

Air Transport Deed of Standing Offer

Commonwealth of Australia as represented by the Department of Defence

ABN 68 706 814 312

Commonwealth

And

Pty Ltd

ABN

Contractor

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Deed made at Canberra on 2009

Parties **Commonwealth of Australia** as represented by the Department of Defence
ABN 68 706 814 312 ("**Commonwealth**")
Pty Ltd ABN having its registered office at ("**Contractor**")

Recitals

- A. The Commonwealth requires the provision of transportation services from time to time for the movement of equipment and personnel primarily by air.
- B. The Commonwealth wishes to create an Air Transport Standing Offer Panel by entering into this Deed with the Contractor and the Other Air Transport Deeds of Standing Offer with the Other Contractors in relation to the provision of transportation services.
- C. The Contractor agrees to provide the Services on the terms and conditions set out in this Deed.

Terms and Conditions

1. Definitions and interpretation

1.1 Definitions

"**ADF**" means the Australian Defence Force.

"**adjustment note**" has the same meaning as in the GST Act.

"**Accompanying Baggage**" means baggage (if any) which accompanies the Relevant Personnel or the Security Detachment on a move the subject of an Agreed Request and excludes any Relevant Equipment.

"**Affected Party**" means a party affected, or which alleges that it is affected, by a Force Majeure Event.

"**agency**" in clause 13.7 has the same meaning as in the Privacy Act.

"**Agreed Request**" means a Completed Request that has been accepted by the Commonwealth in accordance with clause 5.3 and as may be amended by agreement of the parties.

"**Air Transport Standing Offer Panel**" means the standing offer panel for the provision of the Services created by this Deed and the Other Air Transport Deeds of Standing Offer.

"**Aircraft**" means in respect of an Agreed Request, the aircraft specified in that Agreed Request and used to provide the Services.

"**Approvals**" means all approvals, certification, consents, permissions or similar required whether under law or otherwise for the performance of the Services, the operation of the Aircraft and for the movement of the Relevant Equipment, the Accompanying Baggage and Relevant Personnel in accordance with this Deed and an Agreed Request including:

- (a) clearances or approvals (including visa approvals applicable for entry/exit requirements) by the Australian Customs Service and any relevant equivalent overseas agencies or bodies;

- (b) clearances or approvals by the Australian Quarantine Inspection Service and any relevant equivalent overseas agencies or bodies;
- (c) confirmation of slot times, aircraft handling arrangements and airport approvals;
- (d) all approvals, certification, consents, permissions or similar required to carry Dangerous Goods on the Aircraft including, where necessary, the permission of CASA and any relevant equivalent national airworthiness authorities;
- (e) approvals from the CASA and any relevant equivalent national airworthiness authorities applicable to a country to operate an Aircraft;
- (f) flight authorisations;
- (g) landing and over-flight authorisations;
- (h) parking authorisation from a relevant airport corporation; and
- (i) departure authorisation,

but excluding any visas for the Relevant Personnel or the Security Detachment.

"Approved Privacy Code" has the same meaning as in the Privacy Act.

"Approved Subcontractor" means a Subcontractor listed in Attachment 2.

"Approved Subcontract" means a contract between the Contractor and an Approved Subcontractor.

"Attachment" means an attachment to this Deed.

"ATO" means the Australian Taxation Office.

"Audit" means a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which audit criteria are fulfilled.

"Authorised Person" has the meaning given to that term in clause 4.1(c).

"Background IP" means IP, other than Third Party IP, that:

- (a) is in existence at the Effective Date or is subsequently brought into existence other than as a result of the performance of this Deed or any Subcontract (or both); and
- (b) is embodied in, or attached to, the Services or is otherwise necessarily related to the performance of the Services.

"Civil Aviation Safety Authority" or "CASA" means:

- (a) the Australian Civil Aviation Safety Authority or any successor or other body succeeding to its function having the control or supervision over airworthiness and operation of aircraft or other matters relating to civil aviation in Australia; and
- (b) where agreed or required by the Commonwealth, any person, government department, bureau, commission or agency outside Australia, having a function similar to that described in paragraph (a) above.

"Claim" means any claim, action, demand or proceeding including any claim, action, demand or proceeding:

- (a) under, arising out of, or in any way in connection with, this Deed; or
- (b) otherwise at law or in equity including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution, including restitution based on unjust enrichment.

"Commercial-in-Confidence Information" means information (whether or not owned by the Commonwealth) that:

- (a) is by its nature confidential;
- (b) the receiving party knows or ought to know is confidential; or
- (c) the routes, the destinations, the movements, the deployments, the personnel and/or the equipment the subject of an Agreed Request;

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Deed;
- (e) is in the possession of a party without restriction in relation to disclosure before the date of receipt; or
- (f) has been independently developed or acquired by the receiving party.

"Commonwealth Representative" means the person holding or performing the office of Director General Strategic Logistics or any other person appointed pursuant to this Deed as the Commonwealth Representative.

"Completed Request" means a Request submitted by the Commonwealth to the Contractor in accordance with clause 5.1 which has been completed and signed by the Contractor and returned to the Commonwealth in accordance with clause 5.2.

"Contract Price" has the meaning given to that term in clause 5.2(b).

"Contractor Representative" means the Contractor's representative appointed in accordance with clause 4.2.

"Dangerous Goods" means articles or substances which are capable of posing a risk to health, safety, property or the environment or which are shown in the list of dangerous goods in the IATA Dangerous Goods Regulations 2009 or which are classified according to the IATA Dangerous Goods Regulations 2009..

"day" means a calendar day.

"Deed" means this Air Transport Deed of Standing Offer, the Attachments, any Agreed Request accepted by the Commonwealth in accordance with clause 5.3 and any document expressly incorporated as part of this Deed.

"Default" has the meaning given to that term in clause 24.2(b)(i).

"Default Notice" has the meaning given to that term in clause 24.2(b)(ii).

"Defence" in clause 22 means the Department of Defence or the ADF.

"Defence Property" means property of the Commonwealth administered by the Department of Defence (or where another Commonwealth department, agency or body other than the Department of Defence procures Services under this Deed in accordance with clause 2, such other Commonwealth department, agency or body) and includes the GFE and, in respect of an Agreed Request, the Relevant Equipment and the Accompanying Baggage.

"Defence Purposes" means any purpose within the power of the Commonwealth with respect to the defence of the Commonwealth and includes purposes that are necessary or incidental to that purpose.

"Delivery Date" has the meaning given to that term in clause 5.1(b).

"DI(G) PERS 25-4" means the Defence document *"Notification of Post Separation Employment"*.

"document" includes:

- (a) any paper or other materials on which there are writing, marks, figures, symbols or perforations having meaning for persons qualified to interpret them; and
- (b) any article or material from which sound, images, or writings are capable of being reproduced with or without the aid of any other article or device.

"DPPM" means the *Defence Procurement Policy Manual*.

"DRB 19" means the *Defence Workplace Relations Manual*.

"Employee" in clause 22, means an employee of Defence or a member of the ADF.

"Effective Date" means the date on which this Deed is signed by the parties, or if signed on separate days, the date of last signature.

"Equipment" means any equipment owned, used by or otherwise in the possession of the Commonwealth.

"Excepted Risk" means:

- (a) any negligent act or omission of the Commonwealth, the Commonwealth Representative or officers, employees or agents of the Commonwealth;
- (b) war, invasion, acts of foreign enemies, hostilities between nations, civil insurrection or militarily usurped power;
- (c) confiscation by governments or public authorities; or

- (d) ionising radiation, contamination by radioactivity from nuclear fuel or waste, or combustion of nuclear fuels,

which in the case of paragraphs (c) and (d) of this definition is not caused by the Contractor, its officers, its employees, its agents or its Subcontractors.

"**FAA**" means the United States Federal Aviation Administration.

"**Force Majeure Event**" has the meaning given to that term in clause 19.1.

"**Foreground IP**" means IP which is created under or otherwise in connection with the performance of this Deed or any Subcontract (or both), other than Third Party IP.

"**Government Furnished Equipment**" or "**GFE**" means any equipment, provided by the Commonwealth to the Contractor under clause 6.3(e) and any other equipment which the Commonwealth may agree to provide to the Contractor for the purposes of providing the Services (other than the Relevant Equipment and the Accompanying Baggage).

"**Ground Handling Services**" includes all activities associated with the loading, unloading, receipt and despatch of the Aircraft and the provision of all personnel, equipment and supplies necessary for the performance of these activities including cabin service, catering, ramp service, passenger service and field operation services.

"**GST Act**" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"**IATA**" means the International Air Transport Association.

"**ICAO**" means the International Civil Aviation Organisation.

"**Information Privacy Principle**" has the same meaning as in the Privacy Act.

"**infringement**" in clause 14.5 includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 40A of the *Designs Act 1906* (Cth), section 183 of the *Copyright Act 1968* (Cth), and section 25 of the *Circuits Layout Act 1989* (Cth), constitute an infringement.

"**Intellectual Property**" or "**IP**" means all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised anywhere in the world.

"**Key Person**" means a person filling a Key Staff Position.

"**Key Staff Position**" means a position that requires a person with highly specialised skills or such abilities that are crucial to the success of this Deed, as identified in accordance with Attachment 4.

"**Loading Date**" has the meaning given to that term in clause 5.2(b).

"**Loading Location**" has the meaning given to that term in clause 5.1(b).

"**month**" means a calendar month.

"Moral Rights" means:

- (a) a right of attribution of authorship;
- (b) a right not to have authorship falsely attributed; and
- (c) a right of integrity of authorship.

"National Privacy Principle" has the same meaning as in the Privacy Act.

"Non-scheduled Flight" means a flight over or into Australian territory other than under the authority of an international airline licence issued under the Air Navigation Act 1920 (Cth).

"Non-Australian Government Approvals" means the Approvals:

- (a) issued by a foreign government, organisation, agency, body or entity; and
- (b) which are expressly identified in an Agreed Request as being a Non-Australian Government Approval for the purposes of clause 13.1(e).

"Operator" means, in respect of an Agreed Request, the Subcontractor who will be the operator of the Aircraft (where applicable).

"Other Air Transport Deeds of Standing Offer" means the other Air Transport Deeds of Standing Offer between the Commonwealth and the Other Contractors for the operation of the Air Transport Standing Offer Panel.

"Other Contractors" means the contractors appointed by the Commonwealth to the Air Transport Standing Offer Panel from time to time.

"Personal Information" has the same meaning as in the Privacy Act.

"Personnel" means any personnel required to be transported by the Commonwealth.

"Privacy Act" means the *Privacy Act 1988* (Cth).

"Quality" means the degree to which a set of inherent characteristics fulfils requirements.

"Related Bodies Corporate" has the meaning given by section 9 of the *Corporations Act 2001* (Cth).

"Relevant Equipment" has the meaning given to that term in clause 5.1(b).

"Relevant Personnel" has the meaning given to that term in clause 5.1(b).

"Relevant Period" in clause 22 means each of:

- (a) 24 months;
- (b) 12 months; and
- (c) 6 months,

before the request for the approval contemplated by clause 22(b) was made.

"Request" means a request issued by the Commonwealth to the Contractor for the Contractor to provide Services in the form or substantially in the form set out in Attachment 1 (or such other form as may be prescribed by the Commonwealth from time to time) and issued in accordance with clause 5.

"Security Detachment" means a security detachment, provided by the Commonwealth, to escort the Relevant Equipment whilst being transported from the Loading Location to the Unloading Location.

"Service Provider" in clause 22, means a person, other than an Employee or the Contractor and its Subcontractors and their respective officers, employees and agents, involved in Defence work or engaged by Defence.

"Service Commencement Date" means 2 November 2009.

"Services" means the movement of Equipment and/or Personnel in accordance with an Agreed Request and this Deed, and includes all other tasks and things which the Contractor is required to do or provide under this Deed.

"Special Conditions" has the meaning given to that term in clause 5.1(b).

"Subcontractor" means any person, other than the Commonwealth, that directly or indirectly furnishes goods and services, for the purposes of this Deed, to the Contractor; and **"Subcontract"** has a corresponding meaning.

"Surveillance" means continual monitoring and verification of the status of an entity and analysis of records to ensure that specified requirements are being fulfilled (the entity could be a system, process, product, project, contract etc).

"tax invoice" has the same meaning as in the GST Act.

"taxable supply" has the same meaning as in the GST Act.

"Technical Data" means all technical know-how and information reduced to material form produced, acquired or used by the Contractor or Subcontractors in relation to the Services and includes all data, databases, manuals, handbooks, designs, standard specifications, reports, writings, models, sketches, plans, drawings, calculations, software, source code, software design data, test results, software updates and other items describing or providing information in relation to the services or their operations.

"Term" has the meaning given to that term in clause 3(a).

"Third Party IP" means that IP which is owned by a party other than the Commonwealth, the Contractor or Subcontractors, and is embodied in, or attaches to, the Services or is otherwise necessarily related to the functioning or operation of the Services.

"Unloading Location" has the meaning given to that term in clause 5.1(b).

"Working Day" in relation to the doing of an action in a place means any day other than a Saturday, Sunday or public holiday in that place.

1.2 Interpretation

In this Deed, unless the contrary intention appears:

- (a) headings are for the purpose of convenient reference only and do not form part of this Deed;
- (b) the singular includes the plural and vice-versa;
- (c) a reference to one gender includes the other;
- (d) a reference to a person includes a body politic, body corporate or a partnership;
- (e) if the last day of any period prescribed for the doing of an action (other than the provision of the Services) falls on a day which is not a Working Day, the action will be done no later than the end of the next Working Day;
- (f) a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- (g) a reference to a clause includes a reference to a subclause of that clause;
- (h) a reference to a 'dollar', '\$', '\$A' or 'AUD' means the Australian dollar unless otherwise stated;
- (i) a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document as that specification, publication, Commonwealth policy or document may be amended from time to time;
- (j) the word 'includes' in any form is not a word of limitation; and
- (k) a reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party novates any part of this Deed.

1.3 Deed objectives

- (a) The objectives of the parties in entering into this Deed are:
 - (i) to ensure that the Contractor performs the Services on time, to the required safety, quality and capability, in accordance with this Deed;
 - (ii) to provide an effective capability to the ADF that:
 - A. supports the ADF's mission to 'fight and win';
 - B. supports the Commonwealth's policy of Defence self-reliance; and
 - C. minimises the Commonwealth's costs of moving Equipment;
 - (iii) to develop, maintain and enhance appropriate skill sets and capabilities within both the Commonwealth and the Contractor;

- (iv) to obtain value for money for the Commonwealth on an ongoing basis in relation to the delivery of the Services;
 - (v) to obtain for the Contractor as a commercial entity a reasonable return on its investment when it performs the Services efficiently and successfully, and a return that appropriately reflects properly managed risks involved in the performance of this Deed;
 - (vi) to facilitate the retention and enhancement of strategically important Australian capabilities and skills;
 - (vii) to encourage the most efficient possible use of resources for moving Equipment and Personnel;
 - (viii) to work within a framework that ensures personnel and materiel safety, and assures compliance with all laws and other regulatory requirements; and
 - (ix) to achieve these joint objectives through a culture of mutual respect and co-operation, and in an environment that fosters innovation, continuous improvement, cost efficiency, transparency and open, honest and timely communication.
- (b) Without in any way affecting or overriding the other terms of this Deed, the Contractor agrees to perform its obligations and enforce its rights under this Deed having regard to, and with the aim of, satisfying the objectives described in clause 1.3(a).

1.4 Effective Date

This Deed is legally binding from the Effective Date.

