropriate) may be disclosed to any person by the Board at its sole discretion in the form of a User Guide or in any medium of communication it deems appropriate.

**Executed as a Deed****SIGNED, SEALED AND DELIVERED**by [*name and position of person signing*]

for and on behalf of the Principal

for and on behalf of the Crown in right of

the State of New South Wales but not so

as to incur any personal liability in the

presence of:

[insert name of Witness]

(signature of Witness)

**SIGNED, SEALED AND DELIVERED**

by

[insert name of Contractor]

(signature of Contractor)

in the presence of

[insert name of Witness]

(signature of Witness)

## Schedule 1 Agreement Details

Item 1	<b>Contractor's Name</b>
Item 2	<b>Term:</b> (clause 2.1.1) Commencement Date: Expiry Date:  <b>Period of extended term</b> (if any): (clause 2.2.1) Commencement Date: Expiry Date:
Item 3	<b>Benchmark</b> (Not used)
Item 4	<b>Codes and Standards</b> (clause 11.4.1)  1. Code of Practice for Procurement 2. Implementation Guidelines NSW Government Procurement 1999 3. Environmental Management Systems Guidelines 4. Occupational Health and Safety Management Systems Guidelines 5. Code of Behaviour (for the protection of children and other vulnerable people)
Item 5	<b>Key Personnel</b> (clause 13.1.1) <a href="#"><u>Guide Note: List any Key Personnel of the Contractor</u></a>  Relationship Manager (clause 12.3.1)  Name:  Address:  Position:  Telephone: Facsimile
Item 6	<b>Financial Security</b> (Not used):
Item 7	<b>Insurances</b> (clause 11.5) a) Public Liability Insurance Limit of Indemnity, including Hangerkeepers: \$AUS20,000,000  b) Motor Vehicle 3 <sup>rd</sup> party property damage policy: \$AUS5,000,000  c) Third party personal injury, third party property damage, injuries to passengers, noise, loss of cargo and other legal liability (including property damage) for a combined single limit of \$AUS20,000,000 in relation to any one accident.:
Item 8	<b>Principal's Delegate (clause 12.2)</b>  Name:  Address:  Position:  Telephone:

	Facsimile:
<b>Item 9</b>	<b>Expert Determination Amount</b> (clause 14.5.5):  <b>AUD:</b>
<b>Item 10</b>	<b>Notices to:</b> (clause 16.6)  The Contractor's contact name and address:  Name:  Address:  Position:  Telephone: Facsimile:
<b>Item 11</b>	<b>Notices to:</b> (clause 16.6)  The Principal's contact name and address:  Name:  Address:  Telephone: Facsimile:

## Schedule 2 Statement of Requirements

Include Details of Aircraft

### APPENDIX A DETAILS OF AIRCRAFT

To be included in the Contract with the successful tenderer, based on the information provided in its tender response at Clause 3, Table 3 of Part C1.

Navigation equipment: Aircraft [Use a separate sheet for each aircraft]

Aircraft Registration			
Year of Manufacture			
Airframe hours			
Airframe service life			
LH Engine Hours			
LH Engine TBO			
LH Propeller Hours			
LH Propeller TBO			
RH Engine Hours			
RH Engine TBO			
RH Propeller Hours			
RH Propeller TBO			
	<b>Description of fitted equipment</b>	<b>No</b>	<b>Yes</b>
IFR equipped and certified			
2 VHF Radios			
HF radio			
Fire extinguisher			
Engine Fire detection and extinguishing system			
First Aid Kit			
Survival Kit			
TSO 145/146 GNSS			
TSO C126 406 Mhz ELT with GPS for real time positioning			
Engine monitoring system			
Life jackets complying with CAO 103.13			

### **Schedule 3      Pricing, Price Variation Mechanism, and List of Services**

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Attach Pricing and List of Services from Tender

Include Price Variation Mechanism as per Tender response

## Schedule 4 Deed of Confidentiality

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

**BETWEEN** [Name and address of Principal] ("the Principal")

**AND** [Name and address of Contractor] ("the Contractor")

### RECITALS:

- A. In the course of the Contractor supplying certain Services for the Principal (whether directly or indirectly) pursuant to the Agreement, the Contractor 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 Principal.
- C. The Principal requires, and the Contractor 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 Contractor provides the Services faithfully and without any conflicting interest.
- D. This Deed sets out the terms on which the Contractor 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 Services.

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

**"Confidential Information"** means information 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 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 *[insert name of Contractor]*

**"Contract Material"** means:

- (a) any material created, written or otherwise brought into existence as part of, or for the purpose of performing the Services 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");
- (b) any material which is existing at the date of this Agreement and which is incorporated with the New Contract Material ("Existing Contract Material").

**"Express Purpose"** means the Contractor 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 this Agreement;

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

**"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 Agreement 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**

- 3.1.1 The Contractor must not disclose the Confidential Information to any person without the prior written consent of the Principal.
- 3.1.2 The Principal may grant or withhold its consent in its discretion.
- 3.1.3 If the Principal grants its consent, it may impose conditions on that consent, including a condition that the Contractor procure the execution of a Deed in these terms by the person to whom the Contractor proposes to disclose the Confidential Information.
- 3.1.4 If the Principal grants consent subject to conditions, the Contractor must comply with those conditions.
- 3.1.5 Despite cl.3.1.1, the Contractor 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 Contractor or in accordance with this Deed.
- 3.1.6 Before disclosing the Confidential Information to a permitted recipient, the Contractor 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.
- 3.1.7 The Confidential Information must not be copied or reproduced by the Confidant or the permitted recipients without the expressed prior written permission of the Disclosing Party, except as for such copies as may be reasonably required for the purposes of this Deed.
- 3.1.8 The Disclosing Party may at any time require the Contractor to promptly arrange for the permitted recipients to execute a Deed of Confidentiality substantially in the form of this Deed.

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

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

#### **4. Restriction on use**

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

4.2 The Contractor 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 Contractor 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**

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

#### **6. Rights of the Disclosing Party**

##### **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 Contractor containing the Confidential Information.

6.1.2 The Contractor must immediately comply with a demand under this Clause 6.

6.1.3 If the Principal makes a demand under this clause 6, and the Contractor has placed or is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Contractor 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 6, "documents" includes any form of storage of information, whether visible to the eye or not.

## **6.2 Legal Proceedings**

The Principal may take legal proceeding against the Contractor 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 Contractor 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 Contractor or the permitted recipients other than in accordance with this Deed.

## **8. No exclusion of law or equity**

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**

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

### **10.2 Other Instruments**

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**

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**

This Deed will be governed and construed in accordance with the laws 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 Contractor, at the Contractor'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 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****SIGNED, SEALED AND DELIVERED**

)  
)  
by [*name and position of person signing*] )  
for and on behalf of the Principal )  
for and on behalf of the Crown in right of )  
the State of New South Wales but not so )  
as to incur any personal liability in the )  
presence of: )

\_\_\_\_\_  
[insert name of Witness] ) (signature of Witness)

**SIGNED, SEALED AND DELIVERED**

)  
)  
by \_\_\_\_\_ )  
[insert name of Contractor] ) (signature of Contractor)  
)  
in the presence of \_\_\_\_\_ )  
[insert name of Witness] ) (signature of Witness)

## Schedule 5 Financial Security

It is recommended that the Principal only accepts Financial Security from financial institutions supervised by the Australian Prudential Regulation Authority (APRA). For approved financial institutions, please visit the APRA website: <http://www.apra.gov.au/adi/ADIList.cfm>. The list of Authorized Deposit-Taking Institutions indicates acceptable institutions. If you receive an Undertaking from an organization not on the list, please bring it to your Unit Manager's attention.

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

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

**AND** [insert name of Principal] for and on behalf of the Crown in the right of the State of New South Wales ("Beneficiary")

### IT IS AGREED

At the request of Insert name of the Contractor's Company Name, trading as "Insert Contractor's Trading Name," ACN Number (Insert ACN Number) ("Customer") and in consideration of, the Beneficiary accepting this undertaking in connection with *[describe contract]*, 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 without reference to the Customer and regardless of any notice given by the Customer to the Provider not to pay.

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 *[insert applicable State or Territory]*.

**EXECUTED AS A DEED**

*Guide Note: For the Form of Undertaking to be effective, it must be executed as a deed. Like Part D, the Execution of a Deed requires the form to be executed by Supply and the financial institution providing the undertaking.*

**SIGNED, SEALED AND DELIVERED** by <insert name and position of person signing> )  
 For and )  
 on behalf of (insert name of Principal) for and on )  
 behalf of the Crown in right of the State of New  
 South Wales but not so as to incur any personal  
 liability in the presence of:

\_\_\_\_\_  
 \*Witness

\_\_\_\_\_  
 Signatory

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Print Name

\*Delete whichever is not applicable.

**Financial Institution/Company**

*Contract Officers are no longer required to obtain the Company common seal when dealing with a company. However, you are required to obtain the signatures of one of two combinations:*

- 1) the Corporate Secretary and a Director, or
- 2) two Directors, or

**SIGNED** by [insert party name]<insert name of company>, ACN <insert ACN number>, a )  
 prudentially supervised institution by the )  
 Australian Prudential Regulation Authority  
 (APRA), and in accordance with section 127 of  
 the Corporations Act and in the presence of:

\_\_\_\_\_  
<\*Director/Secretary>

\_\_\_\_\_  
 Director

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Print Name

---

## **Schedule 6      Performance Management**

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*[\(Guide Note: Include Service Levels and KPIs here which the Contractor must meet.\)](#)*

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## **Schedule 7      List of Approved Sub-Contractors**

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## **Schedule 8      Expert Determination Procedure**

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

- 1.1 The expert must determine for each issue the following questions (to the extent that they are applicable to the issue):
  - 1.1.1 Is there an event, act or omission which gives the claimant a right to compensation:  
under the Agreement:
    - (a) for damages for breach of the Agreement, or
    - (b) otherwise in law?
  - 1.1.2 If so:  
what is the event, act or omission?
    - (a) on what date did the event, act or omission occur?
    - (b) what is the legal right which gives rise to the liability to compensation?
    - (c) is that right extinguished, barred or reduced by any provision of the Agreement, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
  - 1.1.3 In the light of the answers to clauses 1.1.1 and 1.1.2 of this Expert Determination Procedure:
    - (a) What compensation, if any, is due from one Party to the other and when did it fall due?
    - (b) What interest, if any, is due when the expert determines that compensation?
- 1.2 The expert must determine for each issue any other questions required by the parties, having regard to the nature of the issue.

### **2.      Submissions**

- 2.1 The procedure for submissions to the expert is as follows:
- 2.2 The Party to the Agreement which has referred the issue to Expert Determination must make a submission in respect of the issue, within 15 business days after the date of the letter of engagement referred to in clause 15.5.3 of the Agreement.
- 2.3 The other party must respond within 15 business days after receiving a copy of that submission. That response may include cross-claims.
- 2.4 The Party referred to in clause 2.2 may reply to the response, but must do so within 10 business days after receiving the response, and must not raise new matters.
- 2.5 The other Party may comment on the reply, but must do so within 10 business days after receiving the reply, and must not raise new matters.
- 2.6 The expert must ignore any submission, response, reply, or comment not made within the time given in clauses 2.2 to 2.5 of this Expert Determination Procedure, unless the 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 which would give anything under this Expert Determination Procedure the character of an arbitration.

**4. Role of Expert**

- 4.1 The Expert:
- 4.1.1 acts as an expert and not as an arbitrator;
  - 4.1.2 must make its determination on the basis of the submissions of the Parties, including documents and witness statements, and the expert's own expertise; and
  - 4.1.3 must issue a certificate in a form the expert considers appropriate, stating the expert's determination and giving reasons, within 12 weeks after the date of the letter of engagement referred to in clause 15.5.3 of the Agreement.
  - 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.

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**Schedule 9      Deed - smartbuy® Requirements (Not used)**

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## **Schedule 10      Child Protection Code of Behaviour for the Protection of Children and Vulnerable People**

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### Code of Behaviour - Protection of Children and other Vulnerable People (Core)

The Contractor must ensure that all persons working on the site or sites under the Contract, including but not limited to the Contractor's employees and managers, consultants, subcontractors and suppliers (Contractor Employees) understand and comply with the requirements shown below.