1.5 Precedence of documents

If there is any inconsistency between the documents comprising this Deed, a descending order of precedence will be accorded to:

- (a) this Deed (other than an Agreed Request or the Attachments);
- (b) any Agreed Request;
- (c) the Attachments; and
- (d) any document incorporated by express reference as part of this Deed,

so that the terms of the higher ranked document, to the extent of the inconsistency, will prevail.

2. Use by other Commonwealth departments, agencies or bodies

The Contractor acknowledges and agrees that the Commonwealth may, from time to time, procure Services under this Deed and the Air Transport Standing Offer Panel to meet the transport requirements of Commonwealth departments, agencies or bodies other than the Department of Defence.

3. Term

- (a) Subject to clause 3(b), this Deed commences on the Effective Date and, unless terminated earlier in accordance with this Deed or otherwise, expires three years after the Service Commencement Date ("**Term**").
- (b) The Commonwealth may, in its absolute discretion, extend the Term for two further periods of up to one year each in duration.
- (c) The Commonwealth may exercise its option to extend the Term under clause 3(b) at any time prior to the date being three months prior to the expiry of the then current Term by notice in writing to the Contractor.
- (d) The Contractor acknowledges and agrees that the Commonwealth may, in its absolute discretion, exercise the option to extend the term of any one or more of the Other Air Transport Deeds of Standing Offer, whether or not it exercises the option to extend the Term of this Deed.
- (e) Where the Commonwealth exercises its option to extend the Term of this Deed under clause 3(b), the Deed will continue for the extended Term on the same terms and conditions.

4. Roles and responsibilities

4.1 Commonwealth Representative

- (a) The Commonwealth Representative is responsible for administering this Deed on behalf of the Commonwealth.
- (b) If the Commonwealth appoints as Commonwealth Representative a person who is not a Commonwealth officer, the Commonwealth must obtain the prior written consent of the Contractor, whose consent must not be unreasonably withheld.
- (c) The Commonwealth Representative may delegate its functions, or authorise that its functions be carried out on its behalf. The Commonwealth must notify the Contractor in writing of the persons who are delegated functions or authorised to carry out functions on behalf of the Commonwealth Representative ("**Authorised Persons**"), from time to time, and the scope of their delegation or authorisation.
- (d) The Contractor must comply with the reasonable directions of:
 - (i) the Commonwealth Representative made within the scope of the administration of this Deed; and
 - (ii) an Authorised Person, within the scope of their delegation or authorisation.
- (e) If given orally, a direction must be confirmed in writing within 14 days. Neither the Commonwealth Representative nor any Authorised Person will have any authority to waive any provision of, or release the Contractor from, its obligations under this Deed.
- (f) Unless authorised by this Deed or a direction given under clause 4.1(d), any work performed or cost incurred by the Contractor in response to a communication from

the Commonwealth Representative or an Authorised Person is at the Contractor's sole risk.

4.2 Contractor Representative

The Contractor must on or before the Service Commencement Date nominate in writing the person with the authority to represent the Contractor for the purposes of this Deed. Any communication passed by the Commonwealth to this person will be deemed to have been delivered to the Contractor.

5. Request for provision of Services

5.1 Request

- (a) At any time during the Term after the Service Commencement Date, the Commonwealth may issue a Request to the Contractor requesting the Contractor to submit a Completed Request in relation to the movement of Equipment and/or Personnel.
- (b) Each Request issued by the Commonwealth under clause 5.1(a) may specify:
 - (i) **Item 1** - an inventory of the Equipment to be moved (if applicable) ("**Relevant Equipment**");
 - (ii) **Item 2** - the number of Personnel to be moved (if applicable) ("**Relevant Personnel**") and the volume of any Accompanying Baggage;
 - (iii) **Item 3** - the date and time by which the Relevant Equipment and/or the Relevant Personnel and the Accompanying Baggage (as applicable) must be delivered to the Commonwealth at the Unloading Location ("**Delivery Date**");
 - (iv) **Item 4** - the date and time from which the Commonwealth can make the Relevant Equipment and/or the Relevant Personnel and the Accompanying Baggage (as applicable) available to the Contractor for loading at the Loading Location;
 - (v) **Item 5** - the location(s) for the collection and loading of the Relevant Equipment and/or Relevant Personnel and the Accompanying Baggage (as applicable) ("**Loading Location**");
 - (vi) **Item 6** - the location(s) for the delivery and unloading of the Relevant Equipment and/or Relevant Personnel and the Accompanying Baggage (as applicable) ("**Unloading Location**");
 - (vii) **Item 7** - any special conditions which apply in respect of the move (if applicable) ("**Special Conditions**");
 - (viii) **Item 8** - the date by which the Contractor must complete and submit the Completed Request to the Commonwealth in accordance with clause 5.2; and

- (ix) **Item 9** - any other requirements of the Commonwealth in relation to the move or any other information or details which the Contractor must submit as part of the Completed Request.
- (c) Set out below are examples of some of the matters which the Commonwealth may specify as additional requirements in Item 9 of the Request:
- (i) **(Road transportation):** the provision of road transportation services to transport the Relevant Equipment and/or Relevant Personnel and Accompanying Baggage from the Loading Location to the departure airport or from the arrival airport to the Unloading Location;
 - (ii) **(Insurances):** the provision of additional insurances by the Contractor;
 - (iii) **(Flight schedule):** the provision of a flight schedule;
 - (iv) **(Load plan):** the provision of the load plan that details the planned load and weight allocation and identifies any excess capacity that can be used by the Commonwealth;
 - (v) **(Risk assessment)** the provisions of a risk assessment identifying key risks in relation to the provision of the Services and strategies which will be implemented to manage the risks;
 - (vi) **(Aircraft crew details):** the provision of details of the pilot and aircrew names, nationalities, citizenship and passport details;
 - (vii) **(Approvals):** whether the Commonwealth will be responsible for obtaining any Approvals;
 - (viii) **(Ground Handling Services):** whether the Commonwealth will provide any Ground Handling Services;
 - (ix) **(In-flight manager):** the provision of an in-flight manager;
 - (x) **(Entertainment):** any requirements for the provision of entertainment for the Relevant Personnel or for a Security Detachment;
 - (xi) **(Meals):** any additional requirements in relation to meals;
 - (xii) **(Fuel):** whether the Commonwealth will supply fuel at the Loading Location, the Unloading Location and/or any technical stops between the Loading Location and the Unloading Location and the terms and conditions upon which the Commonwealth will supply the fuel;
 - (xiii) **(Security):** any security requirements;
 - (xiv) **(Unit load devices):** whether the Commonwealth requires the Contractor to provide unit load devices for loading the Relevant Equipment;
 - (xv) **(Animals):** whether the Commonwealth requires the Contractor to move any animals;
 - (xvi) **(Non-Australian Government Approvals):** whether there are any Non-Australian Government Approvals for the purposes of clause 13.1(e)

- (xvii) **(Other):** any other requirements specified by the Commonwealth.

5.2 Completed Request

- (a) On or before the date specified in Item 8 of the relevant Request, the Contractor must either:
- (i) prepare and submit a Completed Request at the Contractor's cost to the Commonwealth Representative in accordance with clause 5.2(b); or
 - (ii) notify the Commonwealth Representative that the Contractor will not submit a Completed Request in respect of the Request.
- (b) Where the Contractor submits a Completed Request in accordance with clause 5.2(a)(i), the Completed Request must set out:
- (i) **Item 10** - the price payable by the Commonwealth in respect of the relevant move, which will include all costs associated with the provision of the Services under the Request ("**Contract Price**"). The Completed Request must contain a detailed breakdown of the Contract Price including sufficient details to enable the Commonwealth to determine the basis on which the Contract Price has been calculated.
 - (ii) **Item 11** - the date and time on which the Contractor requires the Commonwealth to make the Relevant Equipment and/or Relevant Personnel and the Accompanying Baggage available at the Loading Location in order for the Contractor to carry out the move by the Delivery Date, which must be no earlier than the date specified in Item 3 of the Request ("**Loading Date**");
 - (iii) **Item 12** - details of the Aircraft including Aircraft Operating Certificate, aircraft type, registration, maximum payload uplift capacity of personnel and/or equipment based on the route to be operated;
 - (iv) **Item 13** - where the Contractor will not operate the Aircraft, details of the Operator which will operate the Aircraft and details of any other subcontractor which will otherwise provide the whole or any part of the Services;
 - (v) **Item 14** - the Contractor's point of contact including contact details in respect of the Services;
 - (vi) **Item 15** - the maximum liability of the Commonwealth for delays to the scheduled departure time of an Aircraft in accordance with clause 23(a) and the maximum liability of the Commonwealth for cancellation of an Agreed Request in accordance with clause 24.3(c);
 - (vii) **Item 16** - any other information required by the Commonwealth in the Request; and
 - (viii) **Item 17** - the time within which the Commonwealth may accept the Completed Request in accordance with clause 5.3 which must not be less than 10 days.

- (c) The Completed Request will constitute an irrevocable offer by the Contractor to undertake all tasks required to perform the Services the subject of the Completed Request on the terms of the Completed Request and this Deed, such offer being capable of acceptance by the Commonwealth within a period of 10 days (or such longer period as the Contractor specifies in the Completed Request or as the parties may agree) after receipt of the Completed Request by the Commonwealth in accordance with this clause 5.2.
- (d) Prior to the date specified in Item 8 of a Request, the Contractor may request further information or clarification in relation to the Request from the Commonwealth. If the Commonwealth responds to such request for further information or clarification, the Commonwealth may issue the request and the response to such of the Other Contractors who have been issued with the Request.

5.3 Approval of a Completed Request

The Commonwealth may:

- (a) subject to the terms of the Request, accept the Completed Request by signing the Completed Request and returning it to the Contractor within 10 days (or such longer period as the Contractor specifies in the Completed Request or as the parties may agree) of receipt of the Completed Request in which case the Contractor must undertake all tasks required to perform the Services the subject of the Agreed Request on the terms of the Agreed Request and this Deed;
- (b) reject the Completed Request; or
- (c) require the Contractor to submit an amended Completed Request. At the same time, the Commonwealth must advise the Contractor of the aspects of the Completed Request which require amendment. The Contractor must:
 - (i) submit an amended Completed Request within 3 days of the Commonwealth's notice that it requires the Contractor to submit an amended Completed Request addressing the Commonwealth's requirements; or
 - (ii) decline to submit an amended Completed Request. If the Contractor declines to submit an Completed Request, the Commonwealth will be taken to have rejected the Completed Request.

Clause 5.2 and this clause 5.3 will apply to any amended Completed Request until the Commonwealth accepts or rejects the Completed Request.

5.4 No obligation to use Contractor

The Commonwealth has no obligation to use the Contractor to provide any Services the subject of a Request unless and until the Commonwealth accepts a Completed Request in accordance with clause 5.3(a).

5.5 Basis for selecting a Completed Request

Where the Commonwealth issues a Request to the Contractor under this Deed for the provision of Services and issues a request under one or more of the Other Air Transport Deeds of Standing Offer in respect of the same Services, the Commonwealth may accept the completed

request which offers the best value for money. In determining which completed request offers the best value for money, the Commonwealth may take into account such matters as the Commonwealth, in its absolute discretion, determines including the past performance of the Contractor (whether under this Deed or otherwise). The Commonwealth may, in its absolute discretion, elect not to accept any completed request in respect of the relevant Services.

5.6 Amendment of an Agreed Request

- (a) The parties may amend the terms of an Agreed Request from time to time by agreement in writing.
- (b) The parties acknowledge that due to unforeseen or emergency situations, including changes in the Commonwealth's operational requirements, the Commonwealth Representative and the Contractor Representative may need to amend the terms of an Agreed Request. Such amendments will be effective and binding on the parties if the terms of the amendment are agreed in writing and signed by or confirmed by email exchange between the Commonwealth Representative and the Contractor Representative.

6. Provision of Services

6.1 Pre-move meetings

- (a) Where the Commonwealth accepts a Completed Request in accordance with clause 5.3, the Commonwealth may require the Contractor to meet with Commonwealth representatives at a date and location determined by the Commonwealth to discuss the move the subject of the Agreed Request. Where practicable, the Commonwealth will include details of the date and location of the meeting in the Request and whether it requires the Operator (if applicable) to attend. The Commonwealth may require the Contractor to attend additional meetings at a date and location determined by the Commonwealth. At the meeting, the parties may:
 - (i) agree to amend the details of the Agreed Request provided that any such agreement will not be binding on the parties unless and until the amendment is agreed in writing by the Commonwealth Representative and the Contractor Representative; and
 - (ii) agree the timing and order in which the Commonwealth is to deliver the Relevant Equipment to the Loading Location or the timing and order in which the Contractor is to deliver the Relevant Equipment to the Unloading Location.
- (b) Where requested by the Commonwealth, the Contractor will ensure that the Operator (if applicable) attends the meetings referred to in clause 6.1(a).

6.2 Contracted requirement

- (a) Where the Commonwealth accepts a Completed Request in accordance with clause 5.3:
 - (i) the Contractor must provide the Services in accordance with the terms of this Deed and the Agreed Request;

- (ii) the Commonwealth must deliver the Relevant Equipment and/or the Relevant Personnel and the Accompanying Baggage to the Loading Location on or before the Loading Date;
 - (iii) the Contractor must safely and securely move the Relevant Equipment and/or the Relevant Personnel and the Accompanying Baggage from the Loading Location to the Unloading Location by the Delivery Date;
 - (iv) the Contractor must comply with any Special Conditions and the other requirements of the Agreed Request; and
 - (v) the Commonwealth must pay the Contract Price to the Contractor in accordance with clause 10.1.
- (b) Subject to clauses 14.4(a) and 19 and the other provisions of this Deed, the Contractor acknowledges that in the event that the Contractor fails to provide the Services in accordance with the terms of this Deed and an Agreed Request the Commonwealth may suffer loss for which it will be entitled to claim damages from the Contractor.
- (c) Subject to clauses 14.4(a) and 19 and the other provisions of this Deed, without limiting the Commonwealth's rights at law or under clause 6.2(b), the Contractor will, within 10 days of a request by the Commonwealth, reimburse the Commonwealth for the costs incurred by the Commonwealth in providing any accommodation and food for the Relevant Personnel and any Security Detachment required due to the delayed departure of the Aircraft (except to the extent the delay is caused by the Commonwealth, its officers, employees and agents).