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

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**Schedule 11      Outworker's Code Declaration (Not used)**

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## Provision of Aircraft Charter Services for the NSW Department of Juvenile Justice and NSW Police Force

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**SPECIFICATION** **SERVICE DELIVERY REQUIREMENTS****1. SCOPE**

- 1.1 The NSW Department of Juvenile Justice (DJJ) and NSW Police Force (NSWPF) require to charter multi-engine fixed wing Instrument Flight Rules (IFR) certified aircraft inclusive of fuel and lubricants, and flight crew, on an 'as required' basis. The aircraft will be generally used to transport juvenile detainees and their escorting staff to or between country locations to attend court, funerals or similar casework appointments, as well as specified NSW Police Force requirements. Air charter is used at the discretion of the Principal.

- 1.1.1 Aircraft Charter Services will provide for either the full range of services or for part of the range of services as per the requirements detailed in Clause 2 of this Schedule 3, essentially within NSW on behalf of the NSW Department of Juvenile Justice and NSW Police Force.

**1.2 Use and Purpose of the Aircraft**

- 1.2.1 During the period of the Charter, the Aircraft shall not be permitted to be used for any other purpose other than that approved by the Principal.

- 1.2.2 All flights shall be planned as IFR and transit by the most direct route. It is acknowledged that it may be necessary to undertake weather diversions, holding, ATC requirements or other operational diversions during a charter. All such diversions are to be justified with supporting documentation to accompany the respective invoice.

**1.2.3 DJJ Use**

- 1.2.3.1 This specification is for the transport of detainees and other persons predominately to courts across NSW under escort by officers of the Department of Juvenile Justice, as required and authorised by DJJ.

- 1.2.3.2 The detainees are aged between 10 and 21 and will be restrained during the flight with hand cuffs, leg restraints or a restraining belt. Detainees are accompanied at all times by a Youth Officer attached to the Transport Unit within the Department.

- 1.2.3.3 For calculation purposes it should be assumed that two (2) Youth Officers will accompany a single detainee. On occasions there may be more than one (1) detainee per flight. For each additional detainee there will be at least one (1) additional Youth Officer.

- 1.2.3.4 DJJ officers do not use or carry firearms.

**1.2.4 NSW Police Force Use**

- 1.2.4.1 This specification includes the transport of prisoners under Police escort, the transport of NSW Police Force State Protection Group (SPG) personnel, the transport of State Protection Group (SPG) personnel including members of the Rescue and Bomb Disposal Unit, Negotiation Unit, Dog Unit and Tactical Operations Unit (TOU) and their specialised equipment and other persons specifically authorised by the NSW Police Force and necessary for that task.

- 1.2.4.2 Many NSW Police Force tasks are at short notice, urgent, and are often in response to high risk incidents.

- 1.2.4.3 The number of personnel and the amount of equipment to be transported will be dependent upon the nature of each individual task requirement, and may involve the transportation of up to eighteen (18) personnel and up to six hundred 600 kg of equipment.



- 1.2.4.4 The Contractor may be required to transport Dangerous Goods, and as such is required to hold a Company Dangerous Goods Manual and a copy of the current IATA Dangerous Goods Regulations at its Base. The Contractor is also required therefore to have access to a staff member with a current Dangerous Goods Acceptance certificate.
- 1.2.4.5 The Contractor is to be aware that SPG operations may involve the carriage of firearms, munitions, certain other explosive devices and NSW Police Force trained dogs with handlers. The NSW Police Force has a current 'PERMIT FOR THE CARRIAGE OF WEAPONS – POLICE CHARTERS', issued by the Department of Transport, Aviation Security Branch, and approval for the carriage of NSW Police Force dogs issued by CASA. The Contractor is responsible for obtaining a copy of the relevant approvals from the NSW Police Force and the NSW Police Force will not unreasonably withhold them.
- 1.2.4.6 The aircraft and flight crew chartered by the NSW Police Force are required to remain contracted exclusively to and at the direction of the NSW Police Force or their representative until released or re-directed by the NSW Police Force delegated officer.
- 1.2.4.7 The pilot must be trained to wear a gas mask. As NSWPF carry chemical munitions it is a requirement for the Pilot to carry and be trained in the use of a police supplied gas mask. The TOU carries the chemical munitions in CASA approved steel and foam lined boxes. In some types of larger aircraft (such as Piper Chieftan 12 seat aircraft) there are external storage compartments that would contain these types of munitions. The pilot must be comfortable in operating the aircraft controls in the event that there is an accidental release of the agent inside the body of the aircraft whilst wearing the gasmask.

## 2. DJJ AREA OF OPERATIONS

- 2.1 The Contractor may be required to carry out flights in any area of operation as may be designated from time to time by the Principal, and as agreed by the Contractor as suitable for operations therein. The majority of tasking however, will involve the following NSW locations:

- |                 |                       |
|-----------------|-----------------------|
| • Albury        | • Inverell            |
| • Armidale      | • Kempsey             |
| • Albion Park   | • Lismore             |
| • Bankstown     | • Maitland/Rutherford |
| • Bega          | • Moree               |
| • Bourke        | • Port Macquarie      |
| • Brewarrina    | • Queanbeyan          |
| • Broken Hill   | • Tamworth            |
| • Cobar         | • Taree               |
| • Coffs Harbour | • Tweed Heads         |
| • Cooma         | • Wagga Wagga         |
| • Coonamble     | • Warnervale          |
| • Dubbo         | • Wentworth           |
| • Glen Innes    | • Wilcannia           |
| • Grafton       | • Wollongong          |
| • Gunnedah      |                       |

- 2.2 DJJ's air charter requirements are not limited only to the listed destinations and depending on circumstances, may require return flights to any town with a suitable aerodrome, within NSW.

## 3. AIRCRAFT AVAILABILITY for DJJ OPERATIONS

### 3.1 General

- 3.1.1 Aircraft and crew are to be available for charter five (5) days per week from Monday to Friday, between the hours of 0600 and 1800 (the "operational period") for the exclusive use of the Principal and any person nominated by the Principal. It is however possible that work may be required outside the operational week day hours, particularly if a task departs late, which could

result in a late return. On occasions tasks may also be required on weekends. In terms of indicative numbers for air charter approx. usage of aircraft for 2007/08 total air charters equals approx..204, (Departures from Albion Park 11, Bankstown 103, Dubbo 20, Grafton 14, Maitland/Warnervale 38 and Wagga 18). It should be noted DJJ are working on measures to reduce usage of aircraft as a cost saving initiative.

### **3.2 Tasking Planning and Response Capacity**

- 3.2.1 On most occasions, the Principal will be in a position to provide at least twenty four (24) hours notice of a task. The Contractor is expected to respond to tasking at the times nominated. There may be occasions however when the operational situation does not allow for the full twenty four (24) hours notice.
- 3.2.2 The Contractor must be ready to depart the nominated departure point having completed aircraft pre-flight checks, all mandatory operational and flight planning documentation as required, and having completed the loading of passengers and baggage. The Aircraft is to depart at the nominated time, and fulfil the charter requirements as specified by the Principal.
- 3.2.3 If for any reason the Contractor is unable to have an aircraft and/or crew available within the operational period, the Principal is to be advised by the most appropriate means.
- 3.2.4 All flights shall be planned under Instrument Flight Rules (IFR) unless otherwise approved by the Principal. Planning shall include the completion of a full flight plan, meteorological briefing, load manifest and weight and balance computation.
- 3.2.5 The PIC (or co-pilot) is to be at the flight controls throughout any period of time that an aircraft engine is operating.
- 3.2.6 DJJ can provide no guaranteed number of movements/Charters in any given period.

## **4. NSW POLICE FORCE AREA OF OPERATIONS**

- 4.1 The Contractor may be required to carry out flights in any area of operation as may be designated from time to time by the Principal, and as agreed by the Contractor as suitable for operations therein. The majority of tasking however, will involve flights within NSW.
- 4.2 The Contractor must ensure that the Aircraft is able and available to fly to and land at any suitable aerodrome in the Commonwealth of Australia or its Territories.

## **5. AIRCRAFT AVAILABILITY FOR NSW POLICE FORCE OPERATIONS**

### **5.1 General**

- 5.1.1 Aircraft and crew are to be available throughout the twenty four (24) hour period, 365 days per year. When on task to the NSW Police Force, the Aircraft remains within its exclusive use and any person nominated by the NSW Police Force until such time as it is released by the NSW Police Force.

### **5.2 Tasking Planning and Response Capacity**

- 5.2.1 The nature of operations of the NSW Police Force is such that short notice tasking is common. The Contractor is expected to respond to tasking from the primary departure aerodromes in an expeditious manner.
  - 5.2.1.1 Between the hours of 0800 and 1800 90 minutes.
  - 5.2.1.2 Between the hours of 1800 and 0800 120 minutes.
- 5.2.2 If for any reason the Contractor is unable to have an aircraft and/or crew available within the operational period, the Principal is to be advised by the most appropriate means.

- 5.2.3 All flights shall be planned under Instrument Flight Rules (IFR) unless otherwise approved by the Principal. Planning shall include the completion of a full flight plan, meteorological briefing, load manifest and weight and balance computation.
- 5.2.4 The PIC (or co-pilot) is to be at the flight controls throughout any period of time that an aircraft engine is operating.
- 5.2.5 NSW Police Force can provide no guaranteed number of movements/Charters in any given period.

## **6. BASES OF OPERATIONS**

### **6.1 DJJ**

- 6.1.1 Preferred bases of operations are at the primary departure aerodromes of:

- Albion Park
- Bankstown
- Dubbo
- Grafton
- Maitland/Rutherford
- Warnervale

### **6.2 NSW Police Force**

- 6.2.1 The NSW Police Force operates primarily from Bankstown Airport.

## **7. AIRCRAFT CAPACITY**

### **7.1 DJJ**

- 7.1.1 DJJ requires the use of multi engine fixed wing single pilot IFR certified aircraft with a passenger seating capacity excluding any second pilot seat, of four (4), or more passenger seats.

### **7.2 NSW Police Force**

- 7.2.1 The NSW Police Force requires the use of multi engine fixed wing single pilot IFR certified aircraft with a passenger seating capacity excluding any second pilot seat of five (5), seven (7) and nine (9) seats, as well as other multi engine fixed wing IFR certified aircraft with a passenger seating capacity of up to eighteen (18) seats.

## **8. CONTRACTOR'S STAFF**

### **8.1 Aircraft Crew**

- 8.1.1 Under normal circumstances Aircraft with less than nine (9) passenger seats shall be operationally crewed by a single pilot. Nine (9) passenger seat Aircraft and above shall be crewed by two (2) pilots. There may however be occasions when the Principal may require the smaller Aircraft crewed by two (2) suitably qualified and experienced pilots.

- 8.1.2 The Contractor's staff are to be sufficient in number to meet all of the Aircraft availability requirements of the Principal and must meet the qualifications, training and currency requirements as described in Schedule 6.

### **8.2 Uniform and Working Attire**

- 8.2.1 The Contractor shall be responsible for its flight crew being suitably attired in an appropriate crew uniform which is to include suitable footwear, and which is acceptable to the Principal.

**9. ORGANISATIONAL RESILIENCE**

- 9.1.1 The Contractor must be able to demonstrate organisational resilience in terms of regulatory compliance, maintenance, infrastructure support and operations.

**9.7 Quality Control and Internal Audits**

- 9.7.1 The Contractor is to maintain an Engineering Quality Control system which allows for six (6) monthly audits of the maintenance, which should include staff proficiency and personnel morale. The unaltered reports are to be provided to the Principal within seven (7) days of completion.
- 9.7.2 Details of the format to be followed will be described in the Contractor's Safety Management System Manual.