6.3 Loading and unloading process

- (a) Unless and to the extent the Commonwealth specifies otherwise in an Agreed Request, the Contractor is responsible for:
- (i) providing unit load devices to the Commonwealth at the Commonwealth's nominated location on which the Relevant Equipment may be loaded by the Commonwealth. If specified in an Agreed Request, the Contractor must provide the unit load devices by the date specified in the Agreed Request or otherwise on the date notified by the Commonwealth to the Contractor at the Commonwealth's nominated location;
 - (ii) unloading the Relevant Equipment from Commonwealth vehicles following delivery of the Relevant Equipment by the Commonwealth to the Loading Location and loading the Relevant Equipment onto Commonwealth vehicles following delivery of the Relevant Equipment by the Contractor to the Unloading Location;
 - (iii) loading and tie down/securing of the Relevant Equipment, Accompanying Baggage and/or unit load devices on the Aircraft at the Loading Location for transport and unloading the Relevant Equipment, Accompanying Baggage and/or unit load devices from the Aircraft at the Unloading Location;

- (iv) providing, operating and using all suitable equipment, materials and consumables including cranes, forklifts and ramps and bridging plates required for the loading, tie down/securing and unloading of the Relevant Equipment and the Accompanying Baggage and for the provision of the Services;
 - (v) providing all Ground Handling Services; and
 - (vi) providing all appropriately qualified personnel for performing the activities referred to in clauses 6.3(a)(i) to 6.3(a)(v).
- (b) Where specified by the Commonwealth in an Agreed Request, the Commonwealth will provide at its cost personnel as specified in the Agreed Request at the Loading Location and/or the Unloading Location (as the case may be) to assist the Contractor to undertake the loading and tie down/securing and the unloading of the Relevant Equipment and the Accompanying Baggage in accordance with the Agreed Request. Such Commonwealth personnel will work under the direction of the Contractor.
- (c) Where Commonwealth personnel assist the Contractor or are involved in the loading and/or tie down/securing of the Relevant Equipment or the Accompanying Baggage on the Aircraft (whether pursuant to clause 6.3(b) or otherwise), the Contractor must, upon completion of the loading and tie down/securing of the Relevant Equipment or the Accompanying Baggage, examine the tie down/securing of the Relevant Equipment or the Accompanying Baggage to ensure that it is safe and secure. Where the Contractor is not satisfied with the tie down/securing of the Relevant Equipment or the Accompanying Baggage, the Contractor must make such alterations to the tie down/securing of the Relevant Equipment or the Accompanying Baggage as are necessary in order to ensure that it is satisfied with the tie down/securing of the Relevant Equipment or the Accompanying Baggage.
- (d) The Contractor must tie down the Relevant Equipment in accordance with any tie down requirements specified by the Commonwealth in an Agreed Request as such tie down requirements may be amended by agreement of the parties (for example, where agreement is required to align the tie down requirements specified by the Commonwealth in an Agreed Request with the Contractor's or the Operator's (as the case may be) standard operating procedures for securing cargo).
- (e) Where specified by the Commonwealth in an Agreed Request, the Commonwealth will provide at its cost equipment and facilities as specified in the Agreed Request at the Loading Location and/or the Unloading Location (as the case may be) to assist the Contractor to undertake the loading and tie down/securing and the unloading of the Relevant Equipment and the Accompanying Baggage in accordance with the Agreed Request. Unless specified otherwise in the Agreed Request, such equipment will be operated by Commonwealth personnel.
- (f) Notwithstanding clauses 6.3(b), 6.3(d), and 6.3(e) and subject to clause 14.4(a), the Contractor takes full responsibility and risk for the tie down/securing of all Relevant Equipment and the Accompanying Baggage. The Commonwealth will have no liability to the Contractor and the Contractor will not be entitled to make any Claim against the Commonwealth, arising out of or in connection with any assistance provided by Commonwealth personnel in the tie down/securing of the Relevant Equipment and the Accompanying Baggage.

6.4 Provision of Aircraft and other items

- (a) The Contractor must provide at its cost all aircraft required to transport the Relevant Equipment and/or Relevant Personnel and the Accompanying Baggage and all labour, equipment, ground support equipment, plant, consumables and materials required for the proper performance of this Deed and the provision of the Services.
- (b) Without limiting the Contractor's obligations or the Commonwealth's rights under this Deed or in respect of an Agreed Request, in the event that an Aircraft specified in an Agreed Request is not available, the Contractor must use its best endeavours to provide or to procure as soon as practicable a substitute Aircraft with the same configuration to that configuration specified in the relevant Agreed Request and that complies with all of the requirements of the Agreed Request relating to the relevant Services to be performed. The use of any substitute Aircraft will be subject to the prior approval of the Commonwealth.
- (c) In respect of each Agreed Request, the Contractor warrants that the Aircraft and any equipment, plant, consumables and materials used in the provision of the Services will be fit for the purpose of providing the Services in respect of that Agreed Request.

6.5 Relevant Personnel

- (a) Unless and to the extent specified otherwise in an Agreed Request, the Commonwealth must use its best endeavours to ensure that:
 - (i) the Relevant Personnel (if any) arrive at the Loading Location and report to the nominated traffic counter (where applicable) no later than 90 minutes prior to the scheduled departure time on the Loading Date; and
 - (ii) the Relevant Personnel embark only at the Loading Location and disembark only at the Unloading Location.
- (b) Unless and to the extent specified otherwise in an Agreed Request, the Commonwealth must ensure that each of the Relevant Personnel and the Security Detachment to be transported is in possession of the following documents (as applicable):
 - (i) a valid passport, other identification document or documentation in accordance with any applicable Status of Forces Agreement or similar agreements;
 - (ii) valid visas;
 - (iii) health certificates; and
 - (iv) subject to clause 6.5(c), a valid ticket, boarding pass or is listed on the manifest.
- (c) Unless and to the extent specified otherwise in an Agreed Request the Contractor must:
 - (i) provide a check-in service which commences at least three (3) hours prior to the scheduled departure time on the Loading Date:

- (ii) issue each of the Relevant Personnel and Security Detachment nominated by the Commonwealth with a valid ticket or boarding pass.

6.6 Performance of Services

- (a) The Contractor must perform the Services the subject of an Agreed Request:
 - (i) in accordance with this Deed and the terms of the Agreed Request;
 - (ii) to the satisfaction of the Commonwealth Representative;
 - (iii) diligently, effectively and to a high professional standard;
 - (iv) using personnel who are appropriately qualified and experienced in accordance with the Aircraft Operating Certificate for the Aircraft and the rules and regulations of the countries in which the Aircraft will operate;
 - (v) in accordance with all relevant laws, statutes, regulations, by-laws and policies of the Commonwealth, and with the requirements of any State, Territory or local authority;
 - (vi) in accordance with any applicable laws of any foreign countries including those in which the Aircraft will operate; and
 - (vii) in accordance with the reasonable directions from time to time of the Commonwealth Representative.
- (b) Unless specified otherwise in an Agreed Request, the Contractor will be responsible for the provision of all flight crew, technical crew, check-in staff, engineering services, Ground Handling Services and cabin crew necessary to provide the Services.
- (c) Unless specified otherwise in an Agreed Request, the Contractor must provide meals to all Relevant Personnel and any Security Detachment in accordance with best industry standards and taking into consideration any dietary, religious and cultural requirements of such personnel.
- (d) If the Contractor does not meet any of the performance requirements in this Deed then, in addition to the Commonwealth's rights under this Deed and at law or in equity, the Commonwealth Representative may direct the Contractor to take any measures the Commonwealth Representative considers reasonably necessary to remedy the failure to meet the performance requirements at no additional cost to the Commonwealth.

6.7 Security Detachment

- (a) Where specified by the Commonwealth in an Agreed Request, the Commonwealth will provide a Security Detachment to accompany the move of the Relevant Equipment the subject of the Agreed Request from the Loading Location to the Unloading Location.
- (b) Where clause 6.7(a) applies, the Contractor must not move the Relevant Equipment the subject of the Agreed Request unless accompanied by the Security Detachment.

The Contractor must cooperate with the Commonwealth in relation to the Commonwealth's security requirements.

- (c) The Contractor must obtain any necessary approvals and permissions from the relevant airport authority to allow the Security Detachment to remain with the Relevant Equipment at all times (including whilst on the tarmac) during the loading, unloading and transportation of the Relevant Equipment.

6.8 Movement of animals

- (a) An Agreed Request may involve the movement of animals.
- (b) Where an Agreed Request involves the movement of animals, the Contractor must:
 - (i) notify the Australian Quarantine Inspection Service at least 48 hours prior to the departure and the arrival of the relevant flight carrying the animals into or out of Australia;
 - (ii) obtain any necessary Australian Quarantine Inspection Service approvals and permissions and comply with any conditions attaching to such approvals and permissions in relation to the movement of animals; and
 - (iii) comply with any requirements specified in the Agreed Request in relation to the movement of the animals.
- (c) Where an Agreed Request involves the movement of animals, the Commonwealth must provide to the Contractor such information and documentation reasonably requested by the Contractor to enable the Contractor to comply with clause 6.8(b) within 3 Working Days of a request by the Contractor.

7. Operational requirements

- (a) In relation to each move the subject of an Agreed Request, the Contractor must provide an on-site representative at the Loading Location and the Unloading Location.
- (b) The Contractor must ensure that the Contractor's personnel involved in the provision of the Services:
 - (i) at all times carry identification and do not wear military uniforms;
 - (ii) wear personal protective clothing and equipment necessary for their self protection which is suitably marked to indicate the wearer is a civilian; and
 - (iii) do not carry weapons and do not handle, other than for the purposes of loading or unloading the Relevant Equipment and the Accompanying Baggage or to enable inspection by the Australian Customs Service, the Australian Quarantine Inspection Service or relevant equivalent overseas agencies or bodies, the Relevant Equipment, the Accompanying Baggage or any weapon under the care custody or control of ADF personnel under any circumstances.

8. Air transport specific requirements

8.1 Dangerous Goods

- (a) Subject to clause 8.1(c), the Contractor must carry or must ensure that the Operator carries (as the case may be) all Relevant Equipment specified in an Agreed Request including any Relevant Equipment which comprise Dangerous Goods.
- (b) In respect of any Relevant Equipment which comprise Dangerous Goods, the Contractor must comply with or must ensure that the Operator complies with (as the case may be) all applicable Australian and international statutory and regulatory requirements, including any requirements set out in the Technical Instructions for the Safe Transport of Dangerous Goods by Air, approved and published by ICAO from time to time and the IATA Dangerous Goods Regulations 2009 (as amended from time to time) unless the Commonwealth grants an express written waiver.
- (c) Where the Relevant Equipment in respect of an Agreed Request includes Dangerous Goods, the Commonwealth must:
 - (i) specifically identify the Dangerous Goods in the Request and provide details of UN numbers, UN class numbers, quantities and net explosive quantities in respect of the Dangerous Goods;
 - (ii) provide the Contractor with certified and completed dangerous goods documentation in accordance with applicable ICAO, IATA and other regulatory requirements upon delivery of the Relevant Equipment to the Contractor at the Loading Location;
 - (iii) ensure that the Dangerous Goods are packaged in accordance with applicable ICAO, IATA and other regulatory requirements; and
 - (iv) deliver the Dangerous Goods to the Contractor at the Loading Location for acceptance by the Contractor in accordance with the ICAO, IATA and other regulatory requirements.

8.2 State aircraft and use of military call sign

- (a) Subject to clause 8.2(d), where specified by the Commonwealth in an Agreed Request, Aircraft used by the Contractor or the Operator (as the case may be) to provide the Services will operate and travel as "State aircraft". In such circumstances, the Commonwealth will obtain all necessary diplomatic, landing and overflight clearances for any Aircraft travelling as "State aircraft" and will issue a military call sign for each relevant flight.
- (b) The Contractor must provide or ensure that the Operator provides all information and documentation requested by the Commonwealth to enable the Commonwealth to meet its obligations under clause 8.2(a) by the dates specified in the Agreed Request or, where no date is specified in an Agreed Request, the date nominated by the Commonwealth in writing to the Contractor and the Operator.
- (c) The Contractor must or ensure that the Operator will (as the case may be) only use a military call sign issued by the Commonwealth for the purpose of providing the Services. The Commonwealth may revoke a military call sign at any time if the

Commonwealth considers, in its absolute discretion, there has been an abuse, misuse or otherwise unauthorised use of a military call sign.

- (d) An Aircraft used by the Contractor or the Operator (as the case may be) to provide the Services which is to operate and travel as a "State aircraft" in accordance with clause 8.2(a), must not operate and travel as a "State aircraft" during the positioning of the Aircraft to the Loading Location or the de-positioning of the aircraft from the Unloading Location for the purposes of providing the Services.
- (e) The Commonwealth must provide the military call sign and the diplomatic clearance codes to the Contractor at least 24 hours prior to the Loading Date.

8.3 Noise control

In providing the Services, the Contractor must or ensure that the Operator will (as the case may be) comply with all applicable noise controls and noise restrictions except to the extent that the Contractor has obtained a valid waiver in respect of them.

8.4 Airworthiness requirements

- (a) The Contractor must or ensure that the Operator will (as the case may be) comply with the ADF Military Aviation Regulations as notified by the Commonwealth to the Contractor from time to time.
- (b) The Contractor must or ensure that the Operator will (as the case may be):
 - (i) where the Services involve the use of Aircraft in Australian airspace:
 - A. ensure that at all times when Aircraft enter Australian airspace, the Contractor or the Operator (as the case may be) possesses an Air Operator's Certificate issued by CASA or a Non-Scheduled Flight Approval issued by CASA. The Contractor or the Operator (as the case may be) must provide a copy of such Air Operator's Certificate or Non-Scheduled Flight Approval to the Commonwealth prior to the commencement of the Services;
 - B. demonstrate to the reasonable satisfaction of the Commonwealth that the Contractor or the Operator (as the case may be) conducts operations in accordance with the Air Operator's Certificate issued by CASA or Non-Scheduled Flight Approval issued by CASA and the requirements of the certifying national airworthiness authority; and
 - C. ensure that for aircraft accidents as defined by ICAO Annex 13, the Australian Transport Safety Bureau is nominated as the agency with primary responsibility for the investigation of the accident assisted as required by the Directorate of Defence Aviation and Air Force Safety.
 - (ii) upon request by the Commonwealth, make available to the Commonwealth copies of and provide access to all documentation supporting the airworthiness of the Aircraft (including any documentation provided to any national airworthiness authority,

- operations manuals, maintenance records, individual licences (aircrew and maintenance), flight records, safety incident reports and investigation reports);
- (iii) upon request by the Commonwealth, provide the Commonwealth or its nominee access to inspect an Aircraft (including any part of it and any of its technical records) prior to the commencement of, and at any time during, the provision of Services using the Aircraft;
 - (iv) upon request by the Commonwealth, provide the Commonwealth or its nominee and any regulatory investigatory agency, full and unimpeded on-site access and access to an Aircraft (including any part of it and any of its technical records) for the purposes of investigating any incidents or accidents whether arising prior to commencement of, and at any time during, the provision of Services using the Aircraft;
 - (v) develop and implement, an accident and incident reporting system which requires the timely notification of any accident or incident to any relevant national airworthiness authority and the Commonwealth, including immediate notification to the Directorate of Defence Aviation and Air Force Safety. Upon request by the Commonwealth, the Contractor must provide details of the accident and incident reporting system to the Commonwealth;
 - (vi) prior to commencing the provision of the Services brief the Commonwealth on the accident and reporting requirements of the Contractor or the Operator (as the case may be);
 - (vii) comply with the *Occupational Health and Safety Act 1991 (Cth)* where applicable to the provision of the Services or aviation safety;
 - (viii) maintain records of any contracts, inspections or documents used to establish the airworthiness of the Aircraft;
 - (ix) following any accident or incident caused by or involving any Aircraft or otherwise relating to the provision of the Services, immediately notify the Directorate of Defence Aviation and Air Force Safety and notify the Commonwealth in writing as soon as practicable and in any event no later than 1 day after the accident or incident and provide full details of such accident or incident and update that notification at reasonable periods and otherwise promptly upon request from the Directorate of Defence Aviation and Air Force Safety or the Commonwealth to do so;
 - (x) permit the Directorate of Defence Aviation and Air Force Safety or the Commonwealth to take such action as it considers necessary or desirable to investigate any accident or incident caused by or involving any Aircraft or otherwise relating to the provision of the Services, including permitting the Directorate of Defence Aviation and Air Force Safety and the Commonwealth or its nominee on-site access and access to, and liaison with, any relevant regulatory investigative agency and provide such safety personnel assistance as the Commonwealth or its nominee requires;

- (xi) ensure that, prior to the commencement of any Services, the Contractor or the Operator (as the case may be) submits to the Commonwealth all relevant documentation required by CASA to grant an Air Operator's Certificate or Non-Scheduled Flight approval (where applicable);
 - (xii) ensure that, prior to the commencement of any Services, the Contractor submits to the Commonwealth evidence that the Contractor or the Operator (as the case may be) is certified as meeting all applicable ICAO and IATA standards;
 - (xiii) ensure that the Contractor or the Operator (as the case may be) complies with any conditions placed upon them by CASA (or any relevant national airworthiness authority) and by the Air Operator's Certificate or Non-Scheduled Flight approval issued by CASA (where applicable); and
 - (xiv) upon request by the Commonwealth, provide or ensure the Operator provides (as the case may be) documentation, records and other information to enable the Directorate of Defence Aviation and Air Force Safety to maintain records of any investigations, incident occurrence reports or the flying safety history of the Contractor or the Operator (as the case may be).
- (c) An Aircraft used in the provision of the Services must only be operated:
- (i) in approved roles appropriate to the certification basis of the Aircraft as described in the applicable type certificate;
 - (ii) within the limitations and conditions established by the certifying authority in the applicable aircraft operating instructions or type certificate;
 - (iii) in accordance with an applicable airworthiness regulatory framework appropriate to the aircraft operating role and environment recognised by the Australian Defence Force Airworthiness Authority;
 - (iv) in accordance with the directives or requirements issued from time to time by the Australian Defence Force Airworthiness Authority, Australian Defence Force Operational Airworthiness Regulator or the Australian Defence Force Technical Airworthiness Regulator;
 - (v) in accordance with orders and instructions issued by the relevant Operational Airworthiness Authority; and
 - (vi) in accordance with directives issued by the relevant national airworthiness authority.

8.5 Aircraft type

- (a) Subject to clause 8.5(c), the Contractor must, or must ensure that the Operator will:
- (i) provide an aircraft type which is type certified by CASA or one of the national airworthiness authorities of Canada, the United States of America, the United Kingdom, New Zealand or the European full member countries of the Joint Aviation Authority; and

- (ii) the Aircraft is certified as airworthy under a certificate of airworthiness (or equivalent) relevant to the type certificate.
- (b) Subject to clause 8.5(c), if the Services include the movement of Relevant Personnel or a Security Detachment, the Contractor must or must ensure that the Operator will (as the case may be) provide a Western built Aircraft whose operators are authorised for Regular Public Transport (or its overseas equivalent) operations by CASA or one of the national airworthiness authorities of Canada, the United States of America, the United Kingdom, New Zealand or the European full member countries of the Joint Aviation Authority.
- (c) Clauses 8.5(a) or 8.5(b) will not apply to the extent that the Contractor or the Operator (as the case may be) obtains a waiver from compliance with the requirements of those clauses from the Australian Defence Force Airworthiness Authority in accordance with MILAVREG 5.5c of the ADF Military Aviation Regulations and the Contractor has provided a copy of such waiver to the Commonwealth prior to the provision of any Services in relation to which the Contractor seeks to rely on the waiver. The Contractor will not be entitled to make any Claim against the Commonwealth, arising out of or in connection with any failure by the Contractor to obtain a waiver and the failure to obtain a waiver will not relieve the Contractor from compliance with its obligations under this Deed.

8.6 Rejection of Aircraft

- (a) The Commonwealth may reject any Aircraft proposed to be used by the Contractor to provide the Services which does not meet the requirements of clause 8.4 or clause 8.5. If the Commonwealth rejects an Aircraft under this clause 8.6(a), the Contractor will not be entitled to make a Claim against the Commonwealth arising out of or in connection with the Commonwealth rejecting the Aircraft.
- (b) If the Commonwealth rejects an Aircraft under clause 8.6(a), the Commonwealth may:
 - (i) require the Contractor to provide an alternative Aircraft which complies with the requirements of this Deed and the Agreed Request; or
 - (ii) terminate the Agreed Request in accordance with clause 24.2(a)(ii).

8.7 Liens

The Contractor irrevocably waives and renounces and must cause each of the Subcontractors to irrevocably waive and renounce any carriers or possessory liens arising by operation of law or otherwise in favour of the Contractor or a Subcontractor over any Relevant Equipment, Accompanying Baggage, GFE or any other Commonwealth property.

8.8 Obligations of the Contractor in relation to the Services

- (a) The Contractor must at all times ensure that:
 - (i) the Contractor or the Operator (as the case may be) maintains operational control of the Aircraft and crew;
 - (ii) the crew is under the control of and only authorised to take orders from the Contractor or the Operator (as the case may be); and

- (iii) the Aircraft is properly staffed and crewed, equipped and fuelled.
 - (b) Notwithstanding the terms of an Agreed Request, the Commonwealth is exclusively entitled to use any spare capacity in any Aircraft.
 - (c) The Contractor must ensure that the Aircraft used to provide the Services are:
 - (i) airworthy and fit for the purpose of carrying the Relevant Equipment and/or the Relevant Personnel and the Accompanying Baggage;
 - (ii) compliant with Chapter 3 of the Air Navigation (Aircraft Noise) Regulations except to the extent that the Contractor is able to obtain a waiver; and
 - (iii) fitted with an Enhanced Ground Proximity Warning System or an equivalent system authorised by CASA and approved by the Commonwealth.
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9. Contractor acknowledgements

- (a) The Contractor acknowledges and agrees that:
 - (i) the Contractor and the Other Contractors are participants in the Air Transport Standing Offer Panel from which the Commonwealth may procure the Services;
 - (ii) the Air Transport Standing Offer Panel may be utilised by the Commonwealth in its absolute discretion for procuring the Services by sole source procurement or competitive procurement;
 - (iii) when submitting a Request to the Contractor to procure Services, the Commonwealth may also submit a request to one or more Other Contractors in respect of the same Services;
 - (iv) the Commonwealth may submit a request to one or more Other Contractors to procure Services without submitting a Request to the Contractor in respect of the same Services;
 - (v) this Deed does not require the Commonwealth to use the Contractor or the Other Contractors exclusively to provide the Services. The Commonwealth may, in its absolute discretion, obtain services the same as or similar to the Services from the Other Contractors outside the operation of the Air Transport Standing Offer Panel or from third parties whether or not the Commonwealth has submitted a Request to the Contractor and/or the Other Contractors;
 - (vi) this Deed does not require the Commonwealth to issue a Request to the Contractor or to the Other Contractors in respect of any Services or services similar to the Services;
 - (vii) the Contractor is not guaranteed any volume of work under this Deed;

- (viii) the Commonwealth may, in its absolute discretion, appoint additional Other Contractors to the Air Transport Standing Offer Panel from time to time; and
 - (ix) this Deed does not require the Commonwealth to accept any Completed Request submitted by the Contractor in accordance with clause 5.3 or any completed request submitted by any of the Other Contractors under the Other Air Transport Deeds of Standing Offer.
- (b) The Commonwealth will have no liability to the Contractor and the Contractor will not be entitled to make any Claim against the Commonwealth, arising out of or in connection with any of the matters referred to in clause 9(a).

10. Price and payment

10.1 Contract Price and other payments

- (a) In respect of an Agreed Request, the Commonwealth must pay the Contract Price to the Contractor within 30 days of the later of:
- (i) completion of the provision of the Services in accordance with the terms of the Agreed Request and this Deed; and
 - (ii) the provision to the Commonwealth of an invoice in accordance with clause 10.2 in respect of the Contract Price.

10.2 Claims for payment

The Contractor must ensure that each claim rendered under this Deed is an invoice that:

- (a) specifies the Commonwealth's reference number for this Deed;
- (b) includes such supporting documents as this Deed or the Commonwealth Representative requires;
- (c) contains sufficient information to enable the Commonwealth, acting reasonably, to identify the Services and circumstances that gave rise to the claim;
- (d) contains a statement by the Contractor that the information in the claim is complete and accurate;
- (e) is a valid tax invoice for the purposes of the GST Act; and
- (f) sets out the amount payable by the Commonwealth in respect of GST for supplies made under this Deed that are taxable supplies.

10.3 Price basis

- (a) The Contract Price in respect of an Agreed Request includes all costs and amounts payable by the Commonwealth in respect of the Services under an Agreed Request including:
- (i) landing fees and enroute charges;
 - (ii) passenger, landing, airport and departure taxes;

- (iii) fuel;
 - (iv) meals, entertainment and refreshments where applicable;
 - (v) the Ground Handling Services;
 - (vi) obtaining weather information;
 - (vii) NOTAMs;
 - (viii) load control;
 - (ix) obtaining all necessary Approvals; and
 - (x) all charges referable to the provision of the Services in an Agreed Request, whether incidental or ancillary.
- (b) The Contractor warrants that the Contract Price in respect of an Agreed Request:
- (i) makes adequate provisioning for all of the Contractor's costs associated with labour, on and off site overheads (including insurance), goods, materials, tools, plant, equipment, facilities, vehicles, aircraft, fuel, consumables and all other items which are required to enable the Contractor to comply with its obligations under this Deed in respect of the Agreed Request or which are reasonably inferred from this Deed in respect of the Agreed Request, notwithstanding that they are not expressly mentioned in this Deed or the Agreed Request; and
 - (ii) comprises the total consideration payable by the Commonwealth to the Contractor for the provision of the Services in respect of the Agreed Request, and the Contractor will not otherwise make any claim in respect of payment for the provision of the Services in respect of the Agreed Request or otherwise under this Deed.

10.4 Taxes and duties

- (a) Subject to clause 10.4(h), all taxes, duties (including stamp duty) and government charges imposed or levied in Australia or overseas in connection with this Deed will be met by the Contractor and will be included within the Contract Price.
- (b) Subject to clause 10.4(d), the Commonwealth must, in addition to the Contract Price, pay the amount of GST imposed on any taxable supply made by the Contractor to the Commonwealth under this Deed.
- (c) For the purposes of clause 10.4(b), the additional amount is the amount of GST payable on that part of the Contract Price to which the taxable supply relates as if that part of the Contract Price is the value of the taxable supply for the purpose of the GST Act.
- (d) The Contractor must submit each claim for payment under clause 10 in the form of a valid tax invoice. The tax invoice must include the amount and method of calculation of any GST payable by the Contractor in relation to that claim for payment as a separate item.

- (e) If the Contractor incorrectly states the amount of GST payable, or paid, by the Commonwealth on an otherwise valid tax invoice, the Contractor must issue to the Commonwealth a valid adjustment note in accordance with the GST Act.
- (f) If the Commonwealth makes, or is assessed by the ATO as having made, a taxable supply to the Contractor under or in connection with this Deed, the Commonwealth will be entitled to recover from the Contractor upon presentation of a valid tax invoice, the amount of GST paid or payable by the Commonwealth to the ATO.
- (g) Any amount of GST to be paid by the Contractor under clause 10.4(f) will be a debt recoverable by the Commonwealth in accordance with clause 25.5.
- (h) The Commonwealth will be responsible for paying any customs duty associated with the movement of the Relevant Equipment and the Accompanied Baggage.

10.5 Denomination of payments

Unless specified otherwise by the Commonwealth in an Agreed Request, all payments must be quoted by the Contractor in a Completed Request in Australian dollars, US dollars or Euro and will be payable by the Commonwealth in the quoted currency.

11. Commonwealth property and GFE

11.1 Use of Commonwealth property

Subject to clause 6.3(e), the Contractor must not, without the prior written approval of the Commonwealth:

- (a) use Commonwealth property other than for the purposes of this Deed;
- (b) modify Commonwealth property;
- (c) transfer possession or control of Commonwealth property to any other person; or
- (d) create or allow to be created any lien, charge, mortgage or encumbrance over any Commonwealth property.

11.2 Relevant Equipment and Accompanying Baggage

- (a) Subject to clause 14.4(a), the Contractor bears the risk of loss or destruction of, or damage to the Relevant Equipment and the Accompanying Baggage from the time that the Relevant Equipment and/or the Accompanying Baggage (as the case may be) is delivered by the Commonwealth to the Contractor at the relevant Loading Location until the time that the Relevant Equipment and/or the Accompanying Baggage (as the case may be) is delivered to the Commonwealth and unloaded at the relevant Unloading Location except to the extent that such loss, destruction or damage is caused by an Excepted Risk.
- (b) The Contractor must, immediately upon becoming aware that any Relevant Equipment or the Accompanying Baggage in its care, custody or control is lost, destroyed or damaged, notify the Commonwealth Representative of the event in writing.

- (c) The Relevant Equipment and the Accompanying Baggage remains the property of the Commonwealth or the Relevant Personnel (as the case may be) at all times. The Commonwealth retains the right to reasonably identify the Relevant Equipment and the Accompanying Baggage as its or the Relevant Personnel's (as the case may be) property and the Contractor must preserve any means of identification.
- (d) The Contractor must not:
 - (i) without the prior written approval of the Commonwealth Representative:
 - A. use the Relevant Equipment or the Accompanying Baggage;
 - B. modify the Relevant Equipment or the Accompanying Baggage; and
 - C. transfer possession or control of the Relevant Equipment or the Accompanying Baggage to any other person; or
 - (ii) create or allow to be created any lien, charge, mortgage or encumbrance over any Relevant Equipment or the Accompanying Baggage.
- (e) The Contractor must:
 - (i) keep the Relevant Equipment and the Accompanying Baggage safe and secure at all times; and
 - (ii) comply with any safety or security requirements specified by the Commonwealth from time to time.
- (f) The Contractor must ensure that the Relevant Equipment and the Accompanying Baggage is only handled by suitably qualified persons or by persons supervised by suitably qualified persons, in a safe, responsible, competent and skilful manner.
- (g) The Contractor must not, and must ensure that none of its officers, agents, employees and contractors do not, represent itself or themselves (as the case may be) as:
 - (i) being the owner of the Relevant Equipment or the Accompanying Baggage; or
 - (ii) acting for or on behalf of the Commonwealth or as otherwise having any authority to bind or make representations on behalf of the Commonwealth.

11.3 Obligation to provide GFE

- (a) The Commonwealth must deliver or provide access to, and the Contractor must manage, GFE in accordance with this Deed.
- (b) The Contractor acknowledges and agrees that:
 - (i) the Commonwealth's obligation to provide GFE on the dates or at the times required under this Deed is subject to the Contractor complying with its obligations under this Deed; and

- (ii) any delay of the Contractor in meeting its obligations under this Deed may result in the Commonwealth not being able to provide GFE at the time the Contractor requires delivery or access to that GFE.
- (c) If at any time the Contractor's requirement for the timing of delivery or access to GFE changes because of a delay by the Contractor in meeting its obligations under this Deed, the Commonwealth:
 - (i) must use reasonable endeavours to accommodate changes to the Contractor's requirements for delivery or access to GFE; and
 - (ii) is only required to deliver or provide access to the GFE at the time it becomes available for use for the purposes of this Deed.

11.4 Liability for GFE

- (a) The Contractor must, immediately upon becoming aware that any GFE in its care, custody or control is lost, destroyed, damaged, defective or deficient, notify the Commonwealth Representative of the event in writing.
- (b) Subject to clause 14.4(a), the Contractor bears the risk of loss or destruction of, damage to or defects or deficiencies in, the GFE if caused by a default or an unlawful or negligent act or omission of the Contractor, its officers, employees, agents or Subcontractors.

11.5 GFE ownership and restrictions

- (a) The GFE remains the property of the Commonwealth at all times. The Commonwealth retains the right to reasonably identify GFE as its property and the Contractor must preserve any means of identification.
- (b) The Contractor must not:
 - (i) without the prior written approval of the Commonwealth Representative, except as specifically set out in this Deed:
 - A. use GFE other than for the purposes of this Deed;
 - B. modify GFE; and
 - C. transfer possession or control of GFE to any other person; or
 - (ii) create or allow to be created any lien, charge, mortgage or encumbrance over any GFE.
- (c) The Commonwealth Representative may notify the Contractor of any IP rights applicable to the GFE and the Contractor must not act contrary to the existence of such rights.
- (d) The Contractor must return all items of GFE that are required to be returned to the Commonwealth in accordance with this Deed or otherwise immediately upon request by the Commonwealth.