**9.8 Unserviceability Away from Base**

- 9.8.1 In the event of an Aircraft unserviceability away from base, alternative Aircraft and crew shall **only** be selected from those Aircraft and crew which have been accepted, as forming part of the Contract **unless** prior approval is obtained from the Principal or its delegate.
- 9.8.2 Any additional costs over and above the original invoice entitlement, incurred as a result of an unserviceability in the field (e.g. for the provision of alternative transport and/or crew and any associated costs), are to be met by the Contractor.

**9.9 Cross Hire of Aircraft**

- 9.9.1 The Contractor is expressly denied the right, under this Contract, to sub-let (i.e. 'cross-hire') any Aircraft from any other aircraft charter company except for aircraft, which have been nominated at Part C, and accepted, as forming part of the Contract. This provision does not apply to the cross-hiring of aircraft for unserviceabilities in the field. On each occasion the Principal is to be consulted.

**9.10 Ferry, Check or Test Flights for Maintenance of Aircraft**

- 9.10.1 Where ferry, check or test flights are involved to effect maintenance of the Aircraft, the costs incurred thereto shall be borne by the Contractor.

**10. MISSION TASKING**

- 10.1 All tasking will be at the absolute discretion of the Principal.
- 10.2 Where the Principal tasks the Contractor for a mission, it shall be at the absolute discretion of the Principal to re-task the Contractor, at any time, in favour of another mission.
- 10.3 Only those persons specifically authorised are permitted to be carried on Aircraft chartered by DJJ, it's Delegate, or by NSW Police Force.

**11. COMPETENCY OF AIRCRAFT AND PERFORMANCE**

- 11.1 The Contractor shall ensure the Aircraft are able and its Personnel are appropriately qualified, experienced and competent to land on and take-off from any aerodrome nominated by the Principal subject to any operational or regulatory limitations.

**12. PERMITS**

- 12.1 The Contractor shall obtain and comply with all clearance, permits and consents necessary to perform properly and safely all Services, including necessary ancillary services, and shall comply with all formalities in respect of taking-off and landing, and shall ensure that the Aircraft are properly licensed and comply in all respects with applicable laws, rules, regulations, orders, standards and schedules, and are flown and operated in compliance with the laws in force in all places over, to or from which the Aircraft is flown. The Contractor shall pay all amounts charged by the relevant authorities including but not limited to air navigation charges, Aircraft movement charges, airway charges, parking charges, handling charges and rescue and fire fighting charges. Particular charges may be charged back to the Principal as per the details in Clause 13.

**13. MONTHLY REPORTS AND INVOICES**

- 13.1 Within five (5) business days of the end of each calendar month, the Contractor shall provide Principal, together with the monthly invoice, an electronic report for the previous month completed on a pre-planned form, titled Monthly Report. (The layout of the report is to be submitted to the Principal for approval prior to the Commencement Date). The report shall include but not necessarily be limited to:

13.1.1 Flight time total on task for the month and pro-rata thereof, for each Aircraft.

13.1.2 Flight time by task number for the month.

13.1.3 Aircraft callout vs. departure times and explanation for delays.

13.1.4 Copies, with an explanation, of any CASA Survey reports, Audit reports, Ramp Checks etc. including any NCN, RCA notices, AOs etc. issued by the CASA during the period.

13.1.5 Relevant to the Contract any details, with an explanation, for any dispensations granted during the period by the CASA against the provisions of CARs or CAOs.

13.1.6 Reserved

13.1.7 Copies, with an explanation, of any ATSB Aviation Accident or Incident Notification Reports and/or in-house reports and/or any Major Defect Reports, as per Clause 13.3 below, issued by the Contractor during the period.

13.1.8 Details of all ground based work related accidents and incidents which have caused or potentially could cause personnel safety to be threatened. Initial advice shall be as soon as practicable following the incident or accident.

**14. AVIATION AUTHORITY SURVEILLANCE AND AUDIT REPORT**

- 14.1 Contractor shall provide the Principal with one (1) copy of each Surveillance Report, Audit Report, RCA, AO or ASR issued by CASA, as per Clause 13.1.4 of Schedule 3 with the Monthly Report.

**15. SAFETY REGULATIONS AND PROCEDURES**

- 15.1 The Contractor shall establish and publish procedures and shall be responsible for safety related to provision of the Services under their control including, without limiting the generality of the foregoing, the following:

15.1.1 Safety at any Base;

15.1.2 The safe embarkation and disembarkation of passengers;

15.1.3 The safe loading and unloading of freight and equipment;

15.1.4 The safe restraint of baggage and freight in the Aircraft; and

15.1.5 The safe supervision of passengers at any Base.

**16. SAFETY BRIEFING**

- 16.1 Prior to departure from any location, the Contractor's Personnel shall ensure that all passengers are briefed and instructed on all safety procedures, safe practices, emergency procedures, (including Life Jacket and Life Raft procedures if applicable), and evacuation procedures. Instructions shall be comprehensive and so presented that an understanding can be attained by all passengers. Passenger Safety Briefing Cards are to be available to each passenger seat, and each is to be relevant to the Contract Aircraft in every respect.

**17. ADDITIONAL NSWPF REQUIREMENTS****17.1 Marine Area Command**

- 17.1.1 For Marine Area Command, tenderers are to offer aircraft with a capability to transport four (4) divers each with 100 kg of equipment or three (3) divers each with 100 kg of equipment plus 250 kg of additional ancillary equipment supported by the same pilot and crew.

At each stop NSWPF experience approx 20-30 minutes refuelling (some is from drums) total time is likely to be at least 5 Hrs and 48 minutes. Currently undertaken during daylight hours and weather/wind may subject the journey being longer or requiring an extra fuel stop or weather may in fact stop us completely)

## **AIRCRAFT TECHNICAL SPECIFICATIONS AND OPERATING REQUIREMENTS**

### **1. OVERVIEW**

#### **1.1 General Requirements**

- 1.1.1 The Principal requires the use of twin engine IFR certified Aircraft. Aircraft that are certified for Single Pilot IFR (SPIFR) operations must be equipped as a minimum with a serviceable three axis autopilot. Aircraft that require two (2) pilots will be appropriately equipped and the Contractor must have procedures for two (2) pilot operations. The Aircraft must also be appropriately equipped for the routes that it is likely to fly.
- 1.1.2 The Aircraft are to be fitted with a TSO C-126 406Mhz ELT either with integral GPS or integrated with the Aircraft installed GPS for real time positioning.
- 1.1.3 The DJJ requirement is for Aircraft with four (4) or more passenger seats excluding the second pilot seat in the cockpit area depending on the DJJ mission requirements. The four (4) passenger seats excludes the second pilot seat in the cockpit area.
- 1.1.4 The NSW Police Force requirement is as per Clause 1.1.2 of Schedule 4, plus Aircraft with a passenger seating capacity of up to eighteen (18) seats.