11.6 Contractor access

- (a) The Commonwealth may, during the period of this Deed, provide access to a Commonwealth place, area or facility for persons approved under this clause 11.6 as necessary for the Contractor's performance of this Deed.
- (b) The Contractor must seek written permission from the Commonwealth Representative, at least 5 days (or such shorter period provided for in an Agreed Request or as the Commonwealth otherwise specifies) prior to entry being required, for each person the Contractor wishes to have access to a Commonwealth place, area or facility.
- (c) The Commonwealth Representative may grant such person or persons access to the Commonwealth place, area or facility, or may refuse to grant such access in its absolute discretion. If access to any person specified by the Contractor is refused, the Contractor may request access for any other replacement person necessary for the performance of this Deed.
- (d) The Commonwealth Representative may by notice to the Contractor withdraw access rights to any Commonwealth place, area or facility at any time for any period.
- (e) The Contractor must comply with, and require persons afforded access under this clause 11.6 to comply with, any relevant Commonwealth safety and security requirements, regulations, standing orders, or codes of behaviour for the Commonwealth place, area or facility.
- (f) The Commonwealth Representative may notify the Contractor of, and the Contractor must comply with any special security or access terms that apply to a particular Commonwealth place, area or facility relevant to this Deed.

12. Intellectual Property

12.1 Ownership of Intellectual Property

- (a) Nothing in this Deed affects the ownership of Background IP or Third Party IP.
- (b) Ownership of all Foreground IP vests on its creation in the Commonwealth.
- (c) For any Foreground IP that vests in the Commonwealth, the Commonwealth has the exclusive right to apply for registration of that Foreground IP in all countries of the world.

12.2 Intellectual Property Licence

- (a) Without limitation to any licence granted to the Commonwealth by the Contractor or any related entity to the Contractor in any other contract, the Contractor grants to the Commonwealth a royalty-free, irrevocable, world-wide, perpetual, non-exclusive licence in respect of all Background IP and any Foreground IP that is owned by the Contractor, including the right to sub-licence, for Defence Purposes.
- (b) The Contractor must ensure that the Commonwealth is granted a licence from each Subcontractor on the same terms as clause 12.2(a).

- (c) The Contractor must ensure that the Commonwealth is granted a licence to exercise all Third Party IP on the best available commercial terms.
- (d) The Commonwealth may, on request, grant the Contractor a licence to exercise Foreground IP owned by the Commonwealth on terms acceptable to the Commonwealth, including an appropriate licence fee.

12.3 Provision of Technical Data

- (a) To enable the Commonwealth, or another person on behalf of the Commonwealth, to fully exercise its IP rights under this clause 12, the Contractor must deliver to the Commonwealth Representative within 20 days of request any TD deemed necessary by the Commonwealth to exercise its rights under this Deed at no additional cost to the Commonwealth.
- (b) The Commonwealth may provide TD to a third party for the purposes mentioned in clause 12.2(a).
- (c) The Contractor must ensure that all TD provided to the Commonwealth will enable a person reasonably skilled in performing the acts referred to in clause 12.2(a) to perform those acts efficiently and effectively.

12.4 Release to Third Parties

If the Commonwealth makes available to another person any Foreground IP or Background IP owned by the Contractor or a Subcontractor, the Commonwealth must obtain from that person a deed of confidentiality in a form approved by the Contractor provided that the Contractor must not unreasonably withhold its approval.

12.5 Moral Rights

The Contractor must:

- (a) obtain from each and any author of IP vesting in or licensed to the Commonwealth under this Deed a written consent which extends directly or indirectly to:
 - (i) the performance of acts permitted under any licence provided under clause 12; and
 - (ii) any dealings with Foreground IP owned by the Commonwealth as a consequence of this Deed including the Commonwealth's licensees; or
 - (iii) any dealings by any person authorised by the Commonwealth to exercise the Commonwealth's rights to Foreground IP owned by the Commonwealth as a consequence of this Deed,with or without attribution of authorship (but excluding an act amounting to false attribution of authorship) to all or any part of the Services by the Commonwealth or any person claiming under or through the Commonwealth (whether occurring before or after the consent is given); and
- (b) upon request, provide the executed original of any consent provided under this clause to the Commonwealth.

13. Approvals, policy and law

13.1 Approvals

- (a) Subject to clause 8.2, and unless specified otherwise in an Agreed Request, the Contractor must obtain and maintain all necessary Approvals required in order for the Contractor to provide the Services.
- (b) The Contractor must obtain each approval by:
 - (i) the relevant date specified in an Agreed Request;
 - (ii) where no date is specified in an Agreed Request, the date nominated by the Commonwealth in writing to the Contractor; or
 - (iii) where no date is specified in an Agreed Request or is nominated by the Commonwealth in accordance with clause 13.1(b)(ii), at least 15 days prior to the relevant Loading Date.
- (c) The Contractor must keep the Commonwealth fully informed on the status of each application for an Approval and, if requested by the Commonwealth, provide a copy of any application for an Approval. The Contractor must provide a copy of each Approval to the Commonwealth promptly after the Contractor obtains the Approval.
- (d) If the Contractor fails to obtain any Approval (other than the Non Australian Government Approval) in accordance with clause 13.1(b), the Commonwealth may terminate that Agreed Request in accordance with clause 24.2(a)(ii). The Commonwealth will have no liability to the Contractor and the Contractor will not be entitled to make any Claim against the Commonwealth arising out of or in connection with such termination.
- (e) If the Contractor fails to obtain any Non-Australian Government Approval in accordance with clause 13.1(b), the Commonwealth may terminate the Agreed Request and:
 - (i) if the Contractor establishes to the satisfaction of the Commonwealth that it has used its best endeavours to obtain the Non-Australian Government Approval in accordance with clause 13.1(b), the Agreed Request will be deemed to have been terminated by the Commonwealth in accordance with clause 24.3(a) and clause 24.3(c) will apply. Except as provided for in clause 24.3(c), the Commonwealth will have no liability to the Contractor and the Contractor will not be entitled to make any Claim against the Commonwealth arising out of or in connection with such termination; and
 - (ii) otherwise, the Agreed Request will be deemed to have been terminated by the Commonwealth in accordance with clause 24.2(a)(ii). The Commonwealth will have no liability to the Contractor and the Contractor will not be entitled to make any Claim against the Commonwealth arising out of or in connection with such termination.

13.2 Applicable law

The laws of the Australian Capital Territory apply to this Deed. The courts of that State or Territory will have non-exclusive jurisdiction to decide any matter arising out of this Deed.

13.3 Compliance with laws

The Contractor must, in the performance of this Deed and any Services the subject of an Agreed Request, comply with the laws from time to time in force in the State, Territory, or other jurisdictions (including any foreign jurisdictions) in which any part of this Deed is to be carried out.

13.4 Policy requirements

- (a) Subject to clause 13.4(b), the Contractor must comply with and require its officers, employees, agents and Subcontractors to comply with the following Commonwealth policies of general application relevant or applicable to this Deed:
- (i) Conflict of Interest policy as detailed in the DPPM, Section 3, Chapter 3.13;
 - (ii) Defence Equity and Diversity policy as detailed in the Defence Plain English Guide to Managing and Reporting Unacceptable Behaviour; DPI 1/2001 *Equity and Diversity in the Department of Defence*; and DI(G)PERS 35-3 *Managing and Reporting of Unacceptable Behaviour*;
 - (iii) Environment policy as detailed in Defence Environmental Policy;
 - (iv) Equal Opportunity for Women in the Workplace policy as detailed in the DPPM, Section 3, Chapter 3.10;
 - (v) Fraud Control policy as detailed in DI(G) FIN 12-1 *The Control of Fraud in Defence and the Recovery of Public Moneys*;
 - (vi) Hazardous Substance policy as detailed in DPPM, Section 3, Chapter 3.10;
 - (vii) Information Management policy as detailed in DIMPI 4/2001 *Telephones and Related Goods and Services* and DIMPI 5/2001 *Defence Information Environment Provision of Defence Email and Internet Services*;
 - (viii) Information Privacy Principles of the Privacy Act;
 - (ix) Maximising Employment Opportunities for Aboriginal and Torres Strait Islanders policy as detailed in DPPM, Section 3, Chapter 3.10; and
 - (x) Ozone Depleting Substances policy as detailed in DPPM, Section 3, Chapter 3.16.
- (b) Notwithstanding clause 1.5, if an Agreed Request requires a higher standard than a policy mentioned in clause 13.4(a), the Contractor must comply with the Agreed Request to the extent of the inconsistency.

13.5 Occupational Health and Safety

The Contractor must perform its obligations under this Deed in such a way that:

- (a) Commonwealth employees (as defined in Section 9(1) of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*) are able to participate in any necessary inspections of work in progress and tests and evaluations of the Services without the Commonwealth being in breach of; and
- (b) the Commonwealth is able to support and to make full use of the Services for the purposes for which they are intended without being in breach of,

any occupational health and safety statutory requirements which apply to the Services.

13.6 Environmental obligations

The Contractor must perform its obligations under this Deed in such a way that:

- (a) the Commonwealth is not placed in breach of; and
- (b) the Commonwealth is able to support and to make full use of the Services for the purposes for which they are intended without being in breach of,

any applicable environmental legislation including the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

13.7 Privacy

- (a) The Contractor must:
 - (i) use or disclose Personal Information obtained during the course of providing Services under this Deed, only for the purposes of this Deed;
 - (ii) not do any act, or engage in any practice that would breach an Information Privacy Principle contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that Information Privacy Principle;
 - (iii) not use or disclose Personal Information, or engage in an act or practice that would breach section 16F of the Privacy Act, or an National Privacy Principle, particularly National Privacy Principles 7 through to 10 or an Approved Privacy Code, unless:
 - A. in the case of section 16F of the Privacy Act, the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Deed; or
 - B. in the case of an National Privacy Principle or an Approved Privacy Code, if the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Deed, and the activity or practice is inconsistent with the National Privacy Principle or Approved Privacy Code;

- (iv) notify individuals whose Personal Information is held by the Contractor or Subcontractor, as the case may be, of the complaints mechanism outlined in the Privacy Act that may apply to the Contractor;
 - (v) disclose in writing to any person who asks, the content of the provisions of this Deed (if any) that are inconsistent with an National Privacy Principle or an Approved Privacy Code binding a party to this Deed;
 - (vi) carry out and discharge the obligations contained in the Information Privacy Principles as if it were an agency under the Privacy Act; and
 - (vii) ensure that any officer, employee or agent of the Contractor who is required to deal with Personal Information for the purposes of this Deed, is made aware of the obligations of the Contractor as set out in this clause 13.7.
- (b) The Contractor must promptly notify the Commonwealth Representative where:
- (i) it becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 13.7, whether by the Contractor or a Subcontractor;
 - (ii) it becomes aware that a disclosure of Personal Information may be required by law; or
 - (iii) it is approached by the Privacy Commissioner, or by any individual to whom any Personal Information relates.
- (c) The Contractor must ensure that any Subcontract entered into for the purposes of fulfilling its obligations under this Deed, contains provisions to ensure that the Subcontractor has the same awareness and obligations as the Contractor has under this clause 13.7, including the requirement in relation to Subcontracts.

14. Insurance and liability

14.1 Contractor's employees

The Contractor must indemnify the Commonwealth against liability of the Commonwealth for death of, or personal injury to, any person employed by the Contractor on work under this Deed, except to the extent that such death or injury results from any unlawful or negligent act or omission on the part of the Commonwealth, or any person through whom the Commonwealth is acting (but not including the Contractor, its officers, employees, agents or Subcontractors).

14.2 Property damage and public risk

Subject to clause 14.4, the Contractor must indemnify the Commonwealth, its officers, employees and agents against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense sustained or incurred:

- (a) by any person in respect of personal injury or death, except to the extent that the Contractor's indemnity under clause 14.1 applies;

- (b) by any person in respect of loss of, damage to or destruction of any property (including the GFE and other property of the Commonwealth other than any Relevant Equipment or Accompanying Baggage); and
- (c) that comprises costs and expenses of defending or settling any claim referred to in clauses 14.2(a) and 14.2(b),

arising out of or as a consequence of a default or unlawful or negligent act or omission on the part of the Contractor, its officers, employees, agents or Subcontractors except to the extent that such death, injury, or property loss or damage results from any unlawful or negligent act or omission on the part of the Commonwealth or any person through whom the Commonwealth is acting (but not including the Contractor, its officers, employees, agents or Subcontractors).

14.3 Damage to Relevant Equipment and Accompanying Baggage

Subject to clause 14.4, the Contractor must indemnify the Commonwealth, its officers, employees and agents against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense sustained or incurred in respect of loss of, or damage to or destruction of any Relevant Equipment and any Accompanying Baggage from the time that the Relevant Equipment and/or the Accompanying Baggage (as the case may be) is delivered to the Contractor at the relevant Loading Location until the time that the Relevant Equipment and/or the Accompanying Baggage (as the case may be) is collected by the Commonwealth at the relevant Unloading Location except to the extent that such loss, damage or destruction of the Relevant Equipment or the Accompanying Baggage results from an Excepted Risk.

14.4 Limitation of Liability

- (a) Subject to clauses 14.4(b) and 14.4(d), the liability of the Contractor to the Commonwealth arising out of the Contractor's performance of this Deed will be limited as follows:
 - (i) for loss of, or damage to or destruction of, Defence Property, in aggregate to **A\$20 million**; and
 - (ii) for a breach of contract or negligent act or omission not mentioned in clause 14.4(a)(i) in aggregate to **A\$5 million**.
- (b) The limitations in clause 14.4(a) do not apply to liability of the Contractor, including under an indemnity whether or not expressly referred to in this clause, for:
 - (i) personal injury and death;
 - (ii) loss of, or damage to, third party property or Commonwealth property (other than Defence Property);
 - (iii) breach of IP rights, confidentiality, privacy or security obligations;
 - (iv) fraud or dishonesty;
 - (v) unlawful or illegal acts;
 - (vi) the IP indemnity provided by the Contractor under clause 14.5; or

- (vii) the privacy indemnity provided by the Contractor under clause 13.7.
- (c) The limitations in clause 14.4(a) do not apply to liability of the Contractor, including under an indemnity whether or not expressly referred to in this clause, to the extent that the limitations are for amounts less than that provided in the Civil Aviation (Carriers Liability) Act 1959 (Cth).
- (d) To avoid doubt, if more than one limitation mentioned in clause 14.4(a) is capable of applying to a particular liability, and the cap under one limitation is reached, the Commonwealth may recover from the Contractor for the remainder of that liability under the other limitation up to the cap applicable to the other limitation.

14.5 Intellectual Property indemnity

The Contractor must indemnify the Commonwealth and its officers, employees, agents, licensees and sub-licensees against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense sustained or incurred by the Commonwealth which arises out of any action, claim, dispute, suit or proceeding brought by any third party in respect of any:

- (a) infringement or alleged infringement of that third party's IP including Moral Rights if the infringement or alleged infringement arises out of any activity permitted under any licence or assignment referred to in clause 12 or otherwise under this Deed; or
- (b) breach or alleged breach of any duty of confidentiality owed to that third party, when the breach is caused by any act or omission on the part of the Contractor or any of its officers, employees, agents or Subcontractors (whether or not such act or omission constitutes a breach of the this Deed).