#### **1.2 Certificates of Registration and Airworthiness and Registered Operator**

- 1.2.1 Aircraft shall be Australian registered and have a current Australian Certificate of Airworthiness. The Contractor shall be the Registered Operator of the Aircraft and hold a current Certificate.

### **2. OPERATIONAL PERFORMANCE AND AIRCRAFT CONFIGURATION**

#### **2.1 Operational Performance**

- 2.1.1 Aircraft must be able to accommodate the requested load and have the necessary flight performance to meet the specified passenger transport requirements over the required route.

#### **2.2 Operational Configuration**

The Aircraft shall preferably be installed with an air conditioning system.

#### **2.3 Emergency Equipment**

- 2.3.1 The Aircraft shall, when flights are scheduled to over fly water when outside of gliding distance from land, carry sufficient Life Jackets to accommodate all persons on board. Life Jackets must meet the requirements of CAO 103.13 and one must be accessible to each occupied seat. Regardless, all flights departing from or arriving at Sydney Kingsford Smith International Airport, are to carry Life Jackets.
- 2.3.2 The Aircraft shall preferably be installed with an engine fire detection and extinguishing system.
- 2.3.3 The Aircraft shall be equipped with a First Aid Kit and a Survival Kit as approved by Principal.

**BASE AND EQUIPMENT REQUIREMENTS****1. BASE FACILITIES**

- 1.1 The Contractor shall provide the following at each Base:
- 1.1.1 A covered passenger waiting room with attached toilet.
  - 1.1.2 Refreshment (tea/coffee/water) facilities.

**2. BASE EQUIPMENT**

- 2.1 The Contractor shall provide at each Base the following communications equipment:
- 2.1.1 A suitable telephone with message bank capability;
  - 2.1.2 A facsimile machine;
  - 2.1.3 Email capability;
  - 2.1.4 Mobile phone with message bank capability for the Contractor's Representative; and
  - 2.1.5 Computer with internet access of appropriate bandwidth for accessing current and forecast weather information within appropriate timeframes.
- 2.2 The Contractor is totally responsible for all costs associated with equipping, operating and maintaining each Base.

**3. INSPECTION**

- 3.1 The Contractor's premises are to be available for inspection by the Principal or the Principal's nominated agent at mutually acceptable times during the course of the Contract.

**4. INSPECTION, RECTIFICATION AND SAFETY AUDIT PROCEDURE**

- 4.1 The Principal may at any reasonable time:
- (a) inspect or have inspected by a third party any of the Aircraft and any of the Equipment;
  - (b) observe or have observed by a third party the Services; and, if, as a result of considering the findings of any such inspection, the Principal is of the opinion that an Aircraft or any of the Equipment does not comply with the Specifications applicable to it or is otherwise than in accordance with this Contract, or if an Aircraft or any of the Equipment is in an unsatisfactory or unsafe condition; or if any of the Equipment is not safely secured or fitted to an Aircraft; or if the Services are not being carried out with due diligence and care or in a safe, competent, skilful or professional manner, the Contractor shall at its expense, upon receipt of written notice from the Principal, forthwith modify, repair or replace the Aircraft and/or any of the Equipment and/or modify or remedy the Services (as the case may be) to the satisfaction of the Principal's Representative and until modified, repairs, replaced or remedies as aforesaid, the charges under the Contract shall not be payable.
- 4.2 The Principal may, at its absolute discretion, conduct periodic aviation safety audits in relation to the Contractor's Base, Aircraft, Equipment, standard operational procedures, (SOPs) management, operations and maintenance systems and the Contractor will co-operate with any such audit arranged by the Principal.

**5. CHARGES**



**5.1 Services Charges**

- 5.1.1 In consideration of the Contractor providing the Services, the Principal shall, subject to this Contract, in respect of the Aircraft pay the Contractor the corresponding Flight Time Charge and pro-rata thereof to the nearest one tenth of one hour for the Flight Time of the Aircraft as based on the Flying Hours Record, and recompense any costs as applicable under Sub-clause 5.1.2, and as per the Pricing Schedule at Part C1 in accordance with this Contract.
- 5.1.2 In consideration of the Contractor providing the Services, the Principal shall, subject to this Contract, in respect of the Aircraft pay the Contractor the corresponding Standing Charge on the 15<sup>th</sup> day of the month to which the Standing Charge applies.
- 5.1.3 The Flight Time Charge excludes those charges detailed in Schedule 2, Clause 3.
- 5.1.4 The Flight Time Charge is calculated by multiplying Flight Time by the hourly rate nominated in Schedule 2.
- 5.1.5 The Flight Time Charge as presented in Clause 1 of Schedule 2 remains valid for a minimum period of three (3) months from the commencement date. Variation is made according to the Rise and Fall clause detailed at clause 6 of Schedule 6.

**5.2 Flight Time Record**

- 5.2.1 The Flight Time Record required by Sub-clause 5.1.1 of Schedule 3 forms the basis for the Flight Time Charge and may be the subject of audit to verify the claimed Flight Time to actual Flight Time. The Contractor must retain a copy of the Flight Time Record, which shall be prima facie evidence of the Flight Time therein recorded, on site for the duration of the Contract.

**5.3 Landing, Navigation, Handling and Parking Charges**

- 5.3.1 In consideration of the Contractor providing the Services, the Principal shall, subject to this Contract, in respect of the Aircraft, reimburse the Contractor the corresponding Landing and Navigation charges, as levied by the appropriate authorities and incurred by the Contractor. In addition, the Principal shall reimburse any Handling and Parking Charges incurred at other than the Contractor's operating home Base, as levied by the appropriate authorities and incurred by the Contractor. Such charges shall not be payable by Principal if the Contractor is exempted from paying these or is reimbursed such charges. All claims are to be substantiated.

**5.4 Fuel Consumption Charges**

- 5.4.1 The Contractor is responsible for the cost of all fuel, oils and other lubricants consumed by the Aircraft under the terms of the Contract..

**5.5 After Hours Fuel Call Out Charges**

- 5.5.1 The Principal shall, subject to this Contract, in respect of the Aircraft, reimburse the Contractor the corresponding fuel operator "out of hours" call-out fees (e.g. for the issue of out of hours fuel – as per fuel operator charges). All claims are to be substantiated.

**5.6 Relocation Expenses and Flight Crew Allowances**

- 5.6.1 In the event that the Principal requires the Contractor to temporarily relocate to an alternative Base or to remain at a location, the Principal will pay all reasonable and properly substantiated accommodation, transport and subsistence expenses for the Contractor's operational Personnel. Recoverable expenses shall include:
- (a) accommodation and meals;

- (b) personal allowances or entitlements as mutually agreed between Principal and the Contractor; and
  - (c) transport between the airport and the place of accommodation.
- 5.6.2 The Contractor may also nominate fixed allowance charges for accommodation and meals as per Part C1, Clause 2. In such case, the Principal shall pay the lesser of the actual cost vs. the fixed allowance.
- 5.6.3 In the event of an Aircraft becoming unserviceable, the Contractor will meet the costs detailed in Sub-clause 5.6.1 for all Flight Crew and passengers stranded by an unserviceable Aircraft. These costs will include fee for service charges from NSW Police Force for guarding, transporting and housing detainees in custody.

## **6. INSURANCE**

### **6.1 Insurance**

- 6.1.1 Before commencing the Services, the Contractor shall, at its cost, effect and maintain for the full period of this Contract the following insurance upon the following conditions:

#### **6.1.1.1 Workers Compensation**

Insurance under common law of the State of New South Wales and/or Australia, and in compliance with all applicable laws relating to Workers' Compensation against any and all liability to its officers, employees, servants and agents.

#### **6.1.1.2 Public Liability Including Hangarkeepers**

Insurance under a comprehensive public and products liability policy to cover all sums which shall become legally liable to pay as compensation consequent upon:-

- (a) death of, or bodily injury or illness to, any person; and
- (b) loss of or damage to property,

arising out of the Contractor's performance of the Services under this Contract, or arising out of a breach of the Contract by the Contractor or out of any negligent act or omission, or wilful or malicious act, of the Contractor or of any servant or agent of the Contractor, with a limit of liability of not less than A\$20,000,000 for each and every occurrence.

#### **6.1.1.3 Motor Vehicles**

Insurance under a motor vehicle third party property damage policy, or motor vehicle comprehensive policy, any vehicle used by it or any other person whether or not owned by it in respect of which it has an obligation to insure by virtue of any applicable law relating to the insurance of motor vehicles. The limit of liability under the third party property section of the policy shall be not less than A\$5,000,000 for each and every occurrence including Bodily Gap Cover. Compulsory Third Party Insurance howsoever named will be maintained at all times with respect to any vehicles operating in public places.

#### **6.1.1.4 Aircraft**

- (a) Aircraft "All Risk" Hull insurance in respect of damage to or loss of any Aircraft however caused up to the full replacement value thereof. This amount is to be recorded on the policy document; and
- (b) Aircraft liability insurance to protect the Contractor against personal injury or damage arising from the provision of the Services by the Contractor under the Contract including without limitation, arising from the use, operation and maintenance of the Aircraft.

**6.1.1.5 Equipment**

Equipment insurance to insure the Contractor in respect of damage or a loss of any Equipment, tools and spare parts and other property provided by the Contractor under this Contract howsoever caused up to the full replacement value thereof.

**6.1.1.6 Aircraft Liability and Other Liabilities**

Third party personal injury, third party property damage, injuries to passengers, noise, loss of cargo and other legal liability (including property damage) for a combined single limit of A\$20,000,000 in relation to any one accident.

6.1.1.7 Additional insurance relative to the Services as the Contractor may require and such other insurances as may be required by the promulgated laws of the State of New South Wales and/or the Commonwealth of Australia.

6.2 The Contractor shall ensure that either the policies of insurance required under Clause 6.1 provide cover for its sub-contractors or that its sub-contractors effect and maintain similar policies of insurance.

**6.3 Insurers**

6.3.1 The policies of insurance required under Clause 6.1 shall be effected with financially secure insurers with a Standard and Poor's rating of A- or better, and approved by the Principal, which approval shall not be unreasonably withheld.

**6.4 Cancellation or Change**

6.4.1 Each policy of insurance shall provide that thirty (30) days written notice sent by registered mail shall be given by insurers to the Contractor and the Principal before any change to or cancellation of the policy is effected.

**6.5 Named Insured**

6.5.1 Each policy of insurance under Sub-clauses 6.1.1.2 and 6.1.1.4 and 6.1.1.6 to 6.1.1.7 inclusive shall include as named insured the Principal and their contractors to the extent of the liabilities required to be insured by the Contractor under this Contract. All policies other than Clause 6.1.1.1 (Workers' Compensation) and 6.1.1.3 (Motor Vehicles) shall be endorsed to waive all express and implied rights of subrogation by the insurers against any named insured. The liability policies shall include a cross liability clause stipulating that the policy(ies) will apply in the same manner as though a separate policy had been issued to each named insured.

**6.6 Claims**

6.6.1 If any event occurs which may give rise to a claim involving the Principal under any insurances effected pursuant to Clause 6.1, the Contractor shall notify the Principal within fourteen (14) days and shall ensure the Principal is kept fully informed of any subsequent action and developments concerning the claim.

**6.7 Evidence**

6.7.1 Prior to commencement of the Services, the Contractor shall provide the Principal with a list of all policies of insurance (or certified copies thereof) or with a certificate of currency stating the insured parties, sum insured, insured risks, exclusions, deductibles, relevant endorsements and expiry date for each policy. During the Term the Contractor shall provide the receipts of payment of the current policies or other evidence of the currency of the policies. Nothing in this Sub-clause shall limit in any way the liability of the Contractor to effect and maintain the insurances in accordance with this Clause 6.