14.6 Insurance

- (a) The Contractor must effect and maintain (or cause to be effected or maintained) the following insurances for amounts not less than, and with deductibles not more than, those specified in Attachment 5 and an Agreed Request (where applicable):
 - (i) **(Employer's liability and worker's compensation insurance):** employer's liability and worker's compensation insurance policy against any liability for death of or injury to persons employed by the Contractor or its contractors in performing the Services, whether under statute or common law;
 - (ii) **(Hull all risk insurance):** hull all risk insurance in respect of the relevant Aircraft for its agreed value;
 - (iii) **(Aviation liability insurance):** aviation liability insurance in respect of third party injury or death to persons or loss of or damage to property and passenger, baggage, cargo and mail, with a limit of indemnity;
 - (iv) **(Public and product liability insurance):** to the extent not covered by the aviation liability insurance, public and product liability insurance in respect of third party injury or death to persons or loss of or damage to property and passenger, baggage, cargo and mail; and

- (v) **(Other insurance):** hull war risks, and allied perils, hijacking, confiscation and kindred perils and war risks insurance in respect of passenger liability for the Services provided under this Deed;
- (vi) **(General liability insurance):** a general liability insurance policy covering the Contractor's liability to third parties in respect of:
 - A. damage to, loss or destruction of real or personal property;
and
 - B. injury to, or death of, persons,arising out of, or in any way in connection with the Contractor performing the Services under this Deed;
- (b) The Contractor must ensure each Subcontractor is insured against the Subcontractor's corresponding liabilities.
- (c) The Contractor must maintain the insurance or registration required under this clause 14.6 and Attachment 6 for the duration of this Deed and to provide reasonable cover for obligations that survive expiry or termination of this Deed, or as otherwise specified by the Commonwealth.
- (d) The Contractor must:
 - (i) on the Service Commencement Date;
 - (ii) on each anniversary of the Service Commencement Date; and
 - (iii) on request by the Commonwealth at any time, including after expiry or termination of this Deed,produce satisfactory evidence of the insurance or registration to the Commonwealth Representative.
- (e) The evidence required by clause 14.6(d) must include details of:
 - (i) name of the insurance provider;
 - (ii) type of insurance;
 - (iii) terms of the insurance including any specific exclusions;
 - (iv) limits of liability per claim or occurrence and details of any aggregate limits or relevant sublimits which apply;
 - (v) whether or not any past or current claims made under the policy have materially affected, or are likely to materially affect, the amount of cover available under the policy;
 - (vi) deductible amounts; and
 - (vii) period of insurance.

- (f) The Contractor must immediately notify the Commonwealth if any policy or policies of insurance relevant to this Deed:
 - (i) are cancelled by an insurer;
 - (ii) are to have their coverage reduced in any material respect; or
 - (iii) if the Contractor reasonably believes that a policy or policies of insurance relevant to this Deed will or may be cancelled.

15. Warranties

15.1 Fitness for purpose

The Contractor must ensure warrants that the Services will at all times be fit for the purpose or purposes as detailed in this Deed.

15.2 Warranty

- (a) The Contractor:
 - (i) warrants that it has the necessary expertise, experience, capacity and capability required to perform the Services in accordance with this Deed at the highest standard of industry practice;
 - (ii) must promptly remedy any defects or deficiencies in the Services that are notified to the Contractor by the Commonwealth Representative;
 - (iii) warrants that the Aircraft and other equipment and items used in the provision of the Services are airworthy (as applicable) and fit for their intended purpose; and
 - (iv) warrants that the Services will meet the requirements of this Deed.
- (b) The Contractor must meet all costs of, and incidental to, the discharge of the warranties and obligations under clause 15.2(a).
- (c) The Contractor acknowledges that the Commonwealth enters into this Deed in reliance on the Contractor's warranties in this clause 15.2(a), and the Contractor's skill and judgement in rendering the Services.
- (d) Where the Contractor fails within the period of 10 days after notification by the Commonwealth Representative, to rectify an error or deficiency pursuant to clause 15.2(a)(ii), the Commonwealth, without limiting the Contractor's warranties and obligations under clause 15.2(a), may perform or have performed the necessary remedial work at the expense of the Contractor, and may recover such expense as a debt to the Commonwealth in accordance with clause 25.5.

16. Records and meetings

16.1 Records

- (a) The Contractor must:
 - (i) keep records relating to this Deed and to the provision of the Services in accordance with best industry standards; and
 - (ii) keep such other records as the Commonwealth Representative reasonably requires, or may from time to time require, and as advised to the Contractor.
- (b) The Contractor must make the records referred to in clause 16.1(a) available to the Commonwealth in accordance with clause 16.2.

16.2 Commonwealth access

- (a) During the performance of this Deed, the Contractor must permit the Commonwealth Representative or any person authorised by the Commonwealth Representative access to its premises, and access to any of its records or accounts relevant to or impacting on performance of work under this Deed. The Commonwealth may copy any records or accounts for the purposes of this Deed.
- (b) Without limiting the generality of clause 16.2(a), the purposes for which the Commonwealth Representative may require access include:
 - (i) inspecting Commonwealth property, conducting or checking stocktakes of Commonwealth property, or removing Commonwealth property that is no longer required for the performance of this Deed;
 - (ii) performing Audit and Surveillance activities in relation to Quality;
 - (iii) investigating the reasonableness of any proposed prices or costs submitted in accordance with clause 5.2;.
 - (iv) determining whether and to what extent steps should be taken to register or otherwise protect Commonwealth IP; and
 - (v) investigating the reasonableness of any costs claims made by the Contractor under this Deed. For the purpose of this investigation, the Contractor must permit the Commonwealth to, or take all necessary steps to enable the Commonwealth to exercise its rights in this clause 16.2 including to access Related Bodies' Corporate records (including subsidiary and parent company records) relating to transfer pricing, cross-subsidisation with Related Bodies Corporate and the allocation of overheads between the Contractor and the Related Bodies Corporate to the extent that such records relate to the change to this Deed.
- (c) The Contractor must ensure that the terms of Approved Subcontracts provide the Commonwealth Representative with similar access to Approved Subcontractors'

premises, and to records and accounts in connection with the performance of work under the Subcontract, including the right to copy.

- (d) The Commonwealth must comply with, and must require any delegate or person authorised by the Commonwealth Representative to comply with, any reasonable Contractor or Subcontractor safety and security requirements or codes of behaviour for the premises.

16.3 Meetings

The Contractor must attend such meetings as reasonably requested by the Commonwealth Representative in relation to this Deed. Unless the Commonwealth determines otherwise, such meetings will be held at Canberra and on the dates and at times determined by the Commonwealth Representative.

16.4 Notification of matters affecting performance

- (a) The Contractor must promptly notify and fully disclose to the Commonwealth, in writing, any event or occurrence actual or threatened during the performance of this Deed which may materially affect the Contractor's ability to perform any of its obligations under this Deed.
- (b) Without limiting clause 16.4(a), the Contractor:
 - (i) undertakes that, to the best of its knowledge, as at the Effective Date, no conflict of interest exists which is likely to affect the performance of its obligations under this Deed by itself or by any of its employees, officers, agents or Subcontractors; and
 - (ii) must notify the Commonwealth in writing immediately if such a conflict or risk of such a conflict of interest arises.
- (c) Within seven days after giving notice under clause 16.4(a) or 16.4(b), the Contractor must notify the Commonwealth of the steps the Contractor will take to resolve the issue. If the Commonwealth considers those steps are inadequate, it may direct the Contractor to resolve the issue in a manner proposed by the Commonwealth. If the Contractor is unable or unwilling to resolve the issue in the required manner, the Commonwealth may terminate this Deed in accordance with clause 24.2(a).

16.5 Assessment of Contractor's performance

The Contractor acknowledges and agrees that, without limiting any of the Commonwealth's other rights under this Deed, or otherwise under statute, at law or in equity:

- (a) the Commonwealth may conduct internal assessments of the Contractor's performance under this Deed without any obligation to disclose the results of that assessment to the Contractor, and may use the results of such assessments as a basis for any issue of Requests or in the evaluation of any Completed Requests; and
- (b) if, in the Commonwealth Representative's opinion, the Contractor's performance of this Deed is of an unsatisfactory nature, the Commonwealth Representative may issue a direction to the Contractor, requiring the Contractor to address the Commonwealth Representative's concerns within a specified period, and if at the

end of that specified period the Commonwealth Representative's concerns remain, or additional areas of concern exist, then at any time thereafter the Commonwealth may terminate this Deed by written notice of termination for default under clause 24.2(a).

16.6 Performance review meeting

- (a) Where the Commonwealth gives the Contractor notice under clause 16.6(b), the parties will meet to review and discuss the Contractor's performance under this Deed.
- (b) The Commonwealth may require the Contractor to attend a performance review meeting by giving the Contractor at least 30 days notice of the proposed performance review meeting detailing the date, time and place for the performance review meeting.
- (c) Within 14 days of receipt of a notice under clause 16.6(b), the Contractor must provide the Commonwealth with a report:
 - (i) detailing the Contractor's performance under this Deed;
 - (ii) addressing any particular issues identified in the Commonwealth's notice in accordance with clause 16.6(d);
 - (iii) identifying any areas for improved performance by the Contractor;
 - (iv) identifying any areas for improved performance by the Commonwealth;
 - (v) identifying any changes to the manner in which the Services are provided to improve the overall service to the Commonwealth,

in respect of the period commencing on the later of the Service Commencement Date and the date of the last performance review meeting pursuant to this clause 16.5 and ending on the date of the Commonwealth's notice under clause 16.6(b) ("**Review Period**").

- (d) The Commonwealth's notice under clause 16.6(b) may specify particular issues for discussion at the performance review meeting or specify particular issues to be addressed by the Contractor in its report under clause 16.6(c).
- (e) The parties must meet at the time and place specified in the Commonwealth's notice issued under clause 16.6(b) to discuss the Contractor's performance under the Deed, the matters identified in clause 16.6(c), any particular issues identified the Commonwealth's notice in accordance with clause 16.6(d) and the report prepared by the Contractor under clause 16.6(c).
- (f) The Contractor must promptly address and rectify any areas for improvement identified by the Commonwealth at the performance review meeting or notified by the Commonwealth to the Contractor within 30 days after the performance review meeting.

17. Key Persons and other personnel

- (a) The Contractor must ensure that the Services are undertaken by:
 - (i) suitably qualified personnel with appropriate skills and experience; and
 - (ii) personnel which hold an appropriate current certificate, authorisation, clearance or accreditation at all times during the provision of the Services.
- (b) The Contractor must ensure that each person named in Attachment 4 is appointed to the Key Staff Position nominated for that person.
- (c) In the event that a Key Person will or may become unavailable for the performance of work under this Deed for a period of four consecutive weeks or more the Contractor must:
 - (i) notify the Commonwealth of the impending unavailability immediately that the Contractor becomes aware of the situation; and
 - (ii) nominate, at its earliest opportunity, a suitable replacement for the Commonwealth's consideration.
- (d) The Commonwealth may, in its absolute discretion and at any time, give a notice in writing including reasons, directing the Contractor to remove any personnel from work in respect of the Services.
- (e) The Commonwealth may only exercise its discretion under clause 17(d) where the Commonwealth Representative is of the opinion that the person specified in the notice is:
 - (i) unable to undertake the work required of them under this Deed for reasons of incapacity or incompetence; or
 - (ii) inappropriate to undertake the work required of them under this Deed for reasons relating to occupational health and safety, security, equity and diversity, equal opportunity for women in the workplace or relations between the Commonwealth and the Contractor.
- (f) If the Commonwealth gives the Contractor a notice under clause 17(d), the Contractor must within the time specified in the notice:
 - (i) remove the personnel from work in respect of the Services; and
 - (ii) nominate, at its earliest opportunity, a suitable replacement for the Commonwealth's consideration.
- (g) For any replacement Key Person nominated by the Contractor under clause 17(c) or clause 17(f), the Contractor must provide the Commonwealth with documentary evidence identifying the match of the nominated person to the relevant Key Staff Position. As part of this documentary evidence, the Contractor must describe how any capability shortfalls of the nominated person will be addressed and provide any other information requested by the Commonwealth.

- (h) If the Commonwealth is satisfied that a person nominated by the Contractor under clause 17(c)(ii) or clause 17(f)(ii) is a suitable replacement for the relevant Key Person, the Commonwealth must notify the Contractor that the nomination has been accepted.
- (i) If the Commonwealth is not satisfied that a person nominated by the Contractor under clause 17(c)(ii) or clause 17(f)(ii) is a suitable replacement for the relevant Key Person, the Commonwealth must give notice in writing to the Contractor, including reasons, that the nomination has not been accepted.
- (j) If the Contractor receives a notice under clause 17(i), the Contractor must, at the Commonwealth's request, nominate a further replacement person for the Commonwealth's consideration. This clause 17 will apply (as applicable) with respect to that further nomination.
- (k) If the Contractor is required to replace any Key Person under this clause, and a replacement person is not accepted by the Commonwealth under clause 17(i) within three months of the Commonwealth first receiving or providing notice under clause 17(c) or clause 17(f), the Commonwealth may give the Contractor a notice of termination for default in accordance with clause 24.2(a).

18. Subcontracts

- (a) The Contractor must not Subcontract the whole of the work under this Deed without the prior approval of the Commonwealth.
- (b) The Contractor may, but is not required to, Subcontract with one or more of the Approved Subcontractors.
- (c) The Contractor must not Subcontract work under this Deed to a Subcontractor who is not an Approved Subcontractor without the prior approval of the Commonwealth if:
 - (i) the total value of all work with the Subcontractor in respect of an Agreed Request is expected to exceed \$100,000;
 - (ii) the Subcontractor relates to the appointment of the Operator; and
 - (iii) the Subcontractor will provide the Aircraft, pilots or aircrew to provide the Services in respect of an Agreed Request.
- (d) The Contractor may request the inclusion of additional Approved Subcontractors in Attachment 2. The Contractor must provide to the Commonwealth full particulars of the work to be Subcontracted, the name and address of each proposed Subcontractor and any other information about the Subcontractor required by the Commonwealth Representative.
- (e) The Commonwealth Representative must approve or reject additional Approved Subcontractors proposed by the Contractor and notify the Contractor of such decisions in writing. The Commonwealth Representative's approval may be withheld in its absolute discretion.
- (f) The Contractor, by subcontracting any part of the work under this Deed or an Agreed Request or by obtaining the Commonwealth Representative's approval of a

Subcontractor, will not be relieved of its liabilities or obligations under this Deed, and will be responsible for all Subcontractors.

- (g) If a Subcontract is terminated, repudiated or rescinded, whether in relation to its terms or as a result of any legislation relating to bankruptcy, liquidation or official management, the Contractor must promptly notify the Commonwealth and must complete the work under either itself or by engaging another Subcontractor.
- (h) The Contractor, if requested by the Commonwealth Representative, must provide a copy of any Subcontract, which copy need not contain prices.
- (i) The Contractor must not enter into a Subcontract under this Deed with a Subcontractor named by the Director of Equal Opportunity for Women in the Workplace as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).
- (j) Without limiting the application of the other provisions of this clause 18, the following provisions apply where the Contractor engages an Operator to operate the Aircraft in respect of the Services the subject of an Agreed Request:
 - (i) the Operator will be deemed to be an agent of the Contractor;
 - (ii) the Commonwealth will be entitled to rely on any direction or communication given by the Operator as though that direction or communication had been duly given by the Contractor;
 - (iii) the Contractor is responsible for the acts and omissions of the Operator;
 - (iv) the Contractor indemnifies the Commonwealth, its officers, employees and agents against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense sustained or incurred arising out of or in connection with:
 - A. subject to clause 14.4(a), any fraud, negligence, unlawful act or omission or wilful misconduct of the Operator or any of its officers, employees or agents;
 - B. any Claim by the Operator in connection with the Services except to the extent that the Claim arises from the negligent act or omission or wilful misconduct of the Commonwealth, its officers, employees or agents; or
 - C. subject to clause 14.4(a), any breach by the Operator of the terms of its Subcontract including any failure by the Operator to comply with the terms of this Deed which are applicable to the provision and operation of the Aircraft;
 - (v) the Contractor must ensure that the Operator complies with the terms of this Deed which are applicable to the provision and operation of the Aircraft including clauses 6, 7, 8, 11, 13, 14, 15, 16.2, 20, 21,23 and 24 and will incorporate such provisions in its Subcontract with the Operator; and

- (vi) the provision of the whole or part of the Services by the Operator does not relieve the Contractor from performance of all of its obligations under this Deed.

19. Force Majeure

19.1 Force Majeure Events

Each of the following events is a Force Majeure Event:

- (a) lightning, earthquake, cyclone, natural disaster, landslide and mudslide;
- (b) fire or explosion caused by an event referred to in clause 19.1(a);
- (c) a flood which might be expected to occur once or less in every 100 years;
- (d) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped powers, martial law or civil unrest;
- (e) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (f) inclement weather (including storms, rain, hail, fog, dust storms, severe wind, frost or ice) which causes the Operator to abort or delay takeoff or landing of the Aircraft or which causes delay whilst the Aircraft is enroute;
- (g) traffic restrictions or enroute directions imposed by air traffic controllers, any aviation authority or other government agency;
- (h) fuel contamination without fault on the part of the Contractor;
- (i) a failure of fuel supply or refuelling equipment at any destination;
- (j) statewide industrial action or industry wide industrial action excluding any such industrial action caused by the Affected Party; and
- (k) expropriation or hijacking of the Aircraft,

which:

- (l) is beyond the reasonable control of the Affected Party and its Approved Subcontractors; and
- (m) prevents or delays the Affected Party from performing any of its non-financial obligations under this Deed where that cause or the consequences of the cause:
 - (i) has not resulted from the Affected Party breaching a term of this Deed; and
 - (ii) could not have been prevented, avoided, remedied or overcome by the Affected Party or its Approved Subcontractors taking those steps which a prudent, experienced and competent contractor in the position of the Affected Party would have taken.

19.2 Notification

- (a) If the Affected Party alleges or wishes to claim that a Force Majeure Event has occurred it must promptly give the other party notice of the Force Majeure Event as soon as the Affected Party becomes aware of the occurrence of the Force Majeure Event.
- (b) As soon as reasonably practicable after giving notice under paragraph 19.2(a), the Affected Party must give to the other party (progressively if necessary) full particulars of relevant matters pertaining to the Force Majeure Event including:
 - (i) the nature of the Force Majeure Event;
 - (ii) the obligations affected;
 - (iii) the action that the Affected Party has taken and proposes to take to remedy and mitigate the effect of the Force Majeure Event;
 - (iv) an estimate of the time during which the Affected Party will be unable to carry out the affected obligations due to the Force Majeure Event; and
 - (v) an estimate of the costs that the Affected Party will incur to remedy and mitigate the effect of the Force Majeure Event.
- (c) After giving notice under clause 19.2(a), the Affected Party must continue to keep the other party informed of all relevant information pertaining to the Force Majeure Event.

19.3 Meeting

The parties must meet within 5 Working Days of delivery of a notice under paragraph 19.2(a) to determine:

- (a) whether a Force Majeure Event has occurred; and
- (b) the estimated duration of the Force Majeure Event.

19.4 Suspension of obligations

- (a) If a Force Majeure Event occurs and the Affected Party gives notice in accordance with clause 19.2(a), the Affected Party's non-financial obligations under this Deed (other than this clause 19) which are affected by the Force Majeure Event will be suspended, but only to the extent and for so long as the Force Majeure Event prevents or delays the Affected Party from performing those obligations.
- (b) Upon the Affected Party becoming able to recommence performing its obligations which were suspended under paragraph 19.4(a), the Affected Party must recommence the performance of its obligations.

19.5 Best Endeavours to mitigate effect

During the period of suspension under clause 19.4, the Affected Party must use its best endeavours to overcome or mitigate the effects of the Force Majeure Event. This may include incurring reasonable expenditure, rescheduling resources or implementing appropriate temporary measures.

19.6 Cessation of Force Majeure Event

The Affected Party must notify the other party immediately after it ceases to be prevented or delayed from performing its obligations as a result of a Force Majeure Event.

19.7 No compensation

The non-Affected Party will not be liable to compensate the Affected Party for any costs or losses which the Affected Party incurs during the period of suspension under clause 19.4 in respect of the suspended obligations.

20. Commercial-in-Confidence Information

- (a) If in connection with this Deed, Commercial-in-Confidence Information is provided or produced by any person, the relevant party must ensure that any person receiving or producing the information protects the confidential nature of the information except:
 - (i) if disclosure of the information is required by law or statutory or portfolio duties; or
 - (ii) to the extent that the Commonwealth would be prevented from exercising its IP rights under this Deed.
- (b) If it is necessary to disclose Commercial-in-Confidence Information provided or produced by or on behalf of the other party to a third party, other than a legal adviser or for a purpose within an exception listed in clause 20(a), the party wishing to make the disclosure must obtain the written consent of the other party to this Deed.
- (c) The Commonwealth may require the Contractor to ensure that its officers, employees, agents and Subcontractors engaged in the performance of this Deed give a written undertaking in a form acceptable to the Commonwealth Representative prior to the disclosure of Commercial-in-Confidence Information. The Contractor must provide properly executed Deeds of confidentiality as required by the Commonwealth Representative.
- (d) The Contractor must not, in marking information supplied to the Commonwealth, misuse the term 'Commercial-in-Confidence' or the Contractor's equivalent. The marking of information as 'Commercial-in-Confidence' will not affect the legal nature and character of the information.
- (e) Without limiting any rights of the Commonwealth provided for elsewhere in this Deed, and in particular in clauses 12 and 20, the Contractor grants to the Commonwealth the right to disclose information relating to communication protocols, interface standards, message formats, or any other electrical, mechanical or optical interface or other requirements which may be required to be released by the Commonwealth so as to allow software or equipment to connect to or communicate with anything provided to the Commonwealth in the course of the Services.
- (f) The parties agree that those parts of this Deed listed in Attachment 3 are Commercial-in-Confidence Information to the relevant party as at the Effective Date.

- (g) The Contractor agrees to deliver to the Commonwealth, as required by the Commonwealth, all documents in its possession, power or control which contain or relate to any information that is Commercial-in-Confidence Information of the Commonwealth on the earlier of:
 - (i) demand by the Commonwealth; and
 - (ii) the time the documents and other material are no longer required for the purposes of this Deed,except where the Contractor is required to retain such Commercial-in-Confidence Information under law or in accordance with prudent corporate governance procedures.
- (h) If the Commonwealth makes a demand under clause 20(g), and the Contractor has placed or is aware that documents containing the Commercial-in-Confidence Information are beyond its possession or control, then the Contractor must provide full particulars of the whereabouts of the documents containing the Commercial-in-Confidence Information, and the identity of the person in whose custody or control they lie.
- (i) The Contractor, when directed by the Commonwealth in writing, agrees to destroy any document in its possession, power or control, which contain or relate to any Commercial-in-Confidence Information except where the Contractor is required to retain such Commercial-in-Confidence Information under law or in accordance with prudent corporate governance procedures.
- (j) Return or destruction of the documents referred to in this clause 20 does not release the Contractor from its obligations under this Deed.

21. Defence Security

- (a) If the Contractor requires access to any Commonwealth place, area or facility under the control or responsibility of the Department of Defence, or the ADF, the Contractor must:
 - (i) comply with any security requirements notified to the Contractor by the Commonwealth Representative from time to time; and
 - (ii) ensure that its officers, employees, agents and Subcontractors are aware of and comply with the Commonwealth's security requirements.
- (b) The Contractor must:
 - (i) and will ensure that its officers, employees, agents and Subcontractors (including the Subcontractors offices, employees and agents), undertake any security checks or clearances as required by the Commonwealth;
 - (ii) notify the Commonwealth of any changes to circumstances which may affect the Contractor's capacity to provide Services in accordance with the Commonwealth's security requirements; and

- (iii) provide a written undertaking in respect of security or access to the Commonwealth place, area or facility in the form required by the Commonwealth.
- (c) The Contractor must use its best endeavours to ensure that all information in its possession relating to the performance of this Deed is safeguarded and protected.
- (d) All security classified information furnished or generated under this Deed, must not be released to a third party, including a representative of another country, without prior written approval of the originator through the Commonwealth Representative.
- (e) The Contractor must promptly report to the Commonwealth Representative any instance in which it is known or suspected that security classified information furnished or generated under this Deed has been lost or disclosed to unauthorised parties, including a representative of another country.
- (f) All security classified information transmitted between the parties or a party and a Subcontractor, in Australia, whether generated in Australia or overseas, will be subject to the terms of Defence industrial security policy, as set out in Part I of the Defence Security Manual, as amended from time to time.
- (g) All security classified information transmitted between the parties or a party and a Subcontractor located overseas, whether generated in Australia or by another country, will be subject to the laws of the overseas country regarding the custody and protection of security classified information, and to any bilateral security instrument between Australia and the overseas country.
- (h) If there has been a breach by the Contractor, a Subcontractor, or any of their officers, employees or agents, of this clause 21, the Commonwealth Representative may give the Contractor a notice of termination for default under clause 24.2(a).
- (i) The Contractor must ensure the requirements of clause 21 are included in all Subcontracts where the Subcontractor requires access to security classified information in order to perform the obligations of the Subcontract.

22. Post Defence separation employment

- (a) The Contractor must ensure that any employee who is a former Defence Employee complies with the requirements of DRB19 and DI(G) PERS 25-4 as applicable.
- (b) Except with the written approval of the Commonwealth Representative, the Contractor must not permit a person who:
 - (i) in a Relevant Period was an Employee of or Service Provider to Defence engaged in the preparation or management of this Deed, the selection of the Contractor or the performance of the project or activity to which this Deed relates; or
 - (ii) in the 12 months immediately preceding the request for approval was a Defence Employee,to perform or contribute to the performance of this Deed.

- (c) The Commonwealth Representative must not unreasonably withhold approval of a person under clause 22(b) and must consider:
 - (i) the character and duration of the engagement, services or work performed by the Employee or Service Provider in the period specified in clause 22(b);
 - (ii) any information provided by the Contractor about the character and duration of the services proposed to be performed by the Employee or Service Provider under this Deed;
 - (iii) the potential for real or perceived conflicts of interest or probity objections if the Employee or Service Provider performs or contributes to the performance of this Deed;
 - (iv) any information provided by the Contractor concerning any significant effect that withholding approval will have on the Employee or Service Provider's employment opportunities or the performance of this Deed; and
 - (v) the policy set out in DRB 19 and DI(G)PERS 25-4, as applicable.
 - (d) Each restriction created by clause 22(b), by the operation of the definition of 'Relevant Period' (due to the three Relevant Periods applying), is separate and independent of the other (although they are concurrent in effect).
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23. Delay

- (a) Subject to clauses 23(b), 23(c) and 23(d), if the scheduled departure time of an Aircraft in respect of an Agreed Request is delayed by a period in excess of 2 hours solely due to the negligence of the Commonwealth, the Commonwealth must pay the reasonable costs incurred by the Contractor solely in connection with and directly attributable to the delay.
- (b) Other than as provided for in clause 23(a) and notwithstanding the terms of an Agreed Request, the Commonwealth will not have any liability to the Contractor and the Contractor will not be entitled to make any Claim against the Commonwealth arising out of or in connection with any delay caused by the Commonwealth to the provision of the Services by the Contractor in respect of an Agreed Request.
- (c) Notwithstanding the terms of an Agreed Request, where an Agreed Request specifies an amount or amounts payable by the Commonwealth in the event that the Commonwealth delays the scheduled departure time of an Aircraft in respect of an Agreed Request:
 - (i) the amount payable by the Commonwealth to the Contractor following the delay will be determined in accordance with clauses 23(a); and
 - (ii) the Commonwealth's liability to the Contractor in respect of payment of the amount under clause 23(a) will be no greater than the amount or amounts specified in the Agreed Request.

- (d) The Commonwealth will not under any circumstances be liable for any consequential losses incurred by the Contractor in connection with any delay caused by the Commonwealth to the provision of the Services.
- (e) Unless specified otherwise in an Agreed Request, the Contractor may terminate an Agreed Request where:
 - (i) the scheduled departure time of an Aircraft from the Loading Location in respect of an Agreed Request is delayed by a period in excess of 6 hours solely due to the negligence of the Commonwealth;
 - (ii) the delay imposes a material threat to the Contractor's or the Operator's (as the case may be) scheduled operations in respect of that Aircraft; and
 - (iii) the Contractor gives the Commonwealth at least 2 hours notice in writing of its intention to terminate the Agreed Request in accordance with this clause 23(e) and the Commonwealth continues the delay in accordance with clause 23(e) in excess of that 2 hour period of notice.
- (f) Where the Contractor terminates an Agreed Request in accordance with clause 23(c), the Commonwealth will be deemed to have terminated the Agreed Request in accordance with clause 24.3(a) and clause 24.3(c) will apply. Except as provided for in clause 24.3(c), the Commonwealth will have no liability to the Contractor and the Contractor will not be entitled to make any Claim against the Commonwealth in connection with such termination.
- (g) The Contractor must ensure that each Subcontract contains a provision substantially on the same terms as this clause 23.

24. Disputes and termination

24.1 Resolution of disputes

- (a) A party must not commence court proceedings relating to any dispute arising from this Deed except where that party seeks urgent relief from a court or where dispute resolution has failed under this clause 24.1. If a party fails to comply with this clause 24.1, the other party is not required to undertake dispute resolution for the dispute in accordance with this clause 24.1.
- (b) If a dispute arising between the Commonwealth and the Contractor cannot be settled by negotiation (including negotiation between senior management of the parties) within 30 days, the parties may agree to use an alternative dispute resolution process to attempt to resolve the dispute.
- (c) The parties must at all times during the dispute continue to fulfil their obligations under this Deed.

24.2 Contractor default

- (a) **Immediate termination for default**
 - (i) In addition to its other rights, the Commonwealth may immediately terminate or reduce the scope of this Deed or any Agreed Request by notice in writing to the Contractor, if the Contractor:

- A. becomes bankrupt or insolvent;
- B. becomes subject to one of the forms of external administration provided for in Chapter 5 of the *Corporations Act 2001*, including:
 - 1) the appointment of a person to administer a scheme or compromise in relation to the body in accordance with Part 5.1 of the *Corporations Act 2001*;
 - 2) the appointment of a controller or managing controller to the whole or any part of its assets or undertakings in accordance with Part 5.2 of the *Corporations Act 2001*;
 - 3) the appointment of an administrator under Part 5.3A of the *Corporations Act 2001*; or
 - 4) the appointment of a liquidator in relation to the body;
- C. becomes subject to any form of administration under the laws of a non-Australian jurisdiction, which is the same as, or substantially equivalent to, one of those referred to in clause 24.2(a)(i)B;
- D. is wound up by resolution or an order of the court;
- E. suffers execution against any of its assets which has an adverse effect on the Contractor's ability to perform its obligations under this Deed;
- F. makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors;
- G. becomes an insolvent under administration;
- H. ceases to carry on business;
- I. subject to clause 13.1(e)(i), fails to obtain or ceases to hold any Approval;
- J. breaches any of its obligations under clause 12;
- K. commits any breach (other than a breach the subject of clause 24.2(b)) for which this Deed provides a notice of termination for default may be given;
- L. assigns its rights other than in accordance with the requirements of this Deed;
- M. without limiting the Commonwealth's other rights under this clause, has committed a Default of a kind that the Contractor

has been required by the Commonwealth to remedy under clause 24.2(b) on two or more prior occasions, whether or not the Contractor has remedied the Default on those occasions;

- N. has otherwise regularly or persistently failed to meet any, some or all requirements of this Deed, whether or not the Commonwealth has required the Contractor to remedy a Default under clause 24.2(b); or
- O. fails to provide the Services in accordance with an Agreed Request more than once in any rolling period of 12 months.