**6.8 Deductibles**

- 6.8.1 The Contractor shall bear the cost of any excesses or deductibles under the policies of insurance.

**6.9 Indemnity**

- 6.9.1 The Contractor shall indemnify and keep indemnified the Principal against any legal proceedings of any description and any loss or damage suffered by the Principal directly or indirectly as a result of failure by the Contractor to comply with its obligations under this Contract or which may otherwise affect the Principal's position as a named insured. Any insurance which the Contractor fails to effect under this Contract may be effected by the Principal and, without prejudice to its other rights and remedies, any relevant premium costs and expenses may be deducted by the Principal from any amount due and payable to the Contractor.

**6.10 Full Benefit**

- 6.10.1 The Contractor shall, in the event of any loss, injury, damage or claim, do all things necessary to obtain the full benefit of the insurances effected pursuant to this Contract and shall give the insurer prompt written notice of any loss or claim within the knowledge of the Contractor. The Contractor shall not do or omit to do anything which may provide grounds for an insurer to refuse payment of any claim made under any policy or which may otherwise prejudice the interests of any party named as an insured therein and indemnifies the Principal against any loss or damage the Principal may suffer as a result of doing or omitting to do any such thing.

## **PERSONNEL QUALIFICATIONS, EXPERIENCE, TRAINING & CURRENCY**

### **1. PILOTS**

#### **1.1 Pilot Approval**

- 1.1.1 All pilots to provide services under the Contract are to be pre-approved by the Principal.

#### **1.2 Qualifications and Experience**

- 1.2.1 Minimum pilot qualifications as PIC are:

1.2.1.1 Airline Transport Pilot Licence aeroplanes (ATPL) if required by the aircraft category, otherwise, Commercial Pilot Licence; and

1.2.1.2 Command Instrument Rating with a minimum of three (3) renewals. Pilots must be qualified and current on ILS, GNSS(RNAV), VOR, NDB, DME/GPS navigation aids.

- 1.2.2 The following Personnel minimum experience requirements are those expected by the Principal. It is accepted that there may be occasions when a particular requirement is not met by a person proposed by the Contractor. On such occasions, the Principal will make an assessment of the total experience and make a determination of acceptability or otherwise, based upon a written request provided by the Contractor and accompanied by supporting documentation relating to the proposed pilot. The final decision rests with the Principal.

- 1.2.3 The following minimums are set for PIC operations by both day and night, and must be logged in the pilot's personal flying log book:

- (a) 1,000 flying hours aeroplanes;
- (b) 5,000 flying hours Pilot-in-Command (PIC) aeroplanes;
- (c) 100 flying hours PIC turbine engines (if applicable);
- (d) 150 flying hours PIC on twin engine aeroplanes;
- (e) 50 flying hours PIC on the Contract Aircraft type;
- (f) 50 flying hours PIC logged as IFR of which 10 flying hours PIC are to be on the Contract Aircraft type; and
- (g) 50 flying hours PIC night flying.

- 1.2.4 Should there be an occasion when co-pilots are required by Principal, the following minimum pilot qualifications are required:

1.2.4.1 Commercial Pilot Licence (CPL); and

1.2.4.2 Co-pilot Instrument Rating with a minimum of one (1) renewal.

- 1.2.5 The minimum experience requirements as co-pilot aeroplanes which follows, is used as a general guide. These minimums are used as a basis of assessment with other relevant flying experience taken into account.

- 1.2.6 The following minimums are set for co-pilot operations by both day and night, and must be logged in the pilot's personal flying log book:

- (a) 500 flying hours aeroplanes;
- (b) 100 flying hours Pilot-in-Command (PIC) aeroplanes;

- (c) 10 flying hours PIC on twin engine aeroplanes;
- (d) 20 flying hours on the Contract Aircraft type;
- (e) 20 flying hours IFR (including training); and
- (f) 5 flying hours PIC night flying.

### **1.3 Pilot Training, Checking and Currency Requirements**

- 1.3.1 The Contractor is to have either a CASA approved CAR 217 training and checking organisation, or have a regimented and documented training and checking system which if not meeting the requirements of CAR 217, is acceptable to the Principal. The training and checking system should be incorporated as Part C of the company Operations Manual. The system must incorporate both day and night Base checks at least annually, Line/Route checks at least annually, as well as IFR checks as required by regulation. Base and Line Checks should be staggered to ensure that a pilot proficiency check is conducted each six (6) months.
- 1.3.2 As a component of Company Base and Line checks, at least annually written tests are to be undertaken by all pilots to operate on behalf of the Principal. Records of corrected tests are to be held on the pilot's training and checking files.
- 1.3.3 Prior to commencing operations all pilots must be current and meet any recency requirements relevant to the operation.

#### **1.3.4 Crew Resource Management Training**

- 1.3.4.1 All pilots to operate on behalf of the Principal are required to have completed Crew Resource Management (CRM) training through an accredited external training organisation, within the previous two (2) years. This may be undertaken internally if appropriate competence can be demonstrated to the satisfaction of the Principal.

#### **1.3.5 Management System**

- 1.3.5.1 The Contractor is to have in place an appropriate management system for the organisation of the Contract. It will include the elements of a Safety Management System and demonstrate a generative culture of safety management. Additionally it will provide the management framework for regulatory compliance and sound financial management. The Contractor shall at all times during the term of this Contract hold the necessary licences and approvals issued by CASA so as to permit the Contractor to carry out the Service at any time both day and by night in IMC. Pilots employed by the Contractor are to be fully familiar with the operation of the safety management system.

## **2. ENGINEERS**

### **2.1 Minimum Engineer Qualifications and Experience**

- 2.1.1 Engineers employed by or sub-contracted to the Contractor to perform maintenance on the Aircraft are to be appropriately licensed by the relevant regulatory authority to perform maintenance on Australian registered aircraft. They must hold the appropriate airframe and engines groups as a minimum, to cover the Aircraft type.