(ii) In addition to its other rights, the Commonwealth may immediately terminate or reduce the scope of an Agreed Request by notice in writing to the Contractor, if in respect of the Agreed Request:

- A. the scheduled departure time of the flight is delayed by 12 hours or more except where the delay is due to an unlawful or negligent act or omission on the part of the Commonwealth or any person through whom the Commonwealth is acting (but not including the Contractor, its officers, employees, agents or Subcontractors);
- B. the Contractor fails to provide any information to the Commonwealth by the date specified in the Agreed Request where that information is required by the Commonwealth in order to obtain any Approval for which the Commonwealth is obliged to obtain under clause 8.2(a) or where specified in an Agreed Request;
- C. the Aircraft specified in the Agreed Request is not available for use to provide the Services; or
- D. the Commonwealth rejects an Aircraft under clause 8.6(b);
- E. the Contractor fails to obtain an Approval and clause 13.1(d) or clause 13.1(e)(ii) applies.

(iii) To avoid doubt, the Commonwealth is not required to provide prior notice, either orally or in writing, of an exercise of its rights under clause 24.2(a).

(b) Termination following Default Notice

- (i) For clause 24.2(b)(ii), a "**Default**" exists if the Commonwealth considers that the Contractor has failed to comply with an obligation to be performed or observed under this Deed or an Agreed Request.
- (ii) The Commonwealth may notify the Contractor in writing of a Default ("**Default Notice**") and require the Contractor to remedy the Default within the period specified in the Default Notice.
- (iii) If the Commonwealth issues a Default Notice, the Contractor must:

- A. remedy the Default within the period specified in the Default Notice;
 - B. comply with any directions given to the Contractor by the Commonwealth in relation to the Default; and
 - C. mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the Default, including those arising from affected Subcontracts.
- (iv) The Commonwealth may immediately terminate or reduce the scope of this Deed or any Agreed Request by notice in writing to the Contractor if the Contractor fails to:
- A. commence remedying the Default within the period specified in the Default Notice; or
 - B. remedy the Default within the period specified in the Default Notice.

(c) Termination for reaching liability cap

Without limiting the Commonwealth's other rights under clause 24.2, the Commonwealth may immediately terminate or reduce the scope of this Deed or cancel any Agreed Request by notice in writing to the Contractor, if the Contractor would have, except for the operation of clause 14.4(a), been liable to the Commonwealth for loss in relation to one of the categories of loss covered by the liability caps provided for in clause 14.4(a) for an amount equal to or greater than the amount of the liability cap.

(d) General termination terms

- (i) If this Deed is terminated under this clause 24.2 or otherwise:
- A. the Contractor will deliver to the Commonwealth, as required by the Commonwealth, all documents in its possession, power or control or in the possession, power or control of its officers, employees, agents or Subcontractors and personnel, which contain or relate to any Commercial-in-Confidence Information or which are security classified;
 - B. subject to clause 25.6, the parties will be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
 - C. subject to the process set out in clause 24.3, the right to recover damages, including full contractual damages, will not be affected; and
 - D. the Contractor will deliver all existing Technical Data for Services provided prior to the date of termination, within 30 days after receipt of the notice of termination, or other period agreed by the parties;

- E. the Contractor will return all Commonwealth property in its possession, power or control or in the possession, power or control of its officers, employees, agents or Subcontractors and personnel; and
 - F. to avoid doubt, and despite anything else in this Deed, if the Contractor delays in delivering Services or complying with any other obligation in accordance with this Deed, each day of delay is a new breach of this Deed for which the Commonwealth may exercise its rights under this clause or at law, notwithstanding any conduct by the Commonwealth or election not to terminate this Deed for a previous breach of this Deed.
- (ii) The rights of the Commonwealth to terminate or reduce the scope of this Deed or any Agreed Request under this clause 24.2 are in addition to any other right or remedy the Commonwealth may have in relation to this Deed.
 - (iii) For the avoidance of doubt, unless the Commonwealth specifies otherwise in a notice terminating this Deed, termination of this Deed will also terminate all Agreed Requests which have not been fully performed by the Contractor at the effective date of termination. Where the Commonwealth notice terminating this Deed provides that one or more Agreed Requests which have not been fully performed by the Contractor at the effective date of termination will survive termination, this Deed will remain in existence for the purpose of and until such time as the Contractor has fully performed the relevant Agreed Requests subject to such other provisions as the Commonwealth may prescribe in the notice of termination.

24.3 Termination for convenience

- (a) In addition to any other rights it has under this Deed, the Commonwealth may at any time terminate this Deed, reduce the scope of this Deed or cancel an Agreed Request by notifying the Contractor in writing.
- (b) If the Commonwealth Representative issues a notice under clause 24.3(a), the Contractor must:
 - (i) stop work in connection with this Deed and/or an Agreed Request in accordance with the notice;
 - (ii) comply with any directions given to the Contractor by the Commonwealth; and
 - (iii) mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination or cancellation, including those arising from affected Subcontracts.
- (c) Subject to clauses 24.3(d) and 24.3(f), if the Commonwealth Representative issues a notice under clause 24.3(a), the Commonwealth will only be liable for:

- (i) payments under the payment terms of this Deed for work conducted in respect of an Agreed Request before the effective date of termination or cancellation; and
- (ii) any reasonable costs incurred by the Contractor solely in connection with a terminated Agreed Request which has not been fully performed by the Contractor at the effective date of termination or cancellation and that are directly attributable to the termination or cancellation,

when the Contractor substantiates these amounts to the satisfaction of the Commonwealth Representative. The Commonwealth will have no liability to the Contractor and the Contractor will not have any other Claim against the Commonwealth other than as set out in this clause 24.3(c) on the basis that the Contractor is not entitled to receive any payment or compensation under this Deed other than payment of the relevant Contract Price for Services performed in respect of an Agreed Request. Accordingly, if at the effective date of termination or cancellation, there are no terminated Agreed Requests which remain to be fully performed by the Contractor, the Commonwealth will have no liability to compensate the Contractor under this clause 24.3(c).

- (d) The Contractor will not be entitled to:
 - (i) profit anticipated on any part of this Deed terminated or Agreed Request cancelled; or
 - (ii) any lost opportunity as a result of the Contractor entering into any Deed with the Commonwealth.
- (e) The Contractor must, in each Subcontract, secure the right of termination and cancellation and terms for compensation functionally equivalent to that of the Commonwealth under clause 24.3.
- (f) Notwithstanding the terms of an Agreed Request, where an Agreed Request specifies an amount or amounts payable by the Commonwealth in the event that the Commonwealth cancels the Agreed Request:
 - (i) the amount payable by the Commonwealth to the Contractor following cancellation of an Agreed Request will be determined in accordance with clauses 24.3(c) and 24.3(d); and
 - (ii) the Commonwealth's liability to the Contractor in respect of payment of the amount under clause 24.3(c) will be no greater than the amount or amounts specified in the Agreed Request.

The Contractor will not be entitled to make any Claim against the Commonwealth arising out of or in connection with the cancellation of an Agreed Request other than in respect of payment of the amount determined in accordance with clauses 24.3(c) and 24.3(d).

25. General

25.1 Language and Measurement

- (a) All information delivered as part of the Services under this Deed must be written in English. If such documentation is a translation into the English language, the translation must be accurate and free from ambiguity.
- (b) Measurements of physical quantity must be in Australian legal units as prescribed under the *National Measurement Act 1960* (Cth), or, if Services are imported, units of measurement as agreed by the Commonwealth Representative.

25.2 Entire Deed

- (a) This Deed represents the parties' entire agreement in relation to the subject matter and supersedes all tendered offers and prior representations, communications, Deeds, statements and understandings, whether oral or in writing.
- (b) The Commonwealth will not be liable for any work undertaken, nor expenditure incurred, by the Contractor, which has not been authorised or agreed in writing in accordance with the provisions of this Deed.

25.3 Waiver

Failure by either party to enforce a term of this Deed must not be construed as in any way affecting the enforceability of that term or this Deed as a whole.

25.4 Assignment and novation

Neither party may, without the written consent of the other, assign, novate, transfer, mortgage, charge or otherwise deal with its interest in, or obligations under, this Deed.

25.5 Right of Commonwealth to Recover Money

- (a) Without limiting the Commonwealth's rights under this Deed, if the Contractor owes any debt to the Commonwealth in relation to this Deed, the Commonwealth may in its absolute discretion exercise one or both of the following:
 - (i) deduct the amount of the debt from payment of any claim; or
 - (ii) provide the Contractor with written notice of the existence of a debt recoverable which will be paid by the Contractor within 30 days of receipt of notice.
- (b) If the Commonwealth deducts the amount of a debt from any payment, it must notify the Contractor in writing that it has done so.
- (c) If any sum of money owed to the Commonwealth is not received by its due date for payment, the Contractor will pay to the Commonwealth interest at the Reserve Bank of Australia cash rate target current at the date the payment was due for each day the payment is late.

- (d) Nothing in this clause 25.5 affects the right of the Commonwealth to recover from the Contractor the whole of any debt owed by the Contractor, or any balance that remains owing after deduction.

25.6 Survivorship

Any provision of this Deed which expressly or by implication from its nature is intended to survive the termination or expiration of this Deed and any rights arising on termination or expiration will survive, including provisions relating to Commercial-in-Confidence Information, IP, Right of the Commonwealth to Recover Money, Defence Security, Privacy, and any warranties, guarantees, licences or indemnities.

25.7 Severability

If any part of this Deed is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of this Deed will not be affected and will be read as if that part had been severed.

25.8 Notices

- (a) Unless the contrary intention appears, any notice or communication under this Deed will be effective if it is in writing, signed and delivered to the Contractor or the Commonwealth, as the case may be, at the following addresses:

To the Contractor:

Name:
Address:
Fax:
For the attention of:

To the Commonwealth:

Name: Director National Logistics
Address: Northbourne House 8-01
Northbourne Avenue
Canberra ACT 2601
Fax: 02 6266 5254
For the attention of: Director National Logistics

- (b) A notice or communication will be deemed to have been delivered:
- (i) if sent by prepaid post, in three Working Days if sent within Australia and in eight Working Days if sent by air mail from one country to another;
 - (ii) if sent by facsimile, at the time recorded by the transmitting machine; or
 - (iii) in the case of delivery by hand, on delivery.

25.9 Negation of Employment and Agency

- (a) The Contractor must not represent itself, and must ensure that its officers, employees, agents and Subcontractors do not represent themselves, as being employees, partners or agents of the Commonwealth.
- (b) The Contractor, its officers, employees, agents and Subcontractors will not by virtue of this Deed be, or for any purpose be deemed to be, an employee, partner or agent of the Commonwealth or in a joint venture with the Commonwealth.

EXECUTED AS A DEED

SIGNED for and on behalf of

THE COMMONWEALTH OF AUSTRALIA

By:

.....

(signature)	(print name and position of authorised signatory)	(date)
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In the presence of:

.....

(signature of witness)	(print name of witness)	(date)
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Executed by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

**Attachment 1
Request**

Request

To: [insert name and ACN of Contractor] ("Contractor")

From: The Commonwealth of Australia as represented by the Department of Defence ("Commonwealth")

Date: [insert date]

In accordance with the terms of the Air Transport Deed of Standing Offer between the Contractor and the Commonwealth dated [insert date] ("Deed"), the Commonwealth requires the Contractor to move the equipment and/or personnel specified in this Request in accordance with this Request and the terms of the Deed.

Unless the context requires otherwise, terms used in this Request have the meaning given to them in the Deed.

This Request relates to [insert background and a brief description of the move including identifying any key issues associated with the move].

No.	Item	Details
1.	Relevant Equipment	
2.	Relevant Personnel	
3.	Delivery Date	
4.	Date Relevant Equipment and/or Relevant Personnel available for loading	
5.	Loading Location	
6.	Unloading Location	
7.	Special Conditions	
8.	Date for submission of Completed Request	
9.	Other Commonwealth requirements or information	
	Part A: Details of additional Commonwealth requirements or additional information to be submitted by the Contractor	<ul style="list-style-type: none"> • A load plan that details the planned load and weight allocation and identifies any excess capacity that may be used by the Commonwealth. • A risk assessment identifying key risks in relation to the provision of the Services and

Air Transport Deed of Standing Offer

No.	Item	Details
		<p>strategies which will be implemented to manage the risks.</p> <ul style="list-style-type: none"> • A completed flight schedule in accordance with Annex A.
	Part B: Details of any GFE, support or assistance which will be provided by the Commonwealth	
10.	Contract Price	
11.	Loading Date	
12.	Details of the Aircraft including Aircraft Operating Certificate, the aircraft type, registration, maximum payload uplift capacity of personnel and/or equipment	
13.	Details of any Operator which will operate the Aircraft and details of any Subcontractors which will otherwise provide the Services	
14.	Contractor's point of contact including contact details	
15.	<p>Maximum of liability of the Commonwealth for:</p> <p>(a) delays to the scheduled departure time of an Aircraft in accordance with clause 23(a) of the Deed; and</p> <p>(b) cancellation of an Agreed Request in accordance with clause 24.3(c) of the Deed</p>	
16.	Other information to be provided by the Contractor	
17.	The period within which the Commonwealth may accept the Completed Request which must not be less than 10 days.	

Request:

The Commonwealth requests the Contractor to complete Items 10 to 17 of the Request in accordance with the terms of the Deed and return the Completed Request signed by the Contractor to the Commonwealth by the date set out in Item 8 of the Request.

Signed for and on behalf of the Commonwealth

Date:

Completed Request:

The Contractor agrees to move the Relevant Equipment and/or Relevant Personnel and the Accompanying Baggage in accordance with the terms of this Completed Request and the terms of the Deed.

Signed for and on behalf of the Contractor

Date:

Agreed Request:

The Commonwealth accepts the Completed Request.

Signed for and on behalf of the Commonwealth

Date:

Annex A - Flight schedule

Flight number	Loading Date	Loading Location	Delivery Date	Via	Via	Unloading Location	Relevant Equipment/Relevant Personnel	Total

Attachment 2
Schedule of Approved Subcontractors

Approved Subcontractor	Work to be Subcontracted	Equipment/ Services	Comments

**Attachment 3
Commercial-In-Confidence Information**

Item	Title	Reason for classification	Party for whom the information is Commercial-in-Confidence
Clause 12.1(a)	Ownership of Intellectual Property	Contains details about intellectual property regimes that is commercially sensitive.	Commonwealth / Contractor
N/A	The terms of any Request provided to the Contractor by the Commonwealth; the terms of any Completed Request; and the terms of any Agreed Request	Contains details about the movement of equipment that is security sensitive, and information about price which is commercially sensitive.	Commonwealth / Contractor

**Attachment 4
Key Persons**

Key Staff Position	Key Person	Services to be performed by Key Person

Attachment 5 Insurance

Insurance	Minimum sum insured	Maximum deductible
Employer's liability and worker's compensation insurance		
Hull all risk insurance		
Aviation liability insurance		
Public and product liability insurance		
Other insurances		
General liability		
[]		
[]